



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 220919-0193; RTID 0648-XD944]

### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category and Harpoon Category Retention Limit Adjustments

**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 bluefin tuna (BFT) daily retention limit from the default of one large medium or giant BFT to three 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 June through August subquota time period or until further modified. Additionally, NMFS is modifying the Harpoon category BFT daily retention limit from the default of no more than 10 large medium and giant BFT to 5 large medium or giant BFT. The incidental catch limit of two large medium BFT per vessel per day/trip remains unchanged. These retention limits apply to Atlantic Tunas Harpoon category permitted vessels for the remainder of the 2024 Harpoon category fishing season, which concludes on November 15, 2024, or until further modified.

**DATES:** The adjusted retention limit for the General category is effective June 1, 2024, through August 31, 2024 or until NMFS announces in the **Federal Register** another adjustment to the retention limit. The adjusted retention limit for the Harpoon category is

effective from June 1, 2024, through November 15, 2024, or until NMFS announces in the **Federal Register** another adjustment to the retention limit.

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**SUPPLEMENTARY INFORMATION:** Atlantic BFT fisheries are managed under the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and consistent with the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). HMS implementing regulations are at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota, established 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 at 16 U.S.C. 1854(g)(1)(D) 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 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 quota for the General category is 710.7 mt. 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 BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) 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)).

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, 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. If the vessel owner/operator retains two large medium BFT during a day/trip under these default retention limits, they may retain a maximum of 8 giant BFT on that same day/trip.

### **Adjustment of General and Harpoon Category Daily Retention Limits**

NMFS may increase or decrease the General or Harpoon category daily retention limits after considering the regulatory determination criteria under § 635.27(a)(7). For the General category, NMFS may adjust the daily retention limit of large medium and giant BFT over a range of zero to five BFT per vessel (see § 635.23(a)(4)). For the Harpoon category, NMFS may adjust 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 (see § 635.23(d)(1)). NMFS may also adjust the incidental daily catch limit for the Harpoon category over a range of two to a maximum of four large medium BFT per vessel per day (see § 635.23(d)(2)).

NMFS has considered all relevant determination criteria for adjusting the BFT retention limits in both the General and Harpoon categories. For the General category, after evaluating these criteria, NMFS has decided to increase the daily retention limit from one to three large medium or giant BFT per vessel per day/trip. This adjustment would apply to the June through August time period or until NMFS announces in the **Federal Register** another adjustment to the retention limit.

For the Harpoon category, NMFS has decided to decrease the overall daily retention limit 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). 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. As such, if two large medium BFT are retained during a day/trip, no more than three giant BFT may be retained on the same day/trip. Similarly, if no large medium BFT are retained, then all five BFT could be giant BFT. This adjustment would apply from June 1 through the remainder of the 2024 Harpoon category fishing season, which concludes on November 15, 2024, or until NMFS announces in the **Federal Register** another adjustment to the retention limit.

Regardless of the duration of a fishing trip, no more than a single day's daily retention limit may be possessed or retained at the end of the trip for both the General and Harpoon category vessels. For example, whether a General category vessel takes a 2-day trip or makes two trips in 1 day during the June through August time period, the daily limit of three fish may not be exceeded upon landing. Similarly, a Harpoon category vessel cannot exceed the daily limit of five combined large medium and giant BFT, regardless of the trip's length or number of trips in a day. These retention limits are effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeting fishing for BFT. The General category retention limit applies to vessels permitted in the General category and to those HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT, while the Harpoon category retention limit applies to those vessels permitted in the Harpoon category.

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

As described above, under § 635.23(a)(4) and (d)(1), NMFS may adjust the daily retention limit of large medium and giant BFT in the General and Harpoon categories 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 or 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 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 anticipated to migrate to the fishing grounds off the northeast U.S. coast by early June. Given the typically slow catch rates in early June in the General category, it is unlikely that increasing the retention limit from one BFT to three BFT per vessel for a short period of time would result in the subquota for the June through August time period being reached and a closure becoming necessary. If catch rates increase, NMFS could take another action to reduce the trip limit to ensure the fishery would remain open throughout the June through August time period. In 2023, NMFS took a similar action to increase the retention limit to three BFT per vessel in the first part of the June through August time period (88 FR 34454, May 30, 2023). When catch rates increased in late June, NMFS reduced the retention limit from three BFT per vessel back to the default limit of one BFT per vessel (88 FR 42272, June 30, 2023). NMFS found that when the retention limit was three BFT per vessel, the vast majority of successful trips (*i.e.*, General or Charter/Headboat trips on which at least one BFT is landed under General category quota) landed only one or two BFT. Specifically, from June 1 through July 1, 2023, 90 percent of the trips landed one BFT; 8 percent landed two; and only 2 percent landed three. NMFS expects catch rates this year will be similar (*i.e.*, low in the first part of June and then increasing). In short, NMFS adjusts the retention limit throughout the season in such a way that NMFS believes, informed by catch rates in past seasons and the catch rates during the current season, increases fishing

