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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

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

**RIN 0648-BH54**

**Atlantic Highly Migratory Species; Atlantic Bluefin Tuna and Northern Albacore Tuna Quotas; Atlantic Bigeye and Yellowfin Tuna Size Limit Regulations**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; notification of adjustment and recalculation of quotas.

**SUMMARY:** In this final rule, NMFS modifies the baseline annual U.S. quota and subquotas for Atlantic bluefin tuna (BFT) and the baseline annual U.S. North Atlantic albacore (northern albacore or NALB) quota to reflect quotas adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). NMFS also updates regulatory language on school BFT to reflect current ICCAT requirements. NMFS also makes a minor change to the Atlantic tunas size limit regulations to address retention, possession, and landing of bigeye and yellowfin tuna damaged through predation by sharks and other marine species. This action is necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act). NMFS also provides notice of adjustment of the 2018 BFT Reserve category quota and the 2018 NALB baseline quota to account for the available underharvest from 2017, consistent with the Atlantic tunas quota regulations. NMFS further recalculates the BFT Purse Seine and Reserve category quotas that were announced earlier this year, in accordance with the quotas in this final rule.

**DATES:** Effective [*insert date of filing for public inspection at the Office of the Federal Register*].

**ADDRESSES:** Supporting documents, including the Environmental Assessment (EA), Regulatory Impact Review, and Final Regulatory Flexibility Analysis, may be downloaded from the HMS website at [www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species/](http://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species/). These documents also are available by contacting Sarah McLaughlin, Highly Migratory Species (HMS) Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin or Brad McHale, 978-281-9260.

**SUPPLEMENTARY INFORMATION:** Atlantic bluefin tuna (BFT), bigeye tuna, albacore tuna (NALB), yellowfin tuna, and skipjack tuna (hereafter referred to as “Atlantic tunas”) are managed under the dual authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and ATCA (16 U.S.C. 971 *et seq.*). As a member of ICCAT, the United States implements binding ICCAT recommendations pursuant to ATCA, which authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be

necessary and appropriate to carry out ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NMFS. Regulations implemented under the authority of ATCA and the Magnuson-Stevens Act governing the harvest of BFT and NALB by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635.

## **Background**

Background information about the need to modify the U.S. BFT baseline quota and subquotas and the U.S. NALB baseline quota, as well as detailed descriptions of changes to the existing regulations regarding school BFT and size requirements for retention, possession, and landing of bigeye and yellowfin tuna damaged by predation, were provided in the preamble to the proposed rule (83 FR 31517, July 6, 2018) and most of that background information is not repeated here. The 30-day comment period ended August 6, 2018. All Total Allowable Catch (TAC), quota, and weight information in this action are whole weight amounts.

Consistent with the regulations regarding annual BFT quota adjustment, NMFS annually announces the addition of available underharvest, if any, to the BFT Reserve category in a Federal Register notice once complete catch (landings and dead discards) information is available and finalized. Such data became available to NMFS since publication of the proposed rule, and notice of the quota adjustment for 2017 underharvest is included with this final rule to provide the regulated community with the most up-to-date quota balances.

## **BFT Annual Quota and Subquotas**

At its November 2017 meeting, after considering the advice of ICCAT's Standing Committee on Research and Statistics (SCRS), ICCAT adopted Recommendation 17-06 (Recommendation by ICCAT for an Interim Conservation and Management Plan for western Atlantic BFT) for 2018 through 2020. An interim approach was selected in light of the SCRS' new stock assessment approach and ICCAT's anticipated development of management procedures for the stock by 2020. Management procedures are a way to manage stocks in light of stock assessment and other scientific uncertainties and include use of stock monitoring, pre-agreed actions based on triggers (*i.e.*, harvest control rules), and evaluation to help ensure identified management objectives are achieved. See EA for more details. The Recommendation included a TAC of 2,350 mt annually (*i.e.*, an increase of approximately 17.5 percent) for 2018, 2019, and 2020. This TAC is within the SCRS-recommended range and provides a buffer from the top end of the range to help further account for identified stock assessment uncertainties. Relevant provisions of the *Recommendation by ICCAT Amending the Supplemental Recommendation by ICCAT Concerning the Western Atlantic Bluefin Tuna Rebuilding Program* (Recommendation 16-08) were also maintained in Recommendation 17-06, such as those involving effort and capacity limits, the 10-percent limit on the amount of unused quota Contracting Parties may carry forward, minimum fish size requirements and protection of small fish (including the 10-percent tolerance limit on the harvest of BFT measuring less than 115 cm and the procedures for addressing overharvest of the tolerance limit), area and time restrictions, transshipment, scientific research, and data and reporting requirements.

### *Quotas and Domestic Allocations*

Recommendation 17-06 maintained the quota allocations to individual Contracting Parties (*i.e.*, the percentages to each Contracting Party) of previous recommendations. Under the ICCAT recommendation, the annual U.S. quota is 1,247.86 mt, plus 25 mt to account for bycatch related to pelagic longline fisheries in the Northeast Distant gear restricted area (NED), resulting in a total of 1,272.86 mt.

This action implements the ICCAT-recommended quota of 1,272.86 mt. The table below shows the final baseline quotas and subquotas that result from applying the process codified in the quota regulations at 50 CFR 635.27(a) to the ICCAT-recommended U.S. BFT quota. These quotas (in mt) are codified at § 635.27(a) and will remain in effect until changed. Because ICCAT adopted annual TACs for 2018 through 2020, NMFS currently anticipates that the annual U.S. baseline quota and subquotas in this rule will be in effect through 2020; they will remain in place unless and until a new U.S. quota is adopted by ICCAT.

