

General Counsel, Assistant Secretary for Transportation Policy, Assistant Secretary for Aviation and International Affairs, Assistant Secretary for Governmental Affairs, Assistant Secretary for Budget and Programs, Associate Deputy Secretary, Federal Aviation Administrator, and Assistant Secretary for Administration, in that order.

The Federal Vacancies Reform Act of 1998 (Vacancies Act) specifies who may serve in an acting capacity for a vacant position that is subject to a nomination by the President by and with the consent of the Senate (a "PAS" position). The Vacancies Act is the exclusive means for temporarily authorizing an acting official to perform the functions and duties of a PAS position unless otherwise authorized by statute. The Administration interprets the Vacancies Act to mean that if there is no statutory provision that enables the head of an agency to establish an order of succession, only the President of the United States may do so.

Section 102 of title 49, United States Code, authorizes the Secretary to prescribe the order of succession for the Assistant Secretaries and the General Counsel. The Department's order of Secretarial succession is not consistent with the Vacancies Act since it also includes the Associate Deputy Secretary and the Federal Aviation Administrator. Therefore, we are amending the Secretarial Order of Succession to make it consistent with 49 U.S.C. 102 and the Vacancies Act.

Section 102 of title 49, United States Code, authorizes the Secretary to prescribe the order of succession for the Assistant Secretaries and the General Counsel. Under the Vacancies Act, only the President is authorized to designate officers in the line of Secretarial succession that are not specified in the enabling statute. In other words, only the President may designate officers beyond the General Counsel and the Assistant Secretaries. In a Memorandum for the Secretary of Transportation entitled "Designation of Officers of the Department of Transportation," dated March 19, 2002, the President supplemented the Secretarial succession to include: the Associate Deputy Secretary of Transportation; the Under Secretary of Transportation for Security; the Federal Aviation Administrator; the Federal Aviation Administration Regional Administrator, Southwest Region; and the Federal Aviation Administration Regional Administrator, Great Lakes Region, in that order. This final rule codifies the President's Memorandum.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b)(3)(A), and it may be made effective in less than 30 days after publication in the **Federal Register** under 5 U.S.C. 553(d)(2) as a change in internal policy.

#### List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

Issued this 10th day of July, 2002, at Washington, DC.

**Norman Y. Mineta,**

*Secretary of Transportation.*

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

#### PART 1—[AMENDED]

1. The authority citation for part 1 is revised to read as follows:

**Authority:** 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101-552, 104 Stat. 2736; Pub. L. 106-159, 113 Stat. 1748; Pub. L. 107-71, 115 Stat. 597.

2. In § 1.26, paragraphs (a)(3) through (a)(12) are revised to read as follows:

#### § 1.26 Secretarial succession.

(a) \* \* \*

(3) Assistant Secretary for Budget and Programs.

(4) Assistant Secretary for Governmental Affairs.

(5) Assistant Secretary for Transportation Policy.

(6) Assistant Secretary for Aviation and International Affairs.

(7) Assistant Secretary for Administration.

(8) Associate Deputy Secretary.

(9) Under Secretary of Transportation for Security.

(10) Federal Aviation Administrator.

(11) Federal Aviation Administration Regional Administrator, Southwest Region.

(12) Federal Aviation Administration Regional Administrator, Great Lakes Region.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 622, 635, 640, and 654

[Docket No. 010410086-2165-02; I.D. 020801A]

RIN 0648-AN83

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment to the Fishery Management Plans of the Gulf of Mexico

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement the Generic Amendment Addressing the Establishment of the Tortugas Marine Reserves in the Fishery Management Plans of the Gulf of Mexico (Tortugas Amendment), as prepared by the Gulf of Mexico Fishery Management Council (Gulf of Mexico Council). This action will provide enhanced protections for existing marine reserves in the vicinity of the Dry Tortugas, Florida, and is taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This final rule complements regulations previously issued by NOAA under the authority of the National Marine Sanctuary Act by better informing the public of applicable restrictions and providing enhanced enforcement authority and stricter penalties for violations. Consistent with NOAA's existing regulations, these regulations prohibit fishing for any species and anchoring by fishing vessels within the reserves. The intended effect is to inform the public of these restrictions and to further protect and conserve important marine resources.

