



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 170602535-7835-01]**

**RIN 0648-XF480**

**Atlantic Highly Migratory Species; Adjustments to 2017 Northern Albacore Tuna Quota, 2017 North and South Atlantic Swordfish Quotas, and 2017 Atlantic Bluefin Tuna Reserve Category Quota**

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

**ACTION:** Temporary final rule.

**SUMMARY:** NMFS adjusts the northern albacore tuna annual baseline quota for 2017 with available underharvest of the 2016 adjusted U.S. northern albacore quota. NMFS also adjusts the North and South Atlantic swordfish baseline quotas for 2017 based on available underharvest from the 2016 adjusted U.S. quotas and international quota transfers. NMFS also augments the 2017 Atlantic bluefin tuna Reserve category quota with available underharvest of the 2016 adjusted U.S. bluefin tuna quota. This action is necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas

Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective [*insert date of publication in the FEDERAL REGISTER*], through December 31, 2017.

**ADDRESSES:** Supporting documents such as Environmental Assessments and Fishery Management Plans and their Amendments described below may be downloaded from the HMS website at [www.nmfs.noaa.gov/sfa/hms/](http://www.nmfs.noaa.gov/sfa/hms/). These documents also are available upon request from Sarah McLaughlin, Steve Durkee, or Gray Redding at the telephone numbers below.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, 978-281-9260, Steve Durkee, 202-670-6637, or Gray Redding, 301-427-8503.

**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 northern albacore, swordfish, and bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27(e) describes the northern albacore annual quota recommended by ICCAT and the annual northern albacore quota adjustment process. Section 635.27(c) describes the quota adjustment process for both North and South Atlantic swordfish. Section 635.27(a) subdivides the ICCAT-recommended U.S. bluefin tuna quota 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), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014), and describes the annual bluefin tuna quota adjustment process. 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 quotas.

The northern albacore quota implementation and quota adjustment processes, along with the bluefin tuna quota adjustment process, were previously analyzed in Amendment 7, which published in August 2014 and included a Final Environmental Impact Statement, Final Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and Final Social Impact Statement. ICCAT conducted another bluefin tuna stock assessment update in 2014, and, after considering the scientific advice in the stock assessment, adopted a recommendation regarding western Atlantic bluefin tuna management that increases the U.S. bluefin tuna quota for 2015 and 2016 (ICCAT Recommendation 14-05). NMFS published a final rule to implement that baseline annual U.S. bluefin tuna quota on August 28, 2015 (80 FR 52198), and prepared an Environmental Assessment (EA), RIR, and FRFA for that action. ICCAT Recommendation 16-08 extended the U.S. bluefin tuna allocation established in Recommendation 14-05 through 2017.

The North Atlantic swordfish quota adjustment process was previously analyzed in the EA, RIR, and FRFA that were prepared for the 2012 Swordfish Quota Adjustment

Rule (July 31, 2012; 77 FR 45273). The South Atlantic swordfish quota adjustment process was previously analyzed in the EA, RIR, and FRFA that were prepared for the 2007 Swordfish Quota Specification Final Rule (October 5, 2007; 72 FR 56929). In the 2016 North and South Atlantic Swordfish Quotas Adjustment Final Rule (July 26, 2016, 81 FR 48719), after taking public comment on the issue, NMFS announced its intent to no longer issue proposed and final specifications/rules for North and South Atlantic swordfish quotas adjustments in cases where the quota adjustment follows previously codified and analyzed formulas. Therefore, beginning this year, NMFS is instead issuing a temporary final rule to adjust the quota, in a similar process to northern albacore and bluefin tuna quota adjustments. NMFS will continue to undertake notice and comment rulemaking when adopting new quotas, quota formulas, or otherwise altering conservation and management measures.

Note that weight information for northern albacore and bluefin tuna below is shown in metric tons (mt) whole weight (ww), and both dressed weight (dw) and ww is shown for swordfish.

### **Northern Albacore Annual Quota and Adjustment Process**

Since 1998, ICCAT has adopted recommendations regarding the northern albacore fishery. The current ICCAT northern albacore recommendation (Recommendation 16-06) includes a total allowable catch (TAC) at 28,000 metric tons (mt) for 2017 and specific recommendations regarding the northern albacore conservation and management. The U.S. baseline quota for 2017 is 527 mt, annually. The baseline

quota of 527 mt is codified at § 635.27(e) and will remain in effect until changed. For example, Recommendation 16-06 specifies that the quota for 2019 and 2020 will be 564.6 mt. It also specifies that if, in any year, the combined contracting parties' landings exceed the TAC, the Commission will re-evaluate the Recommendation and recommend further conservation measures, as appropriate.

