

imposed by State law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 27, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 13, 2009.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(361)(i)(B) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(361) \* \* \*

(i) \* \* \*

(B) Antelope Valley Air Quality Management District

(1) Rule 1173, “Fugitive Emissions of Volatile Organic Compounds,” adopted July 7, 1989 and amended June 17, 2008.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

RIN 0648–XQ90

#### 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 and quota transfer.

**SUMMARY:** NMFS has determined that the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit should be adjusted for the September, October–November, and December time periods of the 2009 fishing year, based on consideration of the 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). NMFS has also determined that a quota transfer to allow continued fishing in the Harpoon category is appropriate, and therefore transfers 25 metric tons (mt) from the Reserve to the Harpoon category for the remainder of the 2009 fishing year. This action applies to Atlantic Tunas Harpoon category permitted vessels.

**DATES:** The effective dates for the adjusted BFT daily retention limits are September 1, 2009, through December 31, 2009. The quota transfer to the Harpoon category is effective August 28, 2009, through November 15, 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). The latest (2008) ICCAT recommendation for western Atlantic BFT included a U.S. quota of 1,034.9 mt for 2009.

The 2009 fishing year began on January 1, 2009, and ends December 31, 2009. The General category fishery is open until December 31, 2009, or until the General category quota is reached. The Harpoon category fishery is open until November 15, 2009, or until the Harpoon category quota is reached.

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

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; 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 published final specifications on June 1, 2009 (74 FR 26110), and increased the default General category daily retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel to three large medium or giant BFT per vessel for June 1 through August 31, 2009. In addition, NMFS stated that it would consider

adjustment of retention limits for future time periods, if warranted.

As of July 31, 2009, 53.5 mt of the adjusted 2009 General category quota have been landed, and landings rates remain less than 1.0 mt per day. Starting on September 1, 2009, the General category daily retention limit, located at 50 CFR 635.23(a)(2), is scheduled to revert back to the default daily retention limit of one large medium or giant BFT per vessel. 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. In consideration of the rollover of unused quota from the January and June-August time periods, current catch rates, and the daily retention limit reverting to one large medium or giant BFT per vessel per day on September 1, 2009, NMFS anticipates the full 2009 fishing year General category quota will not be harvested. Increasing the daily retention limit from the default may mitigate rolling an excessive amount of unused quota from one time-period subquota to the subsequent time-period subquota. Excessive rollover is undesirable because it effectively changes the time-period subquota allocation percentages established in the Consolidated HMS FMP and may contribute to excessive carryovers 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 2009 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 September 1, 2009, through December 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 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.

In August 2008, NMFS followed a similar course of action and raised the General category retention limits via inseason action to allow for a three BFT daily retention limit throughout 2008 (73 FR 50885, August 29, 2008). NMFS would address the January 2010 General category daily retention limit via a separate inseason action later in the year, if necessary. In December 2008, NMFS set the January 2009 General category BFT daily retention limit at two BFT per vessel via an inseason action (73 FR 76972, December 18, 2008), after considering dealer reports, daily landing trends, the winter fishery performance over the last few years, BFT availability, and the relatively small January General category baseline subquota.

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.

#### **Inseason Transfer to the Harpoon Category**

Under § 635.27(a)(7), NMFS has the authority to allocate any portion of the Reserve to any category quota in the fishery, other than the Angling category school BFT subquota (for which there is a separate reserve), after considering determination criteria provided under § 635.27(a)(8).

The 2009 annual BFT quota specifications (74 FR 26110, June 1, 2009) provide for an adjusted quota of 51.6 mt of large medium and giant BFT to be harvested from the regulatory area by vessels fishing under the Harpoon category quota. As of August 11, 2009, Harpoon category landings totaled 37.7 mt, with 13.9 mt available for the remainder of the season.

After considering the factors for making transfers between categories and from the Reserve, NMFS has determined that 25 mt of the 180.4 mt of Reserve should be transferred to the Harpoon category. Thus, the Harpoon category quota is adjusted to 76.6 mt for the 2009 fishing year. Once the adjusted Harpoon category quota has been reached, or November 15, 2009, whichever comes first, the Harpoon category will be closed.

#### **Monitoring and Reporting**

NMFS selected the General category 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 of the General and Harpoon categories or subsequent adjustments to the General category daily retention limit, 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:

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 the daily retention limit 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 must be effective September 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 by increasing the General category retention limit from the default of one fish per vessel/trip to three fish per vessel/trip, the AA also finds 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: August 24, 2009.

**Kristen C. Koch,**

*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 679

[Docket No. 09100091344-9056-02]

**RIN 0648-XR20**

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2009 total allowable catch (TAC) of pollock for Statistical Area 630 in the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), August 26, 2009, through 1200 hrs, A.l.t., October 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the

GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the 2009 TAC of pollock in Statistical Area 630 of the GOA is 3,550 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009). In accordance with § 679.20(a)(5)(iv)(B) the Administrator, Alaska Region, NMFS (Regional Administrator), hereby decreases the C season pollock allowance by 2,071 mt, to reflect the total amount of pollock TAC that has been caught prior to the C season in Statistical Area 630. Therefore, the revised C season allowance of the pollock TAC in Statistical Area 630 is 1,479 mt (3,550 mt minus 2,071 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2009 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,469 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 630 of the GOA. NMFS