Ordering Clauses

93. Accordingly, *it is ordered* that the Petitions for Reconsideration filed by Robert A. Lynch on July 28, 2009, and Edward A. Schober on July 28, 2009, *are granted in part* to extent set forth above.

94. *It is further ordered* that the Petitions for Reconsideration filed by CSN International on February 4, 2008; National Religious Broadcasters on February 15, 2008; and Positive Alternative Radio, Inc. and Educational Media Foundation on February 19, 2008, *are dismissed as moot.*

95. *It is further ordered* that pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C, 154(i), 301, 302, 303(e), 303(f) and 303(r), and the Local Community Radio Act of 2010, Public Law 111–371, 124 Stat. 4072 (2011), this *Fourth Report and Order* is hereby *adopted* and Part 74 of the Commission's rules *are amended* as set forth in Appendix D, effective 30 days after publication in the **Federal Register**.

96. *It is further ordered* that the rules adopted herein will become effective thirty (30) days after publication in the **Federal Register**, except for any rules or requirements involving Paperwork Reduction Act burdens, which shall become effective upon announcement in the **Federal Register** of OMB approval and an effective date of the rule(s).

97. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Fourth Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 74

Radio.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary.

Rule changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 74 to read as follows:

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 309, 336, and 554.

■ 2. Section 74.1232(d) is revised to read as follows:

§ 74.1232 Eligibility and licensing requirements.

* * * * *

(d) An authorization for an FM translator whose coverage contour extends beyond the protected contour of the commercial primary station will not be granted to the licensee or permittee of a commercial FM radio broadcast station. Similarly, such authorization will not be granted to any person or entity having any interest whatsoever, or any connection with a primary FM station. Interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members and business associates. For the purposes of this paragraph, the protected contour of the primary station shall be defined as follows: the predicted 0.5mV/m contour for commercial Class B stations, the predicted 0.7 mV/m contour for commercial Class B1 stations and the predicted 1 mV/m field strength contour for all other FM radio broadcast stations. The contours shall be as predicted in accordance with § 73.313(a) through (d) of this chapter. In the case of an FM radio broadcast station authorized with facilities in excess of those specified by § 73.211 of this chapter, a co-owned commercial FM translator will only be authorized within the protected contour of the class of station being rebroadcast, as predicted on the basis of the maximum powers and heights set forth in that section for the applicable class of FM broadcast station concerned. An FM translator station in operation prior to March 1, 1991, which is owned by a commercial FM (primary) station and whose coverage contour extends beyond the protected contour of the primary station, may continue to be owned by such primary station until March 1, 1994. Thereafter, any such FM translator station must be owned by independent parties. An FM translator station in operation prior to June 1, 1991, which is owned by a commercial FM radio broadcast station and whose coverage contour extends beyond the protected contour of the primary station, may continue to be owned by a commercial FM radio broadcast station until June 1, 1994. Thereafter, any such FM translator station must be owned by independent parties. An FM translator providing service to an AM fill-in area will be authorized only to the permittee or licensee of the AM radio broadcast station being rebroadcast, or, in the case of an FM translator authorized to operate on an unreserved channel, to a party with a valid rebroadcast consent agreement with such a permittee or licensee to rebroadcast that station as the translator's primary station. In addition, any FM translator providing service to an AM fill-in area must have been authorized by a license or construction permit in effect as of May 1, 2009, or pursuant to an application that was pending as of May 1, 2009. A subsequent modification of any such FM translator will not affect its eligibility to rebroadcast an AM signal.

* * * * *

[FR Doc. 2012–8404 Filed 4–6–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110210132–1275–02]

RIN 0648–XB116

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 Angling category retention limit adjustment; southern area trophy fishery closure.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) daily retention limit that applies to vessels permitted in the Highly Migratory Species (HMS) Charter/Headboat category (when fishing recreationally for BFT) should be adjusted for the remainder of 2012, based on consideration of the regulatory determination criteria regarding inseason adjustments and based on preliminary 2012 landings data. NMFS also closes the southern area Angling category fishery for large medium and giant (''trophy'') BFT. These actions are being taken consistent with the BFT fishery management objectives of the 2006 Consolidated HMS Fishery Management Plan (Consolidated HMS FMP) and to prevent overharvest of the 2012 Angling category quota.

