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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

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

**RIN 0648-XG534**

**Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries**

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

**ACTION:** Temporary rule; General category October-November fishery for 2018; inseason bluefin tuna quota transfer and closure.

**SUMMARY:** NMFS transfers 55 metric tons (mt) of Atlantic bluefin tuna (BFT) quota to the General category October through November 2018 subquota period (40 mt from the Harpoon category and 15 mt from the Reserve category) and closes the General category fishery for large medium and giant BFT until the General category reopens on December 1, 2018. The quota transfer is intended to provide additional fishing opportunities based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Atlantic Highly Migratory Species (HMS) Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT. Given that the adjusted quota is projected to be caught quickly, the closure is to prevent overharvest of the adjusted General category October through November 2018 BFT subquota.

**DATES:** The quota transfer is effective October 4, 2018, through November 30, 2018. The closure is effective 11:30 p.m., local time, October 5, 2018, through November 30, 2018.

**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.

NMFS is required, under regulations at § 635.28(a)(1), to file a closure notice for publication with the Office of the Federal Register when a BFT quota is reached or is projected to be reached. On and after the effective date and time of such notification, for the remainder of the fishing year or for a specified period as indicated in the notification, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

The current baseline General and Reserve category quotas are 466.7 mt and 24.8 mt, respectively. 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. To date for 2018, NMFS has published four actions that have adjusted the available 2018 Reserve category quota, leaving 18.5 mt currently available (83 FR 9232, March 5, 2018; 83 FR 17110, April 18, 2018; 83 FR 38664, August 7, 2018; and 83 FR 47843, September 21, 2018). In the Harpoon category, the base annual subquota was 38.6 mt but was adjusted to 68.6 mt with a transfer of 30 mt from the Reserve category in August 2018 (83 FR 38664, August 7, 2018). The category has had no landings since the August transfer.

Although NMFS has published a proposed rule (83 FR 31517, July 6, 2018) that would increase the baseline U.S. bluefin tuna quota from 1,058.79 mt to 1,247.86 mt and accordingly increase the subquotas for 2018 (including an expected increase in the General category October through November time period subquota from 60.7 mt to 72.2 mt, consistent with the annual bluefin tuna quota calculation process established in § 635.27(a)), the final rule (the “quota rule”)

has not yet filed for public inspection with the Office of the Federal Register and is not yet effective.

### **Transfer of 55 mt to the General category**

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. 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 bluefin tuna dealers continue to provide valuable data for ongoing scientific studies of bluefin tuna age and growth, migration, and reproductive status. Additional opportunity to land bluefin tuna 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) and (ix)). NMFS anticipates that the current October through November subquota of 60.7 mt (72.2 mt if the ICCAT quota rule is finalized as proposed) could be reached in a few days given the high daily landings rates during the end of the September fishery and that commercial-sized bluefin tuna remain available in the areas where General category permitted vessels operate at this time of year. Without a quota transfer, NMFS would have to close the General category

fishery for the remainder of the October through November subquota period even earlier, while unused quota remains in the Harpoon and Reserve categories. Given the lag time between initiation of an inseason action and its implementation, however, this notification also closes the fishery, as NMFS anticipates the transferred quota will be caught quickly. Transferring 55 mt of quota (40 mt from the Harpoon category and 15 mt from the Reserve category) would result in 115.7 mt being available for the October through November 2018 subquota period (127.2 mt if the ICCAT quota rule is finalized as proposed), thus effectively providing limited additional opportunities to harvest the U.S. bluefin tuna quota while avoiding exceeding it.

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 anticipates that all of the additional 55 mt of quota will be used by October 5, based on landings rates in the September 2018 fishery (as well as in the October through November fisheries in recent years), but this is also subject to weather conditions and bluefin tuna availability. In the unlikely event that any of this quota is unused by November 30, such quota will roll forward to the next subperiod within the calendar year (*i.e.*, the October through November period), and NMFS anticipates that it would be used 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 2018 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. There have been no landings in the

Harpoon category since July 31, 2018, and in 2017, only 2.8 mt were landed in the Harpoon category after August 31 until the Harpoon category season ended November 15. Transferring 40 mt at this time to the Reserve category, leaves 2.5 mt (9.9 mt if the quota rule is finalized as proposed) a reasonable amount of quota for the small amount of activity we anticipate continuing for the remainder of the Harpoon category season, based on historic Harpoon category landings.

NMFS will need to account for 2018 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 Harpoon and Reserve categories. Given the upcoming expected increases in available 2018 quota from the carryover of 2017 underharvest, the ICCAT quota rule increase, and the resulting recalculation of 2018 available Purse Seine category quota and transfer to the Reserve category, NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2018, including the December time period.

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)). Specific to the General category, this includes providing opportunity equitably across all time periods.

Based on the considerations above, NMFS is transferring 40 mt of Harpoon category quota and 15 mt of Reserve category quota to the General category for the October through November subquota period, resulting in a subquota of 115.7 mt for the General category October through November 2018 subquota period, 28.6 mt for the 2018 Harpoon category, and 3.5 mt for the Reserve category. (These amounts would be 127.2 mt for the General category October through November 2018 subquota period, 36 mt for the Harpoon category, and 142.9 mt for the Reserve category if the ICCAT quota rule is finalized as proposed.)

#### **Closure of the October through November 2018 General Category Fishery**

Based on landings rates in the September 2018 fishery and the October through November fisheries in recent years and anticipated fishing conditions, NMFS projects that the General category October through November subquota of 115.7 mt, as adjusted in this action, will be reached by October 5, 2018, and that the fishery should be closed to avoid exceedance of the adjusted quota. Through this action, NMFS is closing the General category bluefin tuna fishery effective 11:30 p.m., October 5, 2018, through November 30, 2018. Therefore, retaining, possessing, or landing large medium or giant BFT by persons aboard vessels permitted in the General and HMS Charter/Headboat categories must cease at 11:30 p.m. local time on October 5, 2018. This action applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. For information regarding the HMS Charter/Headboat commercial sale endorsement, see the final rule that created a separate permit endorsement provision for the commercial sale of Atlantic HMS by HMS Charter/Headboat permit holders

(82 FR 57543, December 6, 2017). The intent of this closure is to prevent overharvest of the available General category October through November BFT subquota.

The General category will reopen automatically on December 1, 2018, for the December 2018 subquota period at the default retention limit level of one fish. Currently, the adjusted General category subquota for the December 2018 period is 10 mt (see 82 FR 60680, December 22, 2017), and this amount would be 14.6 mt if the quota rule is finalized as proposed.

Fishermen may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the “Careful Catch and Release” brochure available at [www.nmfs.noaa.gov/sfa/hms/](http://www.nmfs.noaa.gov/sfa/hms/).

### **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. Additionally, and separate from the dealer reporting requirement, 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), using the HMS Catch Reporting app, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are 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.

### **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 quota transfers and fishery closures 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. These fisheries are currently underway and the adjusted subquota for the General category is projected to be reached shortly. Affording prior notice and opportunity for public comment to implement the quota transfer is impracticable and contrary to the public interest as such a delay would likely result in exceedance of the General category October through November fishery subquota or earlier closure of the fishery while fish are available on the fishing grounds. Subquota exceedance may result in the need to reduce quota for the General category later in the year and thus could affect later fishing opportunities. 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 all of the above 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) and 635.28(a)(1), and is exempt from review under Executive Order 12866.

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

Dated: October 4, 2018.

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Margo Schulze-Haugen,  
Acting Director,  
Office of Sustainable Fisheries,  
National Marine Fisheries Service.

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