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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 635

[Docket No. 120510051-2335-02]

RIN 0648- BC16

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: This final rule lifts the trade restrictions on importing bigeye tuna from Bolivia and Georgia to implement a recommendation adopted at the 2011 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Additionally, this rule changes the regulations containing species-specific harmonized tariff codes to be consistent with recent changes adopted by the U.S. International Trade Commission (ITC).

DATES: Effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Tom Warren at 978-281-9260.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic tuna fisheries are managed under the 2006 Consolidated Highly Migratory Species Fishery Management Plan and regulations at 50 CFR part 635, pursuant to the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the Atlantic Tunas Convention Act (ATCA). Under ATCA, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out ICCAT Recommendations.

Trade Measures

In 2002 and 2003, ICCAT adopted binding measures for Parties to prohibit imports of Atlantic bigeye tuna and its products from Bolivia and Georgia. Specifically, Recommendations 02-17 and 03-18 prohibited the imports to address illegal, unreported, and unregulated catches of tuna (especially bigeye tuna) by large-scale Bolivian and Georgian longline vessels respectively, because they operated in a manner that diminished the effectiveness of ICCAT measures.

Recommendation 02-17 expressed concern regarding the overfished status of bigeye tuna in the Atlantic Ocean and noted ICCAT had reviewed information that Bolivian vessels fishing for Atlantic bigeye tuna had continued to operate in a manner that diminished the effectiveness of ICCAT conservation and management measures. Similarly, Recommendation 03-18 expressed concern regarding the overfished status of bigeye tuna in the Atlantic Ocean and stated that Georgian vessels had continued to operate in a manner that diminished the effectiveness of ICCAT conservation and management measures. In 2004, NMFS published a final rule (69 FR 70396; December 6, 2004) that implemented these ICCAT recommendations. When the import prohibitions were implemented in the 2004 final rule, neither Bolivia nor Georgia had exported Atlantic bigeye tuna to the United States in the previous 10 years; therefore, NMFS determined that the import prohibitions would have no socioeconomic impact on fishery participants.

At its 2011 annual meeting, ICCAT examined recent actions of Bolivia and Georgia, and determined that the actions of their vessels no longer diminish the effectiveness of ICCAT's conservation and management measures. Some of the relevant considerations were as follows:

- 1) Bolivia and Georgia have been responsive to ICCAT requests for information on actions taken to control their vessels;
- 2) Since 2006, Bolivia has not registered any fishing vessels to carry out fishing-related activities in the Convention area, and information available to ICCAT

has indicated that Bolivia has not fished for ICCAT species in recent years; and 3) Georgia has recently taken action to de-register those of its vessels fishing without authorization in the Convention area and has considered increased participation in the work of ICCAT.

Thus, ICCAT adopted Recommendation 11-19, which requires Parties to lift import prohibitions on Atlantic bigeye tuna from Bolivia and Georgia as soon as possible in accordance with domestic procedures. Therefore, on June 26, 2012, NMFS published a proposed rule to remove the Atlantic bigeye tuna import prohibitions from Bolivia and Georgia (77 FR 38030), and provided a 30-day public comment period, which ended July 26, 2012. Because there were no imports of Atlantic bigeye tuna from these countries prior to the implementation of the prohibitions, and because NMFS does not expect imports in the future, NMFS does not expect that lifting the prohibitions will result in socioeconomic impacts on U.S. traders.

Consistent with the regulations at 50 CFR § 635.40(c), for one year after the date of filing of the final rule lifting the import restrictions, every shipment that previously was subject to the import restrictions will continue to be denied entry unless the shipment is accompanied by a certification executed by an authorized official of the country of export and authenticated by a consular officer or consular agent of the United States certifying that no portion of the shipment is composed of fish taken prior to or during the import restriction.