DATES: Effective April 7, 2012, through December 31, 2012.

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 (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 allocated by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the Consolidated HMS FMP (71 FR 58058, October 2, 2006) and in accordance with implementing regulations.

The 2012 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2012. The Angling category season opened January 1, 2012, and continues through December 31, 2012. Currently, the default Angling category daily retention limit of one school, large school, or small medium BFT (measuring 27 to less than 73 inches (68.5 to less than 185 cm)) applies (§ 635.23(b)(2)). An annual limit of one large medium or giant BFT (73 inches or greater) per vessel also applies (§ 635.23(b)(1)). These retention limits apply to HMS Angling and HMS Charter/Headboat category permitted vessels (when fishing recreationally for BFT).

The currently codified Angling category quota is 182 mt (94.9 mt for school BFT, 82.9 mt for large school/small medium BFT, and 4.2 mt for large medium/giant BFT).

Adjustment of Angling Category Daily Retention Limit

Under § 635.23(b)(3), NMFS may increase or decrease the retention limit for any size class of BFT 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;
- The catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made;
- 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;
- The estimated amounts by which quotas for other gear categories of the fishery might be exceeded; 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
- Review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

Retention limits may be adjusted separately for specific vessel type, such as private vessels, headboats, or charterboats.

NMFS has considered the set of criteria cited above and their applicability to the Angling category BFT retention limit for the 2012 Angling category fishery. NMFS examined the results of the 2008 through 2011 fishing seasons under the applicable daily retention limits, as well as the observed trend in the recreational fishery over that time period toward heavier fish, particularly in the small medium size range (59 to less than 73 inches). Data and dockside observations from 2008 through 2011 indicated a shift in availability to the large school/small medium size class (47 to less than 73 inches (119 to less than 185 cm)), particularly to large school BFT (47 to less than 59 inches (119 to less than 150 cm)) in 2008 and to small medium BFT in 2009 through 2011. Large school and small medium BFT traditionally have been managed as one size class (47 to less than 73 inches). Over the last 5 years, NMFS has found that as this cohort of fish aged and grew in weight but remained under 73 inches (i.e., the upper range of the large school/small medium size class), the large school/small medium subquota was attained with fewer fish landed.

In 2010 and in 2011, based on considerations of the available quota, fishery performance in recent years, and the availability of BFT on the fishing grounds, NMFS adjusted the Angling category retention limit from the default level to prohibit the retention of small medium BFT for the remainder of the respective fishing years (75 FR 33531, June 14, 2010, and 76 FR 18416, April 4, 2011). Recognizing the different nature, socio-economic needs, and recent landings results of private and charter/headboat vessels, NMFS implemented separate limits for each. Effective June 12 through December 31, 2010, and effective April 2 through December 31, 2011, the limit was one school or large school BFT per vessel per day/trip for private vessels (i.e., those with HMS Angling category permits), and was one school BFT and one large school BFT per vessel per day/trip for charter vessels (i.e., those with HMS Charter/Headboat permits, when fishing recreationally for BFT).

It is important that NMFS constrain landings to BFT subquotas both to adhere to the current FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (e.g., fish caught at each age) that was assumed in the projections of stock rebuilding. However, based on the annual growth rate of BFT and preliminary 2012 recreational catch information, it is reasonable to assume that the cohort of fish described above largely has grown to greater than 73 inches, i.e., has moved through the recreational large school/small medium size class.

Based on current considerations of the available quota, fishery performance in recent years, and the availability of BFT on the fishing grounds, NMFS has determined that the Angling category retention limit applicable to HMS Charter/Headboat category participants (when fishing recreationally) should be adjusted from the default level, and that implementation of separate limits for private and charter/headboat vessels is appropriate, recognizing the different nature, socio-economic needs, and recent landings results of the two components of the recreational BFT fishery. For example, charter operators historically have indicated that a multi-fish retention limit is vital to their ability to attract customers. In addition, 2011 Large Pelagics Survey estimates indicate that charter/headboat BFT landings constitute approximately 35 percent of recent recreational landings, with the remaining 65 percent landed by private vessels.