**Table 1. Final annual Atlantic bluefin tuna quotas (in metric tons)**

Category	Annual Baseline Quotas and Subquotas		
	Quota	Subquotas	
General	555.7		
		January-March <sup>1</sup>	29.5
		June-August	277.9
		September	147.3
		October-November	72.2
		December	28.9
Harpoon	46.0		
Longline	163.6		
Trap	1.2		
Purse Seine	219.5 <sup>2</sup>		
Angling	232.4		
		School	127.3
		Reserve	23.5
		North of 39°18' N. lat.	49.0
		South of 39°18' N. lat.	54.8
		Large School/Small Medium	99.8
		North of 39°18' N. lat.	47.1
		South of 39°18' N. lat.	52.7
		Trophy	5.3
		North of 39°18' N. lat.	1.8
		South of 39°18' N. lat.	1.8
		Gulf of Mexico	1.8
Reserve	29.5 <sup>2</sup>		
<b>U.S. Baseline Quota</b>	<b>1,247.86<sup>3</sup></b>		
<b>Total U.S. Quota, including 25 mt for NED (Longline)</b>	<b>1,272.86<sup>3</sup></b>		

<sup>1</sup> This subquota is referred to as the "January" subquota in the regulations but is in effect from January 1 through the effective date of a closure notice filed by NMFS in the **Federal Register** announcing that the subquota is reached or projected to be reached, or through March 31, whichever comes first.

<sup>2</sup> Baseline amount shown. Does not reflect the annual quota reallocation process (for the Purse Seine and Reserve category quotas) adopted in Amendment 7 (79 FR 71510, December 2, 2014) and codified in the regulations.

<sup>3</sup> Totals subject to rounding error.

Within the BFT quota proposed in this action and consistent with the ICCAT-recommended limit on the harvest of school BFT (measuring 27 to less than 47 inches curved fork length (CFL)), the school BFT subquota is 127.3 mt. This final action also amends the regulations regarding annual quota adjustments to specify that NMFS may adjust the annual school BFT subquota to ensure compliance with the ICCAT-recommended procedures for addressing overharvest of school BFT. This amendment is needed because the current regulatory text refers to outdated language (regarding multi-year “balancing periods”) from a previous ICCAT recommendation.

*Adjustment of the 2018 BFT Quota for 2017 Underharvest*

This final rule also provides notice that, consistent with the BFT quota regulations at § 635.27(a)(10), NMFS augments the BFT Reserve category quota with allowable underharvest, if any, from the previous year. NMFS makes such adjustments consistent with ICCAT limits and when complete catch information for the prior year is available and finalized. The maximum underharvest that a Contracting Party may carry forward from one year to the next is 10 percent of its initial catch quota, which for 2017 equals 108.38 mt for the United States.

For 2017, the adjusted BFT quota was 1,192.17 mt (1,083.79 mt + 108.38 mt of 2016 underharvest carried forward to 2017). The total 2017 BFT catch, which includes landings and dead discards, was 997.86 mt, which is 194.31 mt less than the 2017 adjusted quota. Thus, the 2018 adjusted BFT quota is 1,381.24 mt (baseline quota of 1,272.86 mt + underharvest carryover of 108.38 mt).

*Recalculation of Quota Available to Atlantic Tunas Purse Seine category and Reserve category*

Pursuant to § 635.27(a)(4), NMFS annually determines the amount of quota available to the Atlantic Tunas Purse Seine category participants, based on their BFT catch (landings and dead discards) in the prior year and reallocates the remainder to the Reserve category. Because the U.S. baseline quota and subquotas are increasing via this action, NMFS in this rule is also recalculating the 2018 Purse Seine and Reserve category quotas that were announced earlier this year. NMFS previously announced that 46.1 mt were available to the Purse Seine category for 2018, and the amount of Purse Seine category quota to be reallocated to the Reserve category was 138.2 mt (184.3 mt - 46.1 mt) (83 FR 17110, April 18, 2018). To account for the ICCAT quota increase addressed in this rule, NMFS is first adjusting the 2018 Purse Seine category quota to reflect the ICCAT quota increase. As a result, the baseline Purse Seine category quota initially increases by 35.2 mt to 219.5 mt. NMFS then recalculates the amounts of quota available to individual Purse Seine category participants for 2018 using the final baseline Purse Seine category quota (219.5 mt). Adjusted for the quota increase, 55 mt are available for Purse Seine category participants in 2018. Consistent with § 635.27(a)(4)(v)(C), NMFS will notify Atlantic Tunas Purse Seine fishery participants of the adjusted amount of quota available for their use in 2018 through the Individual Bluefin Quota (IBQ) electronic system and in writing.

The remaining 164.5 mt (219.5 mt - 55 mt = 164.5 mt) is added to the 2018 Reserve category quota. This final rule also increases the baseline annual Reserve

category quota by 4.7 mt from 24.8 mt to 29.5 mt. NMFS made four inseason quota transfers totaling 84.5 mt from the Reserve category in 2018 to date: 10 mt from the Reserve category to the General category effective February 28, 2018, through March 2, 2018 (83 FR 9232, March 5, 2018), 44.5 mt to the Longline category effective April 13, 2018, through December 31, 2018 (83 FR 17110, April 18, 2018), 30 mt from the Reserve category to the Harpoon category effective August 2, 2018, through November 15, 2018 (83 FR 38664, August 7, 2018), and 60 mt from the Reserve category to the General category effective September 18, 2018, through September 30, 2018 (83 FR 47843, September 21, 2018). Thus, the adjusted 2018 Reserve category quota as of publication of this action is: 24.8 mt (baseline) + 4.7 mt (ICCAT quota increase to baseline) - 144.5 (quota transfers) + 164.5 mt (Purse Seine adjustment) + 108.38 mt (underharvest carryover) = 157.9 mt.

