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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150121066-5717-02]

RIN 0648-XF413

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 bluefin tuna (BFT) General category daily retention limit from the default limit of one large medium or giant BFT to four large medium or giant BFT for June 1 through August 31, 2017. 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: Effective June 1, 2017, through August 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) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and amendments, and in accordance with implementing regulations. 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 currently codified baseline U.S. quota is 1,058.9 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). See § 635.27(a). The currently codified General category quota is 466.7 mt. 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. The codified June through August subquota is 233.3 mt.

Adjustment of General Category Daily Retention Limit

Unless changed, the General category daily retention limit starting on June 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. 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 subquota period (80 FR 77264, December

14, 2015), which closed effective March 29, 2016 (the regulations allow the General category fishery under the “January” subquota to continue until the subquota is reached, or March 31, whichever comes first); five large medium or giant BFT for the June through August subquota period (81 FR 29501, May 12, 2016) as well as for September 1 through October 8, 2016 (81 FR 59153, August 29, 2016); four large medium or giant BFT for October 9 through October 16, 2016 (81 FR 70369, October 12, 2016); and two large medium or giant BFT for October 17 through December 31, 2016 (81 FR 71639, October 18, 2016). NMFS closed the 2016 General category fishery effective November 4, 2016 (81 FR 76874, November 4, 2016). NMFS adjusted the daily retention limit for the 2017 January subquota period from the default level of one large medium or giant BFT to three large medium or giant BFT in the same action as the 16.3-mt transfer from the December 2016 subquota period to the January 2016 subquota period (81 FR 91873, December 19, 2016), and closed the January 2017 fishery on March 29 (82 FR 16136, April 3, 2017).

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). NMFS has considered these criteria and their applicability to the General category BFT retention limit for June through August 2017. These considerations include, but are not limited to, the following:

Regarding 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 BFT dealers continue to provide NMFS with valuable data for ongoing scientific studies of BFT age and

growth, migration, and reproductive status. Additional opportunity to land BFT would support the 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 (including during the fall and 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)). Commercial-size BFT are anticipated to migrate to the fishing grounds off the northeast U.S. coast by early June. Based on General category landings rates during the June through August time period over the last several years, it is highly unlikely that the June through August subquota will be filled with the default daily retention limit of one BFT per vessel. During the June-August 2015 period, under a four-fish limit, landings were approximately 205 mt (88 percent of the 233.3-mt subquota). For the entire 2015 fishing year, 138 percent and 95 percent of the baseline and adjusted General category quota was filled, respectively. In the June-August 2016 period, under a five-fish limit, landings were approximately 298.5 mt (128 percent of the subquota). For the entire 2016 fishing year, 161 percent and 111 percent of the baseline and adjusted General category quota was filled, respectively. See below for description of quota transfers to the General category for 2016 and 2017.

NMFS also considered the effects of the adjustment on BFT rebuilding and overfishing and the effects of the adjustment on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). The adjusted retention limit would be consistent with the quotas established and analyzed in the 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. It is also

important that NMFS limit landings to the subquotas both to adhere to the FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (e.g., fish caught at each age) that was assumed in the projections of stock rebuilding.

Another principal consideration in setting the retention limit is the objective of providing opportunities to harvest the full General category quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, 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)). Adjustment of the retention limit is also supported by the Environmental Analysis 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.

Despite elevated General category limits, the vast majority of successful trips (i.e., General or Charter/Headboat trips on which at least one BFT is landed under General category quota) land only one or two BFT. For instance, the landings data for 2016 show that, under the five-fish limit that applied June 1 through October 8, the proportion of trips that landed one, two, three, or four bluefin tuna was as follows: 75 percent landed one; 15 percent landed two; 5 percent landed three; 3 percent landed four; and 2 percent landed five. In the last few years, NMFS has received some comment that a high daily retention limit (specifically five fish) is needed to optimize General category fishing opportunities and account for seasonal distributions by enabling vessels to make overnight trips to distant fishing grounds. NMFS also has received some comment that a lower limit is to increase the likelihood that opportunities will extend through the end of the calendar year, as well as for improved market conditions.

NMFS anticipates that some underharvest of the 2016 adjusted U.S. BFT quota will be carried forward to 2017 to the Reserve category, in accordance with the regulations, this summer (i.e., when complete BFT catch information for 2016 is available and finalized). This makes it likely that General category quota will remain available through the end of 2017 for December fishery participants, despite the transfer of 16.3 mt from the 24.3-mt General category December 2017 subquota period to the January 2017 period (81 FR 91873, December 19, 2016). 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. NMFS 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). Although NMFS closed the 2016 General category fishery effective November 4 to prevent further overharvest of the adjusted General category quota, 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 and amount of quota transfers (based on consideration of the determination criteria regarding inseason adjustments), as practicable.

A limit lower than four fish could result in unused quota being rolled forward to the subsequent subquota time period in the General category season. Increasing the daily retention limit from the default may prevent rolling an excessive amount of unused quota forward from one subquota time period to the next. Increasing the daily retention limit to four fish will increase the likelihood that the General category BFT landings will approach, but not exceed, the

annual quota, as well as increase the opportunity for catching BFT during the June through August subquota period. Increasing 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 four-fish General category retention limit is warranted for the June-August 2017 subquota period. It would provide a reasonable opportunity to harvest the full U.S. BFT quota (including the expected increase in available 2017 quota based on 2016 underharvest), without exceeding it, while maintaining an equitable distribution of fishing opportunities; help optimize the ability of the General category to harvest its full quota; allow the 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 four large medium or giant BFT per vessel per day/trip, effective June 1, 2017, through August 31, 2017.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example (and specific to the June through August 2017 limit), 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 four fish 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 targeting 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 and HMS Charter/Headboat 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* or by using the Android or iPhone app. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are 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. The timing of this rulemaking will allow approximately two weeks' prior notice to the regulated community. Affording additional prior notice and an opportunity for public comment on the change in the daily retention limit from the default level for the June through August 2017 subquota period would be impracticable. Based on available

BFT quotas, fishery performance in recent years, and the availability of BFT on the fishing grounds, responsive adjustment to the General category BFT daily retention limit from the default level is warranted to allow fishermen to take advantage of availability of fish and of quota. NMFS could not have proposed these actions earlier, as it needed to consider and respond to updated data and information about fishery conditions and this year's landings. 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 inappropriate to the amount of quota available for the period.

Fisheries under the General category daily retention limit will commence on June 1 and thus prior notice would be contrary to the public interest. 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 default retention limit of one BFT per day/trip and may result in low catch rates and quota rollovers. Analysis of available data shows that adjustment to the BFT daily retention limit from the default level would result in minimal risks of exceeding the ICCAT-allocated quota. NMFS provides notification of retention limit 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*. With quota available and fish available on the grounds, and with no measurable impacts to the stock, it would be contrary to the public interest to require vessels to wait to harvest the fish allowed through this action.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment.

Adjustment of the General category retention limit needs to be effective June 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 not preclude fishing opportunities for fishermen in geographic areas with access to the fishery only during this time period. Foregoing 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 and amendments. Therefore, the AA finds there is also 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: May 12, 2017.

Karen H. Abrams,
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National Marine Fisheries Service.

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