



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042-8884-02]

RTID 0648-XB018

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 Highly Migratory Species (HMS) Angling category permitted vessels and HMS Charter/Headboat vessels (when fishing recreationally for BFT) should be adjusted for the remainder of 2021, 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; 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 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 targeted fishing for BFT is prohibited.

DATES: Effective May 2, 2021 through December 31, 2021.

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SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed 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.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides 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 FMP and its amendments. NMFS is required under the MSA to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

As a method for limiting fishing mortality on juvenile BFT, ICCAT recommendations have adopted 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) to 127.3 metric tons (mt) annually (10 percent of the U.S. quota)

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). In 2020, following a stock assessment update, ICCAT adopted Recommendation 20-06, which maintained the overall total allowable catch of 2,350 mt and the associated

U.S. quota. As such, as described in § 635.27(a), the current baseline U.S. quota continues to be 1,247.86 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). The Angling category quota continues to be 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 on January 1, 2021, and continues through December 31, 2021. The size classes of BFT are summarized in Table 1. Large school and small medium BFT traditionally have been managed as one size class, *i.e.*, a limit of one large school/small medium BFT (measuring 47 to less than 73 inches). Similarly, large medium and giant BFT traditionally have been managed as one size class that is also known as the “trophy” class. Currently, the default Angling category daily retention limit of one school, large school, or small medium BFT is in effect and applies to HMS Angling category and HMS Charter/Headboat permitted vessels (when fishing recreationally for BFT) (§ 635.23(b)(2)).

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 2019 and 2020, by size class.

Table 2 -- Angling Category Quotas (mt), Estimated Landings (mt), and Daily Retention Limits, 2019-2020

Size Class	2019			2020		
	Subquotas and Total Quota (mt)	Landings (mt)	Amount of Subquotas and Total Quota Used (Percent)	Subquotas and Total Quota (mt)	Landings (mt)	Amount of Subquotas and Total Quota Used (Percent)
School	127.3	71	56	127.3	81.7	64
Large School/ Small Medium	99.8	95	95	99.8	112.3	113
Trophy: Large Medium/ Giant	5.3	15.8	298	5.3	8.9	168
Total	232.4	181.8	78	232.4	202.9	87
Daily Retention Limits (per Vessel)	January 1 through May 10: 1 school, large school, or small medium (default) May 11 through December 31: (84 FR 20296, May 9, 2019) <i>Private boats:</i> 2 school and 1 large school/small medium <i>Charter boats:</i> 3 school and 1 large school/small medium <i>Headboats:</i> 6 school and 2 large school/small medium			January 1 through May 1: 1 school, large school, or small medium (default) May 2 through December 31: (85 FR 26365, May 4, 2020) <i>Private boats:</i> 2 school and 1 large school/small medium <i>Charter boats:</i> 3 school and 1 large school/small medium <i>Headboats:</i> 6 school and 2 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 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.

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 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 continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also 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)). Additionally, NMFS considered Angling category landings in 2019 and 2020, which were approximately 78 percent and 87 percent of the 232.4-mt annual Angling category quota, respectively, including landings of 56 percent and 64 percent of the available school BFT quota, respectively, under the same daily retention limits as implemented in this action. Thus, absent retention limit adjustment, NMFS anticipates that the full 2021 Angling category quota would not be harvested under the default retention limit.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP (§ 635.27(a)(8)(v) and (vi)). These retention limits would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT recommendations, (established in Recommendation 17-06 and maintained in Recommendation 20-06), ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. These retention

limits are in keeping with those established quotas and management measures. 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, and these retention limits are consistent with those objectives.

Another principal consideration in setting the retention limit is the objective of providing opportunities to harvest the available Angling category quota without exceeding the annual quota, based on the objectives 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 available BFT quota allocations (related to § 635.27(a)(8)(x)).

NMFS considered input on recreational limits from the HMS Advisory Panel at its May and September 2020 meetings and that ICCAT recommendations and HMS implementing regulations limit the allowance for landings of school bluefin tuna to ten percent of the U.S. baseline quota (*i.e.*, 127.3 mt). The 2020 school BFT landings represented approximately 6 percent of the total U.S. quota for 2020, well under the ICCAT recommended 10-percent limit. 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 as well as high variability in bluefin tuna availability.

Given that the Angling category landings fell short of the available quota in 2019 and 2020, even with the retention limit adjustments, and considering the regulatory criteria above, NMFS has determined that the Angling category retention limits applicable to participants in the HMS Angling category and HMS Charter/Headboat 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 retention limit greater than the default limit of one fish is vital to their ability to attract customers. In addition, Large Pelagics Survey estimates indicate that charter/headboat BFT landings averaged 24 percent of recent recreational landings for 2019 through 2020, with the remaining 76 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). 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). 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. This action does not change the retention limit for trophy size BFT.

NMFS anticipates that the BFT daily retention limits in this action will result in landings during 2021 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.

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely through the mandatory landings and catch reports. HMS Angling category and HMS Charter/Headboat permitted 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 category and HMS Charter/Headboat 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. All BFT that are released must be handled in a manner that will maximize their 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 2021 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 2020 Angling category. 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 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 category and HMS Charter/Headboat 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 all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.23(b)(3), and is exempt from review under Executive Order 12866.

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

Dated: April 27, 2021.

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