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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120306154-2241-02]

RIN 0648-XD009

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 General category retention limit adjustment.

SUMMARY: NMFS is adjusting the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit from three large medium or giant BFT per vessel per day/trip to five large medium or giant BFT per vessel per day/trip for the remainder of the October - November time period and the December time period of the 2013 fishing year, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action applies to Atlantic tunas General category permitted vessels and to Highly Migratory Species Charter/Headboat category permitted vessels when fishing commercially for BFT.

DATES: Effective [insert date of filing for public inspection with the Office of the Federal Register] through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Tom Warren or Brad McHale, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented 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.)

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) and in accordance with implementing regulations.

The 2013 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2013. The General category season, which was open January 1 through February 15, 2013, resumed on June 1, 2013, and continues through December 31, 2013. The General category daily retention limit is currently three large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip (78 FR 50346, August 19, 2013). This retention limit applies to General category permitted vessels and to HMS Charter/Headboat category permitted vessels when fishing commercially for BFT. 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.

For the 2013 fishing year, NMFS first adjusted the General category limit from the default level of one large medium or giant BFT for the 2013 January subquota period to two large medium or giant BFT (77 FR 74612 , December 17, 2012). That retention limit was effective from January 1, 2013, until February 15, 2013, when NMFS closed the fishery because the January subquota had been met (78 FR 11788, February 20, 2013). NMFS then adjusted the General category limit from the default level of one large medium or giant for the June through

December period to three large medium or giant BFT (78 FR 26709, May 8, 2013; and 78 FR 50346, August 19, 2013).

The 2012 ICCAT recommendation regarding western BFT management resulted in baseline U.S. quota for 2013 of 923.7 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). Consistent with the allocation scheme established in the Consolidated HMS FMP and implementing regulations, the 2013 General category share is 435.1 mt (baseline and adjusted), and the October through November, and December General category subquotas are 56.6 mt and 22.6 mt, respectively (78 FR 36685; June 19, 2013). NMFS is required under the Atlantic Tunas Convention Act and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

Adjustment of General Category 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 of zero to a maximum of five per vessel based on consideration of the relevant 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; 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 BFT distribution, abundance, or migration patterns; 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 review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

NMFS has considered these criteria and their applicability to the General category BFT retention limit for the remainder of October-November, and December 2013 General category fishery. These considerations include, but are not limited to, the following:

NMFS continues to obtain valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status from the catches of the General category to date; the projected ability of the vessels fishing under the General category quota to harvest the quota before the end of the fishing year; and biological samples collected from BFT landed by General category fishermen and provided by BFT dealers. As this action would be taken consistent with the quotas previously established and analyzed in the 2013 BFT quotas final rule (78 FR 36685, June 19, 2013), and consistent with objectives of the Consolidated HMS FMP, it is not expected to negatively impact stock health. A principal consideration is the objective of providing opportunities to harvest the full General category quota without exceeding it based upon the Consolidated HMS FMP goal: “Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems.”

NMFS’ preliminary estimate of landings for the General category, as of November 26, 2013, was 210.9 mt, out of a total General category quota of 435.1 mt. Based on General category landings rates during the October through December time-period over the last several years, it is highly unlikely that the quota will be filled under the current daily retention limit of three BFT per vessel. Therefore, maintenance of the current limit of three fish would increase the likelihood of under harvesting the General category quota. Increasing the daily retention limit from three to five will increase the likelihood that the General category catch of BFT will

approach, but not exceed, the annual quota, as well as maximize the opportunity for catching BFT harvest during the October – November and December subquota periods. Maximizing opportunity within each subquota period is also important because of the migratory nature and seasonal distribution of BFT. In a particular geographic region, or waters accessible from a particular port, the amount of fishing opportunity for BFT may be constrained by the short amount of time the BFT are present.

Based on these considerations, NMFS has determined that a five-fish General category retention limit is warranted. It would provide a reasonable opportunity to harvest the U.S. 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. Therefore, NMFS increases the General category retention limit from the current limit of three large medium or giant BFT per vessel per day/trip, to five large medium or giant BFT per vessel per day/trip. This retention limit will be in effect through December 31, 2013, unless the unlikely circumstance arises that additional inseason action is required to prevent catch from exceeding the quota.

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

Monitoring and Reporting

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 retention limit adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures 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, 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. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as NMFS needs to wait until it has necessary data and information about the fishery before it can select the appropriate retention limit for a time period prescribed by regulation. By the time NMFS has the needed data, implementing the retention limit following a public comment period would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria. Analysis of available data shows that the General

category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the current retention limit of three BFT per day/trip and may perpetuate under harvest of the General category quota, or disadvantage a particular geographic region. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment of the retention limit needs to be effective as soon as possible, to allow the impacted sectors to benefit from the adjustment, and to not preclude fishing opportunities for fishermen who have access to the fishery only during this time period (due to the seasonality of BFT distribution). 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 these 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 § 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: November 27, 2013.

Emily H. Menashes,
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National Marine Fisheries Service.

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