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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 150121066-5717-02]**

**RIN 0648-XE930**

**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 bluefin tuna quota transfer and retention limit adjustment.

**SUMMARY:** NMFS is transferring 125 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category for the remainder of the 2016 fishing year.

This transfer results in an adjusted 2016 General category quota of 591.7 mt. NMFS also is adjusting the Atlantic tunas General category BFT daily retention limit from five large medium or giant BFT per vessel per day/trip to four large medium or giant BFT per vessel per day/trip for the remainder of the 2016 fishing year. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments and 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:** The quota transfer is effective [*insert date of filing for public inspection with the Office of the Federal Register*] through December 31, 2016. The General category retention

limit adjustment is effective [*insert date 3 calendar days after the date of filing for public inspection with the Office of the Federal Register*] through December 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin 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.

The base quota for the General category is 466.7 mt. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a portion of the annual General category quota.

Although it is called the “January” subquota, the regulations allow the General category fishery under this quota to continue until the subquota is reached or March 31, whichever comes first.

Based on the General category base quota of 466.7 mt, the subquotas for each time period are as

follows: 24.7 mt for January; 233.3 mt for June through August; 123.7 mt for September; 60.7 mt for October through November; and 24.3 mt for December. Any unused General category quota rolls forward within the fishing year, which coincides with the calendar year, from one time period to the next, and is available for use in subsequent time periods. On December 14, 2015, NMFS published an inseason action transferring 24.3 mt of BFT quota from the December 2015 subquota to the January 2016 subquota period (80 FR 77264). To date this year, NMFS has published two actions that have adjusted and/or distributed available 2016 Reserve category quota to other quota categories (81 FR 19, January 4, 2016; and 81 FR 60286, September 1, 2016). The Reserve category balance currently is 200.58 mt.

The 2016 General category fishery was open January 1, 2016, through March 31, 2016, reopened June 1, 2016, and remains open until December 31, 2016, or until the General category quota is reached, whichever comes first.

### **Quota Transfer**

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering 14 determination criteria provided under § 635.27(a)(8), including five new criteria added in Amendment 7.

NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer and change in retention limit in the General category fishery. The criteria and their application are discussed below.

### **Transfer of 125 mt from the Reserve Category to the General Category**

For the inseason quota transfer, NMFS considered the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of

the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by tuna dealers provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General Category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii)). As of October 5, 2016, the General category has landed all 466.7 mt of its 2016 quota. Without a quota transfer, NMFS would have to close the 2016 General category fishery for the remainder of the year. Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered catches during the winter fishery in the last several years. General category landings in the winter BFT fishery, which typically begins in December or January each year, are highly variable and depend on availability of commercial-sized BFT. Commercial-sized BFT have continued to be available to General category vessels currently, and NMFS believes that the General category vessels will be able to harvest the additional amount (125 mt) of quota before the end of the fishing year.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2016 landings and dead discards. Overall, approximately 56 percent of the total of the currently available commercial BFT subquotas for 2016 has been harvested. NMFS will need to account for 2016 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT

recommendations and anticipates having sufficient quota to do that even with this transfer from the Reserve category. This quota transfer 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.

Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and Amendment 7, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (§ 635.27(a)(8)(vi)). This transfer is consistent with the quotas established and analyzed in the most recent BFT quota final rule (80 FR 52198, August 28, 2015) and with objectives of the 2006 Consolidated HMS FMP and amendments, and is not expected to negatively impact stock health or to affect the stock in ways not already analyzed in those documents (§ 635.27(a)(8)(v) and (x)).

Based on the considerations above, NMFS is transferring 125 mt of Reserve category quota to the General category for the remainder of 2016, resulting in adjusted General and Reserve category quotas for 2016 of 591.7 mt and 75.6 mt, respectively. NMFS will close the 2016 General category fishery when the adjusted General category quota of 591.7 mt has been reached, unless future adjustments are warranted (as described in the *Monitoring and Reporting* section below), or it will close automatically on December 31, 2016.

#### **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), and listed above. NMFS adjusted the daily retention limit for the 2016 January subquota period (which closed March 31) from the default level of one large medium or giant BFT to three large medium or giant BFT in December 2016 (80 FR 77264, December 14, 2015). NMFS adjusted the daily retention limit to five large medium or giant BFT for the June through August 2016 subquota period (81 FR 29501, May 12, 2016), and again for the September, October through November, and December periods (81 FR 59153, August 29, 2016). NMFS has considered the relevant criteria and their applicability to the General category BFT retention limit for the remainder of the fishing year.

As described above with regard to the quota transfer, additional opportunity to land BFT would support the continued collection of a broad range of data for the biological studies and for stock monitoring purposes (§ 635.27(a)(8)(i)). Regarding the effects of the adjustment on BFT stock rebuilding and the effects of the adjustment on accomplishing the objectives of the fishery management plan (§ 635.27(a)(8)(v) and (x)), 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. It is also supported by the Environmental Analysis for the 2011 final rule regarding General and Harpoon category management measures, which established the current range over which we may set the General category daily retention limit (i.e., from zero to five fish) (76 FR 74003, November 30, 2011).

As described above, a principal consideration is the objective of providing opportunities to harvest the available U.S. BFT quota without exceeding that quota, based on the goals of the 2006 Consolidated HMS FMP and Amendment 7. The retention limit currently is five fish. We are setting the retention limit at four through this action because, given the expected level of

fishing effort and catch rates, a continued level of five fish may lead to exceeding the adjusted category quota, and less than four would likely result in underharvest.

Based on these considerations, NMFS has determined that a four-fish General category retention limit is warranted for the remainder of the year. 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, help optimize the ability of the General category to harvest its available quota, allow collection of a broad range of data for stock monitoring purposes, and be consistent with the objectives of the 2006 Consolidated HMS FMP and amendments. Therefore, NMFS adjusts the General category retention limit from five to four large medium or giant BFT per vessel per day/trip, effective *[insert date 3 calendar days after date of filing for public inspection with the Office of the Federal Register]* through December 31, 2016.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example (and specific to the limit that will apply through the end of the year), whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the day/trip limit of four fish applies and may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT, 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. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. General, HMS Charter/Headboat,

Harpoon, and Angling 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*. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action (i.e., quota and/or daily retention limit adjustment, or closure) is necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. 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, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments 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 an opportunity for public comment to implement the quota transfer and daily retention limit for the remainder of the year is impracticable as NMFS must react as quickly as possible to updated data and information that then requires immediate action to be effective on the fishing grounds and thus efficiently manage the fishery. NMFS could not effectively react to this data if, in implementing the retention limit, it allowed a public comment period, which, for both the quota transfers, would preclude

fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria.

Delays in adjusting the retention limit may result in the available quota being exceeded and NMFS needing to close the fishery earlier than otherwise would be necessary under a lower limit. This could adversely affect those General and HMS Charter/Headboat category vessels that would otherwise have an opportunity to harvest BFT under retention limits set in response to the most recent data available. 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 2006 Consolidated HMS FMP, as amended. Adjustment of the retention limit needs to be effective as soon as possible to extend fishing opportunities for fishermen in geographic areas with access to the fishery only during this time period. 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 635.27(a)(9), and is exempt from review under Executive Order 12866.

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

Dated: October 6, 2016.

Emily H. Menashes,  
Acting Director,  
Office of Sustainable Fisheries,

National Marine Fisheries Service.

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