

EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 28, 2001.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1212 is added to subpart D to read as follows:

§ 180.1212 *Pseudomonas chlororaphis* Strain 63–28; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the microbial pesticide *Pseudomonas chlororaphis* Strain 63–28 in or on all food commodities.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 101501B]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Quota transfers; General category daily retention limit adjustment.

SUMMARY: NMFS adjusts the October–December subquota for the General category Atlantic bluefin tuna (BFT) fishery by transferring 50 metric tons (mt) from the Longline South subcategory quota, 10 mt from the

Longline North subquota, and 100 mt from the Angling category (50 mt from the school size class and 50 mt from the large school/small medium size class for the northern area), for a revised coastwide General category subquota of approximately 347.7 mt for October–December, including the addition of underharvest from previous time periods. NMFS also adjusts the Angling South large school/small medium subcategory by transferring 75 mt from the Angling North large school/small medium subcategory. Finally, NMFS adjusts the BFT General category daily retention limit to one fish per vessel. These actions are being taken to allow for maximum utilization of the U.S. landings quota of BFT while maintaining a fair distribution of fishing opportunities, preventing overharvest of the adjusted subquotas for the affected fishing categories, helping to achieve optimum yield in the General category fishery, and allowing the collection of a broad range of data for stock monitoring purposes, consistent with the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP).

DATES: The quota transfers are effective October 16, 2001, through May 31, 2002. The General category retention limit adjustment is effective October 19, 2001, through December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Pat Scida, 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 (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 among the various domestic fishing categories.

Quota Transfers

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 HMS FMP.

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.

Quota Adjustments

Annual BFT quota specifications issued under § 635.27 provide for a quota of 666.7 mt of large medium and giant BFT to be harvested from the regulatory area by vessels fishing under the General category quota during the 2001 fishing year. The General category BFT quota is further subdivided into time period subquotas to provide for broad temporal and geographic distribution of scientific data collection and fishing opportunities. The October–December subquota was initially set at 65.7 mt for the 2001 fishing year, and is currently 187.7 mt, after the addition of approximately 122 mt of unharvested subquota from previous periods. As of October 12, 2001, General category landings against this adjusted October–December subquota have totaled approximately 161.6 mt, reducing the available quota for the remainder of the season to 26.1 mt. An additional 10 mt has been set aside for the traditional fall New York Bight fishery.

After considering the factors for making transfers between categories, NMFS has determined that 50 mt of the remaining Longline South subcategory

quota of approximately 166.6 mt, and 10 mt of the remaining Longline North subcategory quota of approximately 21 mt should be transferred to the General category. While substantial quota remains in the Longline category, NMFS is in the process of developing proposed regulations to adjust the target catch requirements for pelagic longline vessels retaining bluefin tuna, and is therefore not transferring additional quota from the Longline category. NMFS has also determined that 50 mt of the remaining Angling North school subcategory quota of approximately 124.7 mt, and 50 mt of the remaining Angling North large school/small medium subcategory quota of approximately 165.4 mt should be transferred to the General category. The adjusted subquota for the coastwide General category fishery for the October–December period is 347.7 mt. Finally, NMFS has determined that 75 mt of the remaining Angling North large school/small medium subcategory quota of approximately 115.4 (after 50 mt transfer to the General category) should be transferred to the Angling South large school/small medium subcategory quota category. Landings of large school/small medium BFT have been substantial in the southern area so far this year, and this transfer of quota is to ensure a winter and spring Angling category fishery for North Carolina.

Adjustment of General Category Daily Retention Limit

Under § 635.23(a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on restricted fishing days) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds, NMFS has determined that a return to the one fish per vessel General

category daily retention limit is appropriate and necessary for the remainder of the General category season. An adjustment to the General category daily retention limit will allow full use of the adjusted October–December subquota, while preventing overharvest and ensuring reasonable fishing opportunities in all areas. Therefore, NMFS adjusts the daily retention limit for October 19, 2001 through December 31, 2001, to one large medium or giant BFT per vessel.

Once the adjusted General category subquota for the October–December period has been attained, the coastwide fishery will be closed and NMFS will take action to reopen the New York Bight fishery. Announcement of the closure will be filed with the Office of the Federal Register, stating the effective date of closure, and further communicated through the Highly Migratory Species Fax Network, the Atlantic Tunas Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the Atlantic Tunas Information Line at (888) USA-TUNA or (978) 281-9305, to check the status of the fishery before leaving for a fishing trip.

Classification

This action is taken under 50 CFR 635.23 and 635.27, is consistent with the management measures contained in the HMS FMP, and is exempt from review under Executive Order 12866.

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

Dated: October 16, 2001.

Bruce C. Morehead,

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

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