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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042-8884-02]

RIN 0648-XG787

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category Fishery

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

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS transfers 26 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category January 2019 period (from January 1 through March 31, 2019, or until the available subquota for this period is reached, whichever comes first). 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 with a commercial sale endorsement when fishing commercially for BFT.

DATES: The quota transfer is effective February 8, 2019, through March 31, 2019.

FOR FURTHER INFORMATION CONTACT: Uriah Forest-Bulley, 978-675-2154, or Sarah McLaughlin, 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 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 consistent with a 2017 ICCAT recommendation and accordingly increased the domestic category quotas for 2018, until changed via a subsequent ICCAT recommendation. Within the General category quota, each time period (January, June through August, September, October through November, and December) is further 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 baseline subquotas for each time period are as follows: 29.5 mt for January; 277.9 mt for June through August; 147.3 mt for September; 72.2 mt for October through November; and 28.9

mt for December. Any unused General category quota rolls forward from one time period to the next and is available for use in subsequent time periods within the fishing year, which coincides with the calendar year. Effective January 1, 2019, NMFS transferred 19.5 mt of the 28.9-mt General category quota allocated for the December 2019 period to the January 2019 period, resulting in an adjusted subquota of 49 mt for the January period and a subquota of 9.4 mt for the December 2018 period (83 FR 67140, December 28, 2018).

Transfer of 26 mt from the Reserve category 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 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:

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.

NMFS considered the catches of the General category quota to date (including during the 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) and (ix)). As of February 5, 2019, the General category landed 37 mt (76 percent) of its adjusted January 2019 subquota of 49 mt.

Without a quota transfer, NMFS would have to close the January 2019 General category fishery, while unused quota remains in the Reserve category and while commercial-sized BFT remain available in the areas where General category permitted vessels operate at this time of year.

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. NMFS anticipates that all 26 mt of quota will be used by March 31. In the unlikely event that any of this quota is unused by March 31, the unused quota will roll forward to the next subperiod within the calendar year (*i.e.*, the June through August time period), and NMFS anticipates that it would be used by the subquota category 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 2019 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 2019 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and NMFS anticipates having sufficient quota to do that, even with this 26-mt transfer to the General category.

This transfer would be consistent with the current U.S. quota, which was established and analyzed in the 2018 BFT quota final rule, and with objectives of the 2006 Consolidated HMS

FMP and amendments (§ 635.27(a)(8)(v) and (vi)). At this time, there is a relatively small amount of quota in the Reserve category available to transfer to other categories or use for scientific research and for prudent responsive management. In the past, NMFS has conducted the annual reallocation of unused Purse Seine category quota to the Reserve category early in the calendar year, which resulted in more Reserve category quota available at this time of year. However, a government shutdown occurred due to a lack of appropriations during December 2018-January 2019, which resulted in an administrative backlog that will delay that action for 2019. Given that consideration, current catch rates, and the availability of fish on the fishing grounds, NMFS is moving forward with this inseason transfer based on the immediate needs of the General category fishery. Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota equitably 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)).

NMFS also anticipates that some underharvest of the 2018 adjusted U.S. BFT quota will be carried forward to 2019 and placed in the Reserve category, in accordance with the regulations, later this year. This, in addition to the fact that any unused General category quota will roll forward to the next subperiod within the calendar year and NMFS' plan to actively manage the subquotas to avoid any exceedances, makes it likely that General category quota will remain available through the end of 2019 for December fishery participants. NMFS also may transfer unused quota from the Reserve or other categories, inseason, based on consideration of the determination criteria, as it did in 2018 (*i.e.*, transferred

60 mt from the Reserve category effective September 18, 2018 (83 FR 47843, September 21, 2018); 40 mt from the Harpoon category and 15 mt from the Reserve category effective October 4, 2018 (83 FR 50857, October 10, 2018); and 9.9 mt from the Harpoon category and 129.2 mt from the General category effective November 29, 2018 (83 FR 62512, December 4, 2018). NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2019, through active inseason management measures, such as retention limit adjustments and/or the timing of quota transfers, as practicable. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds to the extent consistent with the available amount of transferrable quota and other management objectives, while avoiding quota exceedance.

Based on the considerations above, NMFS is transferring 26 mt from the Reserve category to the General category for the January 2019 fishery, resulting in a subquota of 75 mt for the January 2019 fishery and 3.5 mt in the Reserve category.

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* or by 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 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*, 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 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 currently available quota for the subcategory 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 result in would likely result in exceedance of the General category January fishery subquota or earlier closure of the fishery while fish are available on the fishing grounds. 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: February 8, 2019.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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