

statement is not required. A copy of the final EA prepared for this rule is available upon request (see **ADDRESSES**).

#### Federalism Impact Statement

This final rule contains policies with federalism implications that were sufficient to warrant preparation of a federalism summary impact statement under Executive Order 13132.

Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate officials of the affected state and local governments through a letter mailed to those officials in April 2002. Specifically, the letter was sent to the state of Florida and Georgia. The letter described NMFS' position supporting the need to issue the regulation, specifically the need to reduce the risk of entanglement of large whales, including right whales. The state and local officials did not raise any concerns in direct response to the April 2002 letter.

#### List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, and Marine mammals.

Dated: September 17, 2002.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory programs, national marine Fisheries Services.*

For the reasons set out in the preamble, the National Marine Fisheries Service amends 50 CFR part 229 as follows:

#### PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

**Authority:** Authority: 16 U.S.C. 1371 *et seq.*

1. In § 229.3, paragraph (k) is revised to read as follows:

##### § 229.3 Prohibitions.

\* \* \* \* \*

(k) It is prohibited to fish with gillnet gear in the areas and for the times specified in § 229.32(f)(1) through (f)(4), unless the gear or the person with gillnet gear complies with the gear marking requirements specified in § 229.32(f)(2), the requirements for observer coverage as specified in § 229.32(f)(3), and the closures, requirements, and other restrictions as specified in § 229.32(f)(4).

\* \* \* \* \*

4. In § 229.32, the heading of paragraph (f) and paragraph (f)(3) are revised; and paragraph (f)(4) is added to read as follows:

##### § 229.32 Atlantic large whale take reduction plan regulations.

\* \* \* \* \*

(f) *Restrictions applicable to the southeast U.S. restricted area and the southeast U.S. observer area.* \* \* \*

\* \* \* \* \*

(3) Observer requirement. No person may fish with shark gillnet gear in the southeast U.S. observer area from November 15 through March 31 of the following year unless the operator of the vessel calls the SE Regional Office in St. Petersburg, FL not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Regional Office requests that an observer be taken on board a vessel during a fishing trip at any time from November 15 through March 31 of the following year, no person may fish with shark gillnet gear aboard that vessel in the southeast U.S. observer area unless an observer is on board that vessel during the trip.

(4) *Restricted period, closure and restrictions, and exemption.* (i) Restricted period. The restricted period for the southeast U.S. restricted area is from November 15 through March 31 of the following year, unless the Assistant Administrator revises this restricted period in accordance with paragraph (g) of this section.

(ii) *Closure for shark gillnet gear.* Except as provided under paragraph (f)(4)(iv) of this section, no person may fish with shark gillnet gear in the southeast U.S. restricted area during the restricted period.

(iii) *Restrictions for straight sets.* Except as provided for shark gillnet gear under paragraph (f)(4)(iv) of this section, no person may fish with a straight set of gillnet gear at night in the southeast U.S. restricted area during the restricted period. A straight set is defined as a set in which the gillnet is placed in a line in the water column, as opposed to a circular set in which the gillnet is placed to encircle an area in the water column.

(iv) *Special provision for strikenets.* Fishing for sharks with strikenet gear is exempt from the restrictions under paragraphs (f)(4)(ii) and (f)(4)(iii) of this section if:

(A) No nets are set at night or when visibility is less than 500 yards (460m).

(B) Each set is made under the observation of a spotter plane.

(C) No net is set within 3 nautical miles of a right, humpback, fin or minke whale.

(D) If a right, humpback, fin or minke whale moves within 3 nautical miles of the set gear, the gear is removed immediately from the water.

\* \* \* \* \*

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[I.D. 091302A]

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

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

**ACTION:** Atlantic bluefin tuna retention limit adjustments.

**SUMMARY:** NMFS has determined that the Atlantic bluefin tuna (BFT) General category daily retention limit should be adjusted in order to allow for maximum utilization of the General category September time-period subquota. Therefore, NMFS increases the daily retention limit to two large medium or giant BFT through September 30, 2002. Additionally, NMFS adjusts the BFT daily retention limit for vessels participating in the recreational fishery that are permitted in the Atlantic Highly Migratory Species (HMS) Charter/Headboat category and that are licensed by the U.S. Coast Guard (USCG) to carry more than six passengers. The daily retention limit for these vessels is adjusted to one BFT per angler, up to a maximum of 20 per vessel through October 31, 2002. These actions are being taken to provide increased fishing opportunities in all areas without risking overharvest of the quotas established for the respective categories.

**DATES:** The BFT General category daily retention limit adjustment is effective September 20, 2002 through September 30, 2002.

The daily retention limit for vessels permitted in the HMS Charter/Headboat category, and licensed by USCG to carry more than six passengers, is effective September 20, 2002 through October 31, 2002.

**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 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 General category effort controls (including time-period subquotas and restricted fishing days (RFDs)) are specified annually under 50 CFR 635.23(a) and 635.27(a). The 2002 BFT Quota Specifications and General category effort controls were proposed on June 27, 2002 (67 FR 43266).

