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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket Nos. 120328229-4949-02 and 150121066-5717-02]**

**RIN 0648-XE346**

**Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries**

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

**ACTION:** Temporary rule; annual adjustment of Atlantic bluefin tuna Purse Seine and Reserve category quotas; inseason quota transfer from the Reserve category to the Longline category.

**SUMMARY:** NMFS is adjusting the Atlantic bluefin tuna (BFT) Purse Seine and Reserve category quotas for 2016, based on regulations implementing Amendment 7 to the 2006 Consolidated Highly Migratory Species Fishery Management Plan. NMFS also is transferring inseason 34 metric tons (mt) of BFT quota from the Reserve category to the Longline category. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments. The transfer to the Longline category is applied to eligible Atlantic Tunas Longline category permitted vessels with Individual Bluefin Quota (IBQ) shares, and as a result of this transfer, current IBQ vessel accounts will be distributed 0.25 mt of IBQ allocation each.

**DATES:** Effective January 1, 2016, through December 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, 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). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

#### **Annual Adjustment of the BFT Purse Seine and Reserve Category Quotas**

In 2015, NMFS implemented a final rule that increased the U.S. BFT quota and subquotas per ICCAT Recommendation 14-05 (80 FR 52198, August 28, 2015). As a result, based on the currently codified U.S. quota of 1,058.79 mt (not including the 25 mt allocated by ICCAT to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area), the baseline Purse Seine, Longline, and Reserve category quotas are codified as 184.3 mt, 148.3 mt, and 24.8 mt, respectively. See § 635.27(a).

Pursuant to § 635.27(a)(4), NMFS has determined the amount of quota available to individual Atlantic Tunas Purse Seine category participants in 2016, based on their BFT catch (landings and dead discards) in 2015 . Specifically, NMFS is making available to each Purse

Seine category participant 100 percent, 75 percent, 50 percent, or 25 percent of the individual baseline quota allocations based on 2015 catch, as described in § 635.27(a)(4)(ii), and is reallocating the remainder to the Reserve category for 2016. NMFS has calculated the amounts of quota available to individual Purse Seine fishery participants based on their individual catch levels in 2015 and the codified process adopted in Amendment 7. Total Purse Seine category BFT catches were 38.8 mt (33.9 mt of landings and 4.9 mt of dead discards) in 2015. Consistent with § 635.27(a)(4)(v)(C), NMFS will notify Atlantic Tunas Purse Seine fishery participants of the amount of quota available for their use this year through the Individual Bluefin Quota electronic system established under § 635.15 and in writing.

Based on the procedures described above and by summing the individual available allocations, NMFS has determined the 2016 Purse Seine category quota available to Purse Seine fishery participants is 82.9 mt. Thus, the amount of Purse Seine category quota to be reallocated to the Reserve category is 101.4 mt. This reallocation would result in a 2016 Reserve category quota of 126.2 mt (24.8 mt + 101.4 mt). However, NMFS also is taking action, as described in the Quota Transfer section below, to transfer 34 mt from the Reserve category to the Longline category such that the 2016 Reserve category quota as adjusted by this action as a whole would be 92.2 mt. Consistent with the quota regulations, NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota pursuant to regulatory determination criteria described at 50 CFR 635.27(a)(8), in addition to using the Reserve category quota for scientific research collection of BFT.

NMFS anticipates that it will announce additional BFT quota adjustments during 2016. For example, when complete 2015 BFT catch information is available and finalized, NMFS may

augment the Reserve further by carrying forward underharvest, if any, from 2015, consistent with ICCAT limits. Subsequent notices will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access *hmspermits.noaa.gov*, for updates.

### **Quota Transfer**

Under § 635.15(b)(5)(ii), as implemented through Amendment 7, additional IBQ may be allocated to eligible vessels with IBQ shares, 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.

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering determination criteria provided under § 635.27(a)(8), which are: 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.

NMFS has considered the determination criteria regarding inseason adjustments and their applicability to the Longline category fishery and have determined that a quota transfer is warranted, as explained below. Consistent with the criteria for quota adjustments, this transfer 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. As described below, the amount of quota available to individual pelagic longline vessels will be particularly important beginning in 2016. 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.

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 Longline category permitted vessel will not be allowed to fish with pelagic longline gear if it has outstanding quota debt or does not have the minimum amount of quota to fish (i.e., 0.125 mt (276 lb) to depart on a fishing trip in the Atlantic and 0.25 mt (551 lb) to depart on a fishing trip in the Gulf of Mexico. Furthermore, vessels that had a quota debt remaining at the end of 2015 will be responsible for accounting for that quota debt using 2016 IBQ allocation before they may fish in 2016.

Approximately one-fifth of active pelagic longline vessels had outstanding quota debt late in 2015, and quota leasing among fishery participants was limited. NMFS believes the reason for the limited quota leasing was due to the leasing program being so new, and shareholders may have been unwilling to lease quota to other shareholders because they did not know if they would have sufficient quota to account for any BFT they may catch.

With respect to the effects of the adjustment on BFT rebuilding and overfishing and accomplishing the objectives of the fishery management plan, this action would be taken consistent with the previously implemented and analyzed quotas, and it is not expected to negatively impact stock health or otherwise affect the stock in ways not previously analyzed. The transfer of 34 mt of BFT quota from the Reserve category to the Longline category will result in an adjusted Longline quota of 182.3 mt, which remains within the ICCAT quota and is less than the historical average of landings and dead discards in the fishery (239 mt). This action is consistent with the rebuilding goals of the 2006 Consolidated HMS FMP as amended because NMFS does not anticipate that the overall U.S. BFT quota will be exceeded.

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. Additional quota should reduce situations where fishing opportunity for target species is constrained by BFT quota debt or a low IBQ balance. 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.

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. A quota transfer effective in early January 2016 helps to address the diversity of the fishery with respect to the timing of fishing activities in different geographic areas. A quota transfer later in the year may disadvantage those fishing early in the year.

Based on the considerations above, NMFS is transferring 34 mt of Reserve category quota, which is adjusted through the annual reallocation from the Purse Seine category to the Reserve category described above, to the Longline category. As a result of this quota transfer, the adjusted 2016 Reserve category quota is 92.2 mt, and the adjusted 2016 Longline category quota is 182.3 mt. This inseason quota transfer does not preclude future inseason quota transfers to any of the quota categories. As a result of this quota transfer, 0.25 mt (551 lb) of IBQ is being 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). This action is supported by the Amendment 7 Final Environmental Impact Statement and final rule, which analyzed and anticipated such an action.

### **Monitoring and Reporting**

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).

If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (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, the transfer from the Reserve category to the Longline category for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP, as amended, provide

for inseason adjustments to quotas 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.

NMFS has determined that adjustments to the Reserve and Longline category BFT quotas are 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. A quota transfer effective in early January 2016 helps to address the diversity of the fishery with respect to the timing of fishing activities in different geographic areas. A quota transfer later in the year may disadvantage those fishing early in the year.

Affording prior notice and opportunity for public comment to implement the quota transfer is impracticable, as NMFS needed to consider and respond to updated data and information from the 2015 fishery in deciding to transfer 34 mt of quota from the Reserve category to the Longline category. If NMFS were to offer a public comment period now, after having appropriately considered that data, it may unnecessarily preclude fishing opportunities for

some vessel operators, particularly those that fish early in the fishing season.

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. 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 635.27(a)(4) and (a)(7), and is exempt from review under Executive Order 12866.

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

Dated: December 18, 2015.

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