

Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and

have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

- For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

- 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

- 2. Reinstate and revise temporary § 165.T09–214 to read as follows:

§ 165.T09–214 Regulated Navigation Area; Des Plaines River, Joliet, Illinois

(a) *Regulated Navigation Area.* The following waters are a Regulated Navigation Area (RNA): All portions of the Des Plaines River between mile 287.3 (McDonough St. Bridge) to mile 288.7 (Ruby Street Bridge).

(b) *Applicability.* This section applies to operators of all southbound tows transiting beneath the Jefferson Street Bridge (mile 287.9), Joliet, Illinois, with barge configurations of over 89 feet in overall width and more than 800 feet in length.

(c) *Effective dates.* This section is effective from 8 a.m., May 11, 2003, until March 1, 2004.

(d) *Regulation.* (1) All southbound tows to which this section applies must use an assist tug when transiting through the RNA.

(2) The general regulations contained in 33 CFR 165.13 apply to this section.

(3) Deviation from this section is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or his designated representatives. Designated representatives include the Captain of the Port Chicago.

Dated: November 10, 2003.

Ronald F. Silva,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 111303B]

Atlantic Highly Migratory Species; Bluefin Tuna Fisheries

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

ACTION: Quota transfer; fishery closure.

SUMMARY: NMFS has determined that effective 11:30 p.m. local time on November 17, 2003, the Atlantic bluefin tuna (BFT) Angling category fishery will close in both the northern and southern management areas. NMFS also has determined that a BFT quota transfer from the General category to the Reserve category in the amount of 150 metric tons (mt) is warranted. These actions are being taken to ensure that U.S. BFT harvest is consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), pursuant to the Atlantic Tunas Convention Act (ATCA), to meet domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to prevent overharvest of the 2003 Angling category quota.

DATES: Effective 11:30 p.m. local time November 17, 2003 through May 31, 2004.

FOR FURTHER INFORMATION CONTACT: Brad McHale at 978–281–9260.

SUPPLEMENTARY INFORMATION:

Regulations implemented under the authority of the ATCA (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens (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 ICCAT among the various domestic fishing categories, and together with General category effort controls are specified annually under 50 CFR 635.23(a) and 635.27(a). The final initial 2003 BFT Quota and General

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.*

Dated: November 13, 2003.

Bruce C. Morehead,

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

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