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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

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

**RIN 0648-XE820**

**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 five large medium or giant BFT for the September, October through November, and December subquota time periods of the 2016 fishing year. 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 when fishing commercially for BFT.

**DATES:** Effective September 1, 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 Atlantic 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.

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 General category quota is 466.7 mt. 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. The codified baseline General category subquotas include 123.7 mt for September, 60.7 mt for October through November, and 24.3 mt for December. NMFS

transferred 21 mt of BFT quota from the December 2016 subquota to the January 2016 subquota period (80 FR 77264, December 14, 2015).

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

Unless changed, the General category daily retention limit starting on September 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.

For the 2015 fishing year, NMFS adjusted the daily retention limit from the default level of one large medium or giant BFT to three large medium or giant BFT for the January subquota period (79 FR 77943, December 29, 2014), which closed March 31, 2015 (the regulations allow the General category fishery under the “January” subquota to continue until the subquota is reached, or March 31, whichever comes first); four large medium or giant BFT for the June through August subquota period (80 FR 27863; May 15, 2015) as well as for September 1 through November 27, 2015 (80 FR 51959; August 27, 2015); and three large medium or giant BFT for November 28 through December 31, 2015 (80 FR 74997; December 1, 2015). NMFS adjusted the daily retention limit for the 2016 January subquota period (which closed March 31) from the default level of one large medium or giant BFT to three large medium or giant BFT in the same action as the 24.3-mt transfer from the December 2016 subquota period to the January 2016 subquota period (80 FR 77264; December 14, 2015). For the June through August 2016 subquota

period, NMFS adjusted the daily retention limit to five large medium or giant BFT (81 FR 29501; May 12, 2016).

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), which are: 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 FMP; 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.

NMFS has considered these criteria and their applicability to the General category BFT retention limit for September through December 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 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.

Regarding the effects of the adjustment on BFT rebuilding and overfishing and the effects of the adjustment on accomplishing the objectives of the FMP, as this action would be taken consistent with the previously implemented and analyzed quotas, it is not expected to negatively impact stock health or otherwise affect the stock in ways not previously analyzed, including on rebuilding, overfishing, or the objectives of the FMP. It is also supported by the Environmental Assessment 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 (76 FR 74003; November 30, 2011).

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 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.

Commercial-size BFT migrated to the fishing grounds off the northeast U.S. coast by early June and are actively being landed. As of August 17, 2016, approximately 210 mt of the 2016 General category quota of 466.7 mt have been landed, and landings rates remain at approximately 1-2 mt per day. Given the rollover of unused quota from one time period to the next, current catch rates, and the fact that the daily retention limit will automatically revert to one large medium or giant BFT per vessel per day on September 1, 2016, absent agency action, NMFS anticipates the full 2016 General category quota may not be harvested. In September through December 2015, under a four-fish limit through November 27 and a three-fish limit November 28 through December 31, BFT landings were approximately 410 mt. See below for description of 2015 quota transfers to the General category. For the entire 2015 fishing year, 131.7 percent and 95.1 percent of the baseline and adjusted General category quota was filled, respectively. However, in 2014, 94.6 percent of the available (*i.e.*, baseline) General category quota was filled under a four-fish limit (*i.e.*, the full 2014 General category quota was not harvested).

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 2015 show that, under the four-fish limit that applied June 1 through November 27, the percentage of trips that landed one, two, three, or four BFT was as follows: 76 percent

landed one BFT; 14 percent landed two BFT; 5 percent landed three BFT; and 5 percent landed four BFT. In the last few years, NMFS has received some 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.

NMFS anticipates that some underharvest of the 2015 adjusted U.S. BFT quota will be carried forward to 2016 to the Reserve category, in accordance with the regulations implementing Amendment 7, later this summer when complete BFT catch information for 2015 is available and finalized. This, in addition to the fact that any unused General category quota will roll forward to the next subperiod within the calendar year, makes it possible that General category quota will remain available through the end of 2016 for December fishery participants, even if NMFS sets higher daily retention limits for the earlier periods. NMFS also may choose to transfer unused quota from the Reserve or other categories inseason based on consideration of the regulatory determination criteria, as NMFS did for late 2015 (80 FR 68265, November 4, 2015; 80 FR 74997, December 1, 2015). Those transfers were intended to provide additional opportunities to harvest the U.S. BFT quota without exceeding it. Therefore, NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the 2016 General category quota.

A limit lower than five fish could result in unused quota being rolled forward to the subsequent subquota time period in the General category season. Increasing the daily retention limit from the default may prevent rolling an excessive amount of unused quota forward from one subquota time period to the next. Increasing the daily retention limit to

five fish will increase the likelihood that the General category BFT landings will approach, but not exceed, the annual quota, as well as increase the opportunity for catching BFT during the September, October through November, and December subquota periods. Increasing opportunity within each subquota period is also important because of the migratory nature and seasonal distribution of BFT. In a particular geographic region, or waters accessible from a particular port, the amount of fishing opportunity for BFT may be constrained by the short amount of time the BFT are present.

Based on these considerations, NMFS has determined that a five-fish General category retention limit is warranted. It would provide a reasonable opportunity to harvest the full U.S. BFT quota (including the expected increase in available 2016 quota based on 2015 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, as amended. Therefore, NMFS increases the General category retention limit from the default limit (one) to five large medium or giant BFT per vessel per day/trip, effective September 1, 2016, through December 31, 2016.

Regardless of the duration of a fishing trip, no more than a single day's retention limit may be possessed, retained, or landed. For example (and specific to the September through December 2016 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 five 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 fishing commercially for BFT.

### *Monitoring and Reporting*

NMFS will continue to monitor the BFT fishery closely. Dealers are required to report landings within 24 hours of a dealer receiving BFT. 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*. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustment or closure is 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*, 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, intended that inseason retention limit adjustments would allow the agency to respond quickly 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, responsive adjustment to the General category BFT daily retention limit from the default level is warranted to allow fishermen to take advantage of the availability of fish and of quota. For such adjustment to be practicable, it must occur in a timeframe that allows fishermen to take advantage of it.

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. With quota available and fish available on the grounds, and with no measurable impacts to the stock, it would be contrary to the public interest to require vessels to wait to harvest the 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 September 1, 2016, 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, as amended. 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: August 24, 2016.

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Emily H. Menashes,  
Acting Director,  
Office of Sustainable Fisheries,  
National Marine Fisheries Service.

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