**DATES:** This final rule is effective August 19, 2002.

**FOR FURTHER INFORMATION CONTACT:** Peter Eldridge, phone: 727-570-5305; fax: 727-570-5583; e-mail: Peter.Eldridge@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico fisheries for coastal migratory pelagics, coral and coral reefs, red drum, reef fish, shrimp, spiny lobster, and stone crab are managed under fishery management plans (FMPs) prepared by the Gulf of Mexico Council and approved and implemented by NMFS. These FMPs were prepared solely by the Gulf of Mexico Council, with the exception of the FMPs for coastal

migratory pelagics and spiny lobster that were prepared jointly by the Gulf of Mexico Council and the South Atlantic Fishery Management Council (South Atlantic Council).

The Tortugas Amendment amends the following FMPs: Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico; Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico; Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico; Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico; Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico; Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; and Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic. All of these FMPs, except the FMPs for spiny lobster and stone crab, are implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622. The FMP for spiny lobster is implemented by regulations at 50 CFR part 640; the FMP for stone crab is implemented by regulations at 50 CFR part 654.

On March 7, 2001, NMFS published a notice of availability of the Tortugas Amendment and requested comments on the amendment (66 FR 13692). On June 6, 2001, NMFS approved those Tortugas Amendment measures that amend the FMPs for coral and coral reefs, red drum, stone crab, shrimp, and reef fish. On July 19, 2001, NMFS announced the availability of the Tortugas Amendment management measures that would amend the FMPs for coastal migratory pelagic resources and for spiny lobster and requested comments on those measures (66 FR 37635). NMFS approved those measures on October 16, 2001. A proposed rule to implement all measures included in the Tortugas Amendment, with a request for comments through March 25, 2002, was published on February 7, 2002 (67 FR 5780). The background and rationale for the measures in the Tortugas Amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here.

### Comments and Responses

NMFS received three general comments in support of the Tortugas Amendment during the public comment period on the amendment. NMFS has approved the amendment. One comment supporting the specific aspects of the proposed rule was received during the comment period on the proposed rule.

Comment: An environmental organization supported all the measures in the proposed rule, including a prohibition on fishing for highly migratory species. They stated that they would vigorously oppose anything less than the protections currently included in the proposed rule. They commented that the proposed measures were crucial to help maintain and rebuild fish populations; protect corals and maintain a functioning ecological whole system; and to provide effective enforcement of the current no-take regulations in that area.

*Response:* NMFS notes that fishing for any species, including highly migratory species, and anchoring by fishing vessels is prohibited in the Tortugas marine reserves.

### Classification

The Administrator, Southeast Region, NMFS determined that the Tortugas Amendment is necessary for the conservation and management of fisheries resources in the Gulf of Mexico and that it is consistent with the national standards of the Magnuson-Stevens Act and other applicable law.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule for this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

The Council prepared a final supplemental environmental impact statement (FSEIS) for the Tortugas Amendment that was filed with the Environmental Protection Agency for public review and comment. A notice of its availability for public comment for 30 days was published in the **Federal Register** on March 16, 2001 (66 FR 15241). According to the FSEIS, the elimination of consumptive uses within the marine reserves will protect essential fish habitat from fishery-related impacts and eliminate fishing mortality. Establishment of the marine reserves may result in many benefits to the ecosystem, including increased size and abundance of marine species. This may potentially improve reproductive success which could enhance recruitment to other areas of the Gulf of Mexico and the Florida Keys. The FSEIS states that although commercial and recreational fishermen could experience

increased costs because of further restrictions on their activities within the marine reserves, they and non-consumptive users are expected to realize long-term benefits resulting from the maintenance of healthy and diverse marine ecosystems. It is noted that following NMFS' publication in the **Federal Register** of the notice of availability of the Tortugas Amendment for public comment, the FKNMS regulations became effective, thereby prohibiting all commercial and recreational fishing in the marine reserve areas. Accordingly, this final rule should not impact commercial and recreational fishermen in terms of a new prohibition on fishing and anchoring in the reserves.

