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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120328229-4949-02]

RIN 0648-XE007

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.

SUMMARY: NMFS is transferring 34 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the Longline category for the remainder of the 2015 fishing year. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments, and applies to eligible Atlantic Tunas Longline category (commercial) permitted vessels. As a result of this transfer, current vessel accounts with IBQ will be distributed 0.25 mt of Individual Bluefin Quota (IBQ) allocation each.

DATES: Effective *[insert date of filing for public inspection with the Office of the Federal Register]* through December 31, 2015.

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), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014), and in accordance with implementing regulations.

The currently codified baseline U.S. quota is 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). Among other things, Amendment 7 revised the allocations to all quota categories, implemented an IBQ system, and added additional regulatory determination criteria for inseason (or annual) adjustments to BFT quota (see § 635.27(a)(8), effective January 1, 2015).

The 2015 BFT fishing year, which is managed on a calendar-year basis and subject to an annual quota, began January 1, 2015. The Longline category was provided 137.3 mt of BFT quota, which was distributed among vessel accounts, (i.e. those which met the initial eligibility criteria implemented by Amendment 7). The Longline category season continues through December 31, 2015. On February 10, 2015, NMFS reallocated quota from the Purse Seine category to the Reserve category based on the amount of 2014 catch of BFT by Purse Seine vessels (80 FR 7547; February 11, 2015). Currently, the Reserve category quota is 108.8 mt.

Under § 635.15(b)(5)(ii), as implemented through Amendment 7, additional IBQ may be allocated to vessels with BFT quota share after the initial annual allocations if the U.S. baseline

quota increases as a result of an ICCAT recommendation or as a result of a transfer of quota from the Reserve category to the Longline category, pursuant to criteria for quota adjustments. NMFS has considered those criteria in relation to the 2015 and 2016 Longline category fishery and have determined that a quota transfer is warranted, as explained below. Consistent with the criteria for quota adjustments, this action is intended to increase the amount of quota available to pelagic longline permitted vessels with IBQ, and therefore help vessel owners account for BFT landings and dead discards while fostering conditions in which permit holders become more willing to lease IBQ. The revised Longline category quota would support the broader objectives of Amendment 7, which include reducing BFT interactions and dead discards while maintaining an economically viable swordfish and yellowfin directed fishery.

Under Amendment 7, a vessel must have IBQ to account for its BFT landings and dead discards. If a vessel has insufficient IBQ to account for such landings and dead discards, it goes into “quota debt.” Starting in 2016, a permitted vessel will not be allowed to fish in the Longline category if it has outstanding quota debt. In 2015 only, however, the vessel may continue to fish but will accrue quota debt that must be accounted for at the end of the year. If by the end of 2015, a permitted vessel does not have adequate IBQ allocation to settle its debt, the allocation will be reduced in the subsequent year or years until the quota debt is fully resolved.

Approximately one-fifth of active pelagic longline vessels currently have outstanding quota debt, and quota leasing among fishery participants has been limited. NMFS suspects the reason for the limited quota leasing is because the leasing program is so new, and shareholders may be unwilling to lease quota to other shareholders because they do not know if they will have sufficient quota to account for any BFT they may catch. Thus, leasing may be perceived as relatively risky from a business perspective.

As of July 8, 2015, ten vessels are in quota debt, ranging from 108 lb (0.05 mt) to 2,912 lb (1.3 mt), with an average of 1,405 lb (0.64 mt) debt (and a total of 14,045 lb (6.4 mt)). Based on preliminary information, the ten vessels represent 22 percent of the active vessels (monthly average of 45 active vessels in 2015 to date). As of July 8, 2015, there were a total of 18 allocation leases (16 involving Longline category participants and two between Purse Seine category participants), however only four of those leases involved participants with quota debt. Some vessel owners have stated that they have been unable to lease quota from other IBQ shareholders, because of lack of willingness of those owners, and these small businesses face uncertainty in their operations because they do not know if they will have sufficient quota to account for BFT they may catch. Because the leasing program is so new, IBQ shareholders may be reluctant to lease quota to other vessels because they do not know if they will have sufficient quota to account for any bluefin tuna they may catch.

Any adjustments to quotas must be 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; 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; review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds; optimizing fishing opportunity; accounting for dead discards, facilitating quota monitoring, supporting other fishing monitoring programs through quota allocations and/or generation of revenue; and support of research through quota allocations and/or generation of revenue.

Regarding the determination criteria about accounting for dead discards and variations in seasonal distribution or abundance, a quota transfer from the Reserve category to the Longline category would contribute toward full accounting of BFT catch by vessels that have quota debt (i.e., reduce quota debt), enhance the likelihood that shareholders will make the decision to lease IBQ to others, and reduce the uncertainty in the fishery as a whole.

