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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

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

**RIN 0648-XF724**

**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.

**SUMMARY:** NMFS is transferring 156.4 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category for the remainder of the 2017 fishing year, to account for overharvests of the January, June through August, and September subquotas. This action is intended to preserve the opportunity for General category fishermen to participate in the October through November and December General category fisheries to the extent that transferrable quota is available and 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, 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, as established in the 2015 BFT quota final rule (80 FR 52198, August 28, 2015). See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a “subquota” or 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. 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 19, 2016, NMFS published an inseason action transferring 16.3 mt of BFT quota from the December 2017 subquota to the January 2017 subquota period, resulting in a subquota of 41 mt for the January 2017 period and a subquota of 8 mt for the December 2017 period (81 FR 91873). For 2017, NMFS also transferred 40 mt from the Reserve to the General category effective March 2, resulting in an adjusted General category quota of 506.7 mt (82 FR 12747, March 7, 2017). The 2017 General category fishery is open until December 31, 2017, or until the General category quota is reached, whichever comes first. Prior to this action, the adjusted Reserve category quota was 156.4 mt, and was most recently adjusted in the action to augment the 2017 BFT Reserve category quota with available underharvest of the 2016 adjusted U.S. BFT quota (82 FR 43500, September 18, 2017).

### **Quota Transfer**

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria at § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to the General category fishery. These considerations include, but are not limited to, the following:

NMFS considered the catches of the General category quota to date (including during the summer/fall and winter fisheries 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) and (ix)). Preliminary landings data as of September 22, 2017, indicate that the General category has landed 596 mt this year, which exceeds the overall General category quota of 506.7 mt. NMFS closed the General

category fishery when the September subquota (123.7 mt) was met, effective September 17, 2017 (82 FR 43711, September 19, 2017). Without a quota transfer at this time, the October through November and December General category subquotas would not be available to General category participants because the entire General category quota of 506.7 mt has been reached and exceeded. Approximately 81 percent (717.3 mt) of the total of the BFT subquotas for all commercial categories (888.7 mt, as published in the 2015 BFT quota final rule) has been harvested as of September 22, 2017, however, and NMFS anticipates that some amount of quota may remain unused by the end of the year even with the transfer. Absent a transfer at this time, this segment of the fishery would have to remain closed if no adjustment is made, even though NMFS anticipates that commercial-sized BFT will be readily available to vessels fishing under the General category quota when the General category fishery is scheduled to reopen on October 1, 2017. Transferring 156.4 mt of BFT quota from the Reserve category would allow this segment of the fishery to continue fishing and would result in a total of 663.1 mt being available to the General category for the 2017 General category fishing season.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. A portion of the transferred quota covers overharvests in the category as prosecuted to date, and thus has already been harvested. For the remainder of the transferred quota, which make the remaining subquotas whole to the extent that transferrable quota is available, there is a high probability that the

transferred quota will be harvested during the October through November and December time periods.

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 total 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. NMFS will need to account for 2017 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and NMFS anticipates having sufficient quota to do that.

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 over the longest time-period allowable would support the collection of a broad range of data for these studies and for stock monitoring purposes.

This transfer would be consistent with the current U.S. quota, which was established and analyzed in the 2015 BFT quota final rule, 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)).

Based on the considerations above, NMFS is transferring all of the available 156.4 mt from the Reserve category to the General category with the objective of making the remaining subquotas whole. Therefore, NMFS adjusts the General category quota to 663.1 mt for the 2017 General category fishing season (i.e., through December 31, 2017, or until the General category quota is reached, whichever comes first), and adjusts the Reserve category quota to 0 mt. If necessary, NMFS will close the General category fishery for October through November and for December when the available subquotas for those time periods are reached.

#### *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. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. General and HMS Charter/Headboat 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](http://hmspermits.noaa.gov) or by using the HMS Catch Reporting App. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action (e.g., quota adjustment or closure) is necessary to ensure available subquotas are 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](http://hmspermits.noaa.gov), for updates on quota monitoring and inseason adjustments.

NMFS reminds General category participants that when the fishery reopens October 1, 2017, the BFT General category daily retention limit will be one large medium or giant BFT (measuring 73” or greater) per vessel per day/trip.

### **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 for the remainder of 2017 is impracticable and contrary to the public interest as such a delay would result in continued closure of the General category fishery (because the available quota has been met) and the need to re-open the fishery later in the October through November time period, rather than the fishery automatically re-opening on October 1. The delay would preclude the fishery from harvesting BFT that are available on the fishing grounds and that might otherwise become unavailable during a delay. 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 § 635.27(a)(9) (Inseason adjustments) and is exempt from review under Executive Order 12866.

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

Dated: September 28, 2017.

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Emily Menashes,

Acting Director,

Office of Sustainable Fisheries,

National Marine Fisheries Service.

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