

of Mexico eastern zone into northern and southern subzones, and established their separate commercial quotas. The northern Florida west coast subzone is located in Federal waters of the Gulf north of 26°19.8' N lat. (a line directly west from the Lee/Collier County, FL boundary) and east of 87°31.1' W long. (a line directly south from the Alabama/Florida boundary). The quota for the northern subzone is 168,750 lb (76,544 kg) (50 CFR 622.42(c)(1)(ii)).

In accordance with 50 CFR 622.43(a), NMFS is required to close any zone to the commercial harvest of king mackerel when the zone's quota has been reached, or is projected to be reached, by filing a notification with the Office of the Federal Register. NMFS has determined the commercial quota for Gulf group king mackerel in the northern Florida west coast subzone will be reached by April 04, 2011. Accordingly, commercial fishing for Gulf group king mackerel in the northern Florida west coast subzone is closed effective 12:01 a.m., local time, April 04, 2011, until 12:01 a.m., local time, July 1, 2011, the end of the current fishing year.

During the closure period, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for or retain Gulf group king mackerel in Federal waters of the closed subzone. There is one exception, however, for a person aboard a charter vessel or headboat. A person aboard a vessel that has a valid charter/headboat permit and also has a commercial king mackerel permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed subzone under the 2-fish daily bag limit, provided the vessel is operating as a charter vessel or headboat. Charter vessels or headboats that hold a commercial king mackerel permit are considered to be operating as a charter vessel or headboat when they carry a passenger who pays a fee or when more than three persons are aboard, including operator and crew.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds the need to immediately implement this commercial closure constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule

itself already has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery resource because the capacity of the commercial fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: March 30, 2011.

Margo Schulze-Haugen,

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 635

[Docket No. 100317152-0176-01]

RIN 0648-XA327

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 Angling category retention limit adjustment; southern area trophy fishery closure.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) daily retention limit should be adjusted for the remainder of 2011, based on consideration of the regulatory determination criteria regarding inseason adjustments and based on North Carolina Tagging Program data. These actions apply to vessels permitted in the Highly Migratory Species (HMS) Angling category and Charter/Headboat category (when fishing recreationally for BFT). NMFS also closes the southern area Angling category fishery for large medium and giant ("trophy") BFT. These actions are being taken consistent

with the BFT fishery management objectives of the 2006 Consolidated HMS Fishery Management Plan and to prevent overharvest of the 2011 Angling category quota.

DATES: Effective April 2, 2011, through December 31, 2011.

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, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006).

The 2011 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2011. The Angling category season opened January 1, 2011, and continues through December 31, 2011. Currently, the default Angling category daily retention limit of one school, large school, or small medium BFT (measuring 27 to less than 73 inches (68.5 to less than 185 cm)) applies (§ 635.23(b)(2)). An annual limit of one large medium or giant BFT (73 inches or greater) per vessel also applies (§ 635.23(b)(1)). These retention limits apply to HMS Angling and HMS Charter/Headboat category permitted vessels (when fishing recreationally for BFT).

In order to implement the 2010 ICCAT-recommended baseline annual U.S. BFT quota, NMFS has published a proposed rule that would modify the U.S. BFT quota and base subquotas for all domestic fishing categories, and establish BFT quota specifications for 2011 (76 FR 13583, March 14, 2011). Until the final rule is effective (likely June 2011), the BFT base quotas codified at § 635.27(a) remain in effect. The currently codified Angling category quota is 187.6 mt (97.7 mt for school BFT, 85.6 mt for large school/small medium BFT, and 4.3 mt for large medium/giant BFT).

Adjustment of Angling Category Daily Retention Limit

Under § 635.23(b)(3), NMFS may increase or decrease the retention limit for any size class of BFT 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. Retention limits may be adjusted separately for specific vessel type, such as private vessels, headboats, or charterboats.

NMFS has considered the set of criteria cited above and their applicability to the Angling category BFT retention limit for the 2011 Angling category fishery. NMFS examined the results of the 2007 through 2010 fishing seasons under the applicable daily retention limits, as well as the observed trend in the recreational fishery toward heavier fish, particularly in the small medium size range (59 to less than 73 inches). Data and dockside observations from 2007 through 2009 indicated a shift in catch to the large school/small medium size class (47 to less than 73 inches (119 to less than 185 cm)), particularly to large school BFT (47 to less than 59 inches (119 to less than 150 cm)) in 2008 and to small medium BFT in 2009. Large school and small medium BFT traditionally have been managed as one size class (47 to less than 73 inches). NMFS has found that as this cohort of fish ages and grows in weight but remains under 73 inches (*i.e.*, the upper range of the large school/small medium size class), the large school/small medium subquota has been attained with fewer fish landed.

