

preserve a historical fishery that takes place in northern New England (i.e., Gulf of Maine). Until recently, all Harpoon category landings have occurred in traditional locations in New England prior to BFT migrating out of the Gulf of Maine. However, in recent years, the Harpoon category quota has not been fully harvested in New England, which has led to vessels in other geographic regions landing 1,043 pounds of BFT against the Harpoon category quota in 2002. This has raised several concerns including conflict with the original intent of the regulations for this fishery to be in the New England area, as well as administrative issues regarding potential mis-reporting and enforcement concerns regarding illegal activities. Over the last couple of years, the Harpoon category has remained open with quota available after the General category quota has been met. This has led some vessels that use rod and reel gear to obtain a Harpoon category permit and land BFT caught with rod and reel against the Harpoon category quota. Typically, these concerns have not been raised as the Harpoon category quota is harvested prior to BFT moving out of the New England area, thus there has been no reason to implement a Harpoon category season end date.

NMFS proposes to establish a Harpoon category season end date of November 15, which is near the time period when BFT migrate out of the New England area, for each fishing year regardless of whether the quota is harvested. The intent of this proposed action is to preserve the traditional Harpoon category fishery by restricting its geographic activity to the New England area and minimize any negative impacts by proposing action before an investment in a southern area Harpoon category fishery takes place. Any potential negative impacts to the northern area fishermen from a closure date and prior to attaining the entire quota maybe somewhat mitigated by an adjustment to the tolerance limit for large medium BFT, as discussed below.

The impacts associated with this proposed action should be negligible due to the lack of investment in outfitting vessels to participate in the Harpoon category and the limited number of BFT Harpoon landings that have occurred outside the traditional New England area in recent history. Since there had been no Harpoon category participation outside the New England area prior to 2002, there has been minimal investment in a true Harpoon category fishery. Finally, any minor potential negative impacts to vessel owners/operators that wish to

fish outside the traditional New England area and use a harpoon as a primary gear type may be mitigated because they would still be able to do so with a General category permit under General category retention limits and regulations.

Adjustment of General Category Closure Date

During the development of the HMS FMP, the emergence of a General category BFT fishery in the southern Atlantic region was extensively discussed by the HMS AP and the public. However, the HMS AP did not reach consensus on how the HMS FMP should address the scope of a southern area General category BFT fishery. Over the last couple of years, NMFS has performed a number of inseason quota transfers of BFT, consistent with the transfer criteria established in the HMS FMP, which have allowed the General category BFT fishery to extend into the winter months (i.e., late November - December). In 2002, NMFS received the Petition to formalize this winter fishery and extend fishing opportunities for the General category into January. NMFS published a Notice of Receipt of Petition on November 18, 2002 (67 FR 69502).

In part, to address some of the concerns raised in the Petition, as well as to increase fishing opportunities and optimum yield for the fishery overall, NMFS proposes to extend the General category end date from December 31 to January 31. This would effectively alter the third time-period from October through December to October through January. The quota allocated to this time-period would remain 10 percent of the overall General category quota (minus the 10 mt New York Bight Set-aside).

This action could have negative economic impacts on those northern area fishermen who would have otherwise caught and sold fish earlier in the season, but would have positive economic impacts to southern area fishermen who would be able to fish later in the season. Negative impacts could be slightly mitigated if northern area fishermen are willing to travel south late in the season, provided there is reciprocity among the different state permitting regulations.

Adjustment of the BFT Size Tolerance Limits for the Purse Seine Category

Currently, vessels permitted in the Purse seine category may retain, possess, land, and sell large medium BFT in amounts not exceeding 15 percent, by weight, of the giant BFT landed on a particular trip, provided that the total amount of large medium

BFT landed does not exceed 10 percent, by weight, of the total BFT quota allocated to that vessel for that fishing year. This restriction is intended to focus the fishery on BFT that have likely spawned at least once, and provide some protection to the large medium BFT size class, which is generally considered to represent pre-spawning fish imminently available to contribute to recruitment in the western Atlantic BFT stock.

Over the last few years, the Purse seine category has not fully harvested its allocated quota. This can be attributed to a number of different reasons outside of the industry's or NMFS' control. In 2001, Purse seine category landings were steady until the September 11 terrorist attack. After September 11, spotter planes were unable to assist in locating schools of BFT for Purse seine category vessels due to a requirement by the Federal Aviation Administration to have all flights schedule a predetermined flight pattern prior to take-off. In 2002, Purse seine category vessels claimed there were large numbers of mixed schools of BFT, comprised of different size classes, and that it was difficult to locate schools consisting solely of giant BFT. Purse seine category vessels claimed they therefore did not set on these mixed schools to ensure they stayed within the regulations tolerance limits and to avoid the potential of increasing BFT dead discards. However as a result, they were not able to land the allocated quota. In 2003, a similar scenario to 2002 is occurring, although this year there also appears to be fewer giant BFT available in any school.

To address some of the concerns raised by the Purse seine category participants and to provide a balance between dead discard reduction and increased numbers of pre-spawning BFT landed, NMFS proposes to remove the large medium tolerance limit on a trip basis and increase the seasonal large medium BFT tolerance to 15 percent by weight of the total BFT quota allocated to that vessel. This proposed action is designed to maintain the focus of the fishery on BFT that have likely spawned at least once while still providing Purse seine category vessels opportunities to harvest their allocated BFT quota in its designated time frame, thus increasing optimum yield. NMFS currently has very little data on BFT discards associated with this segment of the BFT fishery and therefore proposes to implement a previously approved vessel logbook program to gather more data on this issue, particularly regarding impacts of Purse seine category activities on discards of undersized