



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220919-0193]

RTID 0648-XD085

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category Retention Limit Adjustment

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

ACTION: Temporary rule; retention limit adjustment.

SUMMARY: NMFS is adjusting the General category daily retention limit from three large medium or giant (*i.e.*, measuring 73 inches (185 cm) curved fork length (CFL) or greater) Atlantic bluefin tuna (BFT) to one large medium or giant BFT. This daily retention limit applies to 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. This adjustment will be effective for the remainder of the June through August time period.

DATES: Effective July 2, 2023, through August 31, 2023.

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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 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.

As described in § 635.27(a), the current baseline U.S. BFT quota is 1,316.14 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). The General category baseline quota is currently 710.7 mt. This baseline quota is further subdivided into subquotas by time period. The baseline subquota for the June through August time period is 355.4 mt. The default General category daily retention limit is one large medium or giant (*i.e.*, measuring 73 inches (185 cm) CFL or greater) BFT per vessel per day/trip and applies to General category permitted vessels and to HMS Charter/Headboat permitted vessels (when fishing commercially for BFT) (§ 635.23(a)(2)). NMFS adjusted the daily retention limit adjustment for the beginning of the June through August 2023 time period from the default daily retention limit of one to three large medium or giant BFT (88 FR 34454, May 30, 2023). This action would adjust the daily retention limit back to one large medium or giant BFT for the remainder of the June through August 2023 time period.

Adjustment of General Category Daily Retention Limit

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 five BFT per vessel after considering the regulatory determination criteria under § 635.27(a)(7).

NMFS has considered all of the relevant determination criteria and their applicability to the General category BFT retention limit for June through August 2023. As described below, after considering these criteria, NMFS has decided to decrease the daily retention limit from three to one large medium or giant BFT per vessel per day/trip (*i.e.*, one BFT measuring 73 inches (185 cm) CFL or greater) for General category permitted vessels and for HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. HMS Charter/Headboat permitted vessels fishing recreationally under the Angling category restrictions must follow the Angling category retention and size limits.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example (and specific to the June through August 2023 limit), whether a vessel fishing under the General category retention 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 targeting 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.

Consideration of the Determination Criteria

As described above, under § 635.23(a)(4), NMFS may adjust the daily retention limit of large medium and giant BFT after considering the regulatory determination criteria under § 635.27(a)(7). 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)(7)(i)), biological samples collected from BFT landed by General category fishermen and provided by BFT dealers 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 General category quota to date and the likelihood of closure of the General category if no adjustment is made (§ 635.27(a)(7)(ii)). Commercial-size BFT are currently readily available to vessels fishing under the General category quota. To date, the General category has landed approximately 27.4 mt, representing 8 percent of the General category June through August time period. If current catch rates continue with the three-fish daily limit, the available for the June through August time period will be reached or exceeded, and NMFS would need to close the fishery earlier than otherwise would be necessary under a lower limit. NMFS intends to provide General category participants in all areas and time periods opportunities to harvest the General category quota without exceeding it, through active inseason management such as retention limit adjustments and/or the timing and amount of quota transfers (based on consideration of the determination criteria regarding inseason adjustments), while extending the season as long as practicable. NMFS is setting the limit for the remainder of the June through August 2023 time period in such a way that NMFS believes, informed by past experience, increases the likelihood that the fishery will remain open throughout the June through August time period and year.

NMFS also took into consideration a recently published final rule that would set restricted-fishing days (RFDs) for the General category during the months of July through November 2023, with the first RFD scheduled for July 1 (88 FR 33839, June 1, 2023). On an RFD, General category permitted vessels and HMS Charter/Headboat permitted vessels (when fishing commercially for BFT) are prohibited from fishing for BFT. However, HMS Charter/Headboat permitted vessels are authorized to fish recreationally under the Angling category restrictions and must follow the Angling category BFT retention and size limits. NMFS believes the final RFD action, in combination with reducing the daily retention limit that applies on open days (through

this inseason action) would further increase the likelihood that the fishery would remain open throughout the June through August time period and year.

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)). This retention limit adjustment would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT Recommendation 22-10, 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 retention limit adjustment is in line with the established management measures and stock status determinations. It is also important that NMFS be consistent with and limit landings to the subquotas both to adhere to the subquota 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. This retention limit adjustment is consistent with all of the above listed objectives.

Another principal consideration in setting the retention limit is the objective of providing opportunities to harvest the available General category quota without exceeding the annual quota. This consideration is based on the objectives of the 2006 Consolidated HMS FMP and its amendments, and includes achieving optimum yield on a continuing basis and optimizing the ability of all permit categories to harvest available BFT quota allocations (related to § 635.27(a)(7)(x)).

Given these considerations, NMFS has determined that a one-fish General category retention limit is warranted for the remainder of the June through August 2023 time period. This retention limit would provide a reasonable opportunity to harvest the available U.S. BFT quota (including the expected increase in available 2023 quota based

on 2022 underharvest), without exceeding it, while maintaining an equitable distribution of fishing opportunities; help optimize the ability of the General category to harvest its available quota; allow the collection of a broad range of data for stock monitoring purposes; and be consistent with the objectives of the 2006 Consolidated HMS FMP and amendments.

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 adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat vessel owners are required to report their own catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing www.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 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 www.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 and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 533(b)(B), there is good cause to waive prior notice and opportunity to provide comment on this action, as notice and comment would be impracticable and contrary to this action for the following reasons. Specifically, 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. Providing prior notice and an opportunity for public comment on the change in the daily retention limit from three BFT to the default level for the June through August time period would be impracticable. Based on available BFT quotas, fishery performance in recent years, and the availability of BFT on the fishing grounds, responsive adjustment to the General category BFT daily retention limit from three BFT to one fish is warranted to allow fishermen to take advantage of availability of fish and of quota. NMFS could not have proposed this action earlier, as it needed to consider and respond to updated data and information about fishery conditions and this year's landings. 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 inappropriate to the amount of quota available for the period.

Adjustment of the General category retention limit needs to be effective as soon as possible to extend fishing opportunities for fishermen in all geographic areas, and to provide equitable opportunities. Fisheries under the General category daily retention limit are currently underway and thus prior notice would be contrary to the public interest. Delays in decreasing the General category retention limit would adversely affect those General category and HMS Charter/Headboat vessels that would otherwise have an opportunity to harvest BFT if the fishery were to remain open for as long as feasible

throughout the remaining time periods. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the 2006 Consolidated HMS FMP and amendments. 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 www.hmspermits.noaa.gov.

For all of the above reasons, the AA finds that pursuant to 5 U.S.C. 553(d), there is also good cause to waive the 30-day delay in effective date.

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

Dated: June 27, 2023.

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