In 2010, based on considerations of the available quota, fishery performance

in recent years, and the availability of BFT on the fishing grounds, NMFS adjusted the Angling category retention limit to prohibit the retention of small medium BFT (75 FR 33531, June 14, 2010). Recognizing the different nature, needs, and recent landings results of private and charter/headboat vessels, NMFS implemented separate limits for each. Effective June 12 through December 31, 2010, the limit was one school or large school BFT per vessel per day/trip for private vessels (*i.e.*, those with HMS Angling category permits), and was one school BFT and one large school BFT per vessel per day/trip for charter vessels (*i.e.*, those with HMS Charter/Headboat permits, while fishing recreationally for BFT).

In order to constrain landings to the Consolidated HMS FMP-based Angling category allocations, NMFS must implement conservative daily retention limits in 2011. It is important that NMFS constrain landings to BFT subquotas both to adhere to the current FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (*e.g.*, fish caught at each age) that was assumed in the projections of stock rebuilding.

Information from the North Carolina Tagging Program and from fishery participants indicates that the vast majority of BFT landed recreationally this year have been 59 inches or greater. Comparisons of 2011/2010 catch rates from the North Carolina Tagging program for the month of January indicated rates were considerably slower in January 2011, however comparisons of January–February indicate catch rates have increased dramatically and are on par, if not slightly higher, than those in 2010. Based on considerations of the available quota, fishery performance in recent years, and the availability of BFT on the fishing grounds, it is reasonable to assume that the large school/small medium subquota (and potentially the Angling category quota) would be exceeded under the default daily retention limit. NMFS has determined that the Angling category retention limit should be adjusted to prohibit the retention of small medium BFT, and that implementation of separate limits for private and charter/headboat vessels is appropriate, recognizing the different nature, needs, and recent landings results of the two sectors. For example, charter operators historically have indicated that a multi-fish retention limit is vital to their ability to attract customers. In addition, recent Large Pelagics Survey estimates indicate that charter/headboat BFT landings

constitute approximately 25 percent of recent recreational landings, with the remaining 75 percent landed by private vessels. Therefore, for private vessels, *i.e.*, those with HMS Angling category permits, the limit is one school or large school BFT per vessel per day/trip (*i.e.*, one BFT measuring 27 to less than 59 inches). For charter vessels (*i.e.*, those with HMS Charter/Headboat permits), the limit is one school BFT and one large school BFT per vessel per day/trip while fishing recreationally for BFT (*i.e.*, one BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 59 inches). These retention limits will be effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT. Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. NMFS may adjust the daily retention limit further with an inseason action if warranted.

As discussed above, the determination to adjust the daily retention limit is primarily based on the catches of large school/small medium BFT in recent years and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii)), and the anticipated availability of large school/small medium BFT on the fishing grounds (§ 635.27(a)(8)(ix)). NMFS anticipates that reduction of the BFT daily retention limit will result in landings during 2011 that would not exceed the available subquotas as codified in 2010.

Large Medium and Giant “Trophy” Category Fishery; Closure

The 2010 codified BFT quotas provide for 4.3 mt of large medium and giant (trophy) BFT (measuring greater than 73 inches) to be harvested from the regulatory area by vessels fishing under the Angling category quota, with 1.4 mt for the area north of 39°18' N. lat. (off Great Egg Inlet, NJ) and 2.9 mt for the area south of 39°18' N. lat.

Based on North Carolina Tagging Program information, NMFS has determined that the codified southern area trophy BFT Angling category subquota has been taken and that a closure of the southern area trophy BFT fishery is warranted at this time. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT south of 39°18' N. lat. by persons aboard vessels permitted in the HMS Angling category and the HMS Charter/Headboat category (while fishing recreationally) must cease at 11:30 p.m. local time on April 2, 2011. This action is taken consistent with the regulations at § 635.28(a)(1).

These Angling category actions are intended to provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities; and to be consistent with the objectives of the Consolidated HMS FMP.

HMS Angling and HMS Charter/Headboat category permit holders may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. Anglers are also reminded that all released BFT must be returned to the sea immediately with a minimum of injury and without removing the fish from the water, consistent with requirements at § 635.21(a)(1).

If needed, subsequent Angling category adjustments 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 <http://www.hmspermits.gov>, for updates.

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. Based on available BFT quotas, fishery performance in recent years, and the availability of BFT on the fishing grounds, the reduction in Angling category daily retention limit and closure of the southern area Angling category trophy fishery is necessary to ensure sufficient quota remains available to ensure overall 2011 fishing year landings are consistent with ICCAT recommendations and the 2006 Consolidated HMS FMP. NMFS provides notification of closures and retention limit adjustments by publishing the notice in the **Federal Register**, e-mailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on <http://www.hmspermits.gov>.

These fisheries are currently underway and delaying this action

would be contrary to the public interest as it could result in excessive BFT landings that may result in future potential quota reductions for the Angling category and potentially other BFT quota categories, depending on the magnitude of a potential Angling category overharvest. NMFS must close the southern area trophy BFT fishery and preclude small medium BFT landings in all areas before additional landings of these size BFT accumulate. 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 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(b)(3) and 635.28(a)(1), and is exempt from review under Executive Order 12866.

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

Dated: March 30, 2011.

Margo Schulze-Haugen,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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