

Despite this determination, FEMA has, and continues to, consult with Indian tribal governments with respect to hazard mitigation. Before FEMA developed the interim rule, the agency met with representatives from State and local governments and the Bureau of Indian Affairs to discuss the new planning requirements of section 322 of the Stafford Act. The same opportunity for comment was offered to all parties. FEMA received valuable input from all attendees, which helped FEMA to develop the interim rule. Also, since FEMA published the interim rule, it has coordinated more directly with Indian tribal governments, and with organizations that represent them. For example, in conjunction with the National Congress of American Indians, FEMA hosted a Tribal Mitigation Conference in October 2002 at the Ak-Chin Indian Community, Arizona. This conference provided FEMA with an opportunity to better understand its responsibilities related to Indian tribal governments and to build a working relationship with many of the Indian tribal representatives. A follow-up conference was held at the Salish Kootenai Community, Montana in August 2003. As a direct result of these conferences, FEMA developed an EMI resident course titled "Mitigation for Tribal Officials." This course provides a direct opportunity for coordination and information sharing between Indian tribal representatives and FEMA, resulting in refinements to FEMA's Indian tribal policy and guidance.

Finally, FEMA believes that planning is critical to successful mitigation at all levels of government. The agency has been working to technically assist all federally-recognized Indian tribal governments regarding the availability of grant funding, training opportunities, as well as program requirements.

#### List of Subjects

##### 44 CFR Part 201

Administration practice and procedure, Disaster assistance, Grant programs, Reporting and recordkeeping requirements.

##### 44 CFR Part 204

Administration practice and procedure, Fire prevention, Grant programs, Reporting and recordkeeping requirements.

##### 44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing,

Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons stated in the preamble, the interim rules amending 44 CFR parts 201, 204, and 206 that were published at 67 FR 8844 on February 26, 2002, 67 FR 61512 on October 1, 2002, 68 FR 61368 on October 28, 2003, 69 FR 55094 on September 13, 2004, and the correcting amendment published at 68 FR 63738 on November 10, 2003, are adopted as final with the following changes:

#### PART 201—MITIGATION PLANNING

■ 1. The authority citation for part 201 is revised to read as follows:

**Authority:** 42 U.S.C. 5121–5206; 6 U.S.C. 101; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239; 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 2. Revise § 201.4 (c)(2)(ii) to read as follows:

##### § 201.4 Standard State Mitigation Plans.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) An overview and analysis of the State's vulnerability to the hazards described in this paragraph (c)(2), based on estimates provided in local risk assessments as well as the State risk assessment. The State shall describe vulnerability in terms of the jurisdictions most threatened by the identified hazards, and most vulnerable to damage and loss associated with hazard events. State owned or operated critical facilities located in the identified hazard areas shall also be addressed;

\* \* \* \* \*

Dated: October 24, 2007.

**Harvey E. Johnson, Jr.,**

*Deputy Administrator/Chief Operating Officer, Federal Emergency Management Agency.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

RIN 0648–XD44

#### 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 November and December time periods of the 2007 fishing year and the January period of the 2008 fishing year. NMFS increases the daily BFT retention limits, including on previously scheduled Restricted Fishing Days (RFDs), to provide enhanced commercial fishing opportunities to harvest the established General category quota.

**DATES:** The effective dates for the adjusted BFT daily retention limits are November 1, 2007, through January 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Brad McHale or Sarah McLaughlin, 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). The latest (2006) ICCAT recommendation for western Atlantic BFT included a U.S. quota of 1,190.12 mt, effective beginning in 2007, through 2008, and thereafter until changed (i.e., via a new ICCAT recommendation).

The 2007 fishing year began on June 1, 2007, and ends December 31, 2007. NMFS published final specifications on June 18, 2007 (72 FR 33401) and

increased the default General category retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip to three large medium or giant BFT, measuring 73 inches CFL or greater, per vessel per day/trip through August 31, 2007. On August 31, 2007 (72 FR 50257), NMFS published a notice to increase the General category retention limit for September 1–October 31, 2007, to three large medium or giant BFT. NMFS took these actions to enhance commercial BFT fishing opportunities to those vessels permitted in the Atlantic tunas General category and the Highly Migratory Species (HMS) Charter/Headboat category, while fishing commercially. In addition, NMFS stated that it would consider adjustment of retention limits for future time periods, if warranted.

#### **Daily Retention Limits**

Pursuant to this action, the daily BFT retention limits for the Atlantic tunas General and HMS Charter/Headboat categories are as follows:

#### **Adjustment of General Category Daily Retention Limits**

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 to provide for maximum utilization of the General category quota for BFT. Such adjustments to the commercial retention limit are based on NMFS' 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.

As of October 22, 2007, the coastwide General category has landed 74.8 metric tons (mt) out of a possible 643.6 mt, and catch rates remain less than 1.0 mt per day even though the General category retention limit was increased to three BFT per vessel per trip, measuring 73 inches (185 cm) CFL or greater for June through October 2007. Starting on November 1, 2007, the General category daily retention limit, located at 50 C.F.R. 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 coastwide General category quota, thereby ensuring fishing opportunities are provided in years where high catch rates are experienced. In combination with the subquota rollover from previous 2007 fishing year time-periods, scheduled RFDs, current catch rates, and the daily retention limit reverting to one large medium or giant BFT per vessel per day on November 1, 2007, NMFS anticipates the full 2007 fishing year General category quota and January 2008 subquota will not be harvested. Adding an excessive amount of unused quota from one time-period subquota to the subsequent time-period subquota is undesirable because it effectively changes the time-period subquota allocation percentages established in the Consolidated HMS FMP and may contribute to excessive carry-overs to subsequent fishing years.

NMFS has considered the set of criteria cited above and their applicability to the commercial BFT retention limit for the remainder of the 2007 fishing year and the January portion of the 2008 fishing year. Based on these considerations, NMFS has determined that the General category retention should be adjusted to allow for retention of the established General category quota. Therefore, NMFS increases the General category retention limit from the default limits effective November 1, 2007, through January 31, 2008. This adjustment increases the General category daily retention limit to three large medium or giant BFT, measuring 73 inches (185 cm) CFL or greater, per vessel per day/trip. 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.

#### **Restricted Fishing Days**

The 2007 fishing year BFT specifications and effort controls included the following RFDs: all Saturdays and Sundays from November 17, 2007, through December 31, 2007, plus November 22 and December 25, 2007. These RFDs were designed to provide for an extended late season, south Atlantic BFT fishery for the commercial handgear fishermen in the General category. For the reasons referred to above, NMFS has determined that the scheduled RFDs are no longer required to meet their original purpose, but may in fact exacerbate low catch rates, and waives all previously scheduled RFDs for the 2007 fishing year. Therefore, NMFS has determined that an increase in the General category daily BFT retention limit effective from November 1, 2007, through January 31, 2008, inclusive of days that were previously scheduled as RFDs, is warranted. Thus, NMFS is extending the General category daily retention limit of three large medium or giant BFT per vessel per day/trip through January 31, 2008, including all Saturdays and Sundays in November and December 2007 as well as November 22 and December 25, 2007.

This adjustment is intended to provide a reasonable opportunity to harvest the U.S. landings quota of BFT 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](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:

NMFS continues to receive information refining its understanding of the commercial sector's specific needs regarding retention limits through the latter portions of the 2007 season. NMFS assessments and analyses show catch rates to date have been low and that there is sufficient quota for an increase to the General category retention limit during the months of November 2007 through January 2008.

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 November 1, 2007, 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., current 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: October 25, 2007.

**Emily H. Menashes,**

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