### **NALB Annual Quota**

In 2017, following consideration of SCRS' work to test a set of harvest control rules through management strategy evaluation simulations, ICCAT adopted an interim harvest control rule for NALB, the first for any ICCAT stock, with the goal of adopting a long-term harvest control rule following further management strategy evaluation testing over the next few years. In ICCAT Recommendation 17-04 (Recommendation by ICCAT on a Harvest Control Rule for North Atlantic Albacore Supplementing the Multiannual Conservation and Management Programme, Recommendation 16-06), ICCAT adopted a 3-year constant annual TAC of 33,600 t for 2018 through 2020; this 20-percent increase from the current 28,000-t TAC is consistent with the Commission's

chosen stability clause, which limits the TAC increase to 20 percent. The recommendation calls on the SCRS to continue to develop the management strategy evaluation framework over the 2018-2020 period and calls on ICCAT to review the interim harvest control rule in 2020 with a view to adopting a long-term management procedure at that point.

#### *Domestic Quotas*

This action implements the annual U.S. NALB quota of 632.4 mt adopted in ICCAT Recommendation 17-04. Because ICCAT adopted annual TACs for 2018 through 2020, NMFS currently anticipates that the annual baseline quota would be in effect through 2020; it will remain in place unless and until a new TAC is adopted by ICCAT.

#### *Adjustment of the 2018 NALB Quota*

Consistent with the NALB quota regulations at § 635.27(e), NMFS adjusts the U.S. annual northern albacore quota for allowable underharvest, if any, in the previous year. NMFS makes such adjustments consistent with ICCAT limits and when complete catch information for the prior year is available and finalized. The maximum underharvest that a Contracting Party may carry forward from one year to the next is 25 percent of its initial catch quota, which, relevant to 2017, equals 131.75 mt for the United States.

For 2017, the adjusted NALB quota was 658.75 mt (527 mt + 131.75 mt of 2016 underharvest carried forward to 2017). The total 2017 NALB catch was 236.79 mt and this is 421.96 mt less than the 2017 adjusted quota. Thus, the underharvest for 2017 is

421.96 mt, 131.75 mt of which may be carried forward to the 2018 fishing year. As a result, the 2018 adjusted northern albacore quota is 632.4 mt + 131.75 mt, totaling 764.15 mt.

### **Modification of the Size Limit Regulations to Address Bigeye and Yellowfin Tuna Damaged through Predation by Sharks and Other Marine Species**

Minimum fish size regulations have applied for Atlantic bluefin tuna, bigeye tuna, and yellowfin tuna since 1996, when NMFS implemented the 27-inch minimum size for BFT consistent with ICCAT requirements, and also implemented a 27-inch minimum size for bigeye and yellowfin tuna for identification and enforcement purposes. Under existing regulations, these fish may be landed round with fins intact, or eviscerated with the head and fins removed as long as one pectoral fin and the tail remain attached. They cannot be filleted or cut into pieces at sea. The upper and lower lobes of the tail may be removed from tunas for storage purposes, but the fork of the tail must remain intact.

To facilitate enforcement, total curved fork length (CFL) is the sole criterion for determining the size class of whole (with head) Atlantic tunas. CFL is measured by tracing the contour of the body from the tip of the upper jaw to the fork of the tail in a line that runs along the top of the pectoral fin and the top of the caudal keel. Pectoral fin curved fork length (PFCFL) is the sole criterion for determining the size class of a *bluefin tuna with the head removed* and is multiplied by 1.35 to obtain total CFL. For detailed diagrams and measuring instructions, see the HMS Compliance Guides at [www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-highly-migratory-species-fishery-compliance-guides](http://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-highly-migratory-species-fishery-compliance-guides). Currently, the size limit regulations prohibit a person

from taking, retaining, or possessing a BFT, bigeye tuna, or yellowfin tuna in the Atlantic Ocean that is less than 27 inches CFL. The regulations also prohibit removing the head of a bigeye tuna or yellowfin tuna if the remaining portion would be less than 27 inches from the fork of the tail to the forward edge of the cut.

Fishermen have reported that they, at times, catch bigeye and yellowfin tuna that have been damaged by predation by sharks or other marine species. In those cases, a CFL measurement may not be possible if the fork of the tail has been removed by predation. Although the fish may otherwise meet the minimum size requirements, fishermen have had to discard the fish. To address this situation, NMFS makes minor modifications to the applicable Atlantic tunas size limit regulations to address retention, possession, and landing of bigeye and yellowfin damaged through predation by sharks and other marine species. In this action, NMFS adds text to the size limit regulations applicable to bigeye and yellowfin tuna to indicate that a “bigeye or yellowfin tuna that is damaged through predation by sharks and other marine species may be retained, possessed, or landed only if the length of the remainder of the fish is equal to or greater than 27 inches (69 cm).” These changes allow retention, possession, and landing of yellowfin and bigeye tuna for which a measurement to the fork of the tail may not be possible, provided that the remainder of the fish meets the current minimum size (*e.g.*, 27 inches for yellowfin and bigeye tuna). To preserve evidence, for enforcement purposes, that the carcass was damaged through predation by sharks or other marine species, the regulatory text specifies that, aboard a vessel, no tissue may be cut away from or other alterations made to the predation-damaged area of the fish. The effects of this change are

primarily economic and administrative, and no environmental effects are anticipated because the change only allows for retention of a very limited number of fish that would otherwise be caught but need to be discarded. NMFS implemented measures to address shark-damaged swordfish in 1996 (61 FR 27304, May 31, 1996), and intends to consider extending the scope of those measures to include damage through predation by other marine species in a future swordfish action.

