

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 8. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 9. In § 177.834, paragraph (o) is revised to read as follows:

§ 177.834 General requirements.

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(o) *Unloading of IM and UN portable tanks.* No person may unload an IM or UN portable tank while it remains on a transport vehicle with the motive power unit attached except under the following conditions:

(1) The unloading operation must be attended by a qualified person in accordance with the requirements in paragraph (i) of this section. The person performing unloading functions must be trained in handling emergencies that may occur during the unloading operation.

(2) Prior to unloading, the operator of the vehicle on which the portable tank is transported must ascertain that the conditions of this paragraph (o) are met.

(3) An IM or UN portable tank equipped with a bottom outlet as authorized in Column (7) of the § 172.101 Table of this subchapter by assignment of a T Code in the appropriate proper shipping name entry, and that contains a liquid hazardous material of Class 3, PG I or II, or PG III with a flash point of less than 100 °F (38 °C); Division 5.1, PG I or II; or Division 6.1, PG I or II, must conform to the outlet requirements in § 178.275(d)(3) of this subchapter; or, until October 1, 2004, be unloaded only at a facility conforming to the following—

(i) The applicable fire suppression requirements in 29 CFR 1910.106(e), (f), (g), (h), and (i);

(ii) The emergency shutdown requirements in 29 CFR 1910.119(f), 1910.120(q) and 1910.38(a);

(iii) The emergency response planning requirements in 29 CFR part 1910 and 40 CFR part 68;

(iv) An emergency discharge control procedure applicable to unloading operations, including instructions on handling emergencies that may occur during the unloading operation; and

(v) Public access to the unloading area must be controlled in a manner ensuring no public access during unloading.

(4) Alternatively, conformance to equivalent or more stringent non-federal requirements is authorized in place of paragraphs (o)(3)(i) through (o)(3)(iv) of this section.

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 10. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 11. In § 178.275, paragraph (d)(3)(iv) is revised to read as follows:

§ 178.275 Specification for UN Portable Tanks intended for the transportation of liquid and solid hazardous materials.

* * * * *

(d) * * *

(3) * * *

(iv) For UN portable tanks, with bottom outlets, used for the transportation of liquid hazardous materials that are Class 3, PG I or II, or PG III with a flash point of less than 100 °F (38 °C); Division 5.1, PG I or II; or Division 6.1, PG I or II, the remote means of closure must be capable of thermal activation. The thermal means of activation must activate at a temperature of not more than 250 °F (121 °C).

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Issued in Washington, DC on May 22, 2003, under authority delegated in 49 CFR part 1.

Samuel G. Bonasso,

Acting Administrator.

[FR Doc. 03–13492 Filed 5–29–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 001113318–3128–03; I.D. 110200D]

RIN 0648–AO75

Atlantic Highly Migratory Species; Incidental Catch Requirements of Bluefin Tuna

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

ACTION: Final rule.

SUMMARY: NMFS amends regulations under the framework provisions of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) governing the Atlantic bluefin tuna (BFT) fishery as they affect landing of BFT in the Atlantic pelagic longline fishery. The intent of this action is to minimize dead discards of BFT and

improve management of the Atlantic pelagic longline fishery, while complying with the National Standards of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and allowing harvest consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

DATES: Effective June 30, 2003.

ADDRESSES: Copies of the supporting documents including the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) and the HMS FMP may be obtained from Brad McHale, Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. These documents are also available from the Highly Migratory Species Division Web site at www.nmfs.noaa.gov/sfa/hmspg.html.

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic highly migratory species (HMS) fisheries are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP). Implementing regulations at 50 CFR part 635 are issued under the dual authority of the Magnuson-Stevens Act (codified at 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; codified at 16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

Background

Background information about the need for revisions to the HMS regulations was provided in the preamble to the proposed rule (67 FR 78404, December 24, 2002), and is not repeated here. By this final rule, NMFS modifies the target catch requirements for pelagic longline vessels to land incidentally caught BFT, adjusts the Longline category North/South division line and adjusts the Longline category subquotas for each area, and provides NMFS inseason authority to modify the BFT retention limits for pelagic longline vessels.

Changes From the Proposed Rule

This final rule changes three of the proposed revisions to the regulatory text. In the proposed rule, two tiers of target catch requirements were proposed at 2,000 lbs. (907 kg) and 6,000 lbs. (2,727 kg) to allow the landing of one and two incidentally caught BFT, respectively. The final rule adds a third

tier of target catch requirements by requiring the landing of 30,000 lbs. (66,138 kg) of target fish to land three BFT. In addition, the proposed rule would have adjusted the Longline category subquotas to allocate 70 percent to the southern area and 30 percent to the northern area. The final rule divides the Longline category subquotas to allocate 60 percent to the southern area and 40 percent to the northern area. Finally, the advance notice for in season adjustment to target catch requirements was reduced from 30 days to no less than 21 days. These changes were made to further reduce dead discards of BFT, minimize negative social and economic impacts to the fishery, and to respond to comments regarding the changed fishing patterns of the pelagic longline fleet.

