



**Billing Code: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 180117042-8884-02]**

**RIN 0648-HMS-A001**

**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 retention limit adjustment.

**SUMMARY:** NMFS is adjusting the Atlantic bluefin tuna (BFT) General category daily retention limit from the default limit of one large medium or giant BFT to three large medium or giant BFT for June 1 through August 31, 2019. 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:** Effective June 1, 2019, through August 31, 2019.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, 978-281-9260 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) among the various domestic fishing categories, per the allocations established in Amendment 7 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (Amendment 7) (79 FR 71510, December 2, 2014), and in accordance with implementing regulations. 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 baseline quota for the General category is 555.7 mt. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a 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: 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. This action would adjust the daily retention limit for the second time period in 2019, June through August.

#### **Adjustment of General Category Daily Retention Limit**

Unless changed, the General category daily retention limit starting on June 1 would be the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip (§ 635.23(a)(2)). This default retention limit would apply to General category permitted vessels and to HMS Charter/Headboat category permitted vessels when fishing commercially for BFT.

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8). NMFS has considered these criteria and their applicability to the General category BFT retention limit for June through August 2019. 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 would support the 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 (including landings and catch rates during the last several years) and the likelihood of closure of the General category if no adjustment is made (§ 635.27(a)(8)(ii)). Commercial-size BFT are anticipated to migrate to the fishing grounds off the northeast U.S. coast by early June. Based on General category catch rates during the June through August time period over the last several years, it is unlikely that the June through August subquota will be filled with the default daily retention

limit of one BFT per vessel. NMFS set the June through August 2018 time period limit at three fish initially and reduced it to one fish effective August 23 through August 31. Due to a combination of fish availability and extremely favorable fishing conditions, NMFS needed to close the General category fishery in the September subquota time period and the October through November time period (including two subsequent reopenings and closures of the October through November time period) to allow for harvest of the subsequent subquotas without exceeding the adjusted General category quota while simultaneously maintaining equitable distribution of fishing opportunities. NMFS is setting the June through August 2019 limit in such a way that NMFS believes, informed by past experience, increases the likelihood that the fishery will remain open throughout the subperiod and year.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the adjustment on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). The adjusted retention limit would be consistent with the quotas established and analyzed in the 2018 BFT quota final rule, which implemented the ICCAT quota consistent with ATCA, and with objectives of the 2006 Consolidated HMS FMP and amendments and is not expected to negatively impact stock health or to affect the stock in ways not already analyzed in those documents. It is also important that NMFS limit landings to the subquotas both adhere to the FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (*e.g.*, fish caught at each age) that was assumed in the latest stock assessment.

Another principal consideration in setting the retention limit is the objective of providing opportunities to harvest the full General category quota 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)). Adjustment of the retention limit is also supported by the Environmental Analysis for the 2011 final rule regarding General and Harpoon category management measures, which increased the General category maximum daily retention limit from three to five fish.

Despite elevated General category limits, the vast majority of successful trips (*i.e.*, General or Charter/Headboat trips on which at least one BFT is landed under General category quota) land only one or two BFT. For instance, the landings data for 2018 show that, under the three-fish limit that applied June 1 through August 22, the proportion of trips that landed one, two, or three bluefin tuna was as follows: 84 percent landed one; 12 percent landed two; and 4 percent landed three. In the last few years, NMFS has received conflicting comments that a high daily retention limit (specifically five fish) is needed to optimize General category fishing opportunities and account for seasonal distributions by enabling vessels to make overnight trips to distant fishing grounds. Others have noted that a higher General category limit at the start of the June-August period would reduce the likelihood of effort shifting into the Harpoon category, which has a relatively small quota. NMFS also has received general comment that a lower limit increases the likelihood that opportunities will extend through the late fall and the end of the calendar year, as well as improve market conditions. Although this may sometimes be true, 2018 landings data did not indicate that the fall fishery could have been extended substantially through implementation of a lower limit starting June 1. Requests tend to vary depending on actual fish behavior, weather, and availability (*i.e.*, abundance and proximity to shore) in any given year.

NMFS anticipates that some underharvest of the 2018 adjusted U.S. BFT quota will be carried forward to 2019 to the Reserve category, in accordance with the regulations, this summer when complete BFT catch information for 2018 is available and finalized. Because such quota would be available to be transferred from the Reserve category to the General category, and such transfers have occurred in the past, the carryover of underharvest would make it more likely that General category quota will remain available through the end of 2019 for December fishery participants, despite the transfer of 19.5 mt from the 28.9-mt General category December 2019 subquota period to the January 2019 period (83 FR 67140, December 28, 2018); 26 mt from the Reserve category effective February 8, 2019 (84 FR 3724, February 13, 2019); and 25 mt from the Reserve category effective February 25, 2019 (84 FR 6701, February 28, 2019).

