

increased Angling category participation in the winter fishery has provided additional collection of scientific information, NMFS continues to be concerned that high catch rates in the General category would cause a significant shift in the fishery to a non-traditional area.

Comment: Several Harpoon category members requested a proportional share of the proposed allocation of quota from the Reserve. These commenters disagree that harpoon catch data have not been incorporated into any useful index of abundance and add that harpooners have contributed to the NMFS tagging program since 1977.

Response: NMFS agrees that data collected from the Harpoon category participants are useful, e.g., bluefin biological sampling and tagging. However, because catch rates are strongly influenced by weather and sea conditions, and because many harpooners use spotter aircraft to assist in the location of fish, it is difficult to standardize CPUE from the harpoon fishery. Although Harpoon fishery data could potentially be incorporated into an index of abundance, given the difficulties in standardization of effort, such an index would be less reliable than the existing rod and reel based index which covers a larger number of years, fishing areas, and size classes.

Comment: Some comments were received requesting additional Incidental category quota in order to minimize dead discards, as recommended by ICCAT. One commercial organization suggested allocating a portion of the Reserve to the Incidental category to develop a biological database that will provide useful information. Others opposed any increase, stating that additional Incidental quota encourages a directed fishery for ABT rather than reducing discards.

Response: The Incidental category has not filled its quota in the past several years; the constraint to date has been the target catch requirements rather than the actual quota. NMFS is analyzing logbook and observer data in order to consider possible regulatory amendments, if found to be consistent with ICCAT recommendations, to modify target catch requirements for landing ABT by longline, or to make other adjustments in order to minimize dead discards.

Classification

This rule is published under the authority of ATCA, 16 U.S.C. 971 *et seq.* The AA has determined that the regulations in this final rule are necessary to implement the ICCAT

recommendation and are necessary for management of the Atlantic tuna fisheries.

NMFS prepared an EA for this final rule with a finding of no significant impact on the human environment. In addition, an RIR was prepared with a finding of no significant impact. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The fishing category allocations, as established by this final rule, are measures that will not have a significant economic impact on a substantial number of businesses. Therefore, no Regulatory Flexibility Analysis was prepared.

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS has determined that there is good cause to waive the 30-day delay in the effective date normally required by 5 U.S.C. 553(d). This rule imposes no requirements with which a fisherman would have to come into compliance. It merely establishes quotas for the fishing season. As such, it is unnecessary to delay the effective date of the quotas. NMFS will rapidly communicate these rule changes to fishing interests through the FAX network and NOAA weather radio.

List of Subjects in 50 CFR Part 285

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 24, 1997.

C. Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 285 is amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

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

2. In § 285.22, paragraphs (a)(1), (c), (d), and the heading and first sentence of paragraph (f) are revised to read as follows:

§ 285.22 Quotas.

* * * * *

(a) *General.* (1) The total annual amount of large medium and giant Atlantic bluefin tuna that may be

caught, retained, possessed or landed in the regulatory area by vessels permitted in the General category under § 285.21(b) is 541 mt.
* * * * *

(c) *Purse Seine.* The total amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed, or landed in the regulatory area by vessels permitted in the Purse Seine category under § 285.21(b) is 250 mt.

(d) *Angling.* The total annual amount of Atlantic bluefin tuna that may be caught, retained, possessed, or landed in the regulatory area by anglers is 265 mt. No more than 6 mt of this quota may be large medium or giant bluefin tuna and no more than 108 mt of this quota may be school Atlantic bluefin tuna. The size class subquotas for Atlantic bluefin tuna are further subdivided as follows:

(1) 51 mt of school, 71 mt of large school or small medium, and 4 mt of large medium or giant Atlantic bluefin tuna may be caught, retained, possessed, or landed south of 38°47' N. lat.

(2) 57 mt of school, 80 mt of large school or small medium, and 2 mt of large medium or giant Atlantic bluefin tuna may be caught, retained, possessed, or landed north of 38°47' N. lat.

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(f) *Reserve.* The total amount of Atlantic bluefin tuna that will be held in reserve for inseason adjustments and fishery independent research is 33 mt.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970619143-7143-01; I.D. 061097A]

RIN 0648-AC68

Fisheries of the Exclusive Economic Zone Off Alaska; Define Fishing Trip in Groundfish Fisheries

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations that interpret and make clarifying changes consistent with that interpretation to the term "fishing trip" for purposes of

monitoring directed fishing closures in the fisheries of the exclusive economic zone off Alaska. This action is necessary to respond to recent confusion about this definition and how it relates to determinations of maximum retainable bycatch amounts of species that are closed to directed fishing.

DATES: June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, 907-586-7228.

SUPPLEMENTARY INFORMATION: In 1990, NMFS issued regulations that defined "directed fishing" in the domestic groundfish fisheries and established standards governing maximum allowable retainable bycatch of species closed to directed fishing (55 FR 9887, March 16, 1990). These regulations authorized retention of amounts of species closed to directed fishing relative to other species retained in either the subareas of the Bering Sea and Aleutian Islands management area (BSAI) or Gulf of Alaska (GOA) regulatory areas/districts. Directed fishing closures also were implemented for other management areas, such as the BSAI prohibited species bycatch limitation zones, upon the attainment of fishery specific prohibited species bycatch allowances. The reason for establishing these areas for purposes of calculating allowable retention amounts of species closed to directed fishing, rather than individual Federal statistical areas, was that groundfish total allowable catch amounts or fishery specific prohibited species bycatch allowances were, and continue to be, specified for management areas that are comprised of more than one statistical area.