#### **General Category**

Under § 635.23 (a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds, NMFS has determined that an increase of the daily retention limit for the second half of September is appropriate and necessary to allow full use of the September subquota. Therefore, NMFS adjusts the General category daily retention limit through September 30, 2002, to two large medium or giant BFT per vessel.

The intent of this adjustment is to allow for maximum utilization of the General category subquota for the September time-period (specified under 50 CFR 635.27(a)) by General category participants in order to help achieve optimum yield in the General category fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

#### **Angling Category**

A recommendation of ICCAT requires that NMFS limit the catch of school BFT to no more than 8 percent by weight of the total domestic landings quota over each 4-consecutive-year period. NMFS is implementing this ICCAT recommendation through annual and inseason adjustments to the school BFT retention limits, as necessary, and through the establishment of a school BFT reserve (64 FR 29090, May 28, 1999; 64 FR 29806, June 3, 1999).

Under § 635.23(b)(3), NMFS may increase or reduce the recreational angler retention limit for any size class BFT or may change an angler limit to vessel trip limit or vice versa. Size class

categories of BFT are defined as follows: School size BFT measure 27 to less than 47 inches (69 to less than 119 cm) curved fork length (CFL); large school BFT measure 47 to less than 59 inches (119 to less than 150 cm) CFL; small medium BFT measure 59 to less than 73 inches (150 to less than 185 cm) CFL; large medium BFT measure 73 to less than 81 inches (185 to less than 206 cm) CFL; and giant BFT measure 81 inches or greater (206 cm or greater) CFL.

Regulations at 50 CFR 635.23(b) restrict vessels fishing under the BFT Angling category quota to one BFT per vessel per day, which may be from the school, large school, or small medium category and, in addition, one large medium or giant BFT per vessel per year. This retention limit is subject to inseason adjustment to provide for maximum utilization of the quota and enhanced fishing opportunities over the range of the recreational fisheries. NMFS had issued an adjustment notice on June 11, 2002 (67 FR 39869) to allow vessels fishing under the Angling category quota a total of four BFT per day, measuring 27 to less than 73 inches CFL, effective June 11, 2002, through October 31, 2002.

Over the last several years, NMFS has received comments that a retention limit of three or four BFT per vessel per day does not provide reasonable fishing opportunities for headboats, which may carry up to 40 passengers on a tuna fishing trip. In order to increase fishing and data collection opportunities in all sectors of the recreational BFT fishery, NMFS is implementing an alternative retention limit for headboats in the 2002 fishing year. NMFS set a differential retention limit for headboats in 2001 and received favorable comments on that action. For headboats, defined as vessels that possess an Atlantic HMS Charter/Headboat category permit and that are inspected and licensed by the Coast Guard to carry more than six passengers, the daily retention limit through October 31, 2002, is adjusted to one BFT per passenger (not including Captain and crew) in any combination of the school, large school or small medium size classes, with a maximum of 20 fish per vessel. NMFS selected the daily retention limit and the duration of the daily retention limit adjustment after examining past catch and effort rates and the available quota for the 2002 fishing year.

#### **Subsequent Adjustments**

From November 1, 2002 through May 31, 2003, the daily retention limit for all vessels fishing under the Angling category quota will be one large school or small medium BFT per vessel.

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that an interim closure or an additional retention limit adjustment is necessary to enhance scientific data collection from, and fishing opportunities in, all geographic areas. Additionally, NMFS may determine that an allocation from the school BFT reserve is warranted to further fishery management objectives. Closures or subsequent adjustments to the daily retention limit, if any, will be announced through publication in the **Federal Register**. In addition, anglers may call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9305 for updates on quota monitoring and retention limit adjustments.

#### **Landings Reports**

NMFS will continue to monitor the Angling category fishery closely through the Automated Landings Reporting System, the state harvest tagging programs in North Carolina and Maryland, and the Large Pelagic Survey. All BFT landed under the Angling category quota must be reported within 24 hours of landing to the NMFS Automated Landings Reporting System via toll-free phone at (888)872-8862; or the Internet ([www.nmfspermits.com](http://www.nmfspermits.com)); or, if landed in the states of North Carolina or Maryland, to a reporting station prior to offloading. Information about these state harvest tagging programs, including reporting station locations, can be obtained in North Carolina by calling (800) 338-7804, and in Maryland by calling (410) 213-1531.

#### **Catch and Release**

Anglers aboard permitted vessels may continue to tag and release BFT of all sizes under a tag-and-release program, provided the angler tags all BFT so caught, regardless of whether previously tagged, with conventional tags issued or approved by NMFS, returns such fish to the sea immediately after tagging with a minimum of injury, and reports the tagging, and, if the BFT was previously tagged, the information on the previous tag (50 CFR 635.26).

#### **Classification**

These actions are taken under 50 CFR 635.23(a)(4) and under 50 CFR 635.23(b)(3) and are exempt from review under Executive Order 12866.

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

Dated: September 17, 2002.

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