



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220919-0193]

RTID 0648-XD158

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Harpoon

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 Harpoon category bluefin tuna (BFT) daily retention limit from the default of no more than 10 large medium and giant BFT (*i.e.*, measuring 73 inches (185 cm) or greater curved fork length (CFL)), combined, to 5 large medium and giant BFT, combined, per vessel per day/trip. This action maintains the incidental daily catch limit of two large medium BFT (measuring 73 inches to less than 81 inches (206 cm)) per vessel per day/trip. This action applies to Atlantic Tunas Harpoon category permitted vessels and will be effective for the remainder of the 2023 Harpoon category fishing season, which ends November 15, 2023.

DATES: Effective July 14, 2023, through November 15, 2023, or unless NMFS announces via an action in the **Federal Register** another adjustment to the retention limit.

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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 Harpoon category baseline quota is 59.2 mt. As described in § 635.23(d)(1), the overall default Harpoon category daily retention limit is no more than 10 large medium or giant BFT (*i.e.*, measuring 73 inches (185 cm) CFL or greater), combined, per vessel per day/trip. As described in § 635.23(d)(2), the incidental daily catch limit is no more than two large medium BFT (*i.e.*, measuring 73 inches to less than 81 inches (206 cm) CFL) per vessel per day/trip. This retention limit adjustment applies to Atlantic Tunas Harpoon category permitted vessels.

Adjustment of Harpoon Category Daily Retention Limit

Under § 635.23(d)(1), NMFS may increase or decrease the overall daily retention limit of large medium and giant BFT, combined, per vessel per day over a range of 5 to a maximum of 10 BFT per vessel per day 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 Harpoon category BFT retention limit for the remainder of the 2023 Harpoon category fishing season. After considering these criteria, NMFS has decided to decrease the overall daily retention limit from the default to no more than five large medium and giant BFT, combined, per vessel per day/trip (*i.e.*, BFT measuring 73 inches (185 cm) CFL or greater) for Harpoon category permitted vessels. This action maintains the incidental daily catch limit of two large medium BFT (*i.e.*, measuring 73 inches to less than 81 inches (206 cm) CFL) per vessel per day/trip.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a vessel fishing under the Harpoon category retention limit takes a 2-day trip or makes two trips in 1 day, the daily limit of five fish (combined) may not be exceeded upon landing. This Harpoon category retention limit adjustment 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 Harpoon category.

Consideration of the Determination Criteria

As described above, under § 635.23(d)(1), 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 Harpoon 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 considered the catches of the Harpoon category quota to date and the likelihood of closure of the Harpoon category if no adjustment is made

(§ 635.27(a)(7)(ii)). Commercial-size BFT are currently readily available to vessels under the Harpoon category quota. To date, the Harpoon category has landed approximately 42.1 mt, representing 71 percent of the Harpoon category. If catch rates continue with the default daily limit, the Harpoon category quota will be reached or exceeded, and NMFS would need to close the fishery earlier than otherwise would be necessary under a lower 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)(7)(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 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 Harpoon 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)). As discussed above, NMFS will

closely monitor Harpoon category catch rates and actively adjust the daily retention limit as appropriate to enhance scientific data collection and ensure fishing opportunities throughout the fishing season, as well as ensure available quota is not exceeded.

An overall 10 fish (combined) daily retention limit could result in diminished fishing opportunities for Harpoon category vessels resulting in the premature closure of the Harpoon category. A five fish (combined) daily retention limit for the remainder of the fishing season will provide a greater opportunity to harvest the Harpoon category quota while maintaining equitable distribution of fishing opportunities for Harpoon category participants.

Given these considerations, NMFS has determined that a five fish (combined) Harpoon category retention limit is warranted for the remainder of the Harpoon category fishing season, unless modified in another action. 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 Harpoon 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, Harpoon category 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

<https://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 access <https://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 the default level for the Harpoon category fishery 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 Harpoon category BFT, combined, daily retention limit from the default level 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.

Adjustment of the Harpoon category retention limit needs to be effective as soon as possible to minimize any unnecessary disruption in fishing patterns, to allow the impacted sector to benefit from the adjustment, and to extend fishing opportunities for Harpoon category participants. Fishing under the Harpoon category daily retention limit is currently underway and thus prior notice would be contrary to the public interest. Delays in decreasing Harpoon category retention limit would adversely affect those Harpoon category vessels that would otherwise have an opportunity to harvest BFT if the fishery were to remain open for as long as feasibly possible. 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 <https://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: July 12, 2023.

Kelly Denit,

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