

Other aspects of the petition relate to changes in the BFT quota allocations, which would require an FMP amendment process with further analyses and input from the HMS Advisory Panel (AP) and the public. The AP generally supported a late season commercial General category fishery for southern Atlantic states, depending upon the details and impacts on other fishery participants. In particular, AP members were generally supportive of using some proportion of the additional BFT quota allocated by ICCAT in 2002 towards meeting the objectives of the petition. The AP will revisit BFT allocation issues at its next meeting scheduled for February 9 - 11, 2004.

Comment 7 - Several commenters were opposed to extending the General category season and recommended alternative General category closure dates. A few commenters stated that the fishery off North Carolina was a new fishery rather than a traditional fishery, and thus should not be considered in setting the General category season and no extension should be provided. Several commenters proposed an alternative end date for the General category season of November 30, and requested that the General category retention limits early in the season be increased in order to provide northern area fishermen with a greater opportunity to harvest the quota. Several comments stated concern that if the General category was open during December, there may not be enough quota for the extended fishery in January and thus preferred opening the General category for either December or January but not both. Other comments suggested providing for a distinct set-aside quota and time period for a North Carolina fishery.

Response - The intent of this action is to more broadly distribute General category fishing opportunities both temporally and geographically and provide for an increase in optimum yield for the fishery overall. At the time of development of the HMS FMP, the General category quota tended to be harvested prior to the migration of BFT to waters off the southern states. However, since that time, the fishery has changed and General category quota has been available later into the season. Unlike the Harpoon category quota, the General category quota was not established for use solely by a traditional New England fishery. The potential increase in gross revenues provided by a winter General category fishery could help maximize optimum yield for the BFT fishery overall. Reallocation of quota among time periods or establishing set-aside quotas

for particular areas would require an FMP amendment and is beyond the scope of this rulemaking. These issues may be addressed in HMS FMP Amendment Two which is currently under development. A Notice of Intent to prepare this amendment was published in the **Federal Register** on July 9, 2003 (68 FR 40907).

Comment 8 - Comments were generally in favor of the increase in tolerance limit for the Harpoon category. Commenters stated that this fishery is selective, that it is fair and equitable to adjust the tolerance if doing so for the Purse seine category, and an increase in the tolerance limit would not result in an increase in dead discards. A few commenters opposed any tolerance of large medium BFT. One commenter noted that the decrease in availability of giant BFT and any concerns regarding additional mortality of large medium were insignificant when compared to mortality of small fish in the eastern Atlantic and Mediterranean.

Response - The final action increases the tolerance limit for large medium BFT retention in the Harpoon category to two fish per vessel per day. The intent of this action is to balance mortality of pre-spawning fish with the requirement to provide a reasonable opportunity for the Harpoon category to attain its annual quota while avoiding dead discards. Although NMFS stated at the proposed rule stage that logbooks were not expected to be implemented, it is clear that additional information about at-sea operations is needed in order to better evaluate the affect of tolerance limits on dead discards and overall mortality of pre-spawning BFT. NMFS will pursue collection of such information through the implementation of previously approved vessel logbook and/or observer programs. To avoid duplication, existing programs for other fisheries such as the Northeast Region Vessel Trip Report will be evaluated relative to developing HMS specific reporting mechanisms.

Comment 9 - NMFS received comments both in favor of and opposed to the proposed increase in tolerance limit for the Purse seine category. Some commenters were opposed to any increase in tolerance limit, while others opposed the proposed tolerance in favor of a higher one.

Many commenters who were in favor of the change in tolerance limits stated that purse seine vessels would not target smaller fish as a result of a tolerance limit increase. Some commenters also noted that the mortality of undersized fish in the purse seine fishery was negligible when compared with mortality of small fish in the east

Atlantic or even mortality of small fish in the U.S. Angling category. Commenters stated that increasing tolerance was particularly relevant when one considered the new data regarding mixing rates between east and west Atlantic stocks, and the uncertainty of BFT size and age at maturity.

Some commenters opposed to an increase in tolerance limit stated that the preferred alternative (15 percent by weight) would result in purse seine vessels targeting smaller fish, and could result in an increase of dead discards. Many commenters requested a thorough study of the effect of any increase in tolerance limits on dead discards. A commenter stated that purse seine vessels already had many advantages over other fishing categories, and that perhaps larger mesh nets would reduce catch of undersized BFT. Another commenter noted that there is a higher mortality associated with release of undersized BFT from purse seine nets compared to those released alive off hook-and-line. This commenter could only support up to a 50-percent increase if observers were deployed on all vessels; otherwise both trip and annual limits should remain the same. At least one commenter specifically requested that a trip limit remain in place for the Purse seine category.

Several commenters suggested a higher tolerance limit than that proposed, and some suggested waiving the tolerance limit all together and proposed a 73-inch (185.4 cm) minimum size for the Purse seine category. A commenter stated that there is a large potential for discards and wasted mortality because of the preponderance of schools of mixed BFT sizes, and suggested that the tolerance be increased to 50 percent by weight as a form of mitigation. This commenter stated that approximately 315 more large medium BFT would be harvested at a 25 percent tolerance limit than a 15 percent tolerance limit, and that 315 more BFT would be biologically insignificant. Several commenters broadened this request to establish 73-inch as a minimum size for all commercial fishing categories. Several commenters emphasized the need for the United States to ensure all possible quota is utilized in order to support domestic needs at ICCAT negotiations. A number of commenters referred to the 25-percent tolerance limit provided in year 2003 exempted fishing permits (EFPs), and encouraged NMFS to continue with what they considered a successful approach.

Response - The final action includes an increase in tolerance for large