For purposes of making determinations and calculations to monitor directed fishing closures, the 1990 regulations defined a "trip" as being the period of time "from the commencement or continuation of fishing [for any groundfish species] after the effective date of a notice [closing a BSAI subarea or GOA regulatory area or district to directed fishing for a species] until any offload or transfer of any fish or fish product from that vessel or until the vessel left the [BSAI subarea or GOA regulatory area or district] where fishing activity commenced, whichever occurs first."

For purposes of monitoring allowable retention amounts of species closed to directed fishing, under this definition a new trip for a vessel fishing in a management area is initiated upon the effective date of any directed fishing closure applicable to that area. A closure that was not applicable to the area in which a vessel was fishing

would not initiate a new trip. For example, a closure of the Bering Sea subarea pollock fishery would not initiate a new trip for a vessel fishing for groundfish in the Aleutian Islands subarea. Similarly, a closure of the Western Aleutian Islands District to directed fishing for Atka mackerel would initiate a new trip only for vessels fishing in this district and not elsewhere in the BSAI. However, a closure of the BSAI yellowfin sole fishery would initiate a new trip for all vessels fishing for groundfish in the BSAI, including a vessel fishing for Atka mackerel in the Western Aleutian Islands District.

Under the original definition, an individual trip ended when a vessel moved from one management area to another where a different directed fishing closure existed. Thus a vessel could make several trips before returning to port, and the catch during each trip could be monitored separately using groundfish logbooks. A new trip would not be initiated if a vessel moved between Federal statistical areas as long as a different directed fishing prohibition(s) did not apply to those areas.

In 1996, NMFS issued a regulatory amendment that attempted to consolidate several different definitions of the term "fishing trip" that had been developed and issued since 1990 for different management purposes (61 FR 5608, February 13, 1996). In this process, the definition of "fishing trip" for purposes of monitoring maximum retainable bycatch amounts associated with directed fishing closures was revised erroneously. A technical amendment was published in the **Federal Register** on January 15, 1997 (62 FR 2043), that attempted to correct this error. Unfortunately, confusion still exists about which vessel activities initiate a new trip for purposes of determining maximum retainable bycatch amounts.

Recently, NMFS Enforcement interpreted the existing regulatory language to mean that a new fishing trip is initiated each time a vessel moves from one Federal statistical area to another, regardless of whether a different directed fishing prohibition applies between the two statistical areas. While this interpretation is justifiable given the existing regulatory text, it is not consistent with the intent of the original 1990 definition of "fishing trip" and potentially limits the allowable amounts of a bycatch species that may be retained on board a vessel in a manner contrary to the original intent of the regulation.

Accordingly, NMFS hereby revises the definition of "fishing trip" at § 679.2 to clarify that a new fishing trip is not initiated for a vessel within a weekly reporting period upon the effective date(s) of a directed fishing closure(s) that is not applicable to the area where the vessel is fishing. NMFS also clarifies that a new fishing trip is initiated when a vessel moves from one statistical area to another only if a different directed fishing prohibition applies. This initiation of a new fishing trip applies to any vessel, regardless of the gear type used by a vessel or the fishery the vessel is used to participate in. The other activities that initiate a new trip for purposes of monitoring directed fishing closures are not changed. These activities are the offload or transfer of all fish or fish product from a vessel and the end of a weekly reporting period, whichever comes first. These clarifications are intended to make the definition more consistently reflect the original intent.

Classification

As explained above, this rule interprets and makes clarifying changes consistent that interpretation of the definition of the term fishing trip for purposes of monitoring maximum allowable bycatch amounts of a groundfish species closed to directed fishing. Until very recently, the fishing industry has been operating under an interpretation of this definition that is consistent with this rule. To give prior notice and opportunity for public comment or to delay the rule's effective date for 30 days would be contrary to public interest and encumber the fishing industry with unnecessary costs and foregone harvest. Further, for an interpretive rule under 5 U.S.C.(b)(A) and (d)(2), neither prior notice and opportunity for public comment nor delay in effective date is required.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: June 25, 1997.

David L. Evans,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition of “Fishing trip” is revised to read as follows:

§ 679.2 Definitions.

* * * * *

Fishing trip means:

With respect to monitoring compliance with groundfish directed fishing closures, an operator of a vessel is engaged in a fishing trip from the time the harvesting, receiving, or processing of groundfish is begun or resumed in an area after the effective date of a notification prohibiting directed fishing

in the same area under § 679.20 or § 679.21 until:

- (1) The offload or transfer of all fish or fish product from that vessel;
- (2) The vessel enters or leaves an area where a different directed fishing prohibition applies; or
- (3) The end of a weekly reporting period, whichever comes first.

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