

(e) Each operator that has a covered employee who performs multi-DOT agency functions (*e.g.*, an employee performs pipeline maintenance duties and drives a commercial motor vehicle), count the employee only on the MIS report for the DOT agency under which he or she is randomly tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Operators may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(f) A service agent (*e.g.*, Consortia/Third Party Administrator as defined in 49 CFR part 40) may prepare the MIS report on behalf of an operator. However, each report shall be certified by the operator's anti-drug manager or designated representative for accuracy and completeness.

■ 5. Revise § 199.229 to read as follows:

**§ 199.229 Reporting of alcohol testing results.**

(a) Each large operator (having more than 50 covered employees) shall submit an annual MIS report to RSPA of its alcohol testing results using the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at § 40.25 and appendix H to part 40), not later than March 15 of each year for the previous calendar year (January 1 through December 31). The Administrator may require by written notice that small operators (50 or fewer covered employees) not otherwise required to submit annual MIS reports to prepare and submit such reports to RSPA.

(b) Each operator that has a covered employee who performs multi-DOT agency functions (*e.g.*, an employee performs pipeline maintenance duties and drives a commercial motor vehicle), count the employee only on the MIS report for the DOT agency under which he or she is tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Operators may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(c) Each report, required under this section, shall be submitted to the Office of Pipeline Safety Compliance (OPS), Research and Special Programs Administration, Department of Transportation, room 2103, 400 Seventh Street, SW., Washington, DC 20590. The operator may report data electronically using the version of the MIS form provided by DOT. This form can be accessed via the Internet at the following Office of Pipeline Safety web address: <http://ops.dot.gov/drug.htm>.

(d) A service agent (*e.g.*, Consortia/Third Party Administrator as defined in part 40) may prepare the MIS report on behalf of an operator. However, each report shall be certified by the operator's anti-drug manager or designated representative for accuracy and completeness.

Dated: December 11, 2003.

**Samuel G. Bonasso,**

*Acting Administrator, Research and Special Programs Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[I.D.122303H]

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

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

**ACTION:** Quota transfers; fishery reopening.

**SUMMARY:** NMFS adjusts the coastwide General category quota for the Atlantic bluefin tuna (BFT) fishery by transferring 15.0 metric tons (mt) from the Longline North subcategory quota, 12 mt from the Longline South subcategory quota and 3 mt from the Trap category to the coastwide General category for a revised quota of approximately 564.4 mt. NMFS reopens the coastwide BFT General category for the time period of 12:30 a.m. January 2 through 11:30 p.m. January 3, 2004 inclusive. These actions are being taken to allow for maximum utilization of the U.S. BFT landings quota while maintaining a fair distribution of fishing opportunities, preventing overharvest of the adjusted quotas for the affected fishing categories, helping to achieve optimum yield in the General category fishery, and allowing the collection of a broad range of data for stock monitoring purposes, consistent with the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP).

**DATES:** The quota transfers are effective December 24, 2003, through May 31, 2004. The coastwide General category reopening is effective 12:30 a.m. January 2 through 11:30 p.m. January 3, 2004.

**FOR FURTHER INFORMATION CONTACT:** Brad McHale at 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, and together with General category effort controls are specified annually as required under 50 CFR 635.23(a) and 635.27(a). The final initial 2003 BFT quota and General category effort controls were published on October 2, 2003 (68 FR 56783). A final rule to adjust certain size limits and commercial BFT seasons, including extending the General category through January 31 each year was published December 24, 2003 (68 FR 74504).

#### Quota Transfers

Under the implementing regulations at 50 CFR 635.27(a)(8), NMFS has the authority to transfer quotas among categories, or, as appropriate, subcategories, of the fishery, after considering the following factors: (1) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; (2) the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) 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; (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded; (5) the effects of the transfer on BFT rebuilding and overfishing; and (6) the effects of the transfer on accomplishing the objectives of the HMS FMP.

If it is determined, based on the factors listed here and the probability of exceeding the total quota, that vessels fishing under any category or subcategory quota are not likely to take that quota, NMFS may transfer inseason any portion of the remaining quota of that fishing category to any other fishing category or to the Reserve quota.