Harmonized Tariff Codes

The June 26, 2012, proposed rule also included administrative changes in support of the International Trade Permit program. Importers, exporters and re-exporters of Atlantic, Pacific, and Southern bluefin tuna, swordfish, frozen bigeye tuna, and shark fins must obtain an International Trade Permit consistent with regulations at 50 CFR 300, subpart M. Permit holders must include the species-specific harmonized tariff codes on the necessary trade documentation

when trading these species. The Harmonized System is an international product nomenclature system developed by the World Customs Organization. It is updated every 5 years, and the most recent update occurred in 2012, with subsequent modifications to the Harmonized Tariff Schedule of the United States. Thus, the section of the regulations that include harmonized tariff codes for highly migratory species products located at 50 CFR 300.184 is being changed accordingly. These changes are not expected to have economic impacts and are necessary to maintain consistency with current trade regulations and to ensure that permit holders have the most recent information in order to simplify compliance with the regulations. The Harmonized Tariff Schedule (HTS) of the United States is published by the ITC. The chapter pertaining to fish, including Highly Migratory Species (HMS), is available at the following website:

<http://www.usitc.gov/publications/docs/tata/hts/bychapter/1202C03.pdf>.

Responses to Public Comments

NMFS received two written comments on the proposed rule during the public comment period.

Comment 1: The commenter opposed the regulatory changes, and suggested that Bolivia and Georgia “keep their fish”.

Response: If importers determine it is feasible and economically beneficial to import bigeye tuna from Bolivia or Georgia, they are now legally free to do so consistent with a binding decision made at the relevant international regional fishery management organization (ICCAT). That said, NMFS does not anticipate any imports as a result of this change.

Comment 2: The commenter noted that the regulations containing excerpts of the Harmonized Tariff Schedule (for HMS) exclude fresh bigeye tuna and yellowfin tuna and

suggested that NMFS investigate the issue due to concerns about illegal, unregulated, and unreported (IUU) fishing and trade in these species.

Response: The commenter stated that the regulations contain “excerpts of the Harmonized Tariff Schedule.” To clarify, the regulations will no longer “excerpt” the Harmonized Tariff Schedule. Instead, the revised regulations will simply list the fish and fish products that are subject to reporting requirements. The commenter notes that fresh bigeye tuna and yellowfin tuna are not among the species subject to the reporting requirements. NMFS includes on the list at § 300.184 those species that are subject to trade tracking and documentation requirements by one or more regional fishery management organizations (RFMO), including ICCAT. Yellowfin and fresh bigeye tuna currently are not the subject of such reporting requirements and thus are not on the list of species. NMFS will continue to consider this issue as part of international discussions on IUU fishing and in conjunction with future requests to the ITC, to help determine whether additional tracking measures and attendant additional HTS codes are needed in the future.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is necessary for the conservation and management of the Atlantic highly migratory species fishery, and is consistent with the 2006 Consolidated HMS FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration at the proposed rule stage that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. None of the public comments submitted to NMFS addressed the certification, and no new information has become available that would change this determination. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

List of Subjects

50 CFR Part 300

Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

50 CFR Part 635

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

Dated: August 23, 2012.

Alan D. Risenhoover, Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 300 and 635 are amended as follows:

Part 300--INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 951-961 and 971 et seq. ; 16 U.S.C. 1801 et seq.

2. Section 300.184 is revised to read as follows:

§ 300.184 Species subject to permitting, documentation, reporting, and recordkeeping requirements.

(a) Except as noted at (b), the following fish or fish products are subject to the requirements of this subpart, regardless of ocean area of catch, and must be accompanied by the appropriate heading or subheading numbers from the Harmonized Tariff Schedule of the United States (HTS).

- (1) Bluefin tuna,
- (2) Southern bluefin tuna,
- (3) Frozen bigeye tuna,
- (4) Swordfish, and
- (5) Shark fins.

(b) For bluefin tuna, southern bluefin tuna, frozen bigeye tuna, and swordfish, fish parts other than meat (e.g., heads, eyes, roe, guts, and tails) may be imported without documentation.

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.

§ 635.41 [Amended]

4. In § 635.41, remove and reserve paragraph (a).

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