



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 180117042-8884-02; RTID 0648-XA699]

#### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

**ACTION:** Temporary rule; quota transfer.

**SUMMARY:** NMFS is transferring 19.5 metric tons (mt) of Atlantic bluefin tuna (BFT) from the 28.9-mt General category December 2021 subquota to the January through March 2021 subquota period. 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 Atlantic Highly Migratory Species (HMS) Charter/Headboat category vessels with a commercial sale endorsement when fishing commercially for BFT.

**DATES:** Effective January 1, 2021, through March 31, 2021.

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**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 Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and amendments. 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 current baseline General and Reserve category quotas are 555.7 mt and 29.5 mt, respectively. See § 635.27(a). Each of the General category time periods (January through March, June through August, September, October through November, and December) is allocated a “subquota” or portion of the annual General category quota. The baseline subquotas for each time period are as follows: 29.5 mt for January through March; 277.9 mt for June through August; 147.3 mt for September; 72.2 mt for October through November; and 28.9 mt for December. Any unused General category quota rolls forward from one time period to the next and is available for use in subsequent time periods.

**Transfer of 19.5 mt from the December 2021 Subquota to the January through March 2021 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 transfer. 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 BFT dealers provide valuable data for ongoing scientific

studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT, and potentially over a greater portion of the January through March time period, would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including in December 2020 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) and (ix)). Without a quota transfer from December 2021, the quota available for the January through March period would be 29.5 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 19.5 mt of the 28.9-mt quota available for December 2021 (with 28.9 mt representing 5.2 percent of the General category quota) would result in 49 mt (8.8 percent of the General category quota) being available for the January through March 2021 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 quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years. 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 through March subperiod that remains as of March 31 will roll forward to the next subperiod within the calendar year (*i.e.*, the June through August time period). In early 2020, NMFS transferred 19.5 mt of

quota from the December 2020 subquota to the January through March 2020 subquota period, resulting in a subquota of 49 mt for the January through March 2020 period and a subquota of 9.4 mt for the December 2020 period (85 FR 17, January 2, 2020). NMFS also made a transfer of 51 mt from the Reserve to the General category effective February 5, 2020, resulting in an adjusted subquota of 100 mt for the January through March 2020 period (85 FR 6828, February 6, 2020), and closed the General category fishery for the January through March subquota period effective February 24 (85 FR 10993, February 26, 2020). Under a one-fish General category daily retention limit (*i.e.*, of large medium or giant BFT, measuring 73 inches (185 cm) curved fork length or greater) effective January 1 through February 24, a total of 124.1 mt were landed.

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 2021 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. NMFS will need to account for 2021 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds to the extent consistent with the available amount of transferrable quota and other management objectives, while avoiding quota exceedance.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the 2006 Consolidated HMS FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with the current quotas, which were established and analyzed in the 2018 BFT quota final rule (83 FR 51391, October 11, 2018), 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. 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 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)). Specific to the General category, this includes providing opportunity equitably across all time periods.

NMFS also anticipates that some underharvest of the 2020 adjusted U.S. BFT quota will be carried forward to 2021 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 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 2021 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 2020. NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2021, through active inseason management actions such as retention limit adjustments and/or the timing of quota transfers, as practicable.

Based on the considerations above, NMFS is transferring 19.5 mt of the 28.9-mt General category quota allocated for the December 2021 period to the January through March 2021 period, resulting in a subquota of 49 mt for the January through March 2021 period and a subquota of 9.4 mt for the December 2021 period.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landings 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](https://hmspermits.noaa.gov) or by using the HMS Catch Reporting app, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8). 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 through March 2021 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, 2021), whether a vessel fishing under the General category limit takes a 2-day trip or makes two trips in 1 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 targeted 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.

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**. As needed, NMFS will close the General category fishery when the adjusted January through March period subquota has been reached. Even if the adjusted subquota is not reached, the General category fishery will close automatically on March 31, 2021, and will remain closed until it reopens on June 1, 2021. Fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access [hmspermits.noaa.gov](https://hmspermits.noaa.gov), for updates on quota monitoring and inseason adjustments.

### **Classification**

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is consistent with regulations at 50 CFR part 635, which were issued pursuant to section 304(c) of the Magnuson-Stevens Act and the Atlantic Tunas Convention Act, and is exempt from review under Executive Order 12866.

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 quota transfers 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 through March 2021 subquota period 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 landings data, including the recently available December 2020 data, in deciding to transfer a portion of the December 2021 subquota to the January through March 2021 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. This action does not raise conservation and management concerns. Transferring quota within the General category does not affect the overall U.S. BFT quota, and available data shows the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

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

Dated: December 17, 2020.

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