### **Response to Comments**

NMFS received three written comments on the proposed rule. Below, NMFS summarizes and responds to all comments made specifically on the proposed rule during the comment period.

*Comment 1:* One commenter suggested that, for conservation reasons, NMFS should reduce rather than increase the quota.

*Response:* The western Atlantic BFT TAC adopted by ICCAT on an interim basis is within the range recommended by ICCAT's Standing Committee on Research and Statistics (SCRS) and provides a buffer from the top end of the range (2,500 mt). NMFS has determined that implementing the U.S. baseline quota is consistent with the ICCAT recommendation and our conservation and management obligations under the Magnuson-Stevens Act and ATCA to provide the opportunity to harvest the ICCAT-recommended quota. NMFS is committed to the sustainable, science-based management of BFT, and is supportive of ICCAT's work toward adopting stock management recommendations using management procedures, which ICCAT has recommended for

BFT and other priority stocks, to manage fisheries more effectively in the face of identified uncertainties.

*Comment 2:* One commenter, representing a fishing industry organization, supported finalizing the BFT and NALB quotas as proposed, further commented on HMS regulations that affect pelagic longline participants, including the Individual Bluefin Quota Program and time/area closures, and supported access to closed areas through a research fishery.

*Response:* This rulemaking does not address issues beyond the modification of the baseline annual U.S. quota and subquotas for BFT, the baseline annual U.S. NALB quota, and the size limit regulations pertaining to bigeye and yellowfin tuna.

NMFS is currently preparing a draft Three-Year Review of the Individual Bluefin Quota Program. NMFS plans to conduct scoping in the future to respond to that review, as well as consider other potential changes to the regulations applicable to the pelagic longline fishery and the directed bluefin fisheries. NMFS also initiated a separate scoping process in the spring of 2018 to consider a range of issues and options regarding possible area-based and weak hook management changes. The subject time/area closures, gear restricted areas, and weak hook requirement were originally implemented to reduce incidental BFT catch that occurs during pelagic longline operations. Depending on the outcome of NMFS' review, NMFS anticipates publishing a proposed rule on these other potential changes to the regulations in spring 2019.

*Comment 3:* The comment from the fishing industry group also provided specific suggestions regarding the proposed change regarding bigeye and yellowfin tuna damaged

by shark bites. Specifically, the comment suggested that NMFS broaden the regulatory provision to address predation by other marine species that predate on hooked tuna and that may cause damage similar to damage caused by sharks. The comment also requested that NMFS allow trimming of the damaged (*i.e.*, bitten) area of the fish for quality purposes, and noted that fishermen routinely trim the damaged area of predated fish to avoid possible spoiling of the remaining carcass.

*Response:* NMFS agrees that predation by marine species other than sharks, such as pilot whales or Risso's dolphins, may result in damage to caught Atlantic bigeye and yellowfin tuna similar to damage caused by shark bites. It would also be difficult for fishermen or law enforcement to distinguish whether a tuna was bitten by a shark or another marine species. NMFS has determined that expanding the scope of the regulatory text to specify "predation by sharks and other marine species" is an appropriate modification of the originally-proposed text, and that the change could be enforced effectively. Thus, in this final rule, NMFS modifies the language being added to the size limit regulations applicable to bigeye and yellowfin tuna so that it refers to predation by sharks and other marine species. With this modification, the relevant language of § 635.20(c)(3) indicates that a bigeye or yellowfin tuna that is damaged through predation by sharks and other marine species may be retained, possessed, or landed only if the length of the remainder of the fish is equal to or greater than 27 inches (69 cm). No person shall cut or otherwise alter the predation-damaged area in any manner.

NMFS cannot affirm the comment that trimming of the damaged area by fishermen prior to landing is a common or routine practice. Furthermore, for Atlantic tunas this practice is illegal. For enforcement purposes, curved fork length is the sole criterion for determining the size of Atlantic tunas, and this measurement is taken either from the tip of the upper jaw to the fork of the tail (total curved fork length) or, for BFT with the head removed, from the dorsal insertion of the pectoral fin to the fork of the tail (pectoral fin curved fork length). Regulations require that Atlantic tunas be maintained through offloading either in round form or eviscerated with the head and fins removed, provided one pectoral fin and the tail remain attached. The upper and lower lobes of the tuna tail may be removed for storage purposes as long as the fork of the tail remains intact. See § 635.30(a). It is NMFS' understanding that some Atlantic tunas dealers trim away predation-damaged area of the tuna after landing and offloading to help preserve the fish. Legally, trimming may only occur after landing and offloading.

The proposed rule specified that no person shall cut or otherwise alter the damaged area of the fish. This prohibition is necessary, for enforcement purposes, to preserve evidence that the carcass was bitten. NMFS is concerned that allowing trimming of the damaged area prior to offloading could complicate effective enforcement of the Atlantic tunas regulations and species identification, particularly if it results in the tail being removed from the fish, and that this could become a common occurrence. Therefore, this provision prohibiting cutting or altering the damaged area is finalized as proposed.