Amendment 7 established the process by which NMFS adjusts the U.S. annual northern albacore quota for allowable underharvest, if any, in the previous year. NMFS makes such adjustments consistent with ICCAT limits and when complete catch information for the prior year is available and finalized. The maximum underharvest that a Contracting Party may carry forward from one year to the next is 25 percent of its initial catch quota, which equals 131.75 mt for the United States.

#### *Adjustment of the 2017 Northern Albacore Quota*

For 2016, the adjusted quota was 658.75 mt (527 mt plus 131.75 mt of 2015 underharvest carried forward to 2016). The total 2016 northern albacore catch was 249.60 mt, which is 409.15 mt less than the 2016 adjusted quota. Thus, the underharvest for 2016 is 409.15 mt, 131.75 mt of which may be carried forward to the 2017 fishing year. Thus, the adjusted 2017 northern albacore quota is 527 mt plus 131.75 mt, totaling 658.75 mt.

### **North and South Atlantic Swordfish Annual Quota and Adjustment Process**

#### *North Atlantic Swordfish*

At the 2016 ICCAT annual meeting, Recommendation 16-03 maintained the North Atlantic swordfish TAC of 10,301 mt dw (13,700 mt ww) through 2017. Of this TAC, the United States' baseline quota is 2,937.6 mt dw (3,907 mt ww) per year. ICCAT Recommendation 16-03 also includes an 18.8 mt dw (25 mt ww) annual quota transfer from the United States to Mauritania and limits underharvest carryover to 15 percent of a Contracting Party's baseline quota. Therefore, the United States may carry over a maximum of 440.6 mt dw (586.0 mt ww) of underharvest from 2016 to 2017. This final rule adjusts the U.S. baseline quota for the 2017 fishing year to account for the annual quota transfer to Mauritania and the 2016 underharvest.

The 2017 North Atlantic swordfish baseline quota is 2,937.6 mt dw (3,907 mt ww). The total 2016 North Atlantic swordfish catch and dead discards totaled 1,144.4 mt dw, which is 2,215 mt dw less than the 2016 adjusted quota of 3,359.4 mt dw. Thus, the North Atlantic swordfish underharvest for 2016 was 2,215 mt dw, and NMFS is carrying forward 440.6 mt dw, the maximum carryover allowed under Recommendation 16-03. The 2,937.6 mt dw baseline quota is reduced by the 18.8 mt dw annual quota transfer to Mauritania and increased by the underharvest carryover of 440.6 mt dw, resulting in a final adjusted North Atlantic swordfish quota for the 2017 fishing year of 3,359.4 mt dw ( $2,937.6 - 18.8 + 440.6 = 3,359.4$  mt dw). From that adjusted quota, 50 mt dw will be allocated to the reserve category for inseason adjustments and research, and 300 mt dw will be allocated to the incidental category, which includes recreational landings and landings by incidental swordfish permit holders, in accordance with regulations at 50

CFR 635.27(c)(1)(i). This would result in an allocation of 3,009.4 mt dw ( $3,359.4 - 50 - 300 = 3,009.4$  mt dw) for the directed category, which would be split equally between two seasons in 2017 (January through June, and July through December) (Table 1).

### *South Atlantic Swordfish*

In 2016, ICCAT Recommendation 16-04 maintained the South Atlantic swordfish TAC at 11,278.2 mt dw (15,000 mt ww) through 2017. Of this, the United States receives 75.2 mt dw (100 mt ww). Recommendation 16-04 limits the amount of South Atlantic swordfish underharvest that can be carried forward from one year to the next, and the United States may carry forward up to 100 percent of its baseline quota (75.2 mt dw). Recommendation 16-04 also included a total of 75.2 mt dw (100 mt ww) of quota transfers from the United States to other countries. These transfers were 37.6 mt dw (50 mt ww) to Namibia, 18.8 mt dw (25 mt ww) to Côte d'Ivoire, and 18.8 mt dw (25 mt ww) to Belize.

U.S. fishermen landed no South Atlantic swordfish in 2016. The adjusted 2016 South Atlantic swordfish quota was 75.1 mt dw due to nominal landings in previous years. Therefore, 75.1 mt dw of underharvest is available to carry over to 2017. NMFS is carrying forward 75.1 mt dw to be added to the 75.2 mt dw baseline quota. The quota is then reduced by the 75.2 mt dw of annual international quota transfers outlined above, resulting in an adjusted South Atlantic swordfish quota of 75.1 mt dw for the 2017 fishing year (Table 1).

