



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 220919-0193; RTID 0648-XD473]

#### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Quota Transfer and Adjustment (General category December Subquota)

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

**ACTION:** Temporary rule; quota transfer and adjustment.

**SUMMARY:** NMFS is adjusting the Atlantic bluefin tuna (BFT) General category December 2023 subquota by transferring quota from the Reserve category. This adjustment results in an adjusted December time period subquota of 48.7 mt and an adjusted Reserve category quota of 1 mt. This action accounts for the accrued overharvest from previous 2023 General category time period subquotas, and will further opportunities for General category fishermen to participate in the December 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:** The quota transfer and adjustment is effective December 1, 2023, through December 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 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 December time period is 37 mt. Effective January 1, 2023, NMFS transferred 20.5 mt of BFT quota from the December 2023 time period to the January through March 2023 time period resulting in an adjusted subquota of 16.5 mt ( $37 \text{ mt} - 20.5 \text{ mt} = 16.5 \text{ mt}$ ) for the December 2023 time period (88 FR 786, January 5, 2023).

To date, NMFS has published several actions that adjusted the Reserve category quota (88 FR 48136, July 26, 2023; 88 FR 64385, September 19, 2023; 88 FR 64831, September 20, 2023; 88 FR 67654, October 2, 2023). As a result of these previous actions, the current adjusted Reserve category quota prior to this action is 87.2 mt.

Based on preliminary landings data received to date, NMFS has determined that the General category landed 795 mt. This amount exceeded the cumulative adjusted quota available through November 30 (741 mt) by 54 mt ( $795 \text{ mt} - 741 \text{ mt} = 54 \text{ mt}$ ).

### **Quota Transfer and Adjustment**

Under § 635.27(a)(1)(ii) NMFS has the authority to adjust each period's apportionment based on overharvest or underharvest in the prior period, after considering determination criteria provided under § 635.27(a)(7). Additionally, 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). This section focuses on the calculations involved in transferring quota from the Reserve category to the General category and adjusting the quota available for the General category December subquota time period; the consideration of the determination criteria can be found below after this section.

As stated above, the adjusted Reserve category quota is 87.2 mt. The quota in the Reserve category is held in reserve for inseason or annual adjustments and research. Under § 635.24(a)(8), NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota.

Transferring 86.2 mt from the Reserve category to the General category would account for the 54 mt accrued overharvest from the January through November time periods, results in a total adjusted December time period subquota of 48.7 mt ( $16.5 \text{ mt} + 32.2 \text{ mt} = 48.7 \text{ mt}$ ), and leaves 1 mt in the Reserve category to account for any BFT mortalities associated with research. The General category quota is available for use by Atlantic Tunas General category (commercial) permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

In summary, these modifications result in a total adjusted General category December time period subquota of 48.7 mt and a Reserve category quota of 1 mt. This action accounts for the accrued overharvest from previous 2023 General category time period subquotas, and will further opportunities for General category fishermen to participate in the December General category fishery, based on consideration of the regulatory determination criteria regarding inseason adjustments (see below). These quotas will be in effect when the fishery automatically opens on December 1, 2023.

### **Consideration of the Relevant Determination Criteria**

NMFS has considered all of the relevant determination criteria and their applicability to this inseason action. 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)(7)(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)(7)(ii) and (ix)). As stated above, preliminary landings data to date, indicate that the General category landed 795 mt. This amount exceeded the cumulative adjusted quota available through November 30 by 54 mt. While the General category is currently closed and December time period has not yet opened or been exceeded, without a quota transfer and adjustment at this time, based on recent catch rates in comparison to the

current available quota (16.5 mt), NMFS would likely need to close the General category fishery shortly after the December time period opens. Once the fishery is closed, 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 and adjustment 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 quota to harvest the additional amount of BFT quota 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, such as the restrictions that some dealers placed on their purchases of BFT from General category participants this year. Thus, this quota transfer and adjustment would allow fishermen to take advantage of the availability of BFT on the fishing grounds and provide a reasonable opportunity to harvest 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)(7)(iv)) and the ability to account for all 2023 landings and dead discards. In most of the 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 carryover 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 adjustment on accomplishing the objectives of the FMP (§ 635.27(a)(7)(v))

and (vi)). This quota transfer and adjustment would be 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 and adjustment 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 allow all permit categories a reasonable opportunity 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.

### **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 and adjustment of the General category is impracticable and contrary to the public interest as the General category fishery will open on December 1 for the December time period. Based on General category catch rates, a delay in this action would likely result in BFT landings exceeding the adjusted December 2023 General category quota shortly after the opening on December 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 add the underharvest from the October through November time period and transfer a portion of the Reserve category quota to the General category, specifically the December time period subquota. 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: November 7, 2023.

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