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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150121066-5717-02]

RIN 0648-XE566

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 Angling category retention limit adjustment.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) daily retention limit that applies to vessels permitted in the Highly Migratory Species (HMS) Angling category and the HMS Charter/Headboat category (when fishing recreationally for BFT) should be adjusted for the remainder of 2016, based on consideration of the regulatory determination criteria regarding inseason adjustments. NMFS is adjusting the Angling category BFT daily retention limit to two school BFT and one large school/small medium BFT per vessel per day/trip for private vessels (i.e., those with HMS Angling category permits); and three school BFT and one large school/small medium BFT per vessel per day/trip for charter vessels (i.e., those with HMS Charter/Headboat permits when fishing recreationally). These retention limits are effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT.

DATES: Effective April 23, 2016 through December 31, 2016.

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) 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), 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.

As a method for limiting fishing mortality on juvenile BFT, ICCAT recommends a tolerance limit on the annual harvest of BFT measuring less than 115 cm (straight fork length) to no more than 10 percent by weight of a Contracting Party's total BFT quota over the 2015 and 2016 fishing periods. The United States implements this provision by limiting the harvest of school BFT (measuring 27 to less than 47 inches) as appropriate to not exceed the 10-percent limit over the two-year period.

The currently codified baseline U.S. quota is 1,058.9 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the

Northeast Distant Gear Restricted Area). Among other things, Amendment 7 revised the allocations to all quota categories, effective January 1, 2015. See § 635.27(a). The currently codified Angling category quota is 195.2 mt (108.4 mt for school BFT, 82.3 mt for large school/small medium BFT, and 4.5 mt for large medium/giant BFT).

The 2016 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2016. The Angling category season opened January 1, 2016, and continues through December 31, 2016. The size classes of BFT are summarized in Table 1. Please note that large school and small medium BFT traditionally have been managed as one size class, as described below, i.e., a limit of one large school/small medium BFT (measuring 47 to less than 73 inches).

Table 1. BFT Size Classes

Size Class	Curved Fork Length
School	27 to less than 47 inches (68.5 to less than 119 cm)
Large school	47 to less than 59 inches (119 to less than 150 cm)
Small medium	59 to less than 73 inches (150 to less than 185 cm)
Large medium	73 to less than 81 inches (185 to less than 206 cm)
Giant	81 inches or greater (206 cm or greater)

Currently, the default Angling category daily retention limit of one school, large school, or small medium BFT applies (§ 635.23(b)(2)). This retention limit applies to HMS Angling and to HMS Charter/Headboat category permitted vessels (when fishing recreationally for BFT). In

2014 and 2015, NMFS adjusted the daily retention limit from the default level of one school, large school, or small medium BFT to one school BFT and one large school/small medium BFT for private vessels (i.e., those with HMS Angling category permits); and two school BFT and one large school/small medium BFT for charter vessels (i.e., those with HMS Charter/Headboat permits when fishing recreationally), effective May 8, 2014, and May 15, 2015, respectively, through December 31 each year (79 FR 25707, May 6, 2014, and 80 FR27863, May 15, 2015).

Adjustment of Angling Category Daily Retention Limit

In adjusting the daily retention limit in this action, NMFS considered the factors required by regulatory criteria, as discussed in more detail, below.

Under § 635.23(b)(3), NMFS may increase or decrease the Angling category retention limit for any size class of BFT. Any adjustments to retention limits must be based on consideration of the relevant criteria provided under § 635.27(a)(8), which include: The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; review of dealer reports,

daily landing trends, and the availability of the BFT on the fishing grounds; optimizing fishing opportunity; accounting for dead discards, facilitating quota monitoring, supporting other fishing monitoring programs through quota allocations and/or generation of revenue; and support of research through quota allocations and/or generation of revenue. Recreational retention limits may be adjusted separately for specific vessel type, such as private vessels, headboats, or charter vessels.

NMFS has considered these criteria and their applicability to the Angling category BFT retention limit for the remainder of 2016. 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, biological samples collected from BFT landed by recreational fishermen continue to provide NMFS with valuable parts and 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.

Another principal consideration in setting the retention limit is the objective of providing opportunities to harvest the full Angling category 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. This retention limit would be consistent with the quotas established and analyzed in the BFT quota final rule (80 FR 52198, August 28, 2015), 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 BFT subquotas both to 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 projections of stock rebuilding.

Table 2 summarizes the recreational quota, subquotas, and landings information for 2014 and 2015 under the Angling category limits in effect for 2014 and 2015 (described above).

