

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 001005281-0369-02; I.D. 112006D]

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction**

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

**ACTION:** Temporary rule; trip limit reduction.

**SUMMARY:** NMFS reduces the trip limit in the commercial hook-and-line fishery for king mackerel in the northern Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Gulf king mackerel resource.

**DATES:** This rule is effective 12:01 a.m., local time, November 27, 2006, through June 30, 2007, unless changed by further notification in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Steve Branstetter, telephone 727-824-5305, fax 727-824-5308, e-mail [steve.branstetter@noaa.gov](mailto:steve.branstetter@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota for the northern Florida west coast subzone is 168,750 lb (76,544 kg) (50 CFR 622.42(c)(1)(i)(A)(2)(ii)).

In accordance with 50 CFR 622.44(a)(2)(ii)(B), from the date that 75

percent of the northern Florida west coast subzone's quota has been harvested until a closure of the subzone's fishery has been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has determined that 75 percent of the quota for Gulf group king mackerel from the northern Florida west coast subzone has been reached. Accordingly, a 500-lb (227-kg) trip limit applies to vessels in the commercial fishery for king mackerel in or from the EEZ in the northern Florida west coast subzone effective 12:01 a.m., local time, November 27, 2006. The 500-lb (227-kg) trip limit will remain in effect until the fishery closes or until the end of the current fishing year (June 30, 2007), whichever occurs first.

The Florida west coast subzone is that part of the eastern zone south and west of 25° 20.4' N. lat. (a line directly east from the Miami-Dade County, FL, boundary). The Florida west coast subzone is further divided into northern and southern subzones. The northern subzone is that part of the Florida west coast subzone that is between 26° 19.8' N. lat. (a line directly west from the Lee/Collier County, FL, boundary) and 87° 31'06" W. long. (a line directly south from the Alabama/Florida boundary).

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure, if warranted. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action in order to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment will require time and would potentially result in a harvest well in excess of the established quota. For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: November 21, 2006.

**Alan D. Risenhoover,**

*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. 112006C]

**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 daily Atlantic bluefin tuna (BFT) retention limits for the Atlantic tunas General category should be adjusted to provide reasonable opportunity to harvest the General category December time-period subquota. Therefore, NMFS increases the daily BFT retention limits for the entire month of December, including previously scheduled Restricted Fishing Days (RFDs), to provide enhanced commercial General category fishing opportunities in all areas while minimizing the risk of an overharvest of the General category BFT quota.

**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.

The 2006 BFT fishing year began on June 1, 2006, and ends May 31, 2007. The final initial 2006 BFT specifications and General category effort controls

were published on May 30, 2006 (71 FR 30619). These final specifications divided the General category quota among three subperiods (June through August, the month of September, and October through January) in accordance with the Highly Migratory Species Fishery Management Plan (1999 FMP) published in 1999 (May 29, 1999; 64 FR 29090), and implementing regulations at § 635.27. The final initial 2006 BFT specifications increased the General category retention limit to three fish for the June through August time-period, as well as established the following General category RFD schedule: all Saturday and Sundays from November

18, 2006, through January 31, 2007, and Thursday November 23, 2006, and Monday December 25, 2006, inclusive. Due to the large amount of available quota and the low catch rates, NMFS extended the three-fish retention limit through September (71 FR 51529, August 30, 2006), October (71 FR 58287, October 3, 2006), and November (71 FR 64165, November 1, 2006) to enhance fishing opportunities while minimizing the risk of exceeding available quota. Later, on October 2, 2006, NMFS published a final rule (71 FR 58058) implementing the Consolidated Highly Migratory Species Fishery Management Plan (HMS FMP). Contained in the HMS

FMP is a revised General category time-period subquota allocation scheme that has divided the coastwide General category into the following five distinct time-periods; June through August, September, October through November, December, and January of the following year. The effective date of these time-periods and their associated subquota was November 1, 2006.

#### Daily Retention Limits

Pursuant to this action and the final initial 2006 BFT specifications, noted above, the daily BFT retention limits for Atlantic tunas General category are as follows:

TABLE 1. EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

Permit Category	Effective Dates	Areas	BFT Size Class Limit
General	November 1 - 30, 2006, inclusive	All	Three BFT per vessel per day/trip, measuring 73 inches (185 cm) curved fork length (CFL) or larger
	December 1 - 31, 2006, inclusive	All	Three BFT per vessel per day/trip, measuring 73 inches (185 cm) CFL or larger
	January 1 - 31, 2007, inclusive	All	One BFT per vessel per day/trip, measuring 73 inches (185 cm) CFL or larger

#### Adjustment of General Category Daily Retention Limits

Under § 635.23(a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for a reasonable opportunity to harvest the quota for BFT. As part of the final specifications on May 30, 2006 (71 FR 30619), NMFS adjusted the commercial daily BFT retention limit, in all areas, for those vessels fishing under the General category quota, to three large medium or giant BFT, measuring 73 inches (185 cm) or greater curved fork length (CFL), per vessel per day/trip. This retention limit, which was to remain in effect through August 31, 2006, inclusive, was extended through September, October, and November via separate actions published in the **Federal Register**. From December 1, 2006, through January 31, 2007, inclusive, the General category daily BFT retention limit was scheduled to revert to one large medium or giant BFT per vessel per day/trip.

