

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

[Docket No. 050228049–5122–02; I.D. 021105C]

RIN 0648–AT05

Atlantic Highly Migratory Species; Lifting Trade Restrictive Measures

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

ACTION: Final rule.

SUMMARY: NMFS is amending the regulations governing the trade of tuna and tuna-like species in the North and South Atlantic Ocean to implement recommendations adopted at the 2004 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT). This final rule lifts the trade restrictions on importing bigeye tuna (BET) from Cambodia; BET and bluefin tuna (BFT) from Equatorial Guinea; and BET, BFT, and swordfish (SWO) from Sierra Leone. Additionally, the final rule corrects section reference conflicts between two rules that were published in the **Federal Register** on November 17, 2004, and December 6, 2004.

DATES: Effective July 2, 2005.

ADDRESSES: Copies of the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks and other relevant documents are available from the Highly Migratory Species Management Division website at www.nmfs.noaa.gov/sfa/hms.

FOR FURTHER INFORMATION CONTACT: Megan Gamble by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish and tuna fisheries are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and regulations at 50 CFR part 635 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* The ATCA authorizes the promulgation of regulations as may be necessary and appropriate to carry out ICCAT recommendations. Trade-related ICCAT recommendations from 2004 include, but are not limited to, 04–13, 04–14, and 04–15. NMFS issued a proposed rule on March 8, 2005 (70 FR

11190), to implement these recommendations. Details regarding the recommendations and the section reference corrections are described in the proposed rule and are not repeated in this final rule.

Response to Comments

NMFS received a comment from one individual prior to the closing date of the comment period for the proposed rulemaking, which ended on April 7, 2005. This individual's comments are summarized below with the response.

Comment: The United States should not encourage overfishing anywhere in the world. All tuna quotas should be reduced by 50 percent this year and by ten percent each year thereafter.

Response: The United States works closely with ICCAT to develop science-based management advice to rebuild all stocks of Atlantic tuna and tuna-like species. The United States implements quotas for Atlantic tuna and tuna-like species that are consistent with ICCAT recommendations. Additionally, the United States has measures in place to address any overharvest of the annual quotas for Atlantic tunas.

Changes from the Proposed Rule

There are no changes from the proposed rule (March 8, 2005, 70 FR 11190).

Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.* The Assistant Administrator for Fisheries 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 determined that this final rule would not have significant economic, environmental, or social impacts as defined in the National Environmental Policy Act (NEPA). Therefore, it is categorically excluded from the need to prepare an Environmental Assessment.

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

NMFS has determined that these regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable provisions of the coastal zone management programs of those Atlantic, Gulf of Mexico, and Caribbean states. The proposed regulations were submitted to the responsible state agencies for their review under Section

307 of the Coastal Zone Management Act. All of the states that responded (Delaware, New Hampshire, Pennsylvania, Texas, and Virginia) found NMFS' proposed actions to be consistent with their coastal zone management programs. Concurrence is presumed for those states that did not respond.

This action does not contain policies with federalism implications under Executive Order 13132.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

The NMFS has determined that fishing activities conducted under this rule will have no adverse impact on marine mammals.

The fishing activities conducted pursuant to this rule will not affect endangered or threatened species or critical habitat under the Endangered Species Act. This action is not likely to result in any significant changes to the quantity of BET, BFT, and SWO imported from Cambodia, Equatorial Guinea, and Sierra Leone, as past import levels of these fish species from these countries are low or nonexistent.

List of Subjects in 50 CFR Part 635

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

Dated: May 11, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, 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 § 635.41, paragraphs (a) and (b) are removed; paragraphs (c) through (g) are redesignated as paragraphs (a) through (e); and newly redesignated paragraph (a) is revised to read as follows:

§ 635.41 Products denied entry.

(a) All shipments of Atlantic bigeye tuna, or its products, in any form,

harvested by a vessel under the jurisdiction of Bolivia or Georgia will be denied entry into the United States.

* * * * *

■ 3. In § 635.71, paragraphs (b)(26) and (e)(16) are removed; paragraphs (b)(27) through (b)(30) are redesignated as paragraphs (b)(26) through (b)(29); and paragraphs (a)(24), (a)(45) through (a)(47), and newly redesignated paragraph (b)(29) are revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(24) Import, or attempt to import, any fish or fish products regulated under

this part in a manner contrary to any import requirements or import restrictions specified at § 635.40 or 635.41.

* * * * *

(45) Import or attempt to import tuna or tuna-like species harvested from the ICCAT convention area by a fishing vessel that is not listed in the ICCAT record of authorized vessels as specified in § 635.41(b).

(46) Import or attempt to import tuna or tuna-like species harvested by a fishing vessel on the ICCAT illegal, unreported, and unregulated fishing list as specified in § 635.41(c).

(47) Import or attempt to import tuna or tuna-like species, placed in cages for farming and/or transshipment, harvested in the ICCAT convention area and caught by a fishing vessel included on the ICCAT list as engaged in illegal, unreported, and unregulated fishing as specified in § 635.41(d).

(b) * * *

(29) Import a bigeye tuna or bigeye tuna product into the United States from Bolivia or Georgia as specified in § 635.41.

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[FR Doc. 05-9793 Filed 5-16-05; 8:45 am]

BILLING CODE 3510-22-S