

Conventions Act. NMFS hereby closes the U.S. longline fishery for bigeye tuna in the Convention Area for the remainder of 2004 because the bigeye tuna catch in the Convention Area has reached the reported level of catch made in 2001. This action is intended to limit fishing mortality on bigeye tuna stock caused by longline fishing in the Convention Area and contribute to the long-term conservation of bigeye tuna stock at levels that support healthy fisheries.

**DATES:** Effective from December 13, 2004 through the end of the 2004 fishing season, unless NMFS publishes a superseding document in the **Federal Register**.

**ADDRESSES:** Southwest Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90902-4213.

This **Federal Register** document is also accessible via the Internet at the Office of the **Federal Register**'s website at <http://www.gpoaccess.gov/>.

**FOR FURTHER INFORMATION CONTACT:** J. Allison Routt, Sustainable Fisheries Division, Southwest Region, NMFS, (562) 980-4030.

**SUPPLEMENTARY INFORMATION:** The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949 (Convention). The IATTC was established to provide an international arrangement to ensure the effective international conservation and management of highly migratory species of fish in the Convention Area. The Convention Area is defined to include the waters of the ETP bounded by the coast of the Americas, the 40° N. and 40° S. parallels, and the 150° W. meridian. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of tuna stocks and promote viable fisheries. Under the Tuna Conventions Act, 16 U.S.C. 951-962, NMFS must publish regulations to carry out IATTC recommendations and resolutions that have been approved by DOS. A proposed rule and request for comments was published in the **Federal Register** (69 FR 122) on June 25, 2004, and a final rule was published on November 12, 2004 (69 FR 65382). The Southwest Regional Administrator also is required by regulations at 50 CFR 300.29(b)(3) to issue a direct notice to the owners or

agents of U.S. vessels that operate in the ETP of actions recommended by the IATTC and approved by the DOS. Notices to the fleet were issued in October 2003, May 2004, and again in October 2004 regarding these actions.

The November 12, 2004, final rule provides that the U.S. longline fishery for bigeye tuna in the Convention Area will close for the remainder of calendar year 2004 if the catch of bigeye tuna by U.S. longline vessels in the Convention Area reaches 150 mt, which is the amount estimated to have been caught by the U.S. longline fishery in the Convention Area in 2001. Specifically, once the fishery is closed upon reaching the 2001 catch level, no bigeye tuna may be caught and retained by U.S. longline vessels in the Convention Area during the remainder of calendar year 2004.

NMFS has determined that the 150 mt catch level has been reached and hereby closes the U.S. longline fishery for bigeye tuna in the Convention Area for the remainder of the year 2004. It is therefore prohibited for a U.S. longline vessel to catch and retain bigeye tuna in the Convention Area from the effective date of this action through December 31, 2004.

**Authority:** 16 U.S.C. 951-962.

Dated: December 7, 2004.

**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 635

[I.D. 120704C]

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

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

**ACTION:** Quota transfer; fishery reopening; catch limit adjustment.

**SUMMARY:** NMFS has determined that Atlantic bluefin tuna (BFT) quota transfers from the Atlantic tunas General, Harpoon, and Incidental Longline categories to the Angling and Reserve categories, are warranted. In addition, NMFS is reopening the coastwide General category BFT fishery and reopening the Angling category BFT fishery. Finally, NMFS prohibits

retention of school BFT less than 47 inches (119 cm) in the recreational fishery for the remainder of the fishing year. 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 of the BFT quota transfers and recreational catch limit adjustment is December 7, 2004 through May 31, 2005. The effective dates for the reopening of the General and Angling categories, as specified in this rule, are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

**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 were filed with the Office of the Federal Register on December 7, 2004.

#### Quota Transfer

Under the implementing regulations at 50 CFR 635.27(a)(8), NMFS has the authority to transfer quotas among categories, or, as appropriate, subcategories, of the fishery, after considering the following factors: (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 factors listed here and the probability of exceeding the total quota, that vessels fishing under any category or subcategory quota are not likely to take that 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.

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. 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; and Trap category – 2.3 mt. Additionally, 36.6 mt would be allocated to the Reserve category.

On November 19, 2004, (69 FR 68094, November 23, 2004) NMFS closed the coastwide General and Angling category BFT fisheries due to uncertainties in the amount of available quota remaining given preliminary landing estimates for the 2004 fishing year. Since that closure, NMFS has been able to more accurately assess the level of BFT landings to date

after applying quality assurance procedures for commercial dealer reports. Current landings of incidentally caught BFT in the Longline category total approximately 27.8 mt, not including landings against the NED set-aside. The Harpoon category closed on November 15, 2004 (68 FR 74504, December 24, 2003) with a total of 29.9 mt landed by vessels in this category. The General category has landed a total of 251.5 mt to date. In addition, and also since the closure, NMFS has completed a report that analyzes the recreational catch estimate procedures and provides final BFT landings estimates for both the 2002 and 2003 fishing years. Based on the above report, the filing of the 2004 proposed BFT specifications, an assessment of the commercial landings data to date, and considering the factors for making quota transfers between categories, NMFS has determined that BFT quota transfers are warranted and that quota remains available for limited General and Angling category BFT fisheries.

