

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 150121066–5717–02]

RIN 0648–XE335

**Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries**

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

**ACTION:** Temporary rule; inseason General category bluefin tuna quota transfer and retention limit adjustment.

**SUMMARY:** NMFS is transferring 80 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category for the remainder of the 2015 fishing year. This transfer results in an adjusted 2015 General category quota of 646.7 mt. NMFS also is adjusting the Atlantic tunas General category BFT daily retention limit from four large medium or giant BFT per vessel per day/trip to three large medium or giant BFT per vessel per day/trip for the remainder of the 2015 fishing year. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT.

**DATES:** Effective November 25, 2015 through December 31, 2015.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin or Brad McHale, 978–281–9260.

**SUPPLEMENTARY INFORMATION:**

Regulations implemented 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.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated

HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

Earlier this year, NMFS implemented a final rule that increased the U.S. BFT quota and subquotas per ICCAT Recommendation 14–05 (80 FR 52198, August 28, 2015). The base quota for the General category is 466.7 mt. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a portion of the annual General category quota. Although it is called the “January” subquota, the regulations allow the General category fishery under this quota to continue until the subquota is reached or March 31, whichever comes first. Based on the General category base quota of 466.7 mt, the subquotas for each time period are as follows: 24.7 mt for January; 233.3 mt for June through August; 123.7 mt for September; 60.7 mt for October through November; and 24.3 mt for December. Any unused General category quota rolls forward within the fishing year, which coincides with the calendar year, from one time period to the next, and is available for use in subsequent time periods. To date this year, NMFS has published four inseason quota transfers that have adjusted and distributed the available 2015 Reserve category quota among other quota categories (80 FR 7547, February 22, 2015; 80 FR 45098, July 29, 2015; 80 FR 46516, August 5, 2015; and 80 FR 68265, November 4, 2015). The Reserve category balance currently is 82.1 mt. The adjusted General category quota, following the four inseason actions, is 566.7 mt.

**Quota Transfer**

The 2015 General category fishery was open January 1, 2015, through March 31, 2015, reopened June 1, 2015, and remains open until December 31, 2015, or until the General category quota is reached, whichever comes first.

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering determination criteria provided under § 635.27(a)(8), including five new criteria recently added in Amendment 7. The determination criteria are: The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular

category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category’s quota; review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds; optimizing fishing opportunity; accounting for dead discards, facilitating quota monitoring, supporting other fishing monitoring programs through quota allocations and/or generation of revenue; and support of research through quota allocations and/or generation of revenue.

NMFS has considered the determination criteria regarding inseason adjustments and their applicability to the General category fishery for the end of 2015, including, but 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, biological samples collected from BFT landed by General category fishermen and provided by tuna 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 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 that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of bluefin tuna before the end of the fishing year; and the estimated amounts by which quotas for other gear categories of the fishery might be exceeded. General category landings in the winter BFT fishery, which typically begins in December or January each year, are highly variable and depend on availability of commercial-sized BFT to participants. Commercial-sized BFT

continue to be landed by General category vessels.

Without a quota transfer at this time, NMFS would have to close the 2015 General category fishery as the currently available General category quota would be reached shortly. As of November 20, 2015, the General category has landed approximately 550 mt, or 97 percent of its available 2015 quota of 566.7 mt. Overall, approximately 79 percent of the total of the commercial BFT subquotas for 2015 has been harvested. NMFS will need to account for 2015 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that even with this transfer. This quota transfer would provide additional opportunities to harvest the U.S. bluefin quota without exceeding it, while preserving the opportunity for General category fishermen to participate in the winter BFT fishery.

Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and Amendment 7, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations. This transfer would be consistent with the quotas recently established and analyzed in the Atlantic bluefin tuna quota final rule (80 FR 52198, August 28, 2015) and with objectives of the 2006 Consolidated HMS FMP and amendments, and is not expected to negatively impact stock health or to affect the stock in ways not already analyzed in those documents.

Based on the considerations above, NMFS is transferring 80 mt of Reserve category quota to the General category for the remainder of 2015, resulting in adjusted General and Reserve category quotas for 2015 of 646.7 mt and 2.1 mt, respectively. NMFS will close the 2015 General category fishery when the adjusted General category quota of 646.7 mt has been reached, or it will close automatically on December 31, 2015.

#### **Adjustment of General Category Daily Retention Limit**

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8), and listed above. For the 2015 fishing year, NMFS adjusted the daily retention limit from the default level of one large medium or giant BFT to three large medium or giant BFT for

the January subquota period (79 FR 77943, December 29, 2014), which closed March 31, 2015; and four large medium or giant BFT for the June through August period (80 FR 27863, May 15, 2015) as well as the September, October through November, and December periods (80 FR 51959, August 27, 2015). NMFS has considered the relevant criteria and their applicability to the General category BFT retention limit for the remainder of the fishing year. 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, additional opportunity to land bluefin tuna would support the collection of a broad range of data for the biological studies and for stock monitoring purposes. Regarding the effects of the adjustment on BFT rebuilding and overfishing and the effects of the adjustment on accomplishing the objectives of the fishery management plan, this action would be taken consistent with the previously implemented and analyzed quotas, and it is not expected to negatively impact stock health or otherwise affect the stock in ways not previously analyzed. It is also supported by the Environmental Analysis for the 2011 final rule regarding General and Harpoon category management measures, which established the current range over which NMFS may set the General category daily retention limit (*i.e.*, from zero to five fish (76 FR 74003, November 30, 2011)). As described above, a principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and Amendment 7.

