

medium BFT in the Purse seine category of up to 15 percent of landings (by weight). The intent of this action is to balance mortality of large medium BFT while increasing the ability of the Purse seine category to catch the annual quota. NMFS has determined that only a modest increase in large medium tolerance is appropriate at this time, in light of the uncertainty of the effect of a greater tolerance limit on overall mortality of large mediums including dead discards, stock rebuilding, and dead discards of undersized BFT. NMFS estimates that an increase in the tolerance limit of up to 50 percent would result in an additional direct mortality of approximately 1,066 more large medium BFT over the current status quo direct mortality of 251 fish, i.e. over a four-fold increase.

Data from the 2003 season, which relaxed tolerance limits for the purse seine fishery to 25 percent under EFPs, show that purse seine vessels were able to increase landings over 2002 levels with the increased tolerance limit. Further evaluation of this data, in addition to socio-economic data to be provided from the 2003 EFP fishery, will assist NMFS with future management of this fishery sector, including compliance and enforcement of revised tolerance limits. NMFS will be collecting data on dead discards and other variables in this fishery through previously approved programs including vessel logbooks and/or observers. Additional data regarding discard rates and mortality of large medium BFT in the Purse Seine category will help to determine the biological impacts of adjusting the tolerance limits.

Comment 10 - One commenter requested that electronic comments via email be accepted in the future.

Response - NMFS has implemented pilot programs which accepted electronic comments for past rulemakings with some success. The agency intends to pursue the use of electronic media for public comment in the near future.

Comment 11 - One commenter noted that reciprocity should be established for commercial fishermen from other states to fish in North Carolina waters.

Response - The issue of fishing access in state waters by out of state fishermen is a matter of state jurisdiction and not under the purview of NMFS. However, NMFS notes that the State of North Carolina has provided reciprocity for commercial BFT fishermen from other states. In order to fish commercially for BFT in North Carolina, BFT commercial fishermen from other states are now able to obtain a "license to sell" which

allows them to sell their catch in North Carolina. Out of state vessels are also allowed to fish within state waters with a permit from North Carolina Division of Marine Fisheries.

Comment 12 - A commenter suggested providing a "mulligan" or tolerance limit of some set number of undersized fish per vessel in all categories that would allow vessels to retain and land accidentally caught undersized fish and reduce discards. The commenter stated that this approach could also help reduce incentives to sell these undersized fish illegally, and that the Japanese market has a preference for these smaller sized fish and offers relatively higher prices per pound.

Response - Adjusting size limits or tolerance limits for reasons other than improving the ability of the Purse seine and Harpoon categories to harvest their respective quotas was beyond the objective for this action. A more comprehensive approach towards eliminating dead discards will be addressed in HMS Amendment Two.

Comment 13 - Comments were received regarding decreasing quotas for all species; eliminating the use of gill nets, seine nets, longlines, and harpoons; and including environmentalists on agency panels. One commenter noted that an ecosystem imbalance caused by a reduction in the number of herring available in New England waters has resulted in a decreased availability of BFT in New England. Many commenters opposed the recent closing of the BFT Angling category.

Response - These issues are outside the scope of the current rulemaking. NMFS has issued a notice of intent for preparation of an amendment to the HMS FMP (68 FR 40907; July 9, 2003) which could address many of these issues, as well as others, during the FMP amendment process. The Herring fishery is managed under the Herring Fishery Management Plan and is currently in the amendment process. The New England Fisheries Management Council is the responsible council for the Herring FMP amendment and has analyzed several alternatives for action that include considerations of the impact of herring on elements of the ecosystem such as predator-prey relationships. The BFT Angling category was closed on November 17 (68 FR 64990, November 18, 2003) because of recent data indicating an over-harvest of this category in 2002. NMFS is reviewing these data to determine if further action is necessary.

Classification

This final rule is published under the authority of the Magnuson-Stevens Act and ATCA. The AA has determined that the regulations contained in this final rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries. NMFS has determined that these regulations are consistent with the Magnuson-Stevens Act, ATCA and ICCAT recommendations.

This action relieves a restriction by extending the BFT General category end date until January 31, thus providing this category with approximately 30 more days in the fishing season. The General category closed on December 10 because the General category had attained its quota. However, there is additional quota available in other categories that NMFS intends to transfer into the General category in January 2004, after updating and reviewing landings data. This action will re-open the General category to fishing through January 31 to allow for the harvest of the additional quota. Therefore, pursuant to 5 U.S.C. 553(d)(1), the 30-day delayed effectiveness period is not applicable to Section 635.27(a)(1)(i)(c), the General category end date provision.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule and submitted it to the Chief Counsel for Advocacy of the Small Business Administration. No comments were received on the IRFA concerning the economic impact of this final rule. A summary of the FRFA is provided below.

The analysis for the FRFA examines the impacts of the alternatives for adjusting the Purse seine category start date, establishing a Harpoon category end date, adjusting the General category end date, and adjusting the retention limit for large medium BFT in the Harpoon and Purse seine category fisheries on small entities. The purpose of this final action is to ensure the BFT fishery is managed consistently with the objectives of the HMS FMP and its implementing regulations, applicable statutes including the Magnuson-Stevens Act and ATCA, and the 1998 ICCAT Rebuilding Plan for western Atlantic BFT.

The analysis for the FRFA assesses the impacts of the various alternatives on the vessels that participate in the BFT fisheries, all of which are considered small entities. This final action would affect vessels in three permit categories, namely the Purse seine, Harpoon, and General categories. The gross revenues for 2002, and number of vessels to date for 2003 for