

from its DTV allotment, also referred to as its "replication" service area, plus its maximization construction permit, if any, and maximization license, if any). This policy reflects the decisions made in the *Second DTV Periodic Review Report and Order* to (1) require that DTS provide service to essentially all of a station's replication coverage area; (2) permit but not require coverage of any maximization area; and (3) prohibit use of DTS on a primary basis beyond a station's currently authorized area (including its replication area as well as any maximization area resulting from facilities granted by a construction permit or license).

5. We also clarify the requirement that the combined DTS noise-limited service be provided over all of a station's replication service area. To evaluate whether a request to use DTS during this interim period conforms to this requirement, we examine whether every location in a station's replication service area is within the PNLC of at least one proposed DTS transmitter. Because we do not protect DTS service beyond the station's PNLC, DTS signals beyond the PNLC are considered to have secondary status and must protect other licensed operations. Stations designing DTS operations should also recognize that DTS service beyond the area that the station "certified" it intends to serve (on Form 381 filed in accordance with the channel election process) may be considered secondary and unprotected in the planning for post-transition DTV service, and therefore may not be allowed to continue past the end of the transition unless specifically re-authorized. Consistent with our determination in the *Second DTV Periodic Report and Order*, the threshold for unacceptable interference to other stations will be new interference exceeding 0.1 percent based on the strongest of the multiple DTS signals (not based on the combined effect of the multiple DTS transmitters). Stations wishing to use DTS, like all other stations, are required to comply with § 73.625 of our rules with respect to service within the station's community of license (sometimes referred to as a predicted signal strength that is "noise-limited plus 7 dB") (47 CFR 73.625).

6. A station's desire to explore DTS operation is not acceptable grounds for an extension of the replication and maximization interference protection deadline. Any station employing an interim arrangement of DTS transmitters on its build-out deadline will be expected to demonstrate that its DTS operation meets the appropriate build-out requirement. Beyond these

decisions, our staff will determine on a case-by-case basis the adequacy of other aspects of proposed operation (including permissible power, antenna height, and the acceptability of interference showings).

#### IV. Procedural Matters

##### A. Regulatory Flexibility Act Analysis

7. No Regulatory Flexibility Act Analysis is legally required in the case of this *Clarification*.

##### B. Paperwork Reduction Act of 1995 Analysis

8. This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13.

##### C. Congressional Review Act

9. In order to supplement the submission of the *Second Periodic DTV Report and Order* which was made on October 8, 2004, the Commission will send a copy of *Clarification* in a report to be sent to Congress and the General Accountability Office, pursuant to the Congressional Review Act.

#### IV. Ordering Clauses

10. *It is ordered* pursuant to sections 1, 4(i) and (j), 5(c)(1), 7, 301, 302, 303(f) and (r), 307, 308, 309, 316, 319, and 336, of the Communications Act of 1934, as amended, 47 U.S.C. 51, 154(i) and (j), 155(c)(1), 157, 301, 302, 303(f) and (r), 307, 308, 309, 316, 319, and 336, that the policy regarding interim use of distributed transmission systems (DTS) is *clarified* as described herein. *It is further ordered* that, pursuant to 47 U.S.C. 155(c), the Chief, Media Bureau, is *granted delegated authority* to review and process applications to use DTS.

#### List of Subjects in 47 CFR Part 73

Digital television, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[I.D. 112305D]

#### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; quota transfer.

**SUMMARY:** NMFS has determined that an Atlantic bluefin tuna (BFT) quota transfer from the Atlantic tunas General category to the Reserve category in the amount of 200 metric tons (mt), is warranted. This action is being taken to account for any potential overharvests that may occur in the Angling category during the 2005 fishing year (June 1, 2005 through May 31, 2006) and to ensure that U.S. BFT harvest is consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), pursuant to the Atlantic Tunas Convention Act (ATCA), and to meet the domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP).

