

(e) Legal proceedings to which the United States is a party.

§ 1167.3 Definitions.

The following definitions apply to this part:

Agency or *NEH* means the National Endowment for the Humanities.

Demand means a subpoena, order, or other demand of a court or other competent authority, issued in a legal proceeding, for the production of official records and information or for the testimony of an NEH employee.

General Counsel means the General Counsel of the agency, or any person to whom the General Counsel has delegated authority under this part.

Legal proceeding means any proceeding before a court of law, administrative board or commission, hearing officer, or other body conducting a legal or administrative proceeding.

NEH employee or *employee* means any present or former officer or employee of NEH; any other individual hired through contractual agreement by or on behalf of NEH, or who has performed or is performing services under such an agreement for NEH; and any individual who served or is serving on a NEH advisory committee.

Official records and information means all documents and material in the custody and control of NEH; relating to information in the custody and control of NEH; or acquired by an NEH employee in the performance of his or her official duties or because of his or her official status, while the individual was employed by or on behalf of the NEH.

Request means any request in connection with an ongoing or threatened legal proceeding, by whatever method, for the production of official records and information or for testimony, other than a demand.

Testimony means any written or oral statement by a witness, and includes depositions, answers to interrogatories, affidavits, declarations, and statements at a hearing or trial.

§ 1167.4 Testimony and production of official records and information.

(a) No employee may produce official records and information or provide any testimony in response to a demand or request unless authorized to do so by the General Counsel in accordance with this part.

(b) The General Counsel, in his or her discretion, may grant an employee permission to testify or produce official records and information in response to a demand or request. In making this decision, the General Counsel shall consider whether:

(1) Allowing such testimony or production of records would be consistent with the purposes of this part;

(2) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;

(3) Allowing such testimony or production of records would be in the best interest of NEH and the United States; or

(4) NEH has an interest in the outcome of the legal proceeding.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge or produce official records and information, but, unless specifically authorized to do so by the General Counsel, shall not:

(1) Disclose confidential or privileged information;

(2) Testify as to matters regarding which the General Counsel determines that testimony would not be in the best interest of NEH or the United States;

(3) Produce official records and information regarding which the General Counsel determines that production would not be in the best interest of NEH or the United States; or

(4) Testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of NEH. (*See also* 5 CFR 2635.805.)

§ 1167.5 Procedure when demand is made.

(a) Whenever an employee is served with a demand to testify in his or her official capacity, or to produce official records and information, the employee shall notify the General Counsel immediately.

(b) The General Counsel shall review the demand and, in accordance with the provisions of § 1167.4, shall determine whether, or on what conditions, to authorize the employee to testify and/or produce official records and information.

(c) If a demand requires a response before the General Counsel has made the determination referred to in paragraph (b) of this section, the General Counsel shall provide the court or other competent authority with a copy of this part, inform the court or other competent authority that the demand is being reviewed, and seek a stay of the demand pending a final determination.

(d) If a court or other competent authority orders that an NEH employee comply with a demand notwithstanding a final decision by the General Counsel to the contrary, or at any other stage in the process, the General Counsel shall advise the employee on how to respond

to such order and may arrange for legal representation of the employee.

§ 1167.6 Office of Inspector General employees.

Notwithstanding the requirements set forth in §§ 1167.1 through 1167.5, when an employee of the agency's Office of the Inspector General receives a demand or request to provide testimony or produce official records and information, the Inspector General or his or her designee shall be responsible for performing the functions assigned to the General Counsel under this part with respect to such demand or request.

Dated: February 9, 2022.

Samuel Roth,

Attorney-Advisor, National Endowment for the Humanities.

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NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

45 CFR Part 1173

RIN 3136-AA45

Indemnification of Employees

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Final rule.

SUMMARY: The National Endowment for the Humanities (NEH) is adopting as final its proposed policy that permits indemnification of NEH employees in appropriate circumstances, as determined by the Chairperson of NEH or the Chairperson's designee, for claims made against NEH employees as a result of actions taken by them in the scope of their employment.

