

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
Magazine Branch .....	Starts at approximately 920 feet downstream of Pennsylvania Avenue.	+594	City of Charleston, Kanawha County (Unincorporated Areas).
Middle Fork .....	Ends approximately at 100 feet upstream of Pacific Street ..... Begins at approximately 480 feet downstream of Middle Fork Road.	+688 +606	Kanawha County (Unincorporated Areas).
Mill Creek .....	Ends approximately at 135 feet upstream of Middle Fork Road Begins at approximately 90 feet downstream of Rail Road Bridge.	+630 +605	Kanawha County (Unincorporated Areas).
Two and Three Quarter Mile Creek.	Ends approximately at 4550 feet upstream of Mill Creek Road Begins at approximately 220 feet downstream of U.S. Route 60. Ends approximately at 1880 feet upstream of Cane Fork Road	+775 +589 +618	Kanawha County (Unincorporated Areas).

\*National Geodetic Vertical Datum.

#Depth in feet above ground.

+North American Vertical Datum.

#### ADDRESSES

##### City of Charleston

Maps are available for inspection at 501 East Virginia Street, Charleston, WV 25301.

##### City of Dunbar

Maps are available for inspection at 210 12th Street, Dunbar, WV 25064.

##### Kanawha County (Unincorporated Areas)

Maps are available for inspection at 501 East Virginia Street, Charleston, WV 25301.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 22, 2007.

**David I. Maurstad,**

*Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.*

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 635

RIN 0648-XC23

##### 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 Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit should be adjusted for the September and October time period

of the 2007 fishing year. The adjustment will allow for maximum utilization of the General category quota. Therefore, NMFS increases the daily BFT retention limits to provide enhanced commercial fishing opportunities without risking overharvest of the General category 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. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories.

The 2007 fishing year began on June 1, 2007, and ends December 31, 2007. NMFS proposed 2007 fishing year specifications to set BFT quotas and

General category effort controls on April 4, 2007 (72 FR 16318). These proposed specifications considered adjusting the daily retention limits throughout the 2007 season and received favorable public support. NMFS published final specifications on June 18, 2007 (72 FR 33401) and increased the default General category retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip to three large medium or giant BFT, measuring 73 inches CFL or greater, per vessel per day/trip through August 31, 2007. This action enhances commercial BFT fishing opportunities to those vessels permitted in the Atlantic tunas General category and the Highly Migratory Species (HMS) Charter/Headboat category, while fishing commercially. In addition, NMFS stated that it would consider adjustment of retention of retention limits for future time periods, if warranted.

##### **Daily Retention Limits**

Pursuant to this action, the daily BFT retention limits for the Atlantic tunas General and HMS Charter/Headboat categories are as follows:

TABLE 1. EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

Permit Category	Effective Dates	Areas	BFT Size Class Daily Limit
Atlantic tunas General and HMS Charter/Headboat (while fishing commercially)	June 1 through August 31, 2007, inclusive.	All	Three BFT per vessel per trip, measuring 73 inches (185 cm) curved fork length (CFL) or greater.
	September 1 through October 31, 2007, inclusive.	All	Three BFT per vessel per trip, measuring 73 inches (185 cm) CFL or greater.
	November 1 through December 31, 2007, inclusive.	All	One BFT per vessel per trip, measuring 73 inches (185 cm) CFL or greater.

### Adjustment of General Category Daily Retention Limits

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of three per vessel to provide for maximum utilization of the General category quota for BFT. Such adjustments to the commercial retention limit are based on NMFS' consideration of the criteria provided under § 635.27(a)(8), which include: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; 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; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

As of August 24, 2007, the coast wide General category has landed 29.4 metric tons (mt) out of a possible 643.6 mt, and catch rates remain less than 1.0 mt per day even though the General category retention limit was increased to three BFT per vessel per trip, measuring 73 inches (185 cm) CFL or greater for the June through August time period. Starting on September 1, 2007, the General category daily retention limit, located at § 635.23(a)(2), is scheduled to

revert back to the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) CFL) or greater per vessel per day/trip. This scheduled retention limit applies to General category permitted vessels and HMS Charter/Headboat category permitted vessels (when fishing commercially for BFT).

NMFS has considered the set of criteria cited above and their applicability to the commercial BFT retention limit for the September and October portion of the 2007 fishing year. The criteria include but are not limited to: the usefulness of information obtained from catches for biological sampling and monitoring of the status of the stock; the date and the likelihood of closure if no adjustment is made; the effects of the adjustment on BFT rebuilding and overfishing; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds. Based on these considerations, NMFS has determined that the General category retention should be adjusted. Therefore, NMFS increases the General category retention limit from the default limits effective September 1 through October 31, 2007. This adjustment increases the General category daily retention limit to three large medium or giant BFT, measuring 73 inches (185 cm) CFL or greater, per vessel per day/trip. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessel permitted in the General category as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

Monitoring and Reporting  
NMFS selected the daily retention limit and the duration after examining an array of data as it pertains to the determination criteria. These data

included, but were not limited to, current and previous catch and effort rates, quota availability, previous public comments on inseason management measures, stock status, etc. NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports. 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 continues to receive information refining its understanding of the commercial sector's specific needs regarding retention limits mid-way through the 2007 season. NMFS assessments and analyses show catch rates to date have been low and that there is sufficient quota for an increase to the General category retention limit during the months of September and October.

NMFS has recently become aware of increased availability of large medium and giant BFT off northern Atlantic fishing grounds from fishing reports, vessels participating in other fisheries, 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.

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. 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 available on the fishing grounds. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category

vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts to U.S. fishermen that either depend upon catching the available quota within the time periods designated in the HMS FMP. Adjustment to the retention limit needs to be effective September 1, 2007, to minimize any unnecessary disruption in fishing patterns and for the impacted sectors to benefit from the adjustments so as to not preclude fishing opportunities from fishermen who only have access to the fishery during this time period.

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 (b)(3) and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 28, 2007.

**Alan D. Risenhoover,**

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

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