Based on these considerations, NMFS has determined that a three-fish General category retention limit is warranted for the remainder of the year. It would provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, help optimize the ability of the General category to harvest its available quota, allow 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. Therefore, NMFS adjusts the General category retention limit from four to three large medium or giant BFT per vessel per day/trip, effective November 25, 2015 through December 31, 2015.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example (and specific to the limit that will apply through the end of the year), whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the day/trip limit of three fish applies and may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

#### **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. General, HMS Charter/Headboat, Harpoon, and Angling category vessel owners are required to report the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing [hmspermits.noaa.gov](http://hmspermits.noaa.gov). Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustment or closure is 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 [hmspermits.noaa.gov](http://hmspermits.noaa.gov), for updates on quota monitoring and inseason adjustments.

#### **Classification**

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

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. Affording prior notice and opportunity for public comment to implement the quota transfer and daily retention limit for the remainder of the year is impracticable as NMFS is reacting as quickly as possible to updated data and information that then requires

immediate action to be effective on the fishing grounds. NMFS could not effectively react to this data if, in implementing the retention limit, it allowed a public comment period, which, as it relates to quota transfers, would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria.

Delays in adjusting the retention limit may result in the available quota being met or exceeded and NMFS needing to close the fishery earlier than otherwise would be necessary under a lower limit. This could adversely affect those General and HMS Charter/Headboat category vessels that would otherwise have an opportunity to harvest BFT under retention limits set in response to the most recent data available. 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 designated time periods. Adjustment of the retention limit needs to be effective as soon as possible, to extend fishing opportunities for fishermen in geographic areas with access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.23(a)(4) and 635.27(a)(9), and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 25, 2015.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 150413357-5999-02]

RIN 0648-XD898

#### Atlantic Highly Migratory Species; 2016 Atlantic Shark Commercial Fishing Season

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; fishing season notification.

**SUMMARY:** This final rule establishes an opening date of January 1, 2016, for all Atlantic shark fisheries, including the fisheries in the Gulf of Mexico. This final rule also establishes the quotas for the 2016 fishing season based on over- and/or underharvests experienced during 2015 and previous fishing seasons. The large coastal shark (LCS) retention limit for directed shark limited access permit holders will start at 45 LCS other than sandbar sharks per trip in the Gulf of Mexico region and at 36 LCS other than sandbar sharks per trip in the Atlantic region. These retention limits for directed shark limited access permit holders may decrease or increase during the year to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas. NMFS anticipates that the retention limit in the Atlantic region will likely increase to the default limit of 45 LCS other than sandbar sharks per trip around July 15, 2016, subject to NMFS' evaluation of the inseason trip limit adjustment criteria. These actions could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

**DATES:** This rule is effective on January 1, 2016. The 2016 Atlantic commercial shark fishing season opening dates and quotas are provided in Table 1 under **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Guý DuBeck or Karyl Brewster-Geisz at 301-427-8503.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Atlantic commercial shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established, among other things, commercial shark retention limits, commercial quotas for species and management groups, accounting measures for under- and overharvests for the shark fisheries, and adaptive

management measures such as flexible opening dates for the fishing season and inseason adjustments to shark trip limits, which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

On August 18, 2015 (80 FR 49974), NMFS published a rule proposing the 2016 opening dates for the Atlantic commercial shark fisheries and quotas, based on shark landings information reported as of July 15, 2015. The August 2015 proposed rule contains details that are not repeated here. The comment period on the proposed rule ended on September 17, 2015.

During the comment period, NMFS received several written and oral comments on the proposed rule. Those comments, along with the Agency's responses, are summarized below. As further detailed in the Response to Comments section, after considering all the comments, NMFS is opening the fishing seasons for all shark management groups on January 1, 2016, as proposed in the August 18, 2015, proposed rule. For directed shark limited access permit holders, the Gulf of Mexico blacktip, aggregated LCS, and hammerhead management groups will start the fishing season with a retention limit of 45 LCS other than sandbar sharks per vessel per trip. The aggregated LCS and hammerhead shark management groups in the Atlantic region will start the fishing season with a retention limit of 36 LCS other than sandbar sharks per vessel per trip for directed shark limited access permit holders, which is a change from the proposed rule. Also, some of the quotas have changed since the proposed rule, based on updated landings information as of October 16, 2015. The retention limit for incidental shark limited access permit holders has not changed and remains at 3 LCS other than sandbar sharks per trip and a combined total of 16 small coastal sharks (SCS) and pelagic sharks, combined, per trip, consistent with § 635.24(a)(3) and (4).

This final rule serves as notification of the 2016 opening dates of the Atlantic commercial shark fisheries and 2016 quotas, based on shark landings updated as of October 16, 2015, pursuant to the "opening commercial fishing season" criteria at § 635.27(b)(3)(i) through (vii). This action does not change the annual base commercial quotas established under the 2006 Consolidated HMS FMP and its amendments for any