

Aggrieved parties must certify that their petition was filed within 60 days of the termination of ADR proceedings in order to file a petition later than 60 days after completion of the final accountant's report. Cable operators may rebut such certifications.

(e) The cable operator or other respondent will have 30 days from the filing of the petition to file a response. If a leased access rate is disputed, the response must show that the rate charged is not higher than the maximum permitted rate for such leased access, and must be supported by the affidavit of a responsible company official. If, after a response is submitted, the staff finds a *prima facie* violation of our rules, the staff may require a respondent to produce additional information, or specify other procedures necessary for resolution of the proceeding.

(f) The Commission, after consideration of the pleadings, may grant the relief requested, in whole or in part, including, but not limited to ordering refunds, injunctive measures, or forfeitures pursuant 47 U.S.C. 503, denying the petition, or issuing a ruling on the petition or dispute.

(g) To be afforded relief, the petitioner must show by clear and convincing evidence that the cable operator has violated the Commission's leased access provisions in 47 U.S.C. 532 or §§ 76.970 and 76.971, or otherwise acted unreasonably or in bad faith in failing or refusing to make capacity available or to charge lawful rates for such capacity to an unaffiliated leased access programmer.

(h) During the pendency of a dispute, a party seeking to lease channel capacity for commercial purposes, shall comply with the rates, terms and conditions prescribed by the cable operator, subject to refund or other appropriate remedy.

§ 76.978 [Removed]

■ 5. Remove § 76.978.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120306154-2241-02]

RIN 0648-XC593

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 that applies to vessels permitted in the Highly Migratory Species (HMS) Charter/Headboat category (when fishing recreationally for BFT) should be adjusted for the remainder of 2013, based on consideration of the regulatory determination criteria regarding inseason adjustments and based on preliminary 2013 landings data. The adjusted limit for HMS Charter/Headboat vessels is one school BFT and one large school/small medium BFT per vessel per day/trip when fishing recreationally for BFT (i.e., one BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 73 inches). This retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing 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 (Consolidated HMS FMP) and to prevent overharvest of the 2013 Angling category quota.

DATES: Effective April 4, 2013, through December 31, 2013.

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 (ATCA; 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 HMS FMP (71 FR 58058, October 2, 2006) and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The 2013 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2013. The Angling category season opened January 1, 2013, and continues through December 31, 2013. 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 (50 CFR 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).

The currently codified Angling category quota is 182 mt (94.9 mt for school BFT, 82.9 mt for large school/small medium BFT, and 4.2 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 (§ 635.27(a)(8)(i)); effects of the adjustment on BFT rebuilding and overfishing (§ 635.27(a)(8)(v)); effects of the adjustment on accomplishing the objectives of the Consolidated HMS FMP (§ 635.27(a)(8)(vi)); variations in seasonal BFT distribution, abundance, or migration patterns (§ 635.27(a)(8)(vii)); 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 (§ 635.27(a)(8)(viii)); and a review of daily landing trends and availability of the BFT on the fishing grounds (§ 635.27(a)(8)(ix)). Retention limits may be adjusted separately for specific vessel type, such as private vessels, headboats, or charterboats.

NMFS has considered the set of criteria at § 635.27(a)(8) and their applicability to the Angling category BFT retention limit for the 2013 Angling category fishery. These considerations include, but are not limited to, the following: This action, which is taken consistent with the quotas previously established and analyzed in the 2011 BFT quotas final rule (76 FR 39019, July 5, 2011) and consistent with objectives of the Consolidated HMS FMP, is not expected to negatively impact stock health. Biological samples collected

from BFT landed by recreational fishermen continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. A principal consideration is the objective of providing opportunities to harvest the Angling category quota without exceeding it based upon the Consolidated HMS FMP goal:

“Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems.” 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.

NMFS examined the results of the 2009 through 2012 fishing seasons under the applicable daily retention limits, as well as the observed trend in the recreational fishery over that time period (i.e., a shift in availability from primarily large school BFT, which measure 47 to less than 59 inches (119 to less than 150 cm) in 2008 to small medium BFT (59 to less than 73 inches) in 2009 through 2011). Large school and small medium BFT traditionally have been managed as one size class (47 to less than 73 inches). In 2010 and 2011, 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 from the default level to prohibit the retention of small medium BFT for the remainder of the respective fishing years (75 FR 33531, June 14, 2010, and 76 FR 18416, April 4, 2011). Recognizing the different nature, socio-economic needs, and recent landings results of private and charter/headboat vessels, NMFS implemented separate limits for each. Effective June 12 through December 31, 2010, and effective April 2 through December 31, 2011, 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, when fishing recreationally for BFT).

In 2012, based on the annual BFT growth rate and preliminary recreational catch information, NMFS found it was

reasonable to assume that the cohort of fish described above largely had grown to greater than 73 inches (i.e., had moved through the recreational large school/small medium size class), and adjusted the retention limit for HMS Charter/Headboat vessels from the default level to one school and one large school/small medium BFT per vessel per day/trip.

Given the considerations above, NMFS has determined that the Angling category retention limit applicable to HMS Charter/Headboat category participants (when fishing recreationally) should be adjusted from the default level, and that implementation of separate limits for private and charter/headboat vessels is appropriate, recognizing the different nature, socio-economic needs, and recent landings results of the two components of the recreational BFT fishery. For example, charter operators historically have indicated that a multi-fish retention limit is vital to their ability to attract customers. In addition, 2012 Large Pelagics Survey estimates indicate that charter/headboat BFT landings constitute approximately 30 percent of recent recreational landings, with the remaining 70 percent landed by private vessels.

