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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042-8884-02]

RIN 0648-XG624

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; fishery reopening.

SUMMARY: NMFS has determined that a reopening of the Atlantic bluefin tuna (BFT) General category fishery is warranted. This action is intended to provide a reasonable opportunity to harvest the full annual U.S. BFT quota without exceeding it, while maintaining an equitable distribution of fishing opportunities across time periods; help achieve optimum yield in the BFT fishery; and optimize the ability of all permit categories to harvest their full BFT quota allocations. This action 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.

DATES: Effective 12:30 a.m., local time, November 12, 2018, through 11:30 p.m., local time, November 16, 2018.

FOR FURTHER INFORMATION CONTACT: Uriah Forest-Bulley, 978-675-2154, or Larry Redd, 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 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 recently published a final rule (*i.e.*, the “quota rule” (83 FR 51391, October 11, 2018)) that increased the baseline U.S. BFT quota from 1,058.79 mt to 1,247.86 mt and accordingly increased the subquotas for 2018, including an increase in the General category October through November period subquota from 60.7 mt to 70.2 mt, consistent with the annual BFT quota calculation process. On October 4, 2018, NMFS transferred 55 mt to the General category and closed the General category fishery effective October 5, 2018, based on projections that landings would meet or exceed the adjusted October through November subquota of 127.2 mt by that date (83 FR 50857, October 10, 2018). Since October 5, 2018, NMFS has reopened

the October through November subquota period two separate times for multiple days in an attempt to allow the available quota to be harvested (83 FR 52169, October 16, 2018, and 83 FR 55108, November 2, 2018).

General Category Reopening

As of November 6, 2018, reports show that the October through November landings are still less than the available subquota of 127.2 mt. Based on landings rates, NMFS has determined that reopening the General category fishery for five days is appropriate.

Therefore, the General category fishery will reopen at 12:30 a.m., November 12, 2018, and close at 11:30 p.m., November 16, 2018. The General category daily retention limit during this reopening is one large medium or giant BFT per vessel per day/trip. 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. 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 November 16, 2018.

The General category will reopen automatically on December 1, 2018, for the December 2018 subquota period at the default retention limit of one fish. In December 2017, NMFS adjusted the General category base subquota for the December 2018 period to 10 mt (82 FR 60680, December 22, 2017), although this amount increased to 14.6 mt with finalization of the quota rule. Based on quota availability in the Reserve, NMFS may consider transferring additional quota to the December subquota period, as appropriate.

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/.

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, 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, 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 actions 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 fishery reopening is impracticable and contrary to the public interest. The General category recently closed, but based on available BFT quotas, recent fishery performance, and the availability of BFT on the fishing grounds, responsive reopening of the fishery is warranted to allow fishermen to take advantage of availability of fish and of quota. NMFS could not have proposed this action 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. 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)(1), and is exempt from review under Executive Order 12866.

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

Dated: November 9, 2018.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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