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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042-8884-02]

RIN 0648-XH007

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason Angling category retention limit adjustment.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) daily retention limit that applies to vessels permitted in the Highly Migratory Species (HMS) Angling category and the HMS Charter/Headboat category (when fishing recreationally for BFT) should be adjusted for the remainder of 2019, based on consideration of the regulatory determination criteria regarding inseason adjustments. NMFS is adjusting the Angling category BFT daily retention limit from the default of one school, large school, or small medium BFT to two school BFT and one large school/small medium BFT per vessel per day/trip for private vessels with HMS Angling category permits; to three school BFT and one large school/small medium BFT per vessel per day/trip for *charter boat* vessels with HMS Charter/Headboat permits when fishing recreationally; and to six school BFT and two large school/small medium BFT per vessel per day/trip for *headboat* vessels with HMS Charter/Headboat permits when fishing recreationally.

These retention limits are effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT.

DATES: Effective May 11, 2019, through December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978-281-9260 or Larry Redd, 301-427-8503.

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 Amendment 7 to the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (Amendment 7) (79 FR 71510, December 2, 2014), and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

As a method for limiting fishing mortality on juvenile BFT, ICCAT recommends a tolerance limit on the annual harvest of BFT measuring less than 115 centimeters (cm) (45.3 inches) (straight fork length) to no more than 10 percent by weight of a Contracting Party's total BFT quota. Any overharvest of such tolerance limit from one year must be subtracted from the tolerance limit applicable in the next year or the year after that. NMFS implements this provision by limiting the harvest of school BFT (measuring 27 to less than 47 inches curved fork

length) as appropriate to not exceed the 10-percent limit (127.3 mt) annually.

In 2018, NMFS implemented a final rule that established the U.S. BFT quota and subquotas consistent with ICCAT Recommendation 17-06 (83 FR 53191, October 11, 2018). The currently codified baseline U.S. quota is 1,247.86 metric tons (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). See § 635.27(a). The currently codified Angling category quota is 232.4 mt (127.3 mt for school BFT, 99.8 mt for large school/small medium BFT, and 5.3 mt for large medium/giant BFT).

The Angling category season opened January 1, 2019, and continues through December 31, 2019. The size classes of BFT are summarized in Table 1. Please note that large school and small medium BFT traditionally have been managed as one size class, as described below, *i.e.*, a limit of one large school/small medium BFT (measuring 47 to less than 73 inches). Currently, the default Angling category daily retention limit of one school, large school, or small medium BFT applies (§ 635.23(b)(2)). This retention limit applies to HMS Angling and to HMS Charter/Headboat category permitted vessels (when fishing recreationally for BFT).

As defined at § 600.10, “charter boat” means a vessel less than 100 gross tons (90.8 mt) that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire (*i.e.*, uninspected) and “headboat” means a vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire (*i.e.*, greater than six).

Table 1. BFT Size Classes.

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

Table 2 summarizes the recreational quota, subquotas, landings, and retention limit information for 2017 and 2018, by size class.

Table 2. Angling category quotas (mt), estimated landings (mt), and daily retention limits, 2017-2018.

Size Class	2017			2018		
	Subquotas and Total Quota (mt)	Landings (mt)	Amount of Subquotas and Total Quota Used	Subquotas and Total Quota (mt)	Landings (mt)	Amount of Subquotas and Total Quota Used
School	108.4	47.1	43%	127.3	55.8	44%
Large School/ Small Medium	82.3	84.5	103%	99.8	45.5	46%
Trophy: Large Medium/ Giant	4.5	10.2	227%	5.3	11.3	213%
Total	195.2	141.8	73%	232.4	112.6	48%
Daily Retention Limits (per Vessel)	<u>January 1 through April 29:</u> 1 school, large school, or small medium (default) <u>April 30 through December 31</u> (82 FR 19615, April 28, 2017): <i>Private boats:</i> 2 school <u>and</u> 1 large school/small medium <i>Charter/Headboats:</i> 3 school <u>and</u> 1 large school/small medium			<u>January 1 through April 25:</u> 1 school, large school, or small medium (default) <u>April 26 through December 31</u> (83 FR 18230, April 26, 2018): <i>Private boats:</i> 2 school <u>and</u> 1 large school/small medium <i>Charter/Headboats:</i> 3 school <u>and</u> 1 large school/small medium		

Adjustment of Angling Category Daily Retention Limit

Under § 635.23(b)(3), NMFS may increase or decrease the Angling category retention limit for any size class of BFT after considering regulatory determination criteria provided under § 635.27(a)(8). Also under § 635.23(b)(3), recreational retention limits may be adjusted separately for specific vessel type, such as private vessels, headboats, or charter boats.

NMFS has considered all of the relevant determination criteria and their applicability to the change in the Angling category retention limit. The criteria and their application are discussed below.