**Changes from the Proposed Rule (83 FR 31517, July 6, 2018)**

As described in the response to Comment 3 above, NMFS made changes to the regulatory text of the proposed rule in response to the comment that other marine predators may cause damage similar to that caused by shark bites. Specifically, the final rule adds language to the size limit regulations applicable to bigeye and yellowfin tuna at § 635.20(c)(3), providing that a bigeye or yellowfin tuna that is damaged through predation by sharks and other marine species may be retained, possessed, or landed only if the length of the remainder of the fish is equal to or greater than 27 inches (69 cm). No person shall cut or otherwise alter the predation-damaged area in any manner.

### **Classification**

The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, ATCA, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

There is good cause under U.S.C. 553(d)(3) to waive the 30-day delay in effective date and to make the rule effective upon filing in the *Federal Register*. The purpose of the delay in effective date is to afford affected persons a reasonable time to prepare for the effective date of the rule. The fisheries for northern albacore and bluefin tuna began on January 1, 2018. NMFS monitors northern albacore and bluefin tuna catch and measures the data against the applicable available quotas. This rule effectively increases the quota for both of these fisheries and, consequently, for the subquotas within the bluefin tuna fishery. Delaying the effective date of these changes would mean that some

fisheries might have to close while operating under the old quota, and then re-open when the new quota is implemented soon thereafter. This would unnecessarily complicate the management of the northern albacore and bluefin tuna fisheries for the remainder of the year, confuse the regulated community, and create additional administrative burden, because it would require NMFS to publish closures and openings that would otherwise be unnecessary. To prevent confusion and potential overharvests, these quota increases and adjustments should be in place as soon as possible, thus allowing the impacted sectors to benefit from any subsequent quota adjustments to the fishing categories, giving them a reasonable opportunity to catch available quota, and providing them the opportunity for planning operations accordingly.

For example, under the northern albacore regulations, NMFS must close the fishery when the annual fishery quota is reached. Closure of the fishery based only on the currently codified baseline quota, rather than accounting for the higher quota in this rule, would result in an unnecessary closure and could preclude the fishery from harvesting northern albacore that are legally available, consistent with the ICCAT recommendations and the 2006 Consolidated HMS FMP, as amended. Furthermore, NMFS relies upon management flexibility to respond quickly to current fishery conditions and to ensure that fishermen have a reasonable opportunity to catch the available quotas. Implementing the higher bluefin tuna category quotas and adjusting the Reserve category quota as soon as possible provides NMFS the flexibility to transfer quota from the Reserve to other fishing categories inseason after considering the regulatory determination criteria, including fishery conditions at the time of the transfer.

The amount of quota currently in the Reserve category for 2018 is relatively low, and NMFS may need to transfer quota as soon as possible in order to reduce the likelihood of fishery closure during the remaining subquota time periods. NMFS could not appropriately adjust the annual quotas for 2018 sooner because the data needed to make the determination (*i.e.*, 2017 underharvest) did not become available until August, and additional time was needed for agency analysis and consideration of the data.

Implementation of the change to the size limit regulations to address damaged tunas, provided that the remainder of the fish meets the current minimum size (*e.g.*, 27 inches for yellowfin and bigeye tuna), will allow retention, possession, and landing of yellowfin and bigeye tuna for which a measurement to the fork of the tail may not be possible because the tail has been partially or entirely bitten off. Because this change could convert dead discards to landings, implementation of the measure as soon as possible could reduce waste. For all of these reasons, there is good cause to waive the 30-day delay in the date of effectiveness.

NMFS has prepared a Regulatory Impact Review (RIR) and a Final Regulatory Flexibility Analysis (FRFA), which present and analyze anticipated social and economic impacts of the alternatives contained in this final rule. The list of alternatives and their analyses are provided in the RIR and are not repeated here in their entirety. A copy of the RIR prepared for this final rule is available from NMFS (see **ADDRESSES**).

The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS' responses to those comments, and a summary of the analyses completed to

support the action. The full FRFA and analysis of economic and ecological impacts are available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

Section 604(a)(1) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) requires a succinct statement of the need for and objectives of the rule. The purpose of this action is to implement the 2017 ICCAT recommendations regarding western Atlantic BFT and NALB, as necessary and appropriate pursuant to the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The objectives of this action are to implement the 2017 ICCAT recommendations and distribute the U.S. BFT quota among domestic fishing categories using the existing regulatory formula for quota distribution established and analyzed in Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014). This action is needed because BFT and NALB quotas, as well as BFT allocations and resulting subquotas, are codified in the HMS regulations at 50 CFR 635.27, and rulemaking is necessary to modify them.

Section 604(a)(2) of the RFA requires a summary of significant issues raised by the public in response to the IRFA, a summary of the agency's assessment of such issues, and a statement of any changes made as a result of the comments. NMFS received three comments on the proposed rule (83 FR 31517, July 6, 2018) during the comment period. A summary of these comments and the agency's responses are included above. However, NMFS did not receive comments specifically on the IRFA or on the economic impacts of the rule.

Section 604(a)(3) of the RFA requires the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the SBA comments. NMFS did not receive comments from the Chief Counsel for Advocacy of the SBA in response to the proposed rule.

Section 604(a)(4) of the RFA requires agencies to provide descriptions of, and where feasible, an estimate of the number of small entities to which the rule would apply. The SBA has established size criteria for all major industry sectors in the United States, including fish harvesters. This provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS published a December 29, 2015, final rule (80 FR 81194), which became effective on July 1, 2016. The implementing regulations for that rule at 50 CFR 200.2 established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. NMFS considers all commercial HMS permit holders to be small entities because they had average annual receipts of less than \$11 million for commercial fishing.