#### General Category End Date

During the development of the HMS FMP, the emergence of a General

category BFT fishery in the southern Atlantic region was extensively discussed by the HMS AP and the public. However, the HMS AP did not reach consensus on how the HMS FMP should address the scope of a southern area General category BFT fishery. Over the last couple of years, NMFS has performed a number of inseason quota transfers of BFT, consistent with the transfer criteria established in the HMS FMP, which has allowed the General category BFT fishery to extend into the winter months (i.e., late November - December) and provided fishing opportunities for southern Atlantic General category fishermen. In 2002, NMFS received a Petition for Rulemaking submitted by the North Carolina Department of Marine Fisheries to formalize this winter fishery and extend fishing opportunities into January. NMFS published a Notice of Receipt of Petition on November 18, 2002 (67 FR 69502).

In part to address some of the concerns raised in the Petition, as well as to increase fishing opportunities and optimum yield for the fishery overall, NMFS recently extended the General category end date from December 31 to January 31 (68 FR 74504, December, 24, 2003). This effectively alters the third General category time-period from October through December to October through January.

#### Quota Adjustments

The 2003 BFT quota specifications issued pursuant to § 635.27 set a General category quota of 684.4 mt of large medium and giant BFT to be harvested from the regulatory area during the 2003 fishing year, and divided the General category quota into time-period subquotas to provide for broad temporal and geographic distribution of fishing opportunities. On November 18, 2003, NMFS transferred 150 mt to the Reserve category, establishing an adjusted coastwide

General category quota of 534.4 mt for the 2003 fishing year (68 FR 64990, November 18, 2003). Based on reported landings, NMFS closed the coastwide General category at 11:30 p.m. local time December 10, 2003. The intent of this closure was to prevent overharvest of the adjusted quota established for the General category. As of the December 10, 2003 closure, approximately 552.8 mt has been harvested by the coastwide General category, an overharvest of approximately 18.4 mt.

After considering the criteria established for making transfers between categories, NMFS has determined that 15 mt of the remaining Longline North subcategory quota of approximately 27.9 mt (not including the 25 mt set aside for BFT caught in the vicinity of the management boundary area) should be transferred to the coastwide General category quota. NMFS has also determined that 12 mt of the remaining Longline South subcategory quota of approximately 74.0 mt and 3 mt of the Trap category quota of approximately 3.8 should be transferred to the coastwide General category. These transfers provide a combined 30 mt to the coastwide General category fishery for an adjusted quota of 564.4 mt. This action addresses the cumulative overharvest of 18.4 mt to date and also provides a limited amount of additional quota (11.6 mt) to extend fishing opportunities in the southern Atlantic region.

Due to the expected General category catch rates late in the season and the amount of quota available, NMFS is limiting the coastwide General category reopening period for large medium and giant BFT to two days. Therefore, the coastwide General category is scheduled to reopen on 12:30 a.m. January 2, 2004, and close at 11:30 p.m. January 3, 2004. Fishing for, retaining, possessing, or landing large medium or giant BFT intended for sale by persons aboard vessels in the General or HMS Charter/

Headboat categories must cease at 11:30 p.m. local time January 3, 2004.

#### Classification

The Assistant Administrator for fisheries, NOAA (AA), finds good cause that providing prior notice and public comment for this action, as required under 5 U.S.C. 553 (b) (B), is impracticable and contrary to the public interest. This transfer and reopening is intended to provide increased fishing opportunities in all areas without risking overharvest of the adjusted BFT quota established for the coastwide General category. The fishery is currently closed and any delay in reopening would not allow for maximum utilization of available quota and would be inconsistent with domestic requirements and objectives. NMFS provides prior notification of the reopening, and subsequent closure, by publishing a notice in the **Federal Register**, faxing notification to individuals on the HMS FAX Network and to known fishery representatives, announcing the notice on the Atlantic Tunas Information Line, and announcing the notice over NOAA Weather and Coast Guard radio channels. For all of the above reasons, and because this action relieves a restriction (i.e., allows the utilization of quota and extends fishing opportunities), there is also good cause under 5 U.S.C. 553(d) to waive the delay in effectiveness of this action. This action is required under 50 CFR 635.28(a) (1) and is exempt from review under E.O. 12866.

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

Dated: December 24, 2003.

**Bruce C. Morehead,**

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