

as thorough a visual inspection as possible without physically going under the vehicle, and trailer brake connections

- Lighting devices, lamps, markers, and conspicuity marking material
- Wheels, rims, lugs, tires
- Air line connections, hoses, and couplers
- King pin upper coupling device
- Rails or support frames
- Tie down bolsters
- Locking pins, clevises, clamps, or hooks
- Sliders or sliding frame lock

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

■ 8. The authority citation continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31151, and 31502; and 49 CFR 1.73.

■ 9. Revise § 396.11(a)(1) introductory text and (a)(2) to read as follows:

§ 396.11 Driver vehicle inspection report(s).

(a) *Report Required*—(1) *Motor Carriers*. Every motor carrier shall require its drivers to report, and every driver shall prepare a report in writing at the completion of each day's work on each vehicle operated, except for intermodal equipment tendered by an intermodal equipment provider. The report shall cover at least the following parts and accessories:

* * * * *

(2) *Intermodal equipment providers*. Every intermodal equipment provider must have a process to receive driver reports of defects or deficiencies in the intermodal equipment operated. The driver must report on, and the process to receive reports must cover, at least the following parts and accessories:

- Brakes
- Lighting devices, lamps, markers, and conspicuity marking material
- Wheels, rims, lugs, tires
- Air line connections, hoses, and couplers
- King pin upper coupling device
- Rails or support frames
- Tie down bolsters
- Locking pins, clevises, clamps, or hooks
- Sliders or sliding frame lock

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■ 10. Revise § 396.12(d) to read as follows:

§ 396.12 Procedures for intermodal equipment providers to accept reports required by 390.42(b) of this chapter.

* * * * *

(d) *Retention period for reports*. Each intermodal equipment provider must

maintain all documentation required by this section, including the original driver report and the certification of repairs on all intermodal equipment, for a period of three months from the date that a motor carrier or its driver submits the report to the intermodal equipment provider or its agent.

Issued on: December 18, 2009.

Anne S. Ferro,

Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648-XT23

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 month of January 2010, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action applies to Atlantic Tunas General category permitted vessels and Highly Migratory Species Charter/Headboat category permitted vessels (when fishing commercially for BFT).

DATES: Effective January 1, 2010, through January 31, 2010.

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 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP).

The 2010 BFT fishing year, which is managed on a calendar year basis and subject to an annual calendar year quota, begins January 1, 2010. Starting on January 1, 2010, 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 default 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. For the 2009 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, and three large medium or giant BFT for June through December (73 FR 76972, December 18, 2008; 74 FR 26110, June 1, 2009; and 74 FR 44296, August 28, 2009).

The 2008 ICCAT recommendation regarding Western BFT management resulted in a U.S. quota of 1,034.9 mt for 2009 and 977.4 mt for 2010. Consistent with the allocation scheme established in the Consolidated HMS FMP, the baseline General category share was 475.7 mt for 2009 and is 448.6 mt for 2010, and the baseline January General category subquota was 25.2 mt for 2009 and is 23.8 mt for 2010.

In order to implement the ICCAT recommendation for the 2010 fishing year, NMFS has published proposed quota specifications to set BFT quotas for each of the established domestic fishing categories (74 FR 63095, December 2, 2009). Until the 2010 specifications are finalized (most likely in February 2010), the January General category quota of 25.2 mt remains in effect.

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 January 2010 General category fishery. For example, under the 2-fish limit that applied in January 2009, January landings were very close to the base subquota of 25.2 mt, later adjusted in the final 2009 specifications to 33 mt. Under the proposed 2010 BFT quota specifications, the adjusted January 2010 January subquota would be 28.6 mt. Based on these considerations, NMFS has determined that the General category retention limit should be adjusted to allow for retention of the anticipated 2010 General category quota, and that the same approach used for January 2009 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 day/trip, effective January 1, 2010, through January 31, 2010. 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 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. 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 January 2010 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 <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 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 that 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 January 1, 2010, 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/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 (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 18, 2009.

Alan Risenhoover,

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. 0909011267-91427-02]

RIN 0648-AY19

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States

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

ACTION: Final rule.