As described in the recently published final rule to implement quarterly Individual Bluefin Quota (IBQ) accounting (82 FR 61489, December 28, 2017), the average annual gross revenue per active pelagic longline vessel was estimated to be \$308,050 for 2013 through 2016. NMFS considers all HMS Atlantic Tunas Longline permit holders (280 as of October 2017) to be small entities because these vessels have reported annual gross receipts of less than \$11 million for commercial fishing. NMFS is unaware of any other Atlantic Tunas category permit holders that potentially could earn more than \$11 million in revenue annually. HMS Angling category permits, which are recreational fishing permits, are typically obtained by individuals who are not considered small entities for purposes of the RFA. Therefore, NMFS considers all Atlantic Tunas permit holders and HMS Charter/Headboat permit holders subject to this action to be small entities. The following section provides a description of how NMFS calculated the average revenues and then provides a description of and, where feasible, provides an estimate of the number of small entities to which the rule would apply as required by RFA.

This action would apply to all participants in the Atlantic tunas fisheries, *i.e.*, to the over 27,000 vessels that held an Atlantic HMS Charter/Headboat, Atlantic HMS Angling, or an Atlantic Tunas permit as of October 2017. This final rule is expected to directly affect commercial and for-hire fishing vessels that possess an Atlantic Tunas permit or Atlantic HMS Charter/Headboat permit. It is unknown what portion of HMS Charter/Headboat permit holders actively participate in the BFT and NALB fisheries or fishing services for recreational anglers. As summarized in the 2017 SAFE Report for Atlantic HMS, there were 6,855 commercial Atlantic tunas or Atlantic HMS permits in

2017, as follows: 2,940 in the Atlantic Tunas General category; 11 in the Atlantic Tunas Harpoon category; 5 in the Atlantic Tunas Purse Seine category; 280 in the Atlantic Tunas Longline category; 1 in the Atlantic Tunas Trap category; and 3,618 in the HMS Charter/Headboat category. In the process of developing the IBQ regulations implemented in the final rule for Amendment 7, NMFS deemed 136 Longline category vessels as eligible for IBQ shares (*i.e.*, 136 vessels reported a set in the HMS logbook between 2006 and 2012 and had valid Atlantic Tunas Longline category permits on a vessel as of August 21, 2013, the publication date of the Amendment 7 proposed rule). This constitutes the best available information regarding the universe of permits and permit holders recently analyzed. It is unknown what portion of fishery participants would be affected by the minor change in the regulations to allow retention, possession, and landing of bigeye and yellowfin tuna, damaged through predation by sharks and other marine species, for which a measurement to the fork of the tail may not be possible, provided that the remainder of the fish meets the current minimum sizes (*e.g.*, 27 inches for yellowfin, and bigeye tunas). NMFS has determined that this action would not likely directly affect any small government jurisdictions defined under the RFA.

Under section 604(a)(5) of the RFA, agencies are required to describe any new reporting, record-keeping, and other compliance requirements. The action does not contain any new collection of information, reporting, or record-keeping requirements.

Under section 604(a)(6) of the RFA, agencies are required to describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the

factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

In this rulemaking, NMFS analyzed two quota implementation alternatives for BFT and NALB: first, the status quo U.S. baseline quota(s) established in 2015, and second, the preferred alternative to implement the U.S. quota in accordance with the 2017 ICCAT Recommendation and regulations regarding the distribution of the quota within U.S. fishing categories. The final rule implements the recently adopted ICCAT-recommended U.S. BFT and NALB quotas and, for BFT, applies the allocations for each quota category per the codified quota regulations. This action is consistent with ATCA, under which the Secretary promulgates regulations as necessary and appropriate to implement binding ICCAT recommendations.

NMFS has estimated the average impact that establishing the increased annual U.S. baseline BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories. As mentioned above, a 2017 ICCAT recommendation increased the annual U.S. baseline BFT quota for 2018, 2019, and 2020 to 1,247.86 mt and provides 25 mt annually for incidental catch of BFT related to directed longline fisheries in the NED. The annual U.S. baseline BFT subquotas would be adjusted consistent with the process (*i.e.*, the formulas) established in Amendment 7 and as codified in the quota regulations, and these amounts (in mt) would be codified.

To calculate the average ex-vessel BFT revenues under this action, NMFS first estimated potential category-wide revenues. The most recent ex-vessel average price per

pound information for each commercial quota category is used to estimate potential ex-vessel gross revenues under the subquotas (*i.e.*, 2017 prices for the General, Harpoon, and Longline/Trap categories, and 2015 prices for the Purse Seine category). For comparison, in 2017, gross revenues were approximately \$9.2 million, broken out by category as follows: General--\$7.8 million, Harpoon--\$496,968, Purse Seine--\$0, Longline--\$878,824, and Trap--\$0. The baseline subquotas could result in estimated gross revenues of \$10 million annually, if finalized and fully utilized, broken out by category as follows: General category: \$6.5 million (555.7 mt \* \$5.30/lb); Harpoon category: \$526,326 (46 mt \* \$5.19/lb); Purse Seine category: \$1.5 million (219.5 mt \* \$3.21/lb); Longline category: \$1.4 million (163.6 mt \* \$3.99/lb); and Trap category: \$10,556 (1.2 mt \* \$3.99/lb).

No affected entities would be expected to experience negative, direct economic impacts as a result of this action. On the contrary, each of the BFT quota categories would increase relative to the baseline quotas that applied in 2015 through 2017. To the extent that Purse Seine fishery participants and IBQ participants could receive additional quota as a result of the Amendment 7-implemented allocation formulas being applied to increases in available Purse Seine and Longline category quota, those participants would receive varying amounts of an increase, which would result in direct benefits from either increased fishing opportunities or quota leasing.