General category landings were relatively high in the summer and fall of 2018, due to a combination of fish availability, favorable fishing conditions, and higher daily retention limits. NMFS transferred 60 mt from the Reserve category (83 FR 447843, September 21, 2018), transferred 40 mt from the Harpoon category and 15 mt from the Reserve category (83 FR 50857, October 10, 2018), and later transferred 9.9 mt from the Harpoon category and 129.2 mt from the Reserve category (83 FR 62512, December 4, 2018). Although NMFS needed to close the September and the October-November fisheries to prevent further overharvest of the adjusted 2018 General category subquotas, NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2019, through more proactive inseason management such as retention limit adjustments and/or the timing and amount of quota transfers (based on consideration of the determination criteria regarding inseason adjustments), as practicable. NMFS will closely monitor General category

catch rates associated with the various authorized gear types (*e.g.*, harpoon, rod and reel) during the June through August period and actively adjust the daily retention limit as appropriate to enhance scientific data collection from, and ensure fishing opportunities in, all respective time-period subquotas as well as ensure available quota is not exceeded.

A limit lower than three fish at the start of the June through August period could result in diminished fishing opportunities for those General category vessels using harpoon gear based on past fish behavior early in the season. Lower limits may also result in effort shifts from the General category to the Harpoon category, which could result in premature closure of the Harpoon category, and potentially additional inseason adjustments. General category harpoon gear participants land approximately five to seven percent of the General category landings each year and these landings occur early in the season. A three-fish retention limit for an appropriate period of time will provide a greater opportunity to harvest the June through August subquota with harpoon gear without exceeding it while also maintaining equitable distribution of fishing opportunities for harpoon and rod and reel participants. NMFS also considered general input on 2019 General category limits from the HMS Advisory Panel at its September 2018 meeting.

Based on these considerations, we have determined that a three-fish General category retention limit is warranted for the beginning of the June-August 2019 subquota period. This limit would provide a reasonable opportunity to harvest the full U.S. BFT quota (including the expected increase in available 2019 quota based on 2018 underharvest), without exceeding it, while maintaining an equitable distribution of fishing opportunities; help optimize the ability of the General category to harvest its full quota; allow the collection of a broad range of data for stock monitoring purposes; and be consistent with the objectives of the 2006 Consolidated HMS

FMP and amendments. Therefore, NMFS increases the General category retention limit from the default limit (one) to three large medium or giant BFT per vessel per day/trip, effective June 1, 2019, through August 31, 2019.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example (and specific to the June through August 2019 limit), whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of three fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeting fishing for BFT, and 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 fishing commercially for BFT. For information regarding the HMS Charter/Headboat commercial sale endorsement, see 82 FR 57543, December 6, 2017.

### **Monitoring and Reporting**

NMFS will actively 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 adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat vessel owners are required to report their own 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*, 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 adjustments are necessary to ensure available quota is 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 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. The timing of this rulemaking will allow approximately two weeks' prior notice to the regulated community. Affording additional prior notice and an opportunity for public comment on the change in the daily retention limit from the default level for the June through August 2019 subquota period would be impracticable. Based on available BFT quotas, fishery performance in recent years, and the availability of BFT on the fishing grounds, responsive adjustment to the General category BFT daily retention limit from the default level is warranted to allow fishermen to take advantage of availability of fish and of quota. NMFS could not have proposed these actions 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 consistent with all of the regulatory criteria, and/or could result in selection of a retention limit inappropriate to the amount of quota available for the period.

Fisheries under the General category daily retention limit will commence on June 1 and thus prior notice would be contrary to the public interest. Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may result in low catch rates and quota rollovers. Analysis of available data shows that adjustment to the BFT daily retention limit from the default level would result in minimal risks of exceeding the ICCAT-allocated quota. NMFS provides notification of retention limit adjustments by publishing the notice in the **Federal Register**, e-mailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *hmspermits.noaa.gov*. With quota available and fish available on the grounds, and with no expected impacts to the stock, it would be contrary to the public interest to require vessels to wait to harvest the additional fish allowed through this action. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment.

Adjustment of the General category retention limit needs to be effective June 1, 2019, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the impacted sectors to benefit from the adjustment, and to not preclude fishing opportunities for fishermen in geographic areas with access to the fishery only during this time

period. Foregoing opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the 2006 Consolidated HMS FMP and amendments. Therefore, the AA finds there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.23(a)(4) and is exempt from review under Executive Order 12866.

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

Dated: May 15, 2019.

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[FR Doc. 2019-10455 Filed: 5/15/2019 4:15 pm; Publication Date: 5/20/2019]