NMFS considered 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 recreational fishermen continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT would support the collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS considered the catches of the Angling category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii)). NMFS anticipates that the full 2019 Angling category quota would not be harvested under the default retention limit. As shown in Table 2, Angling category landings were approximately 73 percent of the 195.2-mt annual Angling category quota in 2017 and 49 percent of the 232.4-mt annual Angling category quota in 2018, including landings of 43 percent of the available school BFT quota in both years.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of

the adjustment on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). These retention limits would be consistent with the quotas established and analyzed in the 2018 BFT quota final rule, which implemented the ICCAT quota consistent with ATCA, 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 latest stock assessment.

Another principal consideration in setting the retention limit is the objective of providing opportunities to harvest the full Angling category quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and 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)).

The 2018 school BFT landings represent 4 percent of the total U.S. quota for 2018, well under the ICCAT recommended 10-percent limit. Given that the Angling category landings fell short of the available quota and considering the regulatory criteria above, NMFS has determined that the Angling category retention limit applicable to participants on HMS Angling and HMS Charter/Headboat category permitted vessels should be adjusted upwards from the default levels. NMFS has also concluded that implementation of separate limits for private, charter boat, and headboat vessels is appropriate, recognizing the different nature, socio-economic needs, and recent landings results of the two components of the recreational BFT fishery. For example,

charter operators historically have indicated that a multi-fish retention limit is vital to their ability to attract customers. In addition, Large Pelagics Survey estimates indicate that charter/headboat BFT landings averaged 26 percent of recent recreational landings for 2017 through 2018, with the remaining 74 percent landed by private vessels. NMFS has further concluded that a higher limit for headboats (than charter boats) is appropriate, given the limited number of headboats participating in the bluefin tuna fishery.

Given these considerations, for private vessels with HMS Angling category permits, this action adjusts the limit upwards to two school BFT and one large school/small medium BFT per vessel per day/trip (*i.e.*, two BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 73 inches). For charter boat vessels with HMS Charter/Headboat permits, this action adjusts the limit upwards to three school BFT and one large school/small medium BFT per vessel per day/trip when fishing recreationally for BFT (*i.e.*, three BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 73 inches). “Charter boat” means a vessel less than 100 gross tons (90.8 mt) that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire (*i.e.*, uninspected). For headboat vessels with HMS Charter/Headboat permits, this action adjusts the limit upwards to six school BFT and two large school/small medium BFT per vessel per day/trip when fishing recreationally for BFT (*i.e.*, three BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 73 inches). “Headboat” means a vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire (*i.e.*, greater than six). These retention limits are effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT. Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For

example, whether a private vessel (fishing under the Angling category retention limit) takes a two-day trip or makes two trips in one day, the day/trip limit of two school BFT and one large school/small medium BFT applies and may not be exceeded upon landing.

NMFS anticipates that the BFT daily retention limits in this action will result in landings during 2019 that would not exceed the available subquotas. Lower retention limits could result in substantial underharvest of the codified Angling category subquota, and increasing the daily limits further may risk exceeding the available quota, contrary to the objectives of the 2006 Consolidated HMS FMP and amendments. NMFS considered input on recreational limits from the HMS Advisory Panel at its March and September 2018 meetings. NMFS is not setting higher school BFT limits than the adjustments listed in Table 1 due to the potential risk of exceeding the ICCAT tolerance limit on school BFT and other considerations, such as potential effort shifts to BFT fishing as a result of current recreational retention limits for New England groundfish and striped bass.

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely through the mandatory landings and catch reports. HMS Charter/Headboat 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, using the HMS Catch Reporting app, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.). Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments or closures are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. 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.

HMS Angling and HMS Charter/Headboat category permit holders may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. Anglers are also reminded that all BFT that are released must be handled in a manner that will maximize survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the “Careful Catch and Release” brochure available at <https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure>.

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 daily retention limit for the remainder of 2019 at this time is impracticable. Based on available BFT quotas, fishery performance in recent years, and the availability of BFT on the fishing grounds, immediate adjustment to the Angling category BFT daily retention limit from

the default levels is warranted to allow fishermen to take advantage of the availability of fish and of quota. NMFS could not have proposed these actions earlier, as it needed to consider and respond to updated data and information from the 2018 Angling category. If NMFS was to offer a public comment period now, after having appropriately considered that data, it would 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 or low for the amount of quota available for the period.

Fisheries under the Angling category daily retention limit are currently underway and thus prior notice would be contrary to the public interest. Delays in increasing daily recreational BFT retention limit would adversely affect those HMS Angling and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one school, large school, or small medium BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. Analysis of available data shows that adjustment to the BFT daily retention limit from the default level would result in minimal risks of exceeding the ICCAT-allocated quota. NMFS provides notification of retention limit adjustments by publishing the notice in the **Federal Register**, e-mailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *hmspermits.noaa.gov*. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For 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 § 635.23(b)(3), and is exempt from review under Executive Order 12866.

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

Dated: May 06, 2019.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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