DATES: This final rule is effective on February 15, 2022.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Deputy General Counsel, Office of the General Counsel, National Endowment for the Humanities, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606-8322; gencounsel@neh.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 2021, NEH published in the **Federal Register** a notice of proposed rulemaking (86 FR 71863), requesting public comment on a proposed rule regarding indemnification of NEH employees. The agency received

no comments. Accordingly, NEH is adopting the rule as proposed.

This policy permits, but does not require, NEH to indemnify an employee who suffers an adverse verdict, judgment, or other monetary award, provided that the act or omission giving rise to the award occurred within the scope of the employee's employment, and that such indemnification is in the interest of NEH, as determined by the Chairperson or the Chairperson's designee. The policy also permits, but does not require, NEH to settle a claim brought against an employee in his or her individual capacity, upon a similar determination by the Chairperson or the Chairperson's designee. This policy applies to actions pending against NEH employees as of the effective date and to actions commenced after that date.

Executive Order 12866, Regulatory Planning and Review, and Executive Order 13563, Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12988, Civil Justice Reform

This rulemaking meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this rulemaking is written in clear language designed to help reduce litigation.

Executive Order 13175, Indian Tribal Governments

Under the criteria in Executive Order 13175, NEH evaluated this rulemaking and determined that it will not have any potential effects on Federally recognized Indian Tribes.

Executive Order 12630, Takings

Under the criteria in Executive Order 12630, this rulemaking does not have significant takings implications. Therefore, a takings implication assessment is not required.

Regulatory Flexibility Act of 1980

This rulemaking will not have a significant adverse impact on a substantial number of small entities,

including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

Paperwork Reduction Act of 1995

This rulemaking does not impose an information collection burden under the Paperwork Reduction Act. This action contains no provisions constituting a collection of information pursuant to the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not contain a Federal mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year.

National Environmental Policy Act of 1969

This rulemaking will not have a significant effect on the human environment.

Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking will not be a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rulemaking will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E-Government Act of 2002

All information about NEH required to be published in the **Federal Register** may be accessed at www.neh.gov. The website www.regulations.gov contains electronic dockets for NEH's rulemakings under the Administrative Procedure Act of 1946.

Plain Writing Act of 2010

To ensure this proposed rule speaks in plain and clear language so that the public can use and understand it, NEH modeled the language of the proposed rule on the Federal Plain Language Guidelines.

List of Subjects in 45 CFR Part 1173

Administrative practice and procedure.

■ For the reasons set forth in the preamble, the National Endowment for the Humanities amends 45 CFR chapter XI subchapter D by adding part 1173 to read as follows:

PART 1173—INDEMNIFICATION OF EMPLOYEES

Sec.

1173.1 Policy on employee indemnification
1173.2 [Reserved]

Authority: 5 U.S.C. 301.

§ 1173.1 Policy on employee indemnification.

(a) This part explains when the National Endowment for the Humanities (NEH) will indemnify you, an employee or a former employee of NEH, against a verdict, judgment, or other monetary award that a court or other competent authority renders against you. When NEH indemnifies you against a verdict, judgment, or other monetary award, it means that NEH will pay the amounts that the court orders you to pay.

(b) This part also explains when NEH will settle a claim (also referred to as compromising a claim) that someone brings or threatens to bring against you in court or before another competent authority. It is only in exceptional circumstances that NEH will agree to settle a claim before a court or other competent authority has entered a verdict, judgment, or monetary award against you.

(c) In order for NEH to indemnify you or settle a claim:

(1) The verdict, judgment, or monetary award to be paid or the claim to be settled must relate to something that you did (or failed to do) within the scope of your employment with NEH; and

(2) The Chairperson of NEH or someone the Chairperson designates (the Agency Official) must determine, as a matter of discretion, that indemnifying you or settling the claim would be in the interest of NEH.

