

that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this data, the Administrator publishes a **Federal Register** notice of determination each year, announcing the minimum random drug and alcohol testing rates for the following year. See 49 CFR 219.602, 608.

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent of covered railroad employees whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at a 50 percent minimum rate. For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program, before deciding whether to lower annual minimum random testing rates. If the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year, FRA will return the minimum random drug testing rate to 50 percent of covered railroad employees.

If the industry-wide random alcohol violation rate is less than 1.0 percent but greater than 0.5 percent, the minimum random alcohol testing rate will be 25 percent of covered railroad employees. FRA will raise the minimum random rate to 50 percent of covered railroad employees if the industry-wide random alcohol violation rate is 1.0 percent or higher in any subsequent calendar year. FRA may lower the minimum random alcohol testing rate to 10 percent of covered railroad employees whenever the industry-wide violation rate is less than 0.5 percent for two calendar years while testing at a higher rate.

In this notice of determination, FRA announces that the minimum random drug testing rate will remain at 25 percent of covered railroad employees for the period January 1, 2011, through December 31, 2011, because the industry random drug testing positive rate was below 1.0 percent for the last two years (.046 in 2008 and .037 in 2009). The minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2011, through December 31, 2011, because the industry-wide violation rate for alcohol has remained below 0.5 percent for the last two years (.015 in 2008 and .014 in 2009). Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC, on December 13, 2010.

Joseph C. Szabo,
Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 101124587-0586-01]

RIN 0648-BA47

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the South Atlantic States; Emergency Rule To Delay Effectiveness of the Snapper-Grouper Area Closure; Correction

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

ACTION: Temporary rule; correction.

SUMMARY: This document contains a correction to the temporary rule that delays the effective date of the area closure for snapper-grouper specified in Amendment 17A to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) that was published in the **Federal Register** December 9, 2010.

DATES: Effective December 20, 2010, the effective date of the rule published in the **Federal Register** December 9, 2010 (75 FR 76890), is corrected to January 3, 2011, through June 1, 2011, unless NMFS publishes a superseding document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Anik Clemens, 727-824-5305; fax: 727-824-5308; e-mail:

Anik.Clemens@noaa.gov.

SUPPLEMENTARY INFORMATION:

Need for Correction

On December 9, 2010 (75 FR 76890), NMFS published an incorrect effective date in the **DATES** section of the temporary rule. The **DATES** section contained an incorrect effective date of January 3, 2010. The correct effective date for the temporary rule is January 3, 2011, through June 1, 2011, unless NMFS publishes a superseding document in the **Federal Register**. This document corrects that effective date.

Correction

In FR Doc. 2010-30682 appearing on page 78158 in the **Federal Register** of

December 9, 2010, correct the **DATES** section to read as follows:

DATES: This rule is effective January 3, 2011 through June 1, 2011, unless NMFS publishes a superseding document in the **Federal Register**.

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

Dated: December 15, 2010.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 2010-31917 Filed 12-17-10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648-XA017

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.

SUMMARY: NMFS has determined that the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit should be adjusted for the month of January 2011, based on consideration of the regulatory 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).

DATES: Effective January 1, 2011, through January 31, 2011.

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 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006).

The 2011 BFT fishing year, which is managed on a calendar year basis and subject to an annual calendar year quota, begins January 1, 2011. Starting on January 1, 2011, the General category daily retention limit (§ 635.23(a)(2)) is scheduled to revert back to the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) CFL) or greater per vessel per day/trip. This default retention limit applies to General category permitted vessels and HMS Charter/Headboat category permitted vessels (when fishing commercially for BFT, as specified and to the extent allowable under the regulations).

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. For the 2010 fishing year, NMFS adjusted the General category limit from the default level of one large medium or giant BFT as follows: Two large medium or giant BFT for January (74 FR 68709, December 29, 2009), and three large medium or giant BFT for June through December (75 FR 30730, June 2, 2010; and 75 FR 51182, August 19, 2010).

The 2010 ICCAT recommendation regarding western BFT management resulted in a 2011 U.S. quota of 923.7 mt (not including a 25-mt allocation that the United States uses to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area (NED)). Consistent with the allocation scheme established in the Consolidated HMS FMP, the baseline 2011 General category share would be 435.1 mt, and the baseline 2011 January General category subquota would be 23.1 mt.

In order to implement the ICCAT recommendation, which enters into force in June 2011, NMFS is planning to publish proposed quota specifications in the beginning of 2011 to set BFT quotas for each of the established domestic fishing categories. Until the 2011 quota specifications are finalized (most likely in the spring of 2011), the January General category baseline quota of 23.8 mt (established for 2010) remains in effect. In the meantime, the General category BFT fishery remains active into the winter, with landings reported in November and December.

Adjustment of General Category Daily Retention Limits

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; 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 has considered the set of criteria cited above and their applicability to the General category BFT retention limit for the January 2011 General category fishery. For example, under the 2-fish limit that applied in January 2010, January landings were low (2.7 out of the baseline subquota of 23.8 mt, later adjusted in the final 2010 specifications to 28.6 mt). Under the proposed 2011 BFT quota specifications, the baseline 2011 January subquota would be 23.1 mt. Based on these considerations, NMFS has determined that the General category retention limit should be adjusted to allow for retention of the anticipated 2011 General category quota, and that the same approach that was used (and that proved effective) for January 2010 is warranted. Therefore, NMFS increases the General category retention limit from the default limit to two large medium or giant BFT, measuring 73 inches CFL or greater, per vessel per day/trip, effective January 1, 2011, through January 31, 2011. 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 two 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 those vessels permitted in the General category as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

This adjustment is 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, 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.

Monitoring and Reporting

NMFS selected the daily retention limit for January 2011 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, and stock status, among other data. 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 or subsequent adjustments to the daily retention limits, 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 <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 these retention limits 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 for U.S. fishermen that depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment of the retention limit needs to be effective January 1,

2011, 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 for fishermen who have access to the fishery only 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 (*i.e.*, the default General category retention limit is one fish per vessel/trip whereas this action increases that limit and allows retention of additional fish), 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 635.23(a)(4) and is exempt from review under Executive Order 12866.

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

Dated: December 13, 2010.

Emily H. Menashes,

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

[FR Doc. 2010-31751 Filed 12-17-10; 8:45 am]

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