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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150121066-5717-02]

RIN 0648-XF890

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 bluefin tuna quota transfer.

SUMMARY: NMFS is transferring 14.3 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the 24.3-mt General category December 2018 subquota to the January 2018 subquota period (from January 1 through March 31, 2018, 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: Effective January 1, 2018, through March 31, 2018.

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) 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.

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.

Although the 2017 ICCAT recommendation regarding western BFT management would result in an increase to the baseline U.S. BFT quota (i.e., from 1,058.79 mt to 1,247.86 mt) and subquotas for 2018 (including an expected increase in General category quota from 466.7 mt to 555.7 mt, consistent with the annual BFT quota calculation process established in Amendment 7), domestic implementation of that recommendation will take place in a separate rulemaking, likely to be finalized in mid-2018.

Transfer of 14.3 mt from the December Subquota to the January Subquota

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota. 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 tuna dealers provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status.

NMFS also considered the catches of the General category quota to date (including in December 2017 and 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)). Without a quota transfer from December 2018 to January 2018 for the General category at this time, the quota available for the January period would be 24.7 mt (5.3 percent of the General category

quota), and participants would have to stop BFT fishing activities once that amount is met, while commercial-sized BFT may remain available in the areas where General category permitted vessels operate. Transferring 14.3 mt of the 24.3-mt quota available for December 2018 (with 24.3 mt representing 5.2 percent of the General category quota) would result in 39 mt (8.4 percent of the General category quota) being available for the January subquota period. This quota transfer would provide additional opportunities to harvest the U.S. BFT quota without exceeding it, while preserving the opportunity for General category fishermen to participate in the winter BFT fishery at both the beginning and end of the calendar 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 before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years. General category landings in the winter BFT fishery tend to straddle the calendar year as BFT may be available in late November/December and into January of the following year or later. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. Any unused General category quota from the January subperiod that remains as of March 31 will roll forward to the next subperiod within the calendar year (i.e., the June-August time period). In 2017, NMFS transferred 16.3 mt of quota from the December 2017 subquota to the January 2017 subquota period, resulting in a subquota of 41 mt for the January 2017 period and a subquota of 8 mt for the December 2017 period (81 FR 91873, December 19, 2016). NMFS also transferred 40 mt from the Reserve to the General category effective March 2, resulting in an adjusted subquota of 81 mt for the January 2017 period (82 FR 12747, March 7, 2017). Under a three-fish General category daily retention limit (i.e., of large

medium or giant BFT, measuring 73 inches (185 cm) curved fork length (CFL) or greater) effective January 1 through March 4, a total of 68.6 mt were landed. Under a one-fish daily retention limit effective March 5 through March 29, when NMFS closed the General category, an additional 39.1 mt were landed, for a total of 107.7 mt for the January subquota period (82 FR 12747, March 7, 2017; 82 FR 16136, April 3, 2017).

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 2018 landings and dead discards. In the last several years, total U.S. BFT landings have been below the 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. In 2016 and 2017, the General category exceeded its adjusted quota (discussed below) but sufficient quota was available to cover the exceedance without affecting the other categories. NMFS will need to account for 2018 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that.

This transfer would be consistent with the current quotas, which were established and analyzed in the 2015 BFT quota final rule (80 FR 52198, August 28, 2015), and with objectives of the 2006 Consolidated HMS FMP and amendments. (§ 635.27(a)(8)(v) and (vi)). Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT 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 (related to § 635.27(a)(8)(x)).

NMFS also anticipates that some underharvest of the 2017 adjusted U.S. BFT quota will be carried forward to 2018 and placed in the Reserve category, in accordance with the regulations. This, in addition to the fact that any unused General category quota will roll forward to the next subperiod within the calendar year, as well as the anticipated increase in the U.S. quota and subquotas for 2018 as a result of ICCAT recommendations 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 2018 for December fishery participants, even with the quota transfer. NMFS also may choose to transfer unused quota from the Reserve or other categories, inseason, based on consideration of the determination criteria, as NMFS did for late 2017 (i.e., transferred 156.4 mt from the Reserve category, effective October 1, 2017 (82 FR 46000, October 3, 2017)), and later transferred another 25.6 mt from the Harpoon category, effective December 1 (82 FR 55520, November 22, 2017).

In 2017, NMFS closed the General category fishery several times to prevent further overharvest of the adjusted General category quota, specifically August 16 for the June through August subquota period (82 FR 39047, August 17, 2017); September 17 for the September subquota period (82 FR 43711, September 19, 2017); October 4 for the October through November subquota period (82 FR 46934, October 10, 2017); and December 6 for the December subquota period (82 FR 57885, December 8, 2017). General category landings were relatively high in the summer and fall of 2017, due to a combination of fish availability, favorable fishing conditions, and higher daily retention limits in June through early August (i.e., four fish June 1 through August 4 (82 FR 22616, May 17, 2017), and two fish August 5 through August 16 (82 FR 36689, August 7, 2017)). NMFS anticipates that General category participants in all areas

and time periods will have opportunities to harvest the General category quota in 2018, through active inseason management 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, consider the expected increases in available 2018 quota later in the year, and provide a reasonable opportunity to harvest the full U.S. BFT quota.

Based on the considerations above, NMFS is transferring 14.3 mt of the 24.3-mt General category quota allocated for the December 2018 period to the January 2018 period, resulting in a subquota of 39 mt for the January 2018 period and a subquota of 10 mt for the December 2018 period. NMFS will close the General category fishery when the adjusted January period subquota of 39 mt has been reached, or it will close automatically on March 31, 2018, whichever comes first, and it will remain closed until the General category fishery reopens on June 1, 2018.

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.

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant bluefin tuna 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). However, at this time, NMFS is maintaining the default daily retention limit of one large medium or giant BFT per vessel per day/trip (§ 635.23(a)(2)) for the January 2018 General category fishery. 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 January 1, 2018), 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 with a commercial sale endorsement when fishing commercially for BFT fishing commercially for BFT. For information regarding the CHB commercial sale endorsement, see 82 FR 57543, December 6, 2017.

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action (e.g., quota adjustment, daily retention limit 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 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. Affording prior notice and opportunity for public comment to implement the quota transfer for the January 2018 subquota period at this time is impracticable and contrary to the public interest as NMFS could not have proposed this action earlier, as it needed to consider and respond to updated data and information from the 2017 General category fishery, including the recently-available December 2017 data, in deciding to transfer a portion of the December 2018 quota to the January 2018 subquota. If NMFS was to offer a public comment period now, after having appropriately considered that data, it could 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 inappropriately high for the amount of quota available for the period. 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), and is exempt from review under Executive Order 12866.

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

Dated: December 19, 2017.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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