**Table 1. 2017 North and South Atlantic Swordfish Quotas**

<b>North Atlantic Swordfish Quota (mt dw)</b>		<b>2016</b>	<b>2017</b>
Baseline Quota		2,937.6	2,937.6
International Quota Transfer		(-)18.8 (to Mauritania)	(-)18.8 (to Mauritania)
Total Underharvest from Previous Year		2,181.6	2,215.0
Underharvest Carryover from Previous Year <sup>+</sup>		(+) 440.6	(+) 440.6
Adjusted Quota		3,359.4	3,359.4
Quota Allocation	Directed Category	3,009.4	3,009.4
	Incidental Category	300	300
	Reserve Category	50	50
<b>South Atlantic Swordfish Quota (mt dw)</b>		<b>2016</b>	<b>2017</b>
Baseline Quota		75.2	75.2
International Quota Transfers*		(-)75.2	(-)75.2
Total Underharvest from Previous Year		75.1	75.1
Underharvest Carryover from Previous Year <sup>+</sup>		75.1	75.1
Adjusted quota		75.1	75.1

+ Allowable underharvest carryover is capped at 15 percent of the baseline quota allocation for the North Atlantic and 75.2 dw (100 mt ww) for the South Atlantic.

\* Under Recommendation 16-04, the United States transfers 75.2 mt dw (100 mt ww) annually to Namibia (37.6 mt dw, 50 mt ww), Côte d'Ivoire (18.8 mt dw, 25 mt ww), and Belize (18.8 mt dw, 25 mt ww).

### **Bluefin Tuna Annual Quota and Adjustment Process**

Pursuant to Amendment 7, NMFS augments the Reserve category quota to the extent that underharvest from the prior year's adjusted U.S. bluefin tuna quota is available. NMFS makes such adjustments consistent with ICCAT limits and when complete catch information for the prior year is available and finalized. Consistent with the bluefin tuna 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 § 635.27(a)(8), or for scientific research.

NMFS implemented ICCAT Recommendation 14-05 in the bluefin tuna quota final rule in August 2015 (80 FR 52198, August 28, 2015). That rulemaking implemented Recommendation 14-05, which included a western bluefin tuna TAC of 2,000 mt (for 2015 and 2016) and the recommended annual U.S. baseline quota of 1,058.79 mt. The total annual U.S. quota, including the 25 mt to account for bycatch related to pelagic longline fisheries in the Northeast Distant gear restricted area (NED) is 1,083.79 mt. Any underharvest of a CPC's total quota in a given year may be carried forward to the next year but is limited to 10 percent of the CPC's initial quota allocation (for the United States, its baseline quota plus 25 mt for the NED). ICCAT Recommendation 16-08 extended these provisions through 2017. The baseline annual U.S. bluefin tuna quota of 1,058.79 mt is codified at § 635.27(a) and will remain in effect until changed (for instance, if a new ICCAT western bluefin tuna TAC recommendation is adopted).

*Adjustment of the 2016 Bluefin Tuna Reserve Category Quota*

The total 2016 bluefin tuna catch was 1,025.10 mt. This total catch includes landings and dead discards. The total catch of 1,025.10 mt is 167.07 mt less than the 2016 adjusted quota of 1,083.79 mt. Per ICCAT Recommendation 16-08, only 10 percent of the total 2016 U.S. quota, or 108.38 mt, of that underharvest may be carried forward to the 2017 fishing year, resulting in a 2017 adjusted quota of 1,192.17 mt (baseline quota of 1,083.79 mt + underharvest carryover of 108.38 mt). The codified Reserve category quota is 24.8 mt. Consistent with the process established in

Amendment 7, NMFS augments the Reserve category quota with 108.38 mt in this action. Effective February 28, 2017, NMFS adjusted the Reserve category quota for 2017 to 118 mt by reallocating 138.2 mt of Purse Seine quota to the Reserve category (based on 2016 catch by Purse Seine category participants) and also transferring 45 mt of Reserve category quota to the Longline category (82 FR 12296, March 2, 2017).

Effective March 2, 2017, NMFS transferred 40 mt from the Reserve to the General category (82 FR 12747, March 7, 2017). Additionally, effective August 11, 2017, NMFS transferred an additional 30 mt from the Reserve to the Harpoon category (82 FR 38853, August 16, 2017). Thus, as of the effective date of this action (*insert date of publication in the FEDERAL REGISTER*), the adjusted 2017 Reserve category quota would be 156.38 mt ( $24.8 + 138.2 - 45 - 40 - 30 + 108.38$ ).

