



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648-XA802

[Docket No. 110210132-1275-02]

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 quota transfer and General category retention limit adjustment.

SUMMARY: NMFS has determined that an Atlantic bluefin tuna (BFT) quota transfer is appropriate, and transfers 50 metric tons (mt) from the Reserve category to the General category for the remainder of the 2011 fishing year. NMFS also has determined that the General category daily BFT retention limit should be adjusted from three to two large medium or giant BFT for the remainder of the 2011 fishing year (i.e., through December 31, 2011) based on consideration of the regulatory determination criteria regarding inseason adjustments. This action applies to Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels (when fishing commercially for BFT).

DATES: Effective November 6, 2011, through December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Tom Warren, 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, consistent with the allocations established in the Consolidated Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and subsequent rulemaking.

The 2011 BFT fishing year began on January 1, 2011, and ends December 31, 2011. The 2011 BFT quota specifications (76 FR 39019, July 5, 2011) established a quota of 435.1 mt for the General category fishery (the commercial tunas fishery in which handgear is used). Each of the General category time periods (January, June-August, September, October-November, and December) is allocated a portion of the annual General category quota, thereby ensuring extended fishing opportunities throughout the fishing season, particularly in years when catch rates are high. The General category fishery is open until December 31, 2011, or until the General category quota is reached. The 2011 BFT quota specifications also established a Reserve category of 70.5 mt for inseason adjustments, and potential quota transfers, scientific research collection, and accounting for potential overharvest in any category except the Purse Seine category.

#### Inseason Transfer to the General Category

Under § 635.27(a)(7), NMFS has the authority to allocate any portion of the Reserve category 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), 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.

NMFS has considered the determination criteria regarding inseason adjustments and their applicability to the General category fishery for the remainder of the 2011 fishing year. These considerations include, but are not limited to, the following. As of October 26, 2011, the General category has landed 413.1 mt, or 95 percent of its 2011 quota of 435.1 mt. Overall, approximately 64 percent of the available commercial BFT quota (775.4 mt) has been harvested. Several Atlantic tuna dealers are currently providing biological samples from BFT caught by General category vessels to support ongoing NMFS-approved research regarding reproduction status and feeding habits of BFT. Continued landings of BFT would support the collection of a broad range of data for these studies and for stock monitoring purposes. Some categories are not expected to use their available 2011 quotas (i.e., approximately 200 mt or more may remain

unused). NMFS will need to account for 2011 BFT landings and dead discards within the U.S. quota, consistent with ICCAT recommendations. While transferring quota from the Reserve category decreases the amount of unused quota that would be available, if needed, to account for all landings and dead discards within the total 2011 U.S. quota once the dead discard information is available, NMFS' best estimates of current dead discards and quota that will remain unused indicate that the risk of exceeding the overall quota is small. This risk is also outweighed by the potential benefit of keeping the General category, which is successfully harvesting available quota, open for the remainder of the year.

A quota transfer at this time would provide additional opportunities to harvest the U.S. BFT quota without exceeding it, while preserving the opportunity for General category fishermen to participate in the winter BFT fishery in the mid-Atlantic region that typically begins in December when commercial-sized BFT become available in that area. Per the Consolidated HMS FMP, the December General category fishery is allocated 5.2 percent of the General category quota (i.e., 22.6 mt for December 2011).

Based on the considerations above, as well as the available quota, fishery performance in recent years, and the availability of BFT on the fishing grounds, NMFS has determined that a quota transfer is warranted and transfers 50 mt of the 70.5 mt of the Reserve category to the General category. Thus, the General category quota is adjusted to 485.1 mt for the 2011 fishing year. Once the adjusted General category quota has been reached, or on December 31, 2011 (whichever comes first), the 2011 General category fishery will be closed. The 2012 General category fishery begins January 1, 2012.

Reduction of General Category Daily Retention Limit

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of three per vessel based on consideration of the criteria provided under § 635.27(a)(8), as listed above.

For the 2011 fishing year to date, NMFS adjusted the General category limit from the default level of one large medium or giant BFT as follows: two large medium or giant BFT for January (75 FR 79309, December 20, 2010), and three large medium or giant BFT for June through August (76 FR 32086, June 3, 2011) and three large medium or giant BFT for September through December (76 FR 52886, August 24, 2011). In these actions, NMFS indicated that additional retention limit adjustments could be made, if necessary.

As indicated above, the General category has landed 413.1 mt, or 95 percent of its 2011 quota of 435.1 mt based on landings through October 26, 2011. Based on considerations of the available quota, fishery performance in recent years (landings and discards), and the availability of BFT on the fishing grounds, NMFS has determined that the General category retention limit should be reduced. Accordingly, NMFS adjusts the General category retention limit from three to two large medium or giant BFT per vessel per day/trip effective insert date 3 calendar days after the date of filing in the Federal Register, through December 31, 2011. NMFS expects that this retention limit, in conjunction with the 50-mt quota transfer, would allow the General category to remain open through the end of the fishing year while not risking overharvest of the U.S. BFT quota, including accounting for dead discards as required by ICCAT.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of two fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and

applies to vessels permitted in the General category as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

This adjustment is intended to provide a reasonable opportunity to harvest the U.S. landings quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities; to help achieve optimum yield in the General category BFT fishery; to collect a broad range of data for stock monitoring purposes; and to be consistent with the objectives of the Consolidated HMS FMP.

#### Monitoring and Reporting

NMFS selected the daily retention limit for the remainder of the 2011 fishing year after examining an array of data as it pertains to the determination criteria. These data included, but were not limited to, current and previous catch and effort rates in the BFT fisheries, quota availability, previous public comments on inseason management measures, and stock status. NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action is necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. NMFS will address the January 2012 General category daily retention limit via a separate inseason action later in the year, if necessary.

Closure of the General category or subsequent adjustments to the daily retention limits, if any, 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](http://www.hmspermits.gov), for updates on quota monitoring and retention limit adjustments.

## 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, a quota transfer is warranted to provide additional opportunities to harvest the U.S. BFT quota, including preserving the opportunity for General category fishermen to participate in the winter BFT fishery in the mid-Atlantic region that typically begins in December. A reduction in the General category daily retention limit is necessary to extend fishing opportunities throughout the fishing year while reducing the risk of combined landings and dead discards exceeding the available U.S. quota, consistent with ICCAT recommendations.

Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as it would preclude NMFS from acting promptly to allow continued harvest of BFT that are available on the fishing grounds via a quota transfer from the Reserve category to the General category. 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, and because this action relieves a restriction (i.e., the General category retention limit will remain open due to the quota transfer from the Reserve category rather than closing at this time), there is also 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(a)(4) and 635.27(a)(7), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 et seq. and 1801 et seq.

Dated: November 3, 2011

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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