The FRFA assumes that each vessel will have similar catch and gross revenues to show the relative impact of the final action on vessels. To estimate potential average ex-vessel revenues that could result from this action for BFT, NMFS divided the potential

annual gross revenues for the General, Harpoon, Purse Seine, and Trap category by the number of permit holders. For the Longline category, NMFS divided the potential annual gross revenues by the number of IBQ share recipients. This is an appropriate approach for BFT fisheries, in particular, because available landings data (weight and ex-vessel value of the fish in price-per-pound) allow NMFS to calculate the gross revenue earned by a fishery participant on a successful trip. The available data (particularly from non-Longline participants) do not, however, allow NMFS to calculate the effort and cost associated with each successful trip (*e.g.*, the cost of gas, bait, ice, etc.), so net revenue for each participant cannot be calculated. As a result, NMFS analyzed the average impact of the alternatives among all participants in each category.

Success rates vary widely across participants in each category (due to the extent of vessel effort and availability of commercial-sized BFT to participants where they fish), but for the sake of estimating potential revenues per vessel, category-wide revenues can be divided by the number of permitted vessels in each category. For the Longline fishery, actual revenues would depend, in part, on each vessel's IBQ in 2018. It is unknown what portion of HMS Charter/Headboat permit holders actively participate in the BFT fishery. HMS Charter/Headboat vessels may fish commercially under the General category quota and retention limits. Therefore, NMFS is estimating potential General category ex-vessel revenue changes using the number of General category vessels only.

Estimated potential 2018 revenues on a per vessel basis, considering the number of permit holders listed above and the subquotas, could be \$2,409 for the General

category; \$47,848 for the Harpoon category; \$310,670 for the Purse Seine category; \$10,582 for the Longline category, using the 136 IBQ share recipients; and \$10,556 for the Trap category. Thus, all of the entities affected by this rule are considered to be small entities for the purposes of the RFA.

Consistent with the codified BFT quota regulations at § 635.27(a)(4)(v), NMFS will continue to annually calculate the quota available to historical Purse Seine fishery participants and reallocate the remaining Purse Seine category quota to the Reserve category. NMFS is further adjusting those amounts consistent with the annual U.S. baseline BFT quota in this final rule. The analyses in this FRFA are limited to the final baseline subquotas.

Because the directed commercial categories have underharvested their subquotas in recent years, the potential increases in ex-vessel revenues above may overestimate the probable economic impacts to those categories relative to recent conditions. Additionally, there has been substantial interannual variability in ex-vessel revenues in each category in recent years, due to recent changes in BFT availability and other factors.

The 2017 NALB ICCAT recommendation increased the annual U.S. baseline NALB quota for 2018, 2019, and 2020 to 632.4 mt. Based on knowledge of current participants in the fishery and estimated gross revenues, NMFS considers all of the entities affected by the NALB quota action be small entities for the purposes of the RFA.

NMFS does not subdivide the U.S. NALB quota into category subquotas. The most recent ex-vessel average price per pound information is used to estimate potential ex-vessel gross revenues. The baseline subquotas could result in estimated gross

revenues of \$1.8 million annually, if finalized and fully utilized ((632.4 mt/1.25) \* \$1.63/lb dw). No affected entities would be expected to experience negative, direct economic impacts as a result of this action.

The change to the regulatory text concerning Atlantic bigeye and yellowfin tuna size limits applies to all fishery participants but is not expected to have significant economic impacts. This is because damage to caught bigeye and yellowfin tuna through predation by sharks and other marine species is rare, and the change to the regulatory text is not expected to result in significant changes to Atlantic tunas fishery operations.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a statement published online serves as the small entity compliance guide, and a listserv notice containing the web address will be sent to HMS News subscribers. Copies of this final rule and the guide are available upon request (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties,  
Reporting and recordkeeping requirements, Treaties.

Dated: October 3, 2018.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

**PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

1. The authority citation for part 635 continues to read as follows:

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

2. In § 635.20, revise paragraph (c)(3) to read as follows:

**§ 635.20 Size limits.**

\* \* \* \* \*

(c) \* \* \*

(3) No person aboard a vessel shall remove the head of a bigeye tuna or yellowfin tuna if the remaining portion would be less than 27 inches (69 cm) from the fork of the tail to the forward edge of the cut. A bigeye or yellowfin tuna that is damaged through

predation by sharks or other marine species may be retained, possessed, or landed only if the length of the remainder of the fish is equal to or greater than 27 inches (69 cm). No person shall cut or otherwise alter the predation-damaged area in any manner.

\* \* \* \* \*

3. In § 635.27, revise paragraphs (a) introductory text, (a)(1)(i), (a)(2) and (3), (a)(4)(i), (a)(5) and (6), (a)(7)(i) and (ii), (a)(10)(iii), and (e)(1) to read as follows:

**§ 635.27 Quotas.**

(a) *Bluefin tuna*. Consistent with ICCAT recommendations, and with paragraph (a)(10)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. bluefin tuna quota, and make the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. bluefin tuna quota will be allocated among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories, as described in this section. Bluefin tuna quotas are specified in whole weight. The baseline annual U.S. bluefin tuna quota is 1,247.86 mt, not including an additional annual 25-mt allocation provided in paragraph (a)(3) of this section. The bluefin quota for the quota categories is calculated through the following process. First, 68 mt is subtracted from the baseline annual U.S. bluefin tuna quota and allocated to the Longline category quota. Second, the remaining quota is divided among the categories according to the following percentages: General—47.1 percent (555.7 mt); Angling—19.7 percent (232.4 mt), which includes the school bluefin tuna held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon—3.9 percent (46 mt); Purse Seine—18.6 percent

(219.5 mt); Longline—8.1 percent (95.6) plus the 68-mt allocation (*i.e.*, 163.6 mt total not including the 25-mt allocation from paragraph (a)(3)); Trap—0.1 percent (1.2 mt); and Reserve—2.5 percent (29.5 mt). NMFS may make inseason and annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section, including quota adjustments as a result of the annual reallocation of Purse Seine quota described under paragraph (a)(4)(v) of this section.