The June through August, September, and October through November time-period subquota allocations for the 2006 fishing year total approximately 1,041.2 metric tons (mt). As of November 20, 2006, 103.9 mt have been landed in the General category and catch rates are less than 1.0 mt per day. If catch rates

remain at current levels and December RFDs remain as scheduled, approximately 28.0 mt would be landed through December 31, 2006. This projection would bring the June through December landings to approximately 131.9 mt, resulting in an underharvest of approximately 909.3 mt. The October 2, 2006, final rule (71 FR 58058) established stand-alone General category time-periods for the months of December and January. Each of these time-periods are allocated a portion of the coastwide General category, thereby ensuring fishing opportunities are provided in years where high catch rates are experienced. The quota carryover from the previous time-period subquotas, combined with the December time-period subquota allocation, would allow for approximately 969.8 mt to be harvested through December 31, 2006. In combination with the subquota rollover from previous time-periods, scheduled RFDs, current catch rates, and the daily retention limit reverting to one large medium or giant BFT per vessel per day on December 1, 2006, NMFS anticipates the full December time-period subquota will not be harvested. Adding an excessive amount of unused quota from one time-period subquota to the subsequent time-period subquota is undesirable because it changes the time-period subquota allocation percentages established in the

HMS FMP and may contribute to excessive carry-overs to subsequent fishing years. In the past, however, the fishery has had the capability of increasing landings rates dramatically in winter months, particularly off southern states. If the fishery was to perform at these past levels with high landings rates (although not witnessed during the winter of 2005/2006), it may alleviate concern of excessive roll-overs from one fishing year to the next, but raises the possibility of unprecedented, and potentially unsustainable, catch rates during the winter fishery.

The final initial 2006 BFT specifications scheduled a number of RFDs for the month of December, including all Saturdays and Sundays, as well as Monday December 25, 2006. These RFDs were designed to provide for an extended late season, south Atlantic BFT fishery for the commercial handgear fishermen in the General category. For the reasons referred to above, NMFS has determined that the scheduled December RFDs are no longer required to meet their original purpose, and may in fact exacerbate low catch rates. Therefore, NMFS determined that an increase in the General category daily BFT retention limit on those previously established RFDs for the month of December is warranted. NMFS has selected these days in order to give adequate advance notice to fishery

participants. While catch rates have continued to be low so far this season, NMFS recognizes that they may increase at any time late in the season. In order to ensure equitable fishing opportunities in all areas, NMFS has not waived the RFDs scheduled in January at this time. If catch rates continue to be low, some or all of the remaining previously scheduled RFDs may be waived as well.

Therefore, based on a review of dealer reports, daily landing trends, available quota, revised time-periods, and the availability of BFT on the fishing grounds, NMFS has determined that an increase in the General category daily BFT retention limit effective from December 1 through December 31, 2006, inclusive of previously scheduled RFDs for the month of December, is warranted. Thus, the General category daily retention limit of three large medium or giant BFT per vessel per day/trip (see Table 1) is extended through December 31, 2006, including all Saturdays and Sundays of December as well as Monday December 25, 2006. From January 1 through January 31, 2007, inclusive, the General category default daily BFT retention limit will be one large medium or giant BFT per vessel per day/trip will apply, unless further action is taken.

NMFS anticipates that with a combination of the default retention limit starting on January 1, 2007, and the large amount of General category quota available, there will be sufficient quota for the coastwide General category season to extend through the winter months and allow for a southern Atlantic fishery to take place with minimal risk of landings exceeding available quota. However, to reduce the risks of excessive landings rates throughout January, NMFS has determined it necessary to only extend the three BFT daily retention limit for the one month of December and will re-examine the need to further extend the increased bag limit prior to the newly established January time-period based on landings rates and other fishery information.

This adjustment is intended to provide a reasonable opportunity to harvest the U.S. landings quota of BFT while maintaining an equitable distribution of fishing opportunities, to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be

consistent with the objectives of the HMS FMP.

### Monitoring and Reporting

NMFS selected the daily retention limits and their duration after examining current and previous fishing year catch and effort rates, taking into consideration public comment on the annual specifications and inseason management measures for the General category received during the 2006 BFT quota specifications rulemaking process, and analyzing the available quota for the 2006 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.

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, or access the internet at [www.hmspermits.gov](http://www.hmspermits.gov), for updates on quota monitoring and retention limit adjustments.

### Classification

The Assistant Administrator for NMFS (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 for the following reasons:

NMFS has recently become aware of increased availability of large medium and giant BFT off southern Atlantic fishing grounds from fishing reports and landings data from dealers. This increase in abundance provides the potential to increase General category landings rates if fishery participants are authorized to harvest three large medium or giant BFT per day. Although landings to date have been low (i.e., less than one mt per day) there is the potential for increased availability of BFT during the winter to allow for an increase in fishery landing rates. The regulations implementing the HMS FMP provide for inseason retention limit adjustments to respond to the

unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery.

Adjustment of retention limits, including waiving previously scheduled RFDs in the month of December, is also necessary to avoid excessive quota rollovers to subsequent General category time-period subquotas. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as it would preclude NMFS from acting promptly to allow harvest of BFT that are still available on the fishing grounds. Analysis of available data shows that the General category BFT retention limit may be increased for the Atlantic tuna General and HMS Charter/Headboat permit holders with minimal risks of exceeding the International Commission for the Conservation of Atlantic Tunas allocated quota.

Delays in increasing the retention limits would be contrary to the public interest. Limited opportunities to harvest the respective quotas may have negative social and economic impacts to U.S. fishermen that either depend on 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 HMS Charter/Headboat sectors, the retention limits must be adjusted as expeditiously as possible so the impacted sectors can benefit from the adjustment.

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 increases 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: November 22, 2006.

**Alan D. Risenhoover,**

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

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