Table 2. Angling Category Quota, Subquotas, and Landings for 2014 and 2015

	2014			2015		
	Quota and Subquotas (mt)	Landings (mt)	Amount of Quota and Subquotas Used	Quota and Subquotas (mt)	Landings (mt)	Amount of Quota and Subquotas Used
Angling category	182	107.4	59%	195.2	113.1	58%
School	94.9	24.7	26%	108.4	26.2	24%
Large School/ Small Medium	82.9	77.6	94%	82.3	80.2	97%
Large Medium/ Giant (Trophy)	4.2	5.1	113%	4.5	6.7	149%

The 2015 school BFT landings represent 2.4 percent of the total U.S. BFT quota for 2015, well under the ICCAT recommended 10-percent limit. Landings of school BFT in 2014, under the same adjusted limits, represented 2.6 percent of the total U.S. BFT quota for 2014. Given that the Angling category landings fell short of the available quota and based on the considerations of the regulatory criteria as described above, NMFS has determined that the Angling category retention limit applicable to participants on HMS Angling and HMS Charter/Headboat category permitted vessels should be adjusted upwards from the default level. NMFS has also concluded that implementation of separate limits for private and charter/headboat vessels remains appropriate, recognizing the different nature, socio-economic needs, and recent

landings results of the two components of the recreational BFT fishery. For example, charter operators historically have indicated that a multi-fish retention limit is vital to their ability to attract customers. In addition, Large Pelagics Survey estimates indicate that charter/headboat BFT landings averaged approximately 30 percent of recent recreational landings for 2014 through 2015, with the remaining 70 percent landed by private vessels.

Therefore, for private vessels (i.e., those with HMS Angling category permits), this action adjusts the limit upwards to two school BFT and one large school/small medium BFT per vessel per day/trip (i.e., two BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 73 inches). For charter vessels (i.e., those with HMS Charter/Headboat permits), this action adjusts the limit upwards to three school BFT and one large school/small medium BFT per vessel per day/trip when fishing recreationally for BFT (i.e., three BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 73 inches). These retention limits are effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT. Regardless of the duration of a fishing trip (e.g., whether a vessel takes a two-day trip or makes two trips in one day), no more than a single day's retention limit may be possessed, retained, or landed.

NMFS anticipates that the BFT daily retention limits in this action will result in landings during 2016 that would not exceed the available subquotas. Lower retention limits could result in substantial underharvest of the codified Angling category subquota, and increasing the daily limits further may risk exceeding the available quota, contrary to the objectives of the 2006 Consolidated HMS FMP, as amended. NMFS has concluded that increasing the school BFT retention limit for private and charter vessels relative to the adjusted limits for 2015 is possible

without exceeding the annual school BFT subquota, given that the 2015 Angling category landings represented 58 percent of the codified Angling category quota and that school BFT landings represented 24 percent of the school BFT subquota. NMFS has also considered that 2016 is the second year of the two-year balancing period, over which the 10-percent tolerance limit on school BFT applies. NMFS is not setting higher school BFT limit for private and charter vessels due to the potential risk of exceeding the ICCAT tolerance limit on school BFT and other considerations, such as potential effort shifts to BFT fishing as a result of current, reduced recreational retention limits for New England groundfish and striped bass. NMFS will monitor 2016 landings closely and will make further adjustments, including closure if necessary, with an inseason action if warranted.

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely through the mandatory landings and catch reports. General, HMS Charter/Headboat, Harpoon, and Angling 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.

HMS Angling and HMS Charter/Headboat category permit holders 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. Anglers are also reminded that all BFT that are released must be handled in a manner that will maximize 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/.

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments or closures are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. Subsequent actions, if any, 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:

Prior notice is impracticable because the regulations implementing the 2006 Consolidated HMS FMP, as amended, 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. Based on available BFT quotas, fishery performance in recent years, and the availability of BFT on the fishing grounds, immediate adjustment to the Angling category BFT daily retention limit from the default levels is warranted to allow fishermen to take advantage of the availability of fish and of quota.

Fisheries under the Angling category daily retention limit are currently underway and thus prior notice would be contrary to the public interest. Delays in increasing daily recreational BFT retention limit would adversely affect those HMS Angling and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one school, large school, or small medium BFT per day/trip and may exacerbate the problem

of 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*. 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 is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.23(b)(3), and is exempt from review under Executive Order 12866.

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

Dated: April 18, 2016.

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National Marine Fisheries Service.

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