### List of Subjects

#### 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

#### 50 CFR Part 635

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

#### 50 CFR Part 640

Fisheries, Fishing, Incorporation by reference, Reporting and recordkeeping requirements.

#### 50 CFR Part 654

Fisheries, Fishing.

Dated: July 15, 2002.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 622, 635, 640, and 654 are amended as follows:

### PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.34, paragraph (d) is revised to read as follows:

#### § 622.34 Gulf EEZ seasonal and/or area closures.

\* \* \* \* \*

(d) *Tortugas marine reserves.* The following activities are prohibited within the Tortugas marine reserves: Fishing for any species and anchoring by fishing vessels.

(1) *EEZ portion of Tortugas North.* The area is bounded by rhumb lines

connecting the following points: From point A at 24°40'00" N. lat., 83°06'00" W. long. to point B at 24°46'00" N. lat., 83°06'00" W. long. to point C at 24°46'00" N. lat., 83°00'00" W. long.;

thence along the line denoting the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11438, to point A at 24°40'00" N. lat., 83°06'00" W. long.

(2) *Tortugas South*. The area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°33'00"	83°09'00"
B	24°33'00"	83°05'00"
C	24°18'00"	83°05'00"
D	24°18'00"	83°09'00"
A	24°33'00"	83°09'00"

\* \* \* \* \*

**PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

3. 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.*

4. In § 635.21, paragraph (a)(4) is added to read as follows:

**§ 635.21 Gear operation and deployment restrictions.**

(a) \* \* \*

(4) No person may fish for, catch, possess or retain any Atlantic highly migratory species or anchor a fishing vessel, issued a permit or required to be permitted under this part, in the areas designated at § 622.34(d) of this chapter.

\* \* \* \* \*

5. In § 635.71, paragraph (a)(30) is revised to read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(30) Deploy or fish with any fishing gear from a vessel or anchor a fishing vessel, permitted or required to be permitted under this part, in any closed area as specified at § 635.21.

\* \* \* \* \*

**PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC**

6. The authority citation for part 640 continues to read as follows:

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

7. In § 640.7, paragraph (v) is added to read as follows:

**§ 640.7 Prohibitions.**

\* \* \* \* \*

(v) Fish for any species or anchor a fishing vessel in a marine reserve as specified in § 640.26.

8. Section 640.26 is added to subpart B to read as follows:

**§ 640.26 Tortugas marine reserves.**

The following activities are prohibited within the Tortugas marine reserves: Fishing for any species and anchoring by fishing vessels.

(a) *EEZ portion of Tortugas North*. The area is bounded by rhumb lines connecting the following points: From point A at 24°40'00" N. lat., 83°06'00" W. long. to point B at 24°46'00" N. lat., 83°06'00" W. long. to point C at 24°46'00" N. lat., 83°00'00" W. long.; thence along the line denoting the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11438, to point A at 24°40'00" N. lat., 83°06'00" W. long.

(b) *Tortugas South*. The area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°33'00"	83°09'00"
B	24°33'00"	83°05'00"
C	24°18'00"	83°05'00"
D	24°18'00"	83°09'00"
A	24°33'00"	83°09'00"

**PART 654--STONE CRAB FISHERY OF THE GULF OF MEXICO**

9. The authority citation for part 654 continues to read as follows:

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

10. In § 654.7, paragraph (o) is added to read as follows:

**§ 654.7 Prohibitions.**

\* \* \* \* \*

(o) Fish for any species or anchor a fishing vessel in a marine reserve as specified in § 654.28.

11. Section 654.28 is added to subpart B to read as follows:

**§ 654.28 Tortugas marine reserves.**

The following activities are prohibited within the Tortugas marine reserves: Fishing for any species and anchoring by fishing vessels.

