

(ii) On-air third-party advertisements with Web site references to third-party Web sites; or

(iii) Pages that are primarily devoted to multiple characters from multiple programs.

**Note 1:** *Commercial matter* means air time sold for purposes of selling a product or service and promotions of television programs or video programming services other than children's or other age-appropriate programming appearing on the same channel or promotions for children's educational and informational programming on any channel.

\* \* \* \* \*

■ 3. Section 73.671 is amended by revising paragraph (e)(3) and by removing paragraph (f) to read as follows:

**§ 73.671 Educational and informational programming for children.**

\* \* \* \* \*

(e) \* \* \*

(3) For purposes of the guideline described in paragraph (e)(2) of this section, at least 50 percent of the core programming counted toward meeting the additional programming guideline cannot consist of program episodes that had already aired within the previous seven days on either the station's main program stream or on another of the station's free digital program streams. This requirement does not apply to any program stream that merely time shifts the entire programming line-up of another program stream and, during the digital transition, to core programs aired on both the analog station and a digital program stream.

\* \* \* \* \*

**PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**

■ 4. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

■ 5. Section 76.225 is amended by revising paragraphs (b) introductory text, (c), and (d), by adding paragraph (e), and by revising Note 1 to § 76.225 to read as follows:

**§ 76.225 Commercial limits in children's programs.**

\* \* \* \* \*

(b) The display of Internet Web site addresses during program material or promotional material not counted as

commercial time is permitted only if the Web site:

\* \* \* \* \*

(c) If an Internet address for a Web site that does not meet the test in paragraph (b) of this section is displayed during a promotion in a children's program, in addition to counting against the commercial time limits in paragraph (a) of this section the promotion must be clearly separated from program material.

(d)(1) Entities subject to commercial time limits under the Children's Television Act shall not display a Web site address during or adjacent to a program if, at that time, on pages that are primarily devoted to free noncommercial content regarding that specific program or a character appearing in that program:

(i) Products are sold that feature a character appearing in that program; or

(ii) A character appearing in that program is used to actively sell products.

(2) The requirements of this paragraph do not apply to:

(i) Third-party sites linked from the companies' Web pages;

(ii) On-air third-party advertisements with Web site references to third-party Web sites; or

(iii) Pages that are primarily devoted to multiple characters from multiple programs.

(e) The requirements of this section shall not apply to programs aired on a broadcast television channel which the cable operator passively carries, or to access channels over which the cable operator may not exercise editorial control, pursuant to 47 U.S.C. 531(e) and 532(c)(2).

**Note 1 to § 76.225:** *Commercial matter* means air time sold for purposes of selling a product or service and promotions of television programs or video programming services other than children's or other age-appropriate programming appearing on the same channel or promotions for children's educational and informational programming on any channel.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

[I.D. 102606C]

**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 November through January time-period subquota. Therefore, NMFS increases the daily BFT retention limits for the entire month of November, including previous 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 Restricted Fishing Day (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) and October (71 FR 58287, October 3, 2006) respectively to enhance

fishing opportunities while minimizing the risk of exceeding available quota. On October 2, 2006, NMFS published a final rule implementing the Consolidated Highly Migratory Species Fishery Management Plan (HMS FMP) (71 FR 58058). 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 and November,

December, and January of the following year. The effective date of these time-periods and their associated subquota is 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	October 1, 2006, through October 31, 2006, inclusive	All	Three BFT per vessel per day/trip, measuring 73 inches (185 cm) curved fork length (CFL) or larger
	November 1, 2006, through November 30, 2006, inclusive	All	Three BFT per vessel per day/trip, measuring 73 inches (185 cm) curved fork length (CFL) or larger
	December 1, 2006, through January 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 and October through separate actions filed with the **Federal Register**. From November 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 soon to be effective October and November time-period subquota allocations for the 2006 fishing year total approximately 1,041.2 metric tons (mt). As of October 23, 2006, 94.5 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 RFDs remain as scheduled, approximately 29 mt would

be landed through November 30, 2006. This projection would bring June through November landings to approximately 123.5 mt, resulting in an underharvest of approximately 917.7 mt. The October 2, 2006, final rule 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 newly established December and January time-period subquota allocations, would allow for approximately 1,039.8 mt to be harvested through January 31, 2007. 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 November 1, 2006, NMFS anticipates the full October and November 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 effectively 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

the latter Fall and 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 November, including all Saturdays and Sundays, as well as Thursday November 23, 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 November RFDs are no longer required to meet their original purpose, and may in fact exacerbate low catch rates. Therefore, NMFS determined an increase in the General category daily BFT retention limit on those previously established RFDs for the month of November 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 December and 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 November 1, 2006, through November 30, 2006, inclusive of previously scheduled RFDs for the month of November, 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 November 30, 2006, including all Saturdays and Sundays of November as well as Thursday November 23, 2006. From December 1, 2006, 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 December 1, 2006, 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 December and January, NMFS has determined it necessary to only extend the three BFT daily retention limit for the one month of November and will re-examine the need to further extend the increased bag limit prior to newly established December and January time-periods 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 New England and 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 Fall 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 November, 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: October 26, 2006.

**Alan D. Risenhoover,**

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

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