Comments and Responses

Comment 1: Numerous comments supported establishing a target catch requirement in terms of a specific weight versus a percentage to allow for the retention of incidentally caught BFT. Comments stated that the pelagic longline fishery has changed since the two-percent target was implemented and having one set of target catch requirements coastwide will simplify regulations and facilitate compliance. A specific weight tolerance will also assist enforcement agents in assessing compliance.

Response: The final action establishes target catch requirements as specific weights, rather than as percentages, with the intent of reducing BFT discards in all areas, and at the same time minimizing confusion and providing positive economic impacts to longline vessels in both southern and northern management areas. NMFS believes that a specific target weight regardless of geographic location would simplify regulation and facilitate compliance.

Comment 2: NMFS should allow for a third and/or fourth tier of target catch to allow vessels to land three and/or four BFT for those vessels conducting longer trips. For example, NMFS should establish a target catch requirement for all areas, at all times of 20,000 lbs. (44,092 kg) to retain three BFT, and of 30,000 lbs. (66,138 kg) to retain four BFT. Other comments suggested NMFS allow full retention of all catch to eliminate all discards and bring the agency into full compliance with the Magnuson-Stevens Act.

Response: NMFS has modified the final action to include a third tier of target catch allowance in the final action, explicitly allowing the retention of 3 BFT with 30,000 lbs. (66,138 kg) of target catch. This additional tier of

target catch is consistent with the previous percentage-based target catch requirements that allowed a few vessels to land three BFT in conjunction with 30,000 lbs. (66,138 kg) of target catch. The proposed rule for this action would not have allowed these few vessels to retain three BFT regardless of the target catch onboard. Although only a handful of vessels are large enough to complete trips with target catches greater than 30,000 lbs. (66,138 kg), allowing these vessels to retain three BFT would further meet the intent to reduce discards of BFT, avoid incentives to target BFT, and not risk overharvest of the incidental catch quota.

Comment 3: The preferred alternatives may not be providing a reasonable opportunity for pelagic longline vessels to harvest the quota allocated to that category. The inseason adjustment authority should not be limited to a range of zero to three BFT per trip and/or by 25 percent of the target catch requirements.

Response: Under the Atlantic Tunas Convention Act, NMFS is required to provide U.S. fishermen a reasonable opportunity to take the BFT quota allocated to the United States by the ICCAT. Pelagic longline vessels are not allowed to target BFT and thus there is no directed fishery on BFT. However, due to the incidental catch of BFT in pelagic longline operations targeting other species, NMFS has provided a quota and target catch requirements to provide pelagic longline vessels a reasonable opportunity to land their incidentally caught BFT in order to reduce discards and provide positive economic impacts to the pelagic longline fishery.

Comment 4: Numerous comments stated support for the relocation of the boundary line separating the northern and southern management areas to 31°00' N. lat., near Jekyll Island, Georgia. This is an area with little longline activity and should reduce confusion regarding the area in which incidental BFT were harvested. Other comments stated that the Gulf of Mexico should be off limits to all retention of BFT by pelagic longline vessels and a boundary line should be established in the Straits of Florida.

Response: NMFS' final action maintains the proposed location of the boundary line at 31°00' N. lat., near Jekyll Island, Georgia. The intent of the line is to account for seasonal differences in the fisheries within each area and to prevent one area from consuming all available quota. The location of the line was chosen in an area with little longline fishing activity to facilitate enforcement and reporting.

Eliminating the incidental retention of BFT by pelagic longline vessels operating in the Gulf of Mexico would not meet the intent of this rulemaking, as it could increase discards, and have negative impacts to pelagic longline fishermen.

Comment 5: Comments stated support for a reallocation of the Longline category quota based on the new location of the North/South boundary line. Comments suggested the preferred alternative of 30 percent for the northern area and 70 percent for the southern area should be reconsidered. The proposed allocation may not reflect the current fishing patterns of the pelagic longline fishery and may lead to increased effort and mortality on spawning BFT in the Gulf of Mexico, which has been designated by ICCAT as a spawning area in the Western Atlantic Ocean. Some comments suggested NMFS should re-calculate the North/South subquota allocation based on the number of hooks versus the number of sets. Some comments suggested a quota split of 50/50, while others suggested a split of 40 percent for the northern area and 60 percent for the southern area.

