

○ 252.211–7007. Corrects punctuation.

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

252.203–7001 [Amended]

■ 2. Section 252.203–7001 is amended as follows:

- a. By revising the clause date to read “(DEC 2008)”; and
- b. In paragraph (h) by removing “(301) 809–4904” and adding in its place “301–937–1542; www.ojp.usdoj.gov/BJA/grant/DPFC.html”.

252.211–7007 [Amended]

■ 3. Section 252.211–7007 is amended as follows:

- a. In paragraph (d)(5) by adding an ending parenthesis before the period; and
- b. In paragraph (d)(10)(vi) by removing the ending parenthesis before the period.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–XM15

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 January 2009 time period, based on consideration of the determination criteria regarding inseason adjustments.

DATES: Effective January 1, 2009, through January 31, 2009.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or 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, per the allocations established in the Consolidated Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) (71 FR 58058, October 2, 2006).

The 2009 BFT fishing year, which is managed on a calendar year basis and subject to an annual calendar year quota, begins January 1, 2009. Starting on January 1, 2009, the General category daily retention limit (§ 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).

Each of the General category time periods (January, June–August, September, October–November, and December) is allocated a portion of the annual General category quota, thereby ensuring extended fishing opportunities in years when catch rates are high and quota is available. In August, NMFS adjusted the General category limit for September through December 2008 from the default level of one large medium or giant BFT to three (thus maintaining a three fish limit for all of the 2008 season). However, NMFS decided not to make an adjustment for January 2009 until after the 2009 western Atlantic BFT Total Allowable Catch (TAC) and resulting U.S. quota were set at the November 2008 ICCAT meeting (73 FR 50885, August 29, 2008).

The 2008 ICCAT recommendation reduced the TAC (currently 2,100 mt) to 1,900 mt for 2009, resulting in a 2009 U.S. quota of 1,034.9 mt. Consistent with the allocation scheme established in the Consolidated HMS FMP, the baseline General category share of the 2009 U.S. quota would be 475.7 mt, and

the baseline January 2009 General category subquota would be 25.2 mt.

In order to implement the ICCAT recommendation, NMFS is planning to publish proposed quota specifications in the beginning of 2009 to set BFT quotas for each of the established domestic fishing categories and to set effort controls for the General category and Angling category. In the meantime, the General category BFT fishery remains active into the winter, with substantial landings reported in November and December.

Adjustment of General Category Daily Retention Limits

Under § 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 based on 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.

NMFS has considered the set of criteria cited above and their applicability to the General category BFT retention limit for the 2009 fishing year. For example, January 2008 catch rates were high, and under a 3–fish limit, the January subquota was exceeded. Based on these considerations, and the reduced 2009 quota and subquotas, NMFS has determined that the General category retention limit should be adjusted to allow for retention of the anticipated 2009 General category quota, but that an approach more conservative than used for January 2008 is warranted. Therefore, NMFS increases the General category retention limit from the default

limit to two large medium or giant BFT, measuring 73 inches CFL or greater, per vessel per of one day/trip, effective January 1, 2009, through January 31, 2009. Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of two fish may not be exceeded upon landing. 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.

This adjustment is intended to provide a reasonable opportunity to harvest the U.S. landings quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the Consolidated HMS FMP.

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, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. 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, 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:

The regulations implementing the Consolidated 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 Consolidated HMS FMP. Adjustment to the retention limit needs to be effective January 1, 2009, 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., the 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: December 15, 2008.

Alan D. Risenhoover,

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

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