

## Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

This action falls within the scope of alternatives and impacts analyzed in the Final Environmental Assessments prepared for the ALWTRP's DAM program. Further analysis under the National Environmental Policy Act (NEPA) is not required.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30-day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the

action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this notice in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as the AA approves it, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

This temporary rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

**Authority:** 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: December 10, 2003.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[I.D. 120903A]

#### Atlantic Highly Migratory Species; Bluefin Tuna Fisheries

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

**ACTION:** General category closure.

**SUMMARY:** NMFS has determined that the 2003 fishing year Atlantic bluefin tuna (BFT) General category quota will be attained by December 10, 2002. Therefore, the General category fishery will be closed effective 11:30 p.m. on December 10, 2003. This action is being taken to prevent overharvest of the total adjusted General category quota of 534.4 metric tons (mt).

**DATES:** Effective 11:30 p.m. local time on December 10, 2003, through May 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Brad McHale or Dianne Stephan, 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, 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).

#### **General Category Closure**

NMFS is required, under § 635.28 (a)(1), to file with the Office of the

**Federal Register** for publication, notification of closure when a BFT quota is reached, or is projected to be reached. On and after the effective date and time of such closure notification, for the remainder of the fishing year, or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period, or until such date as specified in the notification.

The 2003 BFT quota specifications issued pursuant to § 635.27 set a General category quota of 684.4 mt of large medium and giant BFT to be harvested from the regulatory area during the 2003 fishing year, and divided the General category quota into time-period subquotas. On November 18, 2003, NOAA Fisheries transferred 150 mt to the Reserve category, establishing an adjusted coastwide General category quota of 534.4 mt for the 2003 fishing year (68 FR 64990, November 18, 2003). Based on reported landings and effort, NMFS projects that the adjusted quota will be reached by December 10, 2003. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT intended for sale by persons aboard vessels in the General or HMS Charter/Headboat categories must cease at 11:30 p.m. local time December 10, 2003. The intent of this closure is to prevent overharvest of the adjusted quota established for the General category.

If it is determined that quota remains uncaught in the General category, or if additional quota can be made available to the General category through an inseason transfer, NMFS will announce the re-opening and/or transfer action in a separate **Federal Register** notice. General category and HMS Charter/Headboat permit holders may tag and release BFT while the General category is closed, subject to the requirements of the tag-and-release program at § 635.26.

#### Classification

Pursuant to 5 U.S.C. 553 (b) (B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing for prior notice and public comment for this action is impracticable and contrary to the public interest. Based on recent landings reports, this closure is necessary to prevent the overharvest of the adjusted BFT quota established for the coastwide General category. The fishery is currently underway, and any further delay in this action would cause the fishery to exceed the quota and be inconsistent with domestic and international requirements and objectives. NMFS provides notification

of the closure by publishing the closure notice in the **Federal Register**, faxing notification to individuals on the HMS FAX Network and to known fishery representatives, announcing the notice on the Atlantic Tunas Information Line, and announcing the closure notice over NOAA Weather and Coast Guard radio channels. For these same reasons, the AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553 (d)(3). This action is required under 50 CFR 635.28(a) (1) and is exempt from review under E.O. 12866.

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

Dated: December 9, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 030908223-3289-02; I.D. 081403B]

RIN 0648-AP57

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Amendment 13 to the Surfclam and Ocean Quahog Fishery Management Plan

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

**ACTION:** Final rule; implementation of Amendment 13 to the Surfclam and Ocean Quahog Fishery Management Plan (FMP).

**SUMMARY:** NMFS implements measures contained in Amendment 13 to the FMP (Amendment 13). Amendment 13 establishes: A new surfclam overfishing definition; multi-year fishing quotas; a mandatory vessel monitoring system (VMS), when such a system is economically viable; the ability to suspend or adjust the surfclam minimum size limit through a framework adjustment; and an analysis of fishing gear impacts on Essential Fish Habitat (EFH) for surfclams and ocean quahogs. This final rule includes technical corrections to the regulations

implementing the FMP in order to clarify the Mid-Atlantic Fishery Management Council's (Council) intent not to restrict allocation ownership to only those entities that also own a permitted vessel, and to eliminate the restriction on the transfer of allocation tags of amounts less than 160 bushels (bu) (85 hectoliters (hL)) (i.e., 5 cage tags). The primary purpose of Amendment 13 is to rectify the disapproved surfclam overfishing definition and the EFH analysis and rationale contained in Amendment 12 in order to comply with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to simplify the regulatory requirements of the FMP.

**DATES:** Effective January 15, 2004.

**ADDRESSES:** Copies of the Amendment 13 document, including the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Impact Statement (EIS), and other supporting documents for the amendment are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-2298.

#### FOR FURTHER INFORMATION CONTACT:

Susan A. Murphy, Supervisory Fishery Policy Analyst, 978-281-9252, fax 978-281-9135, [Susan.A.Murphy@noaa.gov](mailto:Susan.A.Murphy@noaa.gov).

**SUPPLEMENTARY INFORMATION:** This final rule implements approved measures contained in the FMP, which was approved by NMFS on behalf of the Secretary of Commerce (Secretary) on November 21, 2003.

Details concerning the justification for and development of Amendment 13 and the implementing regulations were provided in the preamble to the proposed rule (68 FR 55358, September 25, 2003) and are only summarized here.

#### Background

Amendment 12 to the FMP was prepared by the Council to bring the FMP into compliance with the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act of 1996. On April 28, 1999, the Council was