Response: Based on the analysis conducted in the Environmental Assessment, Regulatory Impact Review, and the Regulatory Flexibility Analysis, NMFS has determined that an adjustment to the Incidental Longline category subquota allocation between areas is warranted. Due to the movement of the boundary line and the adjustments in the target catch allowances in both the northern and southern areas, and the apparent redistribution of longline effort in response to bycatch reduction measures, NMFS adjusts the Longline category subquota to allocate 60 percent to the southern area and 40 percent to the northern area. This adjustment is made to reflect the estimated additional landings likely to be applied in the northern area based on the above analysis. The amount of BFT landed is expected to approach the subquota levels of the Longline category fishery, but not exceed them.

Comment 6: Some comments stated that NMFS should increase the number of observers in the Gulf of Mexico pelagic longline yellowfin tuna fishery. *Response:* ICCAT requires five percent of the pelagic longline trips to be selected for observer coverage. Vessels are selected based on a random five percent sampling of sets. Actual deployment of observers on vessels in the past had been constrained by a number of factors including logistic requirements and safety concerns and thus it has not been possible to place

observers on all selected trips. NMFS is working towards improving observer coverage by increasing the sampling of trips to eight percent and facilitating increased communication between vessel operators and observer program coordinators, particularly in regards to safety requirements for the placement of observers (see 50 CFR 600.746), and the need to have all safety equipment on board as required by the U.S. Coast Guard.

Comment 7: Numerous comments stated support for the inseason adjustment authority, but stated that the 30-day delayed effectiveness prior to the regulation changes is too long. NMFS should employ a 2-week notice to be timely responding to resource concerns.

Response: In the proposed rule, NMFS had proposed adjusting the limits through an inseason action, with 30 days public notice. However, NMFS agrees that the highly migratory nature of BFT could result in rapid changes of fishing gear interaction rates. In order for in-season adjustments to work effectively, NMFS must respond quickly. In addition, NMFS is concerned about providing adequate notice of changes to fishing vessels at sea. Therefore, NMFS has reconsidered the balance between prompt action and notification and reduced the public notice period to no less than 21 days, which is the expected trip length for larger vessels fishing further offshore.

Comment 8: NMFS should define "target catch" so as to prohibit the landing of unmarketable species just to reach a minimum threshold to retain a BFT and encourage the release of all live BFT caught by pelagic longline vessels.

Response: The current regulations addressing target catch limits at 635.23 (f)(1) state that species other than BFT must be legally caught, retained, and offloaded from the same trip and recorded on the dealer weighout slip as sold. The current regulatory language meets the intent of preventing the landing of unmarketable species just to reach a minimum threshold. In regard to release of BFT retrieved alive by pelagic longline vessels, NMFS is currently working on a national bycatch reduction strategy. To view the goals, objectives, and strategies please visit www.nmfs.noaa.gov.

Comment 9: NMFS should consider various physical oceanographic parameters and re-examine the Mid-Atlantic closure area because it is not used as a spawning area. Forcing vessels to move further offshore may produce a safety issue. Other comments stated that NMFS should analyze data gathered during the Northeast Distant

experimental fishery to adjust management measures for the pelagic longline fishery in the future.

Response: NMFS' intent in creating the Mid-Atlantic closure area was to ensure compliance with ICCAT recommendations to reduce the bycatch and dead discards of BFT by pelagic longline vessels, not to protect a potential BFT spawning area. The available data, based on logbooks submitted by fishermen, indicate a substantial decline in BFT bycatch throughout the year, indicating the closed area may be effective at reducing discards. Although NMFS realizes that it may be necessary to adjust the time and/or area of the closure based on new data including changed physical oceanographic patterns, fishing activity etc., available information does not warrant such changes at this time. NMFS will continue to analyze logbook and observer data from the Northeast Distant experimental fishery in order to consider possible adjustments to target catch requirements for landing BFT by longline vessels, or to make other adjustments as necessary in order to minimize dead discards.

Classification

These regulatory amendments are published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries, NOAA (AA), has determined that the regulations contained in this final rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic highly migratory species fisheries.

NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule. An Initial Regulatory Flexibility Analysis was prepared for the proposed rule and submitted to the Chief Counsel for Advocacy of the Small Business Administration. No comments were received on the IRFA concerning the economic impact of this rule. The analyses of the FRFA found that the final actions under this rule would have beneficial impacts; therefore, consideration of alternatives to minimize impacts to small entities is contrary to the purposes of the Regulatory Flexibility Act. The proposed rule (67 FR 78404, December 24, 2002) sets forth the purpose and need for this action and a description of the alternatives considered and impacts of those alternatives, which are not repeated here. There are approximately 171 pelagic longline vessels that are permitted to retain Atlantic tunas and swordfish, all of which are considered small entities, and average annual gross revenues per vessel are approximately