(1) \* \* \*

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). Pursuant to paragraph (a) of this section, the amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold under the General category quota is 555.7 mt, and is apportioned as follows, unless modified as described under paragraph (a)(1)(ii) of this section:

(A) January 1 through the effective date of a closure notice filed by NMFS announcing that the January subquota is reached, or projected to be reached under § 635.28(a)(1), or through March 31, whichever comes first—5.3 percent (29.5 mt);

(B) June 1 through August 31—50 percent (277.9 mt);

(C) September 1 through September 30—26.5 percent (147.3 mt);

(D) October 1 through November 30—13 percent (72.2 mt); and

(E) December 1 through December 31—5.2 percent (28.9 mt).

\* \* \* \* \*

(2) *Angling category quota.* In accordance with the framework procedures of the Consolidated HMS FMP, prior to each fishing year, or as early as feasible, NMFS will establish the Angling category daily retention limits. In accordance with paragraph (a) of this section, the total amount of bluefin tuna that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 232.4 mt. No more than 2.3 percent (5.3 mt) of the annual Angling category quota may be large medium or giant bluefin tuna. In addition, no more than 10 percent of the annual U.S. bluefin tuna quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school bluefin tuna (*i.e.*, 127.3 mt). The Angling category quota includes the amount of school bluefin tuna held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for bluefin tuna are further subdivided as follows:

(i) After adjustment for the school bluefin tuna quota held in reserve (under paragraph (a)(7)(ii) of this section), 52.8 percent (54.8 mt) of the school bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining school bluefin tuna Angling category quota (49 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(ii) An amount equal to 52.8 percent (52.7 mt) of the large school/small medium bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining large school/small medium bluefin tuna Angling category quota (47.1 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(iii) One third (1.8 mt) of the large medium and giant bluefin tuna Angling

category quota may be caught retained, possessed, or landed, in each of the three following geographic areas: North of 39°18' N. lat.; south of 39°18' N. lat., and outside of the Gulf of Mexico; and in the Gulf of Mexico. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(3) *Longline category quota.* Pursuant to paragraph (a) of this section, the total amount of large medium and giant bluefin tuna that may be caught, discarded dead, or retained, possessed, or landed by vessels that possess Atlantic Tunas Longline category permits is 163.6 mt. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area, and subject to the restrictions under § 635.15(b)(8).

(4) \* \* \*

(i) *Baseline Purse Seine quota.* Pursuant to paragraph (a) of this section, the baseline amount of large medium and giant bluefin tuna that may be caught, retained, possessed, or landed by vessels that possess Atlantic Tunas Purse Seine category permits is 219.5 mt, unless adjusted as a result of inseason and/or annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section; or adjusted (prior to allocation to individual participants) based on the previous year's catch as described under paragraph (a)(4)(v) of this section. Annually, NMFS will make a determination when the Purse Seine fishery will start, based on variations in seasonal distribution, abundance or migration patterns of bluefin tuna, cumulative and projected landings in other commercial fishing categories, the potential for gear conflicts on the fishing grounds, or market

impacts due to oversupply. NMFS will start the bluefin tuna purse seine season between June 1 and August 15, by filing an action with the Office of the Federal Register, and notifying the public. The Purse Seine category fishery closes on December 31 of each year.

\* \* \* \* \*

(5) *Harpoon category quota.* The total amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 46 mt. The Harpoon category fishery commences on June 1 of each year, and closes on November 15 of each year.

(6) *Trap category quota.* The total amount of large medium and giant bluefin tuna that may be caught, retained, possessed, or landed by vessels that possess Trap category Atlantic Tunas permits is 1.2 mt.

(7) \* \* \*

(i) The total amount of bluefin tuna that is held in reserve for inseason or annual adjustments and research using quota or subquotas is 29.5 mt, which may be augmented by allowable underharvest from the previous year, or annual reallocation of Purse Seine category quota as described under paragraph (a)(4)(v) of this section. Consistent with paragraphs (a)(8) through (10) of this section, NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota.

(ii) The total amount of school bluefin tuna that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (23.5 mt) of the total school bluefin tuna Angling category quota as described under paragraph (a)(2) of this

section. This amount is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school bluefin tuna Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

\* \* \* \* \*

(10) \* \* \*

(iii) Regardless of the estimated landings in any year, NMFS may adjust the annual school bluefin tuna quota to ensure compliance with the ICCAT-recommended procedures for addressing overharvest of school bluefin tuna.

\* \* \* \* \*

(e) \* \* \*

(1) *Annual quota.* Consistent with ICCAT recommendations and domestic management objectives, the total baseline annual fishery quota is 632.4 mt ww. The total quota, after any adjustments made per paragraph (e)(2) of this section, is the fishing year's total amount of northern albacore tuna that may be landed by persons and vessels subject to U.S. jurisdiction.

\* \* \* \* \*

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