### **Classification**

The Assistant Administrator for NMFS (AA) has determined that this temporary final rule is consistent with the Magnuson-Stevens Act, the 2006 Consolidated Atlantic HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law.

Pursuant to section 553(b)(B) of the Administrative Procedure Act (5 USC 553(b)(B)), the AA finds that it would be unnecessary and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the reasons described below.

NMFS solicited and accepted public comment on the northern albacore quota implementation and quota adjustment processes, along with the bluefin tuna quota adjustment process, as part of the Amendment 7 rulemaking. Public comments on these provisions in response to the proposed Amendment 7 rule were generally supportive and were addressed in the Response to Comments section of the Amendment 7 final rule. (See comments 18, 19, and 105 at 79 FR 71530-71531 and 71553). Similarly, in the past, North and South Atlantic swordfish quota adjustments were performed through an annual notice and comment rulemaking process. In the 2016 North and South Atlantic Swordfish Quota Adjustment Rule (81 FR 48719, July 26, 2016), NMFS announced the intent to no longer issue proposed and final specifications/rules for North and South Atlantic swordfish quota adjustments in cases where the quota adjustment simply follows previously codified and analyzed formulas. Public comments on this process change were generally supportive. Beginning this year, NMFS will instead issue a temporary final rule to adjust the quota. NMFS will continue to undertake notice and comment rulemaking if adopting new quotas, quota formulas, or otherwise altering conservation and management measures for North and South Atlantic swordfish.

This action applies the formulas which the public received notice of in the earlier actions (Amendment 7 and the 2016 North and South Atlantic Swordfish Quota Adjustment Rule), using the best available data regarding 2016 catch and underharvest and calculating allowable underharvest consistent with ICCAT recommendations. The rulemakings for Amendment 7 and the 2016 North and South Atlantic Swordfish Quota

Adjustment Rule specifically provided prior notice of, and accepted public comment on, these formulaic quota adjustment processes and the manner in which they occur. The application of this formula in this action does not have discretionary aspects requiring additional agency consideration and thus it would be unnecessarily duplicative to accept public comment for this action.

There is good cause under U.S.C. 553(d)(3) to waive the 30-day delay in effective date and to make the rule effective upon publication in the *Federal Register*. The fisheries for northern albacore, North and South Atlantic swordfish, and bluefin tuna began on January 1, 2017. NMFS monitors northern albacore, North and South Atlantic swordfish, and bluefin tuna annual catch and measures the annual catch data against the applicable available quotas. Delaying the effective date of these quota adjustments would complicate the management of the northern albacore, North and South Atlantic swordfish, and bluefin tuna fisheries, all of which rely on management flexibility to respond quickly to fishery conditions to ensure that fishermen have a reasonable opportunity to catch the available quotas. For example, under the northern albacore fishery closure regulations, NMFS must close the fishery when the annual fishery quota is reached. Closure of the fishery based only on the baseline (codified) quota versus the adjusted northern albacore quota could preclude the fishery from harvesting northern albacore that are legally available consistent with the ICCAT recommendations and the 2006 Consolidated HMS FMP, as amended. Adjusting the North and South Atlantic swordfish quota allows the United States to comply with the ICCAT allowance to carry

over quota underharvest and the obligation of international quota transfers. Adjusting the bluefin tuna Reserve category as soon as possible provides NMFS the flexibility to transfer quota from the Reserve to other fishing categories inseason after considering the regulatory determination criteria, including fishery conditions at the time of the transfer. The amount of quota currently in the Reserve category is relatively low, and NMFS may need to transfer quota soon in order to reduce the likelihood of fishery closure during the September or subsequent subquota time periods. NMFS could not appropriately adjust the annual quotas for 2017 sooner because the data needed to make the determination did not become available until August, and additional time was needed for agency analysis and consideration of the data.

Additionally, to prevent confusion and potential overharvests, these adjustments should be in place as soon as possible in order to allow the impacted sectors to benefit from any subsequent quota adjustments to the fishing categories, give them a reasonable opportunity to catch available quota, and provide them the opportunity for planning operations accordingly.

This action is being taken under § 635.27(e) and § 635.27(a)(10), and is exempt from review under Executive Order 12866.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

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

Dated: September 13, 2017.

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Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

[FR Doc. 2017-19777 Filed: 9/15/2017 8:45 am; Publication Date: 9/18/2017]