Therefore, for private vessels (i.e., those with HMS Angling category permits), the limit is maintained at one school, large school, or small medium BFT per vessel per day/trip (i.e., one BFT measuring 27 to less than 73 inches). For charter vessels (i.e., those with HMS Charter/Headboat permits), the limit is one school BFT and one large school/small medium BFT per vessel per day/trip when fishing recreationally for BFT (i.e., one BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 73 inches). These retention limits are 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 anticipates that the BFT daily retention limits in this action will result in landings during 2013 that would not exceed the available subquotas as codified in 2011. A lower retention limit could result in substantial underharvest of the codified Angling category subquota, and increasing the daily limit further may risk exceeding the available quota, contrary to the objectives of the Consolidated HMS FMP. NMFS will monitor 2013 landings closely and will make further adjustments, including closure, with an inseason action if warranted.

Angling Category Large Medium and Giant Southern “Trophy” Fishery Closure

The codified BFT quotas provide for 4.2 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 2.8 mt for the area south of 39°18' N. lat.

Based on information from the NMFS Automated Landings Reporting System and the North Carolina Tagging Program, NMFS has determined that the codified Angling category trophy BFT subquota has been taken and that a closure of the southern area trophy BFT fishery is warranted at this time. Therefore, retaining, possessing, or landing large medium or giant (“trophy”) BFT south of 39°18' N. lat. by persons aboard vessels permitted in the HMS Angling category and the HMS Charter/Headboat category (when fishing recreationally) must cease at 11:30 p.m. local time on April 4, 2013. 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 BFT that are released must be handled in a manner that will maximize survivability, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the “Careful Catch and Release” brochure available at www.nmfs.noaa.gov/sfa/hms/.

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 www.hmspermits.noaa.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, the availability of BFT on the fishing grounds, among other considerations, an adjustment to the recreational BFT daily retention limit is warranted. Analysis of available data shows that adjustment to the BFT daily retention limit from the default level would result in minimal risks of exceeding the ICCAT-allocated quota. Further, closure of the southern area Angling category trophy fishery is necessary to ensure sufficient quota remains available to ensure overall 2013 fishing year landings are consistent with ICCAT recommendations and the Consolidated HMS FMP. NMFS provides notification of closures and retention limit adjustments by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on www.hmspermits.noaa.gov.

These fisheries are currently underway and delaying this action would be contrary to the public interest as it could result in excessive trophy 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 before additional landings of these sizes of BFT accumulate. Delays in increasing the daily recreational BFT retention limits would adversely affect those Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one school, large school, or small medium BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. 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: April 1, 2013.

Kara Meckley,

Acting Deputy 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. 120822383-3277-02]

RIN 0648-BC48

Fisheries of the Northeastern United States; Northeast Multispecies Fishery Management Plan; Amendment 19

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

ACTION: Final rule.

SUMMARY: This final rule implements Amendment 19 to the Northeast Multispecies Fishery Management Plan. The New England Fishery Management Council developed Amendment 19 to modify management measures that currently govern the small-mesh multispecies fishery, including the accountability measures, the year-round possession limits, and total allowable landings process. Amendment 19 was approved by NMFS on January 15, 2013.

DATES: Effective May 6, 2013.

ADDRESSES: An environmental assessment (EA) was prepared for Amendment 19 that describes the proposed action and other considered alternatives, and provides an analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 19, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from the New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281-9218.

SUPPLEMENTARY INFORMATION:

Background

The small-mesh multispecies complex is composed of five stocks of three species of hakes (northern silver hake, southern silver hake, northern red hake, southern red hake, and offshore hake), and the fishery is managed through a

series of exemptions from the other provisions of the Northeast (NE) Multispecies Fishery Management Plan (FMP). None of the small-mesh multispecies stocks are overfished, and overfishing is not occurring. Amendment 19 to the FMP was initiated by the New England Fishery Management Council (Council) in 2009 to establish a mechanism for specifying annual catch limits (ACLs) and accountability measures (AMs) for the small-mesh multispecies fishery, as required by the 2007 reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). However, the Council postponed developing the amendment in order to include the results of an updated stock assessment in November 2010. Due to this delay, and in order to bring the small-mesh multispecies portion of the NE Multispecies FMP into compliance with the Magnuson-Stevens Act requirements for ACLs and AMs, NMFS implemented a Secretarial Amendment in time for the start of the 2012 fishing year (March 30, 2012; 77 FR 19138).

The Secretarial Amendment was based on the preliminary work the Council had done on Amendment 19 up to that point, including the overfishing limits (OFL), acceptable biological catches (ABC), and ACLs. The Council, through Amendment 19, is adopting those limits (Table 1), as well as the process that describes how those values are calculated, as was implemented in the Secretarial Amendment. As described in the Secretarial Amendment, the ABCs are based on the OFLs and, to account for scientific uncertainty, are set equal to the 40th percentile of the OFL distribution for both red hake stocks, and the 25th percentile for both silver hake stocks.

Offshore hake, which does not have an overfishing definition, are caught incidentally in the southern silver hake fishery and are marketed together with silver hake as “whiting.” In order to account for offshore hake, the southern silver hake ABC is increased by 4 percent, which is the average amount of offshore hake landed on a typical “whiting” trip, based on information presented during the most recent stock assessment. It is not feasible for fishermen to separate silver and offshore hake on a given trip, and there is not enough information to establish a distinct set of offshore hake catch limits. Therefore, this combined ABC, ACL, and TAL in the southern whiting fishery is deemed adequate to account for and manage the southern silver hake and offshore hake stocks. This combined