(d) If you become aware that someone has made or may make a claim against you personally as a result of something that you did (or failed to do) within the scope of your employment, you must immediately notify the Office of the General Counsel.

(e) To request that NEH indemnify you or settle a claim against you, you must submit a written request to the Office of the General Counsel. You must include a copy of the verdict, judgment, monetary award, or settlement proposal, as appropriate. The Office of the General Counsel may consult about the matter with your supervisor, other agency employees, and the Department of Justice.

(f) The Agency Official may waive the requirements of paragraphs (d) and (e) of this section if it would be in the interest of NEH to do so.

(g) If the Agency Official determines that NEH will indemnify you or settle a

claim on your behalf, NEH's commitment will be subject to the availability of appropriated funds. The Agency Official may impose other conditions or limitations on the determination at his or her discretion.

(h) If the Chairperson requests indemnification or settlement of a claim, the General Counsel will perform the functions assigned to the Chairperson under this section with respect to that request.

§ 1173.2 [Reserved]

Dated: February 9, 2022.

Samuel Roth,

Attorney-Advisor, National Endowment for the Humanities.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042-8884-02; RTID 0648-XB796]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; closure of the General category January through March fishery for 2022.

SUMMARY: NMFS closes the General category fishery for large medium and giant (*i.e.*, measuring 73 inches (185 cm) curved fork length or greater) Atlantic bluefin tuna (BFT) for the January through March subquota time period. This action applies to Atlantic Tunas General category (commercial) permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective 11:30 p.m., local time, February 11, 2022, through May 31, 2022.

FOR FURTHER INFORMATION CONTACT:

Larry Redd, Jr., larry.redd@noaa.gov, 301-427-8503, Nicholas Velseboer, nicholas.velsboer@noaa.gov, 978-281-9260, or Thomas Warren, thomas.warren@noaa.gov, 978-281-9347.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the

Atlantic Tunas Convention Act (ATCA; 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.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

Under § 635.28(a)(1), NMFS files a closure notice with the Office of the Federal Register for publication when a BFT quota (or subquota) is reached or is projected to be reached. Retaining, possessing, or landing BFT under that quota category is prohibited on and after the effective date and time of a closure notice for that category, for the remainder of the fishing year, until the opening of the subsequent quota period or until such date as specified.

The 2022 baseline quota for the General category is 555.7 mt. The General category baseline subquota for the January through March time period is 29.5 mt. As a result of two adjustments, the adjusted subquota for the January through March time period is 75 mt (86 FR 72857, December 23, 2021; 87 FR 5737, February 2, 2022).

Closure of the January Through March 2022 General Category Fishery

As of February 10, 2022, reported landings for the General category January through March subquota time period total approximately 63.1 mt. Based on these landings data, as well as average catch rates and anticipated fishing conditions, NMFS projects the adjusted January through March 2022 subquota of 75 mt will be reached shortly. Therefore, retaining, possessing, or landing large medium or giant (*i.e.*, measuring 73 inches (185 cm) curved fork length or greater) BFT by persons aboard vessels permitted in the Atlantic Tunas General category and HMS Charter/Headboat permitted vessels (while fishing commercially) must cease at 11:30 p.m. local time on February 11, 2022. The General category will automatically reopen June 1, 2022, for

the June through August 2022 subquota time period. This action applies to Atlantic Tunas General category (commercial) permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT and is taken consistent with the regulations at § 635.28(a)(1). The intent of this closure is to prevent overharvest of the available January through March subquota.

Fishermen aboard General category permitted vessels and HMS Charter/Headboat permitted vessels may catch-and-release and tag and release BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the "Careful Catch and Release" brochure available at <https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/>.

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing hmspermits.noaa.gov, using the HMS Catch Reporting app, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS 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 2006 Consolidated HMS FMP and its amendments provide for inseason adjustments and fishery closures to