Therefore, for private vessels (i.e., those with HMS Angling category permits), the limit is maintained at one school, large school, or small medium BFT per vessel per day/trip (i.e., one BFT measuring 27 to less than 73 inches). For charter vessels (i.e., those with HMS Charter/Headboat permits), the limit is one school BFT and one large school/small medium BFT per vessel per day/trip when fishing recreationally for BFT (i.e., one BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 73 inches). These retention limits are effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT. Regardless of the duration of a fishing trip, the daily retention limit applies upon landing.

NMFS anticipates that the BFT daily retention limits in this action will result

in landings during 2012 that would not exceed the available subquotas as codified in 2011. However, NMFS will monitor 2012 landings closely and will adjust the daily retention limit further through additional inseason actions if warranted.

The determination to adjust the daily retention limit is based primarily on: the usefulness of information obtained from recreational BFT catches for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)); catch to date and the likelihood of closure of the Angling category if no adjustment is made (§ 635.27(a)(8)(ii)); the effects of the adjustment on accomplishing the objectives of the Consolidated HMS FMP (§ 635.27(a)(8)(vi)); variations in seasonal distribution, abundance, or migration patterns of BFT (§ 635.27(a)(8)(vii)); and the anticipated availability of school, large school, and small medium BFT on the fishing grounds (§ 635.27(a)(8)(ix)).

Angling Category Large Medium and Giant ''Trophy'' Fishery Closure

The codified BFT quotas provide for 4.2 mt of large medium and giant (trophy) BFT (measuring greater than 73 inches) to be harvested from the regulatory area by vessels fishing under the Angling category quota, with 1.4 mt for the area north of 39°18′ N. lat. (off Great Egg Inlet, NJ) and 2.8 mt for the area south of 39°18′ N. lat.

Based on information from the NMFS Automated Landings Reporting System and the North Carolina Tagging Program, NMFS has determined that the codified Angling category trophy BFT subquota has been taken and that a closure of the southern area trophy BFT fishery is warranted at this time. Therefore, fishing for, retaining, possessing, or landing large medium or giant (''trophy'') BFT south of 39°18′ N. lat. by persons aboard vessels permitted in the HMS Angling category and the HMS Charter/Headboat category (when fishing recreationally) must cease at 11:30 p.m. local time on April 7, 2012. This action is taken consistent with the regulations at § 635.28(a)(1).

These Angling category actions are 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; and to be consistent with the objectives of the Consolidated HMS FMP.

HMS Angling and HMS Charter/Headboat category permit holders may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. Anglers are also reminded that all BFT that are released must be handled in a manner that will maximize survivability, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the Careful Catch and Release brochure available at *www.nmfs.noaa.gov/sfa/hms/.*

If needed, subsequent Angling category adjustments 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 *www.hmspermits.gov,* for updates.

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. Based on available BFT quotas, fishery performance in recent years, the availability of BFT on the fishing grounds, among other considerations, an adjustment to the recreational BFT daily retention limit is warranted. Analysis of available data shows that adjustment to the BFT daily retention limit from the default level would result in minimal risks of exceeding the ICCAT-allocated quota.

Furthermore, closure of the southern area Angling category trophy fishery is necessary to ensure sufficient quota remains available to ensure overall 2012 fishing year landings are consistent with ICCAT recommendations and the Consolidated HMS FMP. NMFS provides notification of closures and retention limit adjustments by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *www.hmspermits.gov.*

These fisheries are currently underway and delaying this action would be contrary to the public interest as it could result in excessive trophy BFT landings that potentially could result in future quota reductions for the Angling category and other BFT quota categories, depending on the magnitude of any Angling category overharvest. NMFS must close the southern area trophy BFT fishery before additional landings of these sizes of BFT accumulate. Delays in increasing the daily recreational BFT retention limits would adversely affect those Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one school, large school, or small medium BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. 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 good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.23(b)(3) and 635.28(a)(1), and is exempt from review under Executive Order 12866.

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

Dated: April 3, 2012.

Carrie Selberg,

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

[FR Doc. 2012–8474 Filed 4–4–12; 4:15 pm]

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