Landings and effort information from the General and Angling category BFT fisheries are used by NMFS scientists for calculation of Catch-Per-Unit-Effort (CPUE) indices and are useful for stock assessment purposes. Extending the General and Angling category seasons has traditionally provided for enhanced CPUE data estimates due to the collection of additional data over a greater time frame and with broader spatial coverage. Without conducting an inseason transfer, NMFS would not be able to obtain an optimal temporal or geographic distribution of CPUE data for

the 2004 fishing year. Based on previous fishing years catch rates late in the season, availability of quota, and availability of BFT on the fishing grounds, NMFS expects that transferred quota would be harvested prior to the end of the 2004 fishing year.

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

Therefore, NMFS has determined to transfer 223.1 mt of the proposed General category quota of approximately 659.0 mt to the Angling category. Also, in part to address the anticipated landings from the 2004 recreational season, NMFS has determined to transfer 76.9 mt of the proposed General category quota, 45 mt of the proposed Longline category quota, and 40 mt of the proposed Harpoon category quota to the Reserve category. 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.

#### Reopening of the General and Angling BFT Fisheries

TABLE 1. REOPENING EFFECTIVE DATES

Category	Effective Dates	Areas	BFT Size Class Limit
General	December 8 through December 20, 2004, inclusive	All	One large medium or giant BFT per vessel/day/trip, measuring 73 inches (185 cm) CFL or greater.
Angling	December 8 through May 31, 2005, inclusive	All	One large school or small medium BFT per vessel/day/trip, measuring 47 to less than 73 inches (119 cm to less than 185 cm) CFL. One large medium or giant “trophy” BFT per vessel/year, measuring 73 inches (185 cm) or greater (no sale).

#### General category

The General category fishery was closed (69 FR 68094, November 23, 2004) and is reopened to provide commercial fishing opportunities to both General and Charter/Headboat category fishery participants to harvest

the remainder of the available General category quota. Given the proposed specifications and the above transfers, a limited quota of approximately 107 mt remains available which is approximately the same level of landings attributed to southern area

fishermen during last winter’s commercial fishery. Recent information indicates that the commercial sized BFT have now migrated off the coast off North Carolina and are available to General and Charter/Headboat category fishery participants. Due to the

anticipated General category catch rates in December, the unpredictable nature of the weather, the availability of BFT on the fishing grounds, and the amount of available quota, NMFS has determined to limit the coastwide General category reopening period for large medium and giant BFT to 13 days.

Therefore, the coastwide General category is scheduled to reopen on 12:30 a.m. December 8, 2004, and close at 11:30 p.m. December 20, 2004. 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 and applies in all areas, for all vessels fishing under the General category quota (i.e., permitted HMS General and 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 December 20, 2004.

#### Angling category

The Angling category fishery was closed on November 19, 2004 (69 FR 68094, November 23, 2004) and is reopened to provide recreational fishing opportunities to both Angling and Charter/Headboat category fishery participants. Given the 2004 proposed specifications and the above transfer, an approximate quota of 288 mt is available for the 2004 fishing year. Preliminary 2004 recreational landings estimates to date are not yet available. Winter recreational BFT landings are very limited (less than 30 mt) due to the low numbers of participants and limited availability of recreational sized BFT through the winter to spring time frame.

This transfer is intended to ensure sufficient quota remains available for the Angling category for the 2004 fishing year. In addition, under the western BFT rebuilding plan, ICCAT recommended limiting the catch of recreationally caught school BFT, measuring 27 to less than 47 inches (69 to less than 119 cm) CFL, to no more than 8-percent by weight of the total domestic landings quota over each 4-consecutive-year period. NMFS implements this ICCAT recommendation through annual and inseason adjustments to the school BFT retention limits, as necessary, and through the establishment of a school BFT reserve (64 FR 29090, May 28, 1999; 64 FR 29806, June 3, 1999). This ICCAT recommendation allows NMFS the flexibility to enhance fishing opportunities and to collect information on a broad range of BFT size classes and to make interannual adjustments for

overharvests and underharvests, provided that the 8-percent landings limit is met over the applicable 4-consecutive-year period.

After the transfers mentioned above and the resultant available quota, the expected Angling category catch rates during the winter months, availability of BFT on the fishing grounds, NMFS has determined to reopen the Angling category BFT fishery. Based on school size class BFT landing estimates from the 2002 and 2003 fishing years and the most recently available 2004 Angling category landings estimates, NMFS has determined to limit the recreational BFT retention of school BFT for the remainder of the 2004 fishing year to ensure the 8-percent school landings limit is not exceeded.

Therefore, the Angling category BFT fishery is reopened at 12:30 a.m. December 8, 2004, and continue through May 31, 2005. The Angling category daily retention limit will be one large school or small medium BFT, measuring 47 to less than 73 inches (119 to less than 185 cm) CFL and per vessel/day/trip. In addition, one large medium or giant BFT per vessel per year is available under the trophy fishery program (no sale), for all vessels fishing under the Angling category quota (i.e., permitted HMS Angling and Charter/Headboat vessels).

