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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150121066-5717-02]

RIN 0648-XF067

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 16.3 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the 24.3-mt General category December 2017 subquota to the January 2017 subquota period (from January 1 through March 31, 2017, or until the available subquota for this period is reached, whichever comes first). NMFS also is adjusting the Atlantic tunas General category BFT daily retention limit for the January 2017 subquota period to three large medium or giant BFT from the default retention limit of one. 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 January 1, 2017, through March 31, 2017. The General category retention limit adjustment is effective January 1, 2017, through March 31, 2017.

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) and as implemented by the United States 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.

Quota Transfer

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

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 16.3 mt from the December Subquota to the January Subquota

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.

NMFS also considered the catches of the General category quota to date (including during the winter fishery in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii)). Without a quota transfer from December 2017 to January 2017 for the General category at this time, the quota available for the January period would be 24.7 mt (5.3 percent of the General category quota), and participants would have to stop BFT fishing activities once that amount is met, while commercial-sized BFT may remain available in the areas where General category permitted vessels operate.

Transferring 16.3 mt of the 24.3-mt quota available for December 2017 (with 24.3 mt representing 5.2 percent of the General category quota) would result in 41 mt (8.8 percent of the General category quota) being available for the January subquota period. 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 at both the beginning and end of the calendar 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 General category landings in the last several years. General category landings in the winter BFT fishery tend to straddle the calendar year as BFT may be available in late November/ December and into January of the following year or later. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. Any unused General category quota from the January subperiod that remains as of March 31 will roll forward to the next subperiod within the calendar year (*i.e.*, the June-August time period). In 2016, NMFS transferred the entire 24.3-mt December subquota to the January time period, for an adjusted January 2016 subquota of 49 mt. Under a three-fish General category daily retention limit, that adjusted subquota allowed the fishery to continue through the end of March.

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 2017 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of

underharvest allowed by ICCAT from one year to the next. In 2016, the General category exceeded its adjusted quota (discussed below) but sufficient quota was available to cover the exceedance without affecting the other categories. NMFS will need to account for 2017 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that.

This transfer would be consistent with the current quotas, which were established and analyzed in the 2015 BFT quota final rule (80 FR 52198, August 28, 2015), and with objectives of the 2006 Consolidated HMS FMP and amendments. (§ 635.27(a)(8)(v) and (vi)). 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 (related to § 635.27(a)(8)(x)).

NMFS also anticipates that some underharvest of the 2016 adjusted U.S. BFT quota will be carried forward to 2017 and placed in the Reserve category, in accordance with the regulations. This, in addition to the fact that any unused General category quota will roll forward to the next subperiod within the calendar year, along with NMFS' plan to actively manage the subquotas to avoid any exceedances, makes it likely that General category quota will remain available through the end of 2017 for December fishery participants, even with the quota transfer. NMFS also may choose to transfer unused quota from the Reserve or other categories, inseason, based on consideration of the determination criteria, as NMFS did for late 2016, (*i.e.*, transferred 125 mt from the Reserve category (81 FR 70369, October 12, 2016) and later

transferred another 85 mt (18 mt from the Harpoon category and 67 mt from the Reserve category) (81 FR 71639, October 18, 2016).

In 2016, NMFS closed the General category quota effective November 4 to prevent further overharvest of the adjusted General category quota. General category landings were relatively high in the fall of 2016, due to a combination of fish availability, favorable fishing conditions, and higher daily retention limits (described below). NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2017, through active inseason management such as retention limit adjustments and/or the timing of quota transfers, as practicable. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds, consider the expected increases in available 2017 quota later in the year, and provide a reasonable opportunity to harvest the full U.S. BFT quota.

Based on the considerations above, NMFS is transferring 16.3 mt of the 24.3-mt General category quota allocated for the December 2017 period to the January 2017 period, resulting in a subquota of 41 mt for the January 2017 period and a subquota of 8 mt for the December 2017 period. NMFS will close the General category fishery when the adjusted January period subquota of 41 mt has been reached, or it will close automatically on March 31, 2017, whichever comes first, and it will remain closed until the General category fishery reopens on June 1, 2017.

