



Figure 5. S7.6.7 Measurement for V2' Voltage across Resistor between Positive Side of the High Voltage Source and Vehicle Chassis Electricity-Conducting Structure

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David L. Strickland,
Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648-XW79

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; quota transfer.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) daily retention limit should be adjusted for the remainder of 2010, based on consideration of the regulatory determination criteria regarding

inseason adjustments. These actions apply to vessels permitted in the Highly Migratory Species (HMS) Angling category and Charter/Headboat category (when fishing recreationally for BFT). NMFS also closes the southern area Angling category fishery for large medium and giant ("trophy") BFT, and transfers 1.7 mt from the Reserve to the northern area trophy category subquota. These actions are being taken consistent with the BFT fishery management objectives of the 2006 Consolidated HMS Fishery Management Plan and to prevent overharvest of the 2010 Angling category quota.

DATES: Effective June 12, 2010 through December 31, 2010.

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 recommended by the

International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006).

The 2010 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2010. The Angling category season opened January 1, 2010, and continues through December 31, 2010. 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 2008 ICCAT recommendation regarding Western BFT management resulted in a U.S. quota of 1,034.9 mt for 2009, and 977.4 mt for 2010. Consistent with the allocation scheme established

in the Consolidated HMS FMP, the baseline Angling category share was 199 mt for 2009, and is 187.6 mt for 2010. In order to implement the ICCAT recommendation for the 2010 fishing year, NMFS has recently published final quota specifications to set BFT quotas for each of the established domestic fishing categories (75 FR 30732, June 2, 2010). The final 2010 Angling category quota is 225.4 mt (97.7 mt for school BFT, 122.5 mt for large school/small medium BFT, and 5.2 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 a 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 2010 Angling category fishery. NMFS examined the results of the 2007 through 2009 fishing seasons under the applicable daily retention limits, as well as the observed trend in the recreational fishery toward heavier fish, particularly in the large school and small medium size classes. Data and dockside observations from 2007 through 2009 indicate a shift in catch 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 (59 to less than 73 inches) in 2009. Large school and small medium BFT traditionally have been managed as one size class (47 to less than 73 inches). NMFS has found that as this cohort of fish ages and grows in weight but remains under 73 inches (i.e., the upper range of the large school/small medium size class), the large school/small medium subquota has been attained with fewer fish landed.

NMFS has also considered recreational landings data from the North Carolina Tagging Program, which indicate that a quarter of the available large school/small medium quota (30.5 mt out of 122.5 mt) and nearly the entire coastwide trophy quota (5.1 out of 5.2 mt) was taken as of April 30, 2010.

In order to constrain landings to the Consolidated HMS FMP-based Angling category allocations, NMFS needs to implement more restrictive daily retention limits in 2010 than in recent years. This is particularly important given the ICCAT-recommended 2-year balancing period for limiting the harvest of school-BFT and given that complete information regarding coastwide recreational BFT landings is not available until the end of the calendar year. It is also important that NMFS constrain landings to BFT subquotas not only to remain within the current FMP quota allocations but also 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.

Based on considerations of the available quota, fishery performance in recent years, and the availability of BFT on the fishing grounds, it is reasonable to assume that the large school/small medium subquota (and potentially the Angling category quota) would be exceeded under the default daily retention limit, particularly due to the high availability of small medium BFT. NMFS has determined that the Angling category retention limit should be adjusted to prohibit the retention of small medium BFT, and that implementation of separate limits for private and charter/headboat vessels is appropriate, recognizing the different nature, needs, and recent landings results of the two sectors. For example, charter operators historically have indicated that a multi-fish retention limit is vital to their ability to attract customers. In addition, recent Large Pelagics Survey estimates indicate that charter/headboat BFT landings constitute approximately 25 percent of recent recreational landings, with the

remaining 75 percent landed by private vessels. Therefore, for private vessels (i.e., those with HMS Angling category permits) the limit is one school or large school BFT per vessel per day/trip (i.e., one BFT measuring 27 to less than 59 inches). For charter vessels, i.e., those with HMS Charter/Headboat permits, the limit is one school BFT and one large school BFT per vessel per day/trip while fishing recreationally for BFT (i.e., one BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 59 inches). These retention limits will be effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing. Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. NMFS may adjust the daily retention limit further with an inseason action if warranted.

As discussed above, the determination to adjust the daily retention limit is primarily based on the catches of large school/small medium BFT in 2007 and the likelihood of closure of that segment of the fishery if no adjustment is made § 635.27(a)(8)(ii), and the anticipated availability of large school/small medium BFT on the fishing grounds § 635.27(a)(8)(ix). NMFS anticipates that reduction of the BFT daily retention limit will result in landings during 2010 that would not exceed the available subquota (122.5 mt) as set in the 2010 quota specifications.

Large Medium and Giant "Trophy" Category Fishery; Closure and Quota Transfer

Under § 635.27(a)(7), NMFS has the authority to allocate any portion of the Reserve to any category quota in the fishery, other than the Angling category school BFT subquota (for which there is a separate reserve), after considering determination criteria provided under § 635.27(a)(8).

The 2010 annual BFT quota specifications provide for an adjusted quota of 5.2 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 1.7 mt for the area north of 39°18' N. lat. (off Great Egg Inlet, NJ) and 3.5 mt for the area south of 39°18' N. lat.

Based on North Carolina Tagging Program information, NMFS has determined that the southern area trophy BFT Angling category 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 BFT south of 39°18' N. lat. by persons aboard

vessels permitted in the HMS Angling category and the HMS Charter/Headboat category (while fishing recreationally) must cease at 11:30 p.m. local time on June 12, 2010. This action is taken consistent with the regulations at § 635.28(a)(1).

Following consideration of the determination criteria described above and at § 635.27(a)(8), NMFS transfers 1.7 mt from the Reserve to the Angling category northern area trophy subquota, so that 1.7 mt (the amount established in the 2010 BFT quota specifications) is available for the retention and landing of trophy BFT in the area north of 39°18' N. lat. This action is consistent with the inseason adjustment regulations at § 635.27(a)(9).

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 released BFT must be returned to the sea immediately with a minimum of injury and without removing the fish from the water, consistent with requirements at § 635.21(a)(1).

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, and the availability of BFT on the fishing grounds, the reduction in Angling category daily retention limit and closure of the southern area Angling category trophy fishery is necessary to ensure sufficient quota remains available to ensure overall 2010 fishing year landings are consistent with ICCAT recommendations and the 2006 Consolidated HMS FMP. NMFS provides notification of closures and retention limit adjustments by publishing the notice in the **Federal Register**, e-mailing 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 BFT landings that may result in future potential quota reductions for the Angling category and potentially other BFT quota categories, depending on the magnitude of a potential Angling category overharvest. NMFS must close the southern area trophy BFT fishery and preclude small medium BFT landings in all areas before additional landings of these size BFT accumulate. 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 50 CFR 635.23(b)(3), 635.27(a)(9), 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: June 8, 2010.

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