#### Monitoring and Reporting

NMFS selected the duration of the openings and the daily retention limits based on a review of 2004 proposed quotas, transfers, dealer reports, daily landing trends, the availability of BFT on the fishing grounds, and previous fishing years effort and landings rates from December through May. NMFS will continue to monitor both the General and Angling category BFT fisheries closely.

The General category will be monitored via the commercial BFT landing reports submitted by authorized BFT dealers. Should the available quota projected to be reached, any interim closures will be published in the **Federal Register**. Once the General category BFT fishery has closed, NMFS will assess reported landings and available quota and determine if a reopening in January is warranted.

The Angling category will be monitored through the Automated Landings Reporting System (ALRS) and the state harvest tagging programs in North Carolina and Maryland. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that an interim closure or an additional retention limit adjustment is necessary to enhance scientific data

collection from, and fishing opportunities in, all geographic areas. Closures or subsequent adjustments to the Angling category fishery, if any, will be published in the **Federal Register**. All BFT landed under the Angling category quota must be reported within 24 hours of landing to the NMFS ALRS via toll-free phone at (888) 872-8862; or the Internet (<http://www.nmfspermits.com>); or, if landed in the state of North Carolina, to a reporting station prior to offloading. Information about North Carolina's harvest tagging program, including reporting station locations, can be obtained by calling (800) 338-7804. Information about Maryland's harvest tagging program can be obtained from the Maryland Department of Natural Resources at (410) 213-1531. In addition, BFT fishery participants may call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9305 for updates on quota monitoring and regulatory updates.

#### 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 and Angling category fisheries have been closed since November 23, 2004 (69 FR 68094) due to uncertainty in availability of quota and accurate landings estimates and concern over potential overharvest of anticipated quotas. Since that time NMFS has completed a Report analyzing recreational BFT landings estimates from 2002 and 2003, and the information was used to prepare the proposed initial 2004 BFT specifications, which show that quota is available for a limited fishery for the remainder of the current fishing year. Recent information shows BFT in both recreational and commercial size classes are now available off southern Atlantic states in nearshore areas and accessible to recreational and commercial anglers as well as Charter/Headboat operations. Under ATCA and the HMS FMP, NMFS is obliged to provide fishing opportunities to catch the available quota. Through this action, NMFS is using its authority to transfer quota among categories, which is biologically neutral with respect to the ICCAT BFT rebuilding plan, is consistent with the HMS FMP to ensure specific categories do not overharvest allocated quota, and will provide equitable fishing opportunities to a wide geographic range of fishery participants. Restricting retention of school size BFT will ensure that the ICCAT recommended 8-percent

limit on school size over a 4-year consecutive period is not exceeded, and closing the General category fishery on December 20 will reduce the likelihood of overharvest of quota in this commercial fishery.

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 recreational fleets. As both the Angling and General categories are currently closed, fishery participants are not currently able to access the BFT while the fish are available and accessible in nearshore areas off the south Atlantic states. It is in the public interest to act quickly to open the fisheries while the BFT are available 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.

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: December 7, 2004.

**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 635

**[Docket No. 040910261-4325-02; I.D. 072704A]**

**RIN 0648-AS08**

#### Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures; Correction

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

**ACTION:** Final rule; fishing season notification; correction.

**SUMMARY:** This document corrects the season closure dates in a final rule published November 30, 2004. Corrections concern the first trimester season closure dates for large coastal sharks (LCS) for the Gulf of Mexico and the first trimester season closure dates for the South Atlantic.

**DATES:** Effective January 1, 2005.

#### FOR FURTHER INFORMATION CONTACT:

Chris Rilling by phone: 301-713-2347 or by fax: 301-713-1917.

**SUPPLEMENTARY INFORMATION:** On November 30, 2004, NMFS published in the **Federal Register** a final rule that established the opening and closure dates of the first trimester season for the Atlantic commercial shark fishery (69 FR 69537). In that rule, the closure dates for LCS in the Gulf of Mexico and the South Atlantic in Table 1 were inverted. This document corrects that error.

#### Correction

Rule FR Doc. 04-26414 published on November 30, 2004 (69 FR 69537), to be effective January 1, 2005, is corrected as follows.

On page 69538, in Table 1, the first two rows are corrected to read as follows:

Species Group	Region	First Trimester Season Opening Dates	First Trimester Season Closure Dates
Large Coastal Sharks	Gulf of Mexico	January 1 - February 28, 2005, 11:30 p.m. local time	February 28, - April 30, 2005, 11:30 p.m. local time
	South Atlantic	January 1 - February 15, 2005, 11:30 p.m. local time	February 15, - April 30, 2005, 11:30 p.m. local time
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**Authority:** 16 U.S.C. 1801, *et seq.*

Dated: December 7, 2004.

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

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