Adjustment of General Category Daily Retention Limit

Unless changed, the General category daily retention limit starting on January 1 would be the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip (§ 635.23(a)(2)). This default

retention limit would apply to General category permitted vessels and to HMS Charter/Headboat category permitted vessels when fishing commercially for BFT.

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. For the 2016 fishing year, NMFS adjusted the daily retention limit from the default level of one large medium or giant BFT to three large medium or giant BFT for the January 2016 subquota period (80 FR 77264, December 14, 2015); and five large medium or giant BFT for the June through August 2016 subquota period (81 FR 29501, May 12, 2016). Although NMFS initially adjusted the daily retention limit for the September, October through November, and December periods to five large medium or giant BFT (81 FR 59153, August 29, 2016), NMFS later decreased the limit to four fish effective October 9 (81 FR 70369, October 12, 2016) and to two fish effective October 17 (81 FR 71639, October 18, 2016). NMFS closed the 2016 General category quota effective November 4, 2016. NMFS has considered the relevant criteria and their applicability to the General category BFT retention limit for the January 2017 subquota period.

As described above with regard to the quota transfer, additional opportunity to land BFT would support the collection of a broad range of data for biological studies and for stock monitoring purposes. Regarding the effects of the adjustment on BFT rebuilding and overfishing and the effects of the adjustment on 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. It is also supported by the Environmental Assessment for the

2011 final rule regarding General and Harpoon category management measures, which increased the General category maximum daily retention limit from three to five fish (76 FR 74003, November 30, 2011).

Regarding 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, in 2012, 2013, and 2014, the available January subquota (23.1 mt) was reached on January 22, February 15, and March 21, respectively, under a limit of two large medium or giant BFT, and in each of these years, the General category did not reach its available quota by the end of the year. For 2015, the adjusted January subquota of 45.7 was not met under a daily retention limit of three large medium or giant BFT, whereas for 2016, the adjusted subquota of 49 mt was reached, and slightly exceeded, as of March 31 under a three-fish limit.

As noted above, commercial-sized BFT are typically available in January and may continue to be available through March. Considering this information and the transfer of 16.3 mt of the 24.3-mt December 2017 subquota to the January 2017 subquota period (for an adjusted total of 41 mt), the default one-fish limit likely would be overly restrictive. Increasing the daily retention limit from the default may mitigate rolling an excessive amount of unused quota from one time-period subquota to the next and thus help maintain an equitable distribution of fishing opportunities. Although NMFS has the authority to set the daily retention limit up to five fish, the rate of harvest of the January subquota could be accelerated under a high limit (and higher fish availability), and result in a relatively short fishing season or quota exceedance. A short fishing season may preclude or reduce fishing opportunities for some individuals or geographic areas because of the migratory nature and seasonal distribution of BFT.

Based on these considerations, NMFS has determined that a three-fish General category retention limit is warranted for the January 2017 subquota period. 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 increases the General category retention limit from the default limit (one) to three large medium or giant BFT per vessel per day/trip, effective January 1, 2017, through March 31, 2017, or until the 41-mt January subquota is harvested, whichever comes first.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, during the January 2017 subquota period, 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 three 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 opportunity for public comment to implement the quota transfer and daily retention limit for the January 2017 subquota period at this time is impracticable. NMFS could not have proposed these actions earlier, as it needed to consider and respond to updated data and information from the 2016 General category fishery, including during late 2016, in deciding to transfer the December 2017 quota to the January 2017 subquota period and selecting the appropriate retention limit for the January 2017 subquota period. If NMFS was to offer a public comment period now, after having appropriately considered that data, it would preclude fishermen from harvesting BFT that are legally available

consistent with all of the regulatory criteria, and/or could result in selection of a retention limit inappropriately high for the amount of quota available for the period.

Delays in increasing the daily retention limit would adversely affect those General and HMS Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. 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 January 1, 2017, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the impacted sectors to benefit from the adjustment, and to provide 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 also 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: December 14, 2016

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