With respect to the effects of the adjustment on rebuilding and overfishing and accomplishing the objectives of the fishery management plan, the fishery is a quota-managed fishery, a measure which supports objectives related to rebuilding and overfishing. The transfer of 34 mt of BFT quota from the Reserve category to the Longline category will result in an adjusted Longline quota of 171.3 mt, which remains within the ICCAT quota and is less than the historical average of landings and dead discards in the fishery (239 mt). The revised Longline category quota would support the broader objectives of Amendment 7, which include reducing BFT interactions and dead discards while maintaining an economically viable swordfish and yellowfin tuna directed fishery. As a result of this quota transfer, 0.25 mt (551 lb) of IBQ will be distributed to each of the 136 permit holders with IBQ shares, provided the permit is associated with a vessel. For those permits that qualified for IBQ shares and are not associated with a vessel at the time of the quota transfer, the IBQ will not be usable by the permit holder (i.e., may not be leased or used to account for BFT) unless and until the eligible permit is associated with a

vessel. Eligible permits will be allocated either Gulf of Mexico (GOM) IBQ, Atlantic (ATL) IBQ, or both GOM and ATL IBQ, according to the eligible permit initial share's regional designations (and totaling 0.25 mt).

Regarding the determination criteria "optimizing fishing opportunity," the ability of pelagic longline vessel owners to account for BFT with allocated quota or lease IBQ at an affordable price is key to the success of the IBQ program. An inseason transfer of quota to the Longline category would facilitate accomplishing the objectives of the 2006 Consolidated HMS FMP by optimizing fishing opportunity, contributing to full accounting for landings and dead discards, and reducing uncertainty in the fishery as a whole. Where fishing opportunity for target species is constrained by BFT quota debt or a low IBQ balance, the additional quota will help reduce this effect. It will also reduce vessel owner uncertainty about whether a vessel owner will have sufficient quota to account for BFT they may catch in the future. Without this inseason quota transfer, it is more likely that permit holders will have difficulty leasing quota to account for BFT catch or reduce quota debt, permit holders may have a reduced ability to make business plans for the future, and a higher number of permitted vessels may be prohibited from fishing during 2016 as a result of quota debt accrued during 2015.

This action is consistent with the rebuilding goals of the 2006 Consolidated HMS FMP because NMFS does not anticipate that the overall U.S. BFT quota will be exceeded. Based on the considerations above, NMFS is transferring 34 mt of Reserve category quota to the Longline category. As a result of this quota transfer, the Reserve category quota will be reduced from 108.8 mt to 74.8 mt, and the Longline category quota will be increased from 137.3 to 171.3 mt. This inseason quota transfer does not preclude future inseason quota transfers to any of the quota

categories. This action is supported by the Amendment 7 Final Environmental Impact Statement and final rule, which analyzed and anticipated such an action.

NMFS will continue to monitor the BFT fisheries, including the pelagic longline fishery, closely through the mandatory landings and catch reports. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Pelagic longline vessels are required to report BFT catch through Vessel Monitoring System, as well as through the online IBQ system.

Longline category permit holders are reminded that all BFT discarded dead must be reported through the Vessel Monitoring System, and accounted for in the on-line IBQ system, consistent with requirements at § 635.15(a).

Subsequent inseason actions, 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 hmspermits.noaa.gov, for updates on quota monitoring and inseason 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 2006 Consolidated HMS FMP, as amended, provide for inseason adjustments to quota and other aspects of BFT fishery management, to respond to the diverse range of factors which may affect BFT fisheries, including ecological (e.g., rebuilding, or the migratory nature of HMS) and commercial (e.g., optimizing fishing opportunity, or reducing bycatch). Specifically, Amendment 7 stated that NMFS may need to

consider providing additional quota to the Longline category as a whole in order to increase the amount of quota available to eligible permitted vessels via the IBQ program, and balance the need to have an operational directed pelagic longline fishery with the need to reduce BFT bycatch.

Based on available BFT quota in the Reserve category, the amount of quota debt in the pelagic longline fishery, and the catch of BFT by pelagic longline vessels during 2015 to date, among other considerations, adjustment to the Reserve and Longline category BFT quotas is warranted. Analysis of available data shows that adjustment to the Longline category quota from the initial level would result in minimal risks of exceeding the ICCAT-allocated quota. The regulations implementing the 2006 Consolidated HMS FMP, as amended, provide the flexibility to provide additional quota to the Longline category in order to optimize fishing opportunity, account for dead discards, and accomplish the objectives of the fishery management plan. NMFS provides notification of quota 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 hmspermits.noaa.gov.

Delays in adjusting the Reserve and Longline category quotas would adversely affect those Longline category vessels that would otherwise have an opportunity to reduce or resolve quota debt, lease quota to other vessels, as well as delay potential beneficial effects on the ability for vessel operators to make business plans for their future. Due to the migratory nature of the target species, delaying inseason action may preclude fishing opportunities for some vessel operators. NMFS is trying to balance providing opportunity to the pelagic longline fishery, with the reduction of BFT bycatch, and delaying this action would be contrary to the public interest.

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 §§ 635.15(b)(5)(ii), 635.15(f), 635.27(a)(8) and (9), and is exempt from review under Executive Order 12866.

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

Dated: July 24, 2015

Emily H. Menashes

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National Marine Fisheries Service.

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