opportunities while also increasing the likelihood that the fishery will remain open throughout the subquota time period and year. NMFS also acknowledges and has taken into account a previously proposed rule, which, among other provisions, included proposed measures to designate restricted-fishing days for the General category from July through November 2024. Additionally, it proposed setting a default retention limit of three fish during June and one fish for all other open months (*i.e.*, January through March and July through December) (89 FR 13667, February 23, 2024). Upon its finalization, this rule will further enhance the probability of maintaining an open fishery throughout the subquota time period and year.

NMFS also considered the catches of the Harpoon category quota in recent years (*i.e.*, most recently in 2023). As mentioned above, commercial-size BFT are anticipated to migrate to the fishing grounds off the northeast U.S. coast by early June. Given the possibility of high catch rates in early June, decreasing the retention limit from a combined 10-fish limit to 5-fish per vessel/day would extend the quota throughout a greater portion of the fishing season. If catch rates are low with the adjusted daily trip limit, NMFS could take another action to increase the trip 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)(8)(v) and (vi)). Adjusting the retention limit for both of these categories 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. Making these adjustments 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. Because this action is similar to past actions in previous years, these retention limit adjustments are consistent with those objectives.

Another principal consideration in setting the retention limit is the objective of providing opportunities to harvest the available General category and 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)). NMFS anticipates that General category participants will have opportunities to harvest their quota in 2024 through proactive inseason management, such as adjustments to retention limits and timing and amount of quota transfers, as feasible. During the June through August period, NMFS will closely monitor General category catch rates associated with various gear types and adjust the daily retention limit accordingly to enhance scientific data collection and ensure fishing opportunities align with respective subquotas. Similarly, for the Harpoon category, NMFS will actively monitor catch rates and adjust the daily retention limit as needed throughout the fishing season to facilitate scientific data collection and maintain fishing opportunities while preventing the exceedance of available quota.

A limit lower than three fish at the start of the June through August time period could result in diminished fishing opportunities for those General category vessels using harpoon gear, based on past fish behavior early in the season. Lower limits may also result in effort shifts from the General category to the Harpoon category, which could result in premature closure of the Harpoon category (related to § 635.27(a)(7)(iv)), and, potentially, additional inseason adjustments. General category harpoon landings have

averaged less than 5 percent of the General category landings in recent years and these landings occur early in the season. A three-fish retention limit for an appropriate period of time will provide a greater opportunity to harvest the June through August subquota with harpoon gear in the General category while maintaining equitable distribution of fishing opportunities for harpoon and rod and reel General category participants. For the Harpoon category, an overall 10 fish (combined) daily retention limit could result in diminished fishing opportunities, and 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 three-fish retention limit for the General category and a five-fish (combined) retention limit for the Harpoon category are warranted for their respective parts of the fishing season. These retention limits would provide a reasonable opportunity to harvest the available U.S. BFT quota (including the expected increase in available 2024 quota based on 2023 underharvest), without exceeding it, while maintaining an equitable distribution of fishing opportunities; help optimize the ability of the General category and Harpoon category to harvest their available quotas; 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 category,

Harpoon category, and HMS Charter/Headboat permitted 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 (16 U.S.C. 1855(d)) and regulations at 50 CFR part 635 and this action 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 limits from the default level for the time periods that begin in June would be impracticable. Based on available BFT quotas, recent fishery performance, and the presence of BFT on fishing grounds, responsive adjustments to both the General and

Harpoon category BFT daily retention limits from their default levels are warranted. These adjustments aim to enable fishermen to capitalize on the availability of fish and quota. NMFS could not have proposed these adjustments earlier as it needed to thoroughly assess updated data and information concerning fishery conditions and this year's landings. Offering a public comment period now, after appropriately considering this data, would prevent fishermen from legally harvesting BFT in alignment with all regulatory criteria. Additionally, it could lead to the selection of a retention limit unsuitable to the available quota for the period.

Fisheries under the General and Harpoon category daily retention limit will commence on June 1 and thus prior notice would be contrary to the public interest. Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may result in low catch rates and quota rollovers. Analysis of available data shows that adjustment to the BFT daily retention limits from the default level would result in minimal risks of exceeding the ICCAT-allocated quota. NMFS provides notification of retention limit adjustments 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>.

Adjustment of the General and Harpoon category retention limits needs to be effective June 1, 2024, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the impacted sectors to benefit from the adjustment, and to not preclude fishing opportunities for fishermen in geographic areas with access to the fishery only during this time period. Reducing opportunities to harvest the respective quotas throughout the fishing season 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.

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: May 20, 2024.

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