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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150121066-5717-02]

RIN 0648-XF634

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: The Atlantic bluefin tuna (BFT) General category is currently closed and will reopen on September 1, 2017. NMFS is updating the adjustment of the BFT General category daily retention limit that will take effect beginning September 1, 2017, from the recently adopted two large medium or giant BFT per vessel per day/trip to one large medium or giant BFT per vessel per day/trip. This action is based on updated information about the availability of BFT and quota after considering 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, 2017, through December 31, 2017.

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 base quota for the General category is 466.7 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 “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 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. On December 19, 2016, NMFS published an inseason action

transferring 16.3 mt of BFT quota from the December 2017 subquota to the January 2017 subquota period (81 FR 91873). For 2017, NMFS also transferred 40 mt from the Reserve to the General category effective March 2, resulting in an adjusted General category quota of 506.7 mt (82 FR 12747, March 7, 2017).

Adjustment of General Category Daily Retention Limit

The default General category retention limit is 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)).

Thus far this year, NMFS adjusted the daily retention limit for the 2017 January subquota period from the default level of one large medium or giant BFT to three large medium BFT (81 FR 91873, December 19, 2016). NMFS closed the January 2017 fishery on March 29 (82 FR 16136, April 3, 2017). NMFS adjusted the daily retention limit from the default level of one large medium or giant BFT to four large medium or giant BFT for the June through August 2017 subquota period (82 FR 22616, May 17, 2017). Effective August 5, 2017, NMFS reduced the daily retention limit from four to two large medium or giant BFT for the remainder of 2017, and indicated that, if needed, additional adjustments would be published in the *Federal Register* (82 FR 36689, August 7, 2017). Upon determining that the June through August 2017 subquota of 233.3 mt had been reached, NMFS closed the General category fishery for the June through August period effective August 16, 2017 (82 FR 39047, August 17, 2017).

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 the

relevant regulatory determination criteria and their applicability to the General category BFT retention limit for the September, October through November, and December subquota time periods. These considerations include, but are not limited to, the following:

NMFS considered the catches and catch rates of the General category quota to date (including during the summer/fall and winter fisheries 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)). NMFS previously considered catch and catch rate information from July and August and determined that a two-fish limit was appropriate for the remainder of the year.

Subsequently, however, a large number of landings occurred in a short time period, increasing the overall daily catch rates and indicating increased availability of fish on the fishing grounds, and participation in the fishery. Through the August 16, 2017 General category closure date, 2017 General category landings were approximately 433 mt, which is 93 and 85 percent of the annual base and adjusted 2017 General category quotas, respectively. Landings from June 1 through the August 16 closure date were 325.3 mt, representing 139 percent of the General category subquota for the June 1 through August 31 period. NMFS anticipates that commercial-size BFT will be readily available to vessels fishing under the General category quota. If the catch rates of approximately 6 mt per day under the two-fish daily limit established in the August 7 *Federal Register* document were to continue when the fishery reopens on September 1, the available subquotas for the September, October through November, and December could be reached or exceeded quickly, and NMFS would need to close the fishery earlier than otherwise would be necessary under a lower limit. Thus, while NMFS anticipates that commercial-size bluefin tuna will be readily available to vessels fishing under the General category quota when

the fishery reopens, current catch rates indicate a reduction from two fish to one fish is warranted.

Another relevant criterion is the 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 (§ 635.27(a)(8)(viii)). NMFS anticipates that 108.38 mt of underharvest of the 2016 adjusted U.S. BFT quota will be carried forward to 2017 to the Reserve category, in accordance with the regulations, in the coming weeks. This increases the likelihood that General category quota will remain available through the end of 2017, provided retention limits are managed accordingly. Last fall, General category landings were relatively high due to a combination of fish availability, favorable fishing conditions, and higher daily retention limits (five fish per day for June 1 through October 8, four fish effective October 9 through October 16, and two fish effective October 17 through November 3). Given these conditions, NMFS transferred 125 mt from the Reserve category (81 FR 70369, October 12, 2016) and later transferred another 85 mt (18 mt from the Harpoon category and 67 mt from the Reserve category) (81 FR 71639, October 18, 2016). Nevertheless, NMFS had to close the 2016 General category fishery effective November 4 to prevent further overharvest of the adjusted General category quota. For 2017, NMFS again intends to provide General category participants in all areas and time periods opportunities to harvest the General category quota without exceeding it, through active 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), while extending the season as long as practicable.

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. Prolonged opportunities 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 also considered the effects of the adjustment on BFT rebuilding and overfishing 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 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 the 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.

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)).

Based on these considerations, NMFS has determined that a one-fish General category retention limit is warranted for the remainder of the year. It would provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, help optimize the ability of the General category to harvest its available quota, allow 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 adjusts the General category retention limit from two to one large medium or giant BFT per vessel per day/trip, effective when the General category fishery reopens on September 1, 2017, through December 31, 2017. 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.

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 limit that will apply beginning September 1, 2017), 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 one 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 submit landing reports within 24 hours of a dealer receiving BFT. 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. 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 and an opportunity for public comment 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, adjustment to the General category BFT daily retention limit from the default level is warranted.

Delays in adjusting the retention limit may result in the available quota being reached or exceeded and NMFS needing to close the fishery earlier than otherwise would be necessary under a lower limit. Such delays could adversely affect those General and HMS

Charter/Headboat category vessels that would otherwise have an opportunity to harvest BFT if the fishery were to remain open for as long as feasible throughout the remaining subquota periods. Limited 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. Adjustment of the retention limit needs to be effective September 1, 2017, to extend fishing opportunities for fishermen in all geographic areas, consistent with objectives of the 2006 Consolidated HMS FMP and provide equitable opportunities.

Prior notice and an opportunity for public comment is also impracticable for the retention limit adjustment to one fish for the September and subsequent subquota periods. By adopting the one-fish limit for the remainder of the year through this action, NMFS avoids confusion that would arise for the regulated community from two inseason actions adopting the same limit. 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 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(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 28, 2017.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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