**DATES:** The effective date of the BFT quota transfer is December 2, 2005 through May 31, 2006.

**FOR FURTHER INFORMATION CONTACT:** 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 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 ICCAT among the various domestic fishing categories. The categories, together with the General category effort controls, are specified annually through procedures provided at § 635.23(a) and § 635.27(a). The 2005 BFT fishing year began on June 1, 2005, and ends May 31, 2006. The final initial 2005 BFT specifications and General category effort controls were published on June 7, 2005 (70 FR 33033).

#### Quota Transfer

To date, preliminary fishing reports from the 2005 recreational BFT fishery indicate a season of strong effort and participation which could potentially equate to high landings. This is in contrast with the low landing rates across the commercial BFT categories. The Angling category quota allocation of 288.6 mt for the 2005 season addressed several issues including Angling category quota overages during the last several years, consistency with baseline quota percentages established in the HMS FMP, and the Agency's intent to

provide a limited recreational season during the 2005 fishing year. However, final 2005 recreational BFT landings estimates will not be available until mid to late January. Based on the lack of final recreational BFT catch estimates and the Angling category overharvests experienced over the last couple of years, NMFS has determined that a risk adverse strategy to transfer 200 mt from the General category quota to the Reserve category is warranted as a precautionary measure to address any potential overharvests in the Angling category. The Reserve category was established for the purpose of compensating for any overharvest in any category and would be used to take subsequent actions in the year following an overharvest and as necessary to meet ICCAT obligations.

This transfer is conducted in accordance with the implementing regulations at § 635.27(a)(8), which state that NMFS has the authority to transfer quotas among categories, or, as appropriate, subcategories, of the fishery, after considering several factors.

#### End of General Category Season

The amount of this transfer will still provide ample quota, approximately 545 mt, for the remainder of the General category BFT fishery, while ensuring there is sufficient quota in the Reserve category to address any potential Angling category overharvests that may occur during the 2005 fishing year. As of November 28, 2005, approximately 163.5 mt has been landed against the General category quota of 908.3 mt and catch rates to date have been extremely slow. NMFS is concerned over the unusually large magnitude of General category quota remaining at the end of the 2005 fishing year. NMFS is aware of the need to provide adequate fishing opportunities and to continue its support of traditional fishing practices

and patterns. Thus, NMFS needs to be especially prudent and careful as the fishery enters the last months of the season with an unprecedented large amount of quota, and will be carefully monitoring landings to assess the status of, and any impacts to, the fishery.

#### Monitoring and Reporting

NMFS will continue to closely monitor the General category BFT fishery through daily dealer BFT landing reports and communication with industry and affected parties. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional management actions are necessary to ensure that the objectives of the HMS FMP and appropriate mandates are met. Closures, subsequent adjustments to the daily retention limits, and/or additional inseason quota transfers, if any, will be published in the **Federal Register**. In addition, individuals may access the Internet at [www.nmfspermits.com](http://www.nmfspermits.com) or call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9260, for updates on quota monitoring and retention limit adjustments.

#### Classification

The Assistant Administrator for Fisheries, NOAA (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. NMFS has recently become aware of increased availability of large school, small medium, large medium, and giant BFT on the South Atlantic fishing grounds. This increase in abundance provides the potential to increase Angling and General category landings rates. As noted above, the regulations implementing the HMS FMP provide for inseason quota transfers, taking into consideration several factors including the probability of exceeding the total BFT quota.

NMFS needs to act promptly while quota is still available in the General category in order to take precautionary steps regarding potential Angling category overharvests. In addition, it is necessary to promptly inform General category participants of the amount of quota available for the remainder of the General category BFT season to allow for industry to adequately plan and prepare. This action would allow the General and Angling category fisheries to remain open while remaining consistent with recommendations of ICCAT, pursuant to ATCA, and meeting the domestic management objectives under the Magnuson-Stevens Act and the HMS FMP.

Delays in performing this inseason quota transfer from the General category to the Reserve category would be contrary to the public interest. Such delays would adversely affect those Angling and General participants, as well as their support industries, attempting to make plans for the remainder of the BFT fishery and may jeopardize the availability of quota to account for potential overharvests if landings rates increase dramatically.

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 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 635.27(a)(8) and is exempt from review under Executive Order 12866.

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

Dated: December 1, 2005.

**Alan D. Risenhoover,**

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