

category effort controls were published on October 2, 2003 (68 FR 56783).

Angling Category Closure

The final initial 2003 BFT quota specifications were prepared using the ICCAT recommended 2003 baseline BFT quota adjusted by the results of the previous fishing year. During the development of the 2003 BFT quota specifications, it appeared that the Angling category had not harvested the available quota in 2002, thus the remaining quota was carried over to the 2003 Angling category. These initial landing estimates were calculated using an Automated Landing Reporting System (ALRS), in conjunction with the state landing tag data from Maryland and North Carolina. However, since the publication of the final initial 2003 BFT quota specifications, revised preliminary estimates of 2002 fishing year Angling category landings have been made available based on data collected through the Large Pelagics Survey (LPS). The LPS is the standard mechanism used for end of the year Angling category landing estimates, as well as the established method used to report landings data to ICCAT. These preliminary LPS estimates indicate that the Angling category fishery overharvested its allocated quota in the 2002 fishing year. The ICCAT Recommendation regarding the harvest of BFT requires that countries overharvesting their allocation in a given year must take corrective action in the following year. Although the preliminary 2002 LPS Angling category landings estimates are currently under review, NMFS is closing the Angling category fishery to take a conservative approach for corrective action while the 2003 fishing year is still under way. Therefore, effective 11:30 p.m. local time on November 17, 2003, the Angling category BFT fishery will be closed in all management areas until further notice.

Upon further examination of the revised 2002 Angling category landings estimates and 2003 Angling category landings estimates, NMFS may reconsider this Angling category closure. If it is determined that 2003 fishing year quota remains available in the Angling category, after adjustments for the 2002 overharvest, or if additional 2003 quota can be made available to the Angling category, NMFS will announce the re-opening and/or transfer action in a separate **Federal Register** notice. Anglers aboard permitted vessels may continue to tag and release BFT of all sizes under a tag-and-release program, provided the anglers tag all BFT so caught, with conventional tags issued or

approved by NMFS, return such fish to the sea immediately after tagging with a minimum of injury, and report the tagging (50 CFR 635.26).

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 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks.

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.

As stated above, preliminary 2002 Angling category landings estimates derived from the ALRS/Tagging data indicated an Angling category quota underharvest for the 2002 fishing year, and to fully utilize the entire 2002 U.S. BFT quota and after considering the quota transfer criteria outlined above, NMFS performed two separate quota transfers in the 2002 fishing year from the Angling category to the General category. These transfers allowed the General category to remain open for a longer period of time, thus providing additional fishing opportunities to General category fishermen in all areas and assisting in the attainment of optimum yield.

The 2003 fishing year proposed and final initial BFT quota specifications were prepared using the baseline 2003 ICCAT BFT quota recommendation, and added or subtracted, as appropriate, underharvest or overharvest from the previous 2002 fishing year in accordance with U.S. regulations and all applicable ICCAT Recommendations, including restrictions on landings of

school BFT. As discussed above, the 2003 Angling category fishery is being closed in response to revised Angling category landings estimates for the 2002 fishing year that indicate an overharvest.

As the General category was the recipient of the inseason BFT quota transfers from the Angling category during the 2002 fishing year (due to the apparent underharvest based on the ALRS/tagging estimates) and after considering the criteria for making BFT quota transfers between categories, NMFS has determined that a transfer of 150 mt from the General category to the Reserve category is warranted. The Reserve category was established for the purpose of compensating for any overharvest in any category and this transfer is necessary to meet ICCAT obligations to take corrective actions in the year subsequent to an overharvest.

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. Revised 2002 LPS Angling category landings estimates, recently made available, indicate an overharvest rather than an underharvest for the 2002 fishing year. As the 2003 BFT quota specifications applied the estimated underharvest from the 2002 fishing year to the 2003 Angling category quota, a closure of the Angling category is warranted to address any potential for additional overharvest while evaluation of the revised landings estimates proceeds. In addition, an inseason BFT quota transfer is warranted to ensure any existing overharvest issues are not exacerbated by additional harvest prior to a full evaluation of the 2002 and 2003 fishing year landings. Delaying this action would be contrary to the public interest because it could result in further overharvest of BFT, an overfished species. 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, 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.*