(a) *EEZ portion of Tortugas North*. The area is bounded by rhumb lines

connecting the following points: From point A at 24°40'00" N. lat., 83°06'00" W. long. to point B at 24°46'00" N. lat., 83°06'00" W. long. to point C at 24°46'00" N. lat., 83°00'00" W. long.; thence along the line denoting the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11438, to point A at 24°40'00" N. lat., 83°06'00" W. long.

(b) *Tortugas South*. The area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°33'00"	83°09'00"
B	24°33'00"	83°05'00"
C	24°18'00"	83°05'00"
D	24°18'00"	83°09'00"

	Point	North lat.	West long.
A		24°33'00"	83°09'00"

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[I.D. 071202D]

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

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

**ACTION:** Adjustment of General category daily retention limit.

**SUMMARY:** NMFS has determined that the Atlantic bluefin tuna (BFT) General category daily catch limit should be adjusted in order to allow for maximum utilization of the proposed 2002 General category June through August subquota. Therefore, NMFS increases the daily retention limit from one to two large medium (73 to less than 81 inches (185 to less than 206 cm)) or giant (81 inches or greater (206 cm or greater)) BFT for the remainder of the June through August time-period.

**DATES:** Effective July 18 through August 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 Conservation and Management 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. BFT fishing category quotas and General category effort controls (including time-period subquotas and Restricted-Fishing Days (RFDs)) are specified annually under §§ 635.23(a) and 635.27(a). The 2002 BFT quotas and General category effort controls were proposed June 25, 2002 (67 FR 43266, June 27, 2002).

#### Adjustment of Daily Retention Limit

Under § 635.23 (a)(4), NMFS may increase or decrease the 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 is appropriate and necessary to allow full use of the June through August subquota while ensuring an August fishery. Therefore, NMFS adjusts the daily retention limit for the remainder of the June through August subquota time-period to two large medium or giant BFT per vessel. This adjustment does not affect the proposed RFDs for August (August 10, 11, and 12), on which the daily retention in the General category would be zero, and on which General category vessels would not be allowed to fish for BFT.

The intent of this adjustment is to allow for maximum utilization of the June through August subquota (specified under §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 Fishery Management Plan for Atlantic tunas, swordfish, and sharks.

While catch rates have been low so far this season, NMFS recognizes that they may increase. In addition, due to the temporal and geographical nature of the fishery, certain gear types and areas are more productive at various times during the fishery. In order to ensure that the June through August subquota is not filled prematurely and to ensure equitable fishing opportunities in all areas and for all gear types, NMFS has not waived the proposed RFDs in August, which correspond to market closures in Japan, and could promote better ex-vessel prices.

#### Classification

This action is taken under § 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: July 15, 2002.

**Virginia M. Fay,**

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

[FR Doc. 02-18190 Filed 7-15-02; 4:10 pm]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 020402077-01; I.D. 071202E]

#### Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; End of the Primary Season and Resumption of Trip Limits for the Shore-based Fishery for Pacific Whiting

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

**ACTION:** Fishing restrictions; request for comments.

**SUMMARY:** NMFS announces the end of the 2002 primary season for the shore-based fishery for Pacific whiting (whiting) at 0800 local time (l.t.) July 17, 2002, because the allocation is projected to be reached. This action is intended to keep the harvest of whiting at the 2002 allocation levels.

**DATES:** Effective from 0800 l.t. July 17, 2002, until the effective date of the 2003 specification and management measures for the Pacific Coast groundfish fishery which will be published in the **Federal Register**, unless modified, superseded or rescinded. Comments will be accepted through August 5, 2002.

**ADDRESSES:** Submit comments to D. Robert Lohn, Acting Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

**FOR FURTHER INFORMATION CONTACT:** Becky Renko at 206-526-6110.

**SUPPLEMENTARY INFORMATION:** This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. On April 15, 2002 (67 FR 18117), the levels of allowable biological catch, the optimum yield (OY) and the commercial OY (the OY minus the tribal allocation) for U.S. harvests of whiting were announced in the **Federal Register**. For 2002 the