



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042-8884-02]

RTID 0648-XB400

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 113.8 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category. This action is intended to account for an accrued overharvest of 53.8 mt from previous time-period subquotas and to provide further opportunities for General category fishermen to participate in the September General category fishery, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action would affect Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective [*insert date of filing for public inspection with the Office of the Federal Register*] through September 30, 2021.

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr., 301-427-8503, Nicholas Velseboer, 978-281-9260, or Lauren Latchford, 301-427-8503.

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 HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act 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.

The current baseline General and Reserve category quotas are 555.7 mt and 29.5 mt, respectively. The General category baseline subquota for the September time-period is 147.3 mt. Any unused General category quota rolls forward from one time-period to the next and is available for use in subsequent time-periods. To date for 2021, NMFS has published three actions that resulted in adjustments to the General and Reserve category quotas. The current adjusted quotas are 138 mt for the Reserve category, 75 mt for the General category January through March 2021 subquota period, and 9.4 mt for the December 2021 subquota period (85 FR 83832, December 23, 2020; 86 FR 8717, February 9, 2021; 86 FR 43420, August 9, 2021).

Transfer of 113.8 mt from the Reserve Category to the General Category

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories after considering 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 tuna dealers 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 in the General category 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 during the summer/fall and winter fisheries 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)). Preliminary landings data as of September 8, 2021, indicate that the General category landed a cumulative total of 406.7 mt through August 31, which exceeds the cumulative adjusted quota available through August 31, *i.e.*, 352.9 mt. Preliminary September landings as of September 8, 2021, are 74.5 mt, which represent 51 percent of the baseline September subquota (147.3 mt). As of September 8, 2021, the General category September time-period subquota has not yet been exceeded, but without a quota transfer at this time, NMFS would likely close the General category fishery shortly, and participants would have to stop BFT fishing activities while commercial-sized BFT remain available in the areas where General category permitted vessels operate at this time of year. Transferring 113.8 mt of quota from the Reserve category would account for 53.8 mt of accrued overharvest from the prior time-periods and result in an additional 60 mt being available for the September 2021 subquota time-period, thus effectively providing limited additional opportunities to harvest the U.S. BFT quota while avoiding exceeding it. NMFS also took into consideration a recently published final rule that would set restricted-fishing days for the General category during the months of September through November 2021 (86 FR 43421, August 9, 2021). That rule would further increase the likelihood that the fishery would remain open throughout the subperiod and year.

Regarding the projected ability of the vessels fishing under the General category quota 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 and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors, such as the restrictions that some dealers placed on their purchases of BFT from General category participants this year. A portion of the transferred quota covers the 53.8 mt overharvest in the category to date, and NMFS anticipates that General category participants will be able to harvest the remaining 60 mt of transferred BFT quota by the end of the subquota time-period. In the unlikely event that any of this quota is unused by September 30, such quota will roll forward to the next subperiod within the calendar year (*i.e.*, to the October through November period), and NMFS anticipates that it would be used before the end of the fishing year. 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. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds and provide a reasonable opportunity to harvest the available U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the BFT 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.

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

effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). This transfer 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. This quota transfer is in line with the established management measures and stock status determinations. Another principal consideration is the objective of providing opportunities to harvest the available General category quota without exceeding the annual quota, based on the objectives of the 2006 Consolidated HMS FMP and its 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)). Specific to the General category, this includes providing opportunities equitably across all time-periods.

Given these considerations, NMFS is transferring 113.8 mt of the available 138 mt of Reserve category quota to the General category. Of this amount, 53.8 mt accounts for preliminary overharvest of the January through March and June through August time-period subquotas, and 60 mt is added to the September subquota. Therefore, NMFS adjusts the General category September 2021 subquota to 207.3 mt after accounting for the 53.8 mt of overharvest through for the prior 2021 time-periods and adjusts the Reserve category quota to 24.2 mt. The General category fishery will remain open until September 30, 2021, or until the adjusted General category quota is reached, whichever comes first.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General category and HMS Charter/Headboat vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing hmspermits.noaa.gov or by using the HMS Catch Reporting app 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 adjustments (*e.g.*, quota adjustment, daily retention limit adjustment, or closure) 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.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is taken pursuant to 50 CFR part 635, which was issued pursuant to section 304(c), 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 its amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of

this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer for the September 2021 time-period is contrary to the public interest as such a delay would likely result in closure of the General category fishery when the baseline subquota for the September time-period is met and the need to re-open the fishery, with attendant costs to the fishery, including administrative costs and lost fishing opportunities. The delay would preclude the fishery from harvesting BFT that are available on the fishing grounds and that might otherwise become unavailable during a delay. This action does not raise conservation and management concerns. Transferring quota from the Reserve category to the General category does not affect the overall U.S. BFT quota, and 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. 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

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

Dated: September 9, 2021.

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Acting Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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