\$168,000. Annual gross revenues from the Atlantic pelagic longline fishery are approximately \$29 million. NMFS selected this final action because the selected target catch requirements will minimize BFT discards while allowing retention of truly incidentally caught BFT and preventing a directed fishery. One target catch alternative considered was rejected because it would not reduce BFT discards as much as the final action, and it would have negative economic impacts. While the other alternatives generally had positive economic impacts, NMFS did not select them because they maintained differential target catch requirements, which no longer seemed warranted based on available data, or because they would not have reduced BFT discards as much as the final action. The final action will have a positive economic impact on revenues approximately a 1.2 to 1.5% increase of pelagic longline vessels. While the new north/south boundary line and inseason adjustment authority will not have any direct economic impacts, NMFS selected these measures as part of the final action because they could help prevent negative impacts on small entities due to closures. In addition, the new boundary line was selected to address confusion regarding the applicability of regulations. A copy of the FRFA and other analytical documents prepared for this rule are available from NMFS (see ADDRESSES).

NMFS prepared an EA for this final rule, and the AA has concluded that there would be no significant impact on the human environment. The EA presents analyses of the anticipated impacts of these final actions and the alternatives considered. A copy of the EA and other analytical documents prepared for this rule, are available from NMFS (see ADDRESSES).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The regulations implemented through this final rule are not expected to have any additional impact on sea turtles or other endangered species or marine mammals as this action is not likely to increase or decrease pelagic longline effort, nor is it expected to shift effort into other fishing areas. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. On July 9, 2002 (67 FR 45393), NMFS implemented the reasonable and prudent alternative required by the BiOp. None of the

actions in this final rule would have any additional impact on sea turtles as these actions would not likely increase or decrease pelagic longline effort, nor are they expected to shift effort into other fishing areas. No impacts are expected from this final action that would adversely affect the implementation of the requirements of the BiOp.

NMFS has determined that the final regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management programs. The proposed regulations were submitted to the responsible state agencies for their review under Section 307 of the Coastal Zone Management Act. As of May 15, 2003, NOAA Fisheries has received 11 responses, all concurring with NOAA Fisheries' consistency determination. Because no responses were received from other states, their concurrence is presumed.

The area in which this final action is planned has been identified as essential fish habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the Highly Migratory Species Management Division of NOAA Fisheries. It is not anticipated that this action will have any adverse impacts to EFH and, therefore, no consultation is required.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: May 23, 2003.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

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

■ 2. In § 635.23, paragraph (f) is revised to read as follows:

§ 635.23 Retention limits for BFT.

* * * * *

(f) *Longline category.* Persons aboard a vessel permitted in the Atlantic Tunas Longline category may retain, possess, land, and sell large medium and giant BFT taken incidentally when fishing for other species. For vessels fishing North or South of 31°00' N. lat., limits on retention, possession, landing and sale are as follows:

(1) One large medium or giant BFT per vessel per trip may be landed, provided that at least 2,000 lb (907 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold. Two large medium or giant BFT per vessel per trip may be landed, provided that at least 6,000 lb (2,727 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold. Three large medium or giant BFT per vessel per trip may be landed, provided that at least 30,000 lb (13,620 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold.

(2) NMFS may increase or decrease the Longline category retention limit of large medium and giant BFT over a

range from zero to a maximum of three per trip, or, for a given BFT retention limit, increase or decrease the target catch requirement by 25 percent from the level specified in paragraph (f)(1) of this section. Such increase or decrease in the BFT retention limit or target catch requirement will be based on a review of dealer reports, observer reports, vessel logbooks, landing trends, availability of the species on the fishing grounds, and any other relevant factors, and will consider the likelihood of increasing dead discards of BFT and/or exceeding the incidental landings quota established for the pelagic longline fishery. Such adjustments may be made separately for vessels fishing North or South of 31°00' N. lat. NMFS will adjust the retention limits and target catch requirements specified in paragraph (f)(1) of this section by filing the adjustment with the Office of the **Federal Register** for publication. In no case shall such adjustment be effective less than 21 calendar days after the adjustment is filed with the Office of the **Federal Register** for publication.

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■ 3. In § 635.27, paragraph (a)(3) is revised to read as follows:

§ 635.27 Quotas.

(a) * * *

(3) *Longline category quota.* The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels for which Longline category Atlantic tunas permits have been issued is 8.1 percent of the overall U.S. BFT quota. In the initial quota specifications issued under paragraph (a) of this section, no more than 60.0 percent of the Longline category quota may be allocated for landing in the area south of 31°00' N. lat.

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[FR Doc. 03-13556 Filed 5-29-03; 8:45 am]

BILLING CODE 3510-22-S