



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220523-0119; RTID 0648-XD185]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Harpoon Category Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring 10.8 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the Harpoon category. With this transfer, the adjusted Harpoon category quota for the 2023 fishing season is 70 mt. The 2023 Harpoon category fishery is open until November 15, 2023, or until the Harpoon category quota is reached, whichever comes first. This action is intended to provide further opportunities for Harpoon category fishermen, based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic Tunas Harpoon category (commercial) permitted vessels.

DATES: Effective July 21, 2023, through November 15, 2023.

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SUPPLEMENTARY INFORMATION: Atlantic highly migratory species (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 baseline quotas for the Harpoon and Reserve categories are 59.2 mt and 38.2 mt, respectively. The 2023 Harpoon category fishery opened June 1, and is open through November 15, 2023, or until the Harpoon category quota is reached, whichever comes first. In this action, NMFS is transferring 10.8 mt from the Reserve category to the Harpoon category. This transfer results in 70.0 mt ($59.2 \text{ mt} + 10.8 \text{ mt} = 70.0 \text{ mt}$) being available for the Harpoon category through November 15, 2023, or until the Harpoon category quota is reached, whichever comes first. This transfer also results in 27.4 mt ($38.2 \text{ mt} - 10.8 \text{ mt} = 27.4 \text{ mt}$) being available in the Reserve category through the remainder of the 2023 fishing year.

Transfer of 10.8 mt from the Reserve category to the Harpoon category

Under § 635.27(a)(8), NMFS has the authority to transfer quota among fishing categories or subcategories after considering the determination criteria provided under § 635.27(a)(7). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. These criteria 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)(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 in the Harpoon category 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) and (ix)). To date, preliminary landings data indicate that the Harpoon category has landed approximately 55 mt. Without a quota transfer at this time, NMFS would likely need to close the Harpoon category fishery and participants would have to stop BFT fishing activities while commercial-sized BFT remain available in the areas where Harpoon category permitted vessels operate. A quota transfer of 10.8 mt would provide limited additional opportunities to harvest the U.S. BFT quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the Harpoon category to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(7)(iii)), NMFS considered Harpoon 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. NMFS anticipates that the Harpoon category could harvest the transferred 10.8 mt prior to the end of the Harpoon category season, subject to weather conditions and BFT availability. NMFS may transfer unused Harpoon category quota to other quota categories, inseason, based on consideration of the determination criteria, as NMFS did in late 2022. Thus, this quota transfer would allow fishermen to take advantage of the availability of BFT 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 fishery might be exceeded (§ 635.27(a)(7)(iv)) and the ability to account for all 2023 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. While NMFS does not yet have final estimates of 2022 landings and dead discards, NMFS anticipates having sufficient quota to account for landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations.

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)(7)(v) and (vi)). This transfer 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 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 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)).

Given these considerations, NMFS is transferring 10.8 mt of the available 38.2 mt of Reserve category quota to the Harpoon category. Therefore, NMFS adjusts the Harpoon category quota to 70 mt for the 2023 Harpoon category fishing season (*i.e.*,

through November 15, 2023, or until the Harpoon category quota is reached, whichever comes first), and adjusts the Reserve category quota to 27.4 mt for the remainder of the 2023 fishing year.

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, 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 opportunity for public comment on this quota transfer to the Harpoon category for the remainder of 2023 is impracticable and contrary to the public interest as the Harpoon category fishery is currently underway. Based on Harpoon category catch rates, a delay in this action would likely result in closure of the Harpoon fishery when the baseline quota is met and the need to re-open the fishery, with attendant administrative costs and costs to the fishery. NMFS could not have proposed this action earlier, as it needed to consider and respond to updated landings data, in deciding to transfer a portion of the Reserve category quota to the Harpoon category quota. A delay in implementing this quota transfer 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 Harpoon category does not affect the overall U.S. BFT quota, and available data show 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, the AA finds that pursuant to 5 U.S.C. 553(d), there is 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 21, 2023.

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National Marine Fisheries Service.

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