



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220523-0193]

RTID 0648-XD386

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category October through November Time Period Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring 25 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category October through November time period resulting in an adjusted October through November time period subquota of 117.4 mt and a Reserve category quota of 87.2 mt. 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: The transfer is effective September 28, 2023, through November 30, 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 baseline quotas for the General and Reserve categories are 710.7 mt and 38.2 mt, respectively. The General category baseline quota is suballocated to different time periods. Relevant to this action, the baseline subquota for the October to November time period is 92.4 mt. To date, NMFS has published several actions that resulted in adjustments to the Reserve category quota, including the allowable carryover of underharvest from 2022 to 2023, resulting in an adjusted Reserve category quota of 112.2 mt (88 FR 48136, July 26, 2023; 88 FR 64385, September 19, 2023; 88 FR 64831 September 20, 2023). In this action, NMFS is transferring 25 mt from the Reserve category to the General category October through November time period. This transfer results in 117.4 mt ($92.4 \text{ mt} + 25 \text{ mt} = 117.4 \text{ mt}$) being available for the General category October through November time period. This transfer also results in 87.2 mt ($112.2 \text{ mt} - 25 \text{ mt} = 87.2 \text{ mt}$) being available in the Reserve category through the remainder of the 2023 fishing year.

Transfer of 25 mt from the Reserve category to the General 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 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 in the General category will support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS considered the catches of the General category quota to date and the likelihood of overharvests and an earlier closure of the General category if no adjustment is made (§ 635.27(a)(7)(ii) and (ix)). While the General category is currently closed and the October through November time-period subquota has not yet opened or been exceeded, without a quota transfer, NMFS would likely need to close the General category shortly after the October through November time period opens and participants would have to stop BFT fishing activities while commercial-sized BFT remain available in the areas where General category permitted vessels operate. A quota transfer of 25 mt at this time provides limited additional opportunities to harvest the U.S. BFT quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the General category to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(7)(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. Thus, this quota transfer will 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 most of 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 recently took such an action to carry over the allowable 106.5 mt of underharvest from 2022 to 2023 (88 FR 64831, September 20, 2023). 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 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)). Specific to the General category, this includes providing opportunities equitably across all time periods.

Given these considerations, NMFS is transferring 25 mt of the available 112.2 mt of Reserve category quota to the General category October through November time period subquota. Therefore, NMFS adjusts the General category October through November time period subquota to 117.4 mt and the Reserve category quota to 87.2 mt for the remainder of the 2023 fishing year, or until modified by a later action.

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 and HMS Charter/Headboat 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 call the Atlantic Tunas Information Line at (978) 281-9260, or access <https://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 of the General category is impracticable and contrary to the public interest as the General category fishery will open on October 1 for the October through November time period. Based on General category catch rates, a delay in this action would likely result in BFT landings exceeding the adjusted October through November 2023 General category quota shortly after the opening on October 1. Subquota exceedance may result in the need to reduce quota for the General category later in the year and thus could affect later fishing opportunities. 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 General category quota. 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 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: September 27, 2023.

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