

still not possible to level the transverse instrumentation platform to within  $\pm 0.5$  degrees, select the neck bracket angle position that minimizes the difference between the transverse instrumentation platform angle and level.

(10) Measure and set the dummy's pelvic angle using the pelvic angle gage. The angle is set to 20.0 degrees  $\pm 2.5$  degrees. If this is not possible, adjust the pelvic angle as close to 20.0 degrees as possible while keeping the transverse instrumentation platform of the head as level as possible by adjustments specified in S12.3.2(a)(9).

(11) If the dummy is contacting the vehicle interior after these adjustments, move the seat rearward until there is a maximum of 5 mm (0.2 in) between the contact point of the dummy and the interior of the vehicle or if it has a manual seat adjustment, to the next rearward detent position. If after these adjustments, the dummy contact point is more than 5 mm (0.2 in) from the vehicle interior and the seat is still not in its forwardmost position, move the seat forward until the contact point is 5 mm (0.2 in) or less from the vehicle interior, or if it has a manual seat adjustment, move the seat to the closest detent position without making contact, or until the seat reaches its forwardmost position, whichever occurs first.

(b) *Passenger foot positioning.*

\* \* \* \* \*

(3) If either foot does not contact the floor pan, place the foot parallel to the floor pan and place the lower leg as perpendicular to the thigh as possible.

\* \* \* \* \*

S12.3.4 *5th percentile female in rear outboard seating positions.*

\* \* \* \* \*

(h) *Head leveling.*

(1) Vehicles with fixed seat backs. Adjust the lower neck bracket to level the transverse instrumentation platform angle of the head to within  $\pm 0.5$  degrees. If it is not possible to level the transverse instrumentation platform to within  $\pm 0.5$  degrees, select the neck bracket adjustment position that minimizes the difference between the transverse instrumentation platform angle and level.

(2) Vehicles with adjustable seat backs. While holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform angle of the head is level to within  $\pm 0.5$  degrees, making sure that the pelvis does not interfere with the seat bight. If it is not possible to level the transverse instrumentation platform to within  $\pm 0.5$  degrees, select the seat back adjustment position that minimizes the difference between the transverse instrumentation

platform angle and level, then adjust the neck bracket to level the transverse instrumentation platform angle to within  $\pm 0.5$  degrees if possible. If it is still not possible to level the transverse instrumentation platform to within  $\pm 0.5$  degrees, select the neck bracket angle position that minimizes the difference between the transverse instrumentation platform angle and level.

\* \* \* \* \*

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**David L. Strickland,**  
*Administrator.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

[Docket No. 110210132-1275-02]

**RIN 0648-XA630**

**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 General category retention limit adjustment.

**SUMMARY:** NMFS has determined that the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit should be adjusted from one to three large medium or giant BFT for the September, October-November, and December time periods of the 2011 fishing year, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels (when fishing commercially for BFT).

**DATES:** Effective September 1, 2011, through December 31, 2011.

**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, consistent with the allocations established in the Consolidated Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and subsequent rulemaking.

The 2011 BFT fishing year began on January 1, 2011, and ends December 31, 2011. The 2011 BFT quota specifications (76 FR 39019, July 5, 2011) established a quota of 435.1 mt for the General category fishery (the commercial tunas fishery in which handgear is used). 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. The General category fishery is open until December 31, 2011, or until the General category quota is reached.

**Adjustment of General Category Daily Retention Limit**

Starting on September 1, 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) curved fork length or greater) per vessel per day/trip. This default retention limit applies to General category permitted vessels and HMS Charter/Headboat category permitted vessels (when fishing commercially for BFT).

Under 50 CFR 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; 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.

For the 2010 fishing year, NMFS adjusted the General category limit from the default level of one large medium or giant BFT as follows: Two large medium or giant BFT for January (74 FR 68709, December 29, 2009), and three large medium or giant BFT for June through December (75 FR 30730, June 2, 2010; and 75 FR 51182, August 19, 2010). For the 2011 fishing year, NMFS adjusted the January limit to two large medium or giant BFT (75 FR 79309, December 20, 2010), and adjusted the June through August limit to three large medium or giant BFT (76 FR 32086, June 3, 2011).

Despite an elevated three-fish daily retention limit, 2011 General category landings remain low. As of August 8, 2011, 86.9 mt of the 2011 General category quota of 435.1 mt have been landed, and landings rates remain at approximately 1 mt per day. Given the rollover of unused quota from the January and June-August time periods, current catch rates, and the fact that the daily retention limit will automatically revert to one large medium or giant BFT per vessel per day on September 1, 2011, absent agency action, NMFS anticipates the full 2011 General category quota will not be harvested. Increasing the daily retention limit from the default of one fish may mitigate rolling an excessive amount of unused quota from one time-period subquota to the subsequent time-period subquota.

Based on considerations of the available quota, fishery performance in recent years, and the availability of BFT on the fishing grounds, NMFS has determined that the General category retention limit should be adjusted to allow for retention of the anticipated 2011 General category quota, and that the same approach used for September through December 2010 is warranted. Therefore, NMFS increases the General category retention limit from the default limit to three large medium or giant BFT per vessel per day/trip effective September 1, 2011, through December 31, 2011. 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 three 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 vessels 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 for September–December 2011 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 in the BFT fisheries, quota availability, previous public comments on inseason management measures, and stock status. 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. NMFS will address the January 2012 General category daily retention limit via a separate inseason action later in the year, if necessary.

Closure of the General category 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 <http://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/trip 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 for U.S. fishermen who depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment of the retention limit needs to be effective September 1, 2011, or as soon as possible thereafter, 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 for fishermen who have access to the fishery only 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 General category retention limit is one fish per vessel per day/trip whereas this action increases that limit and allows retention of additional 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 is exempt from review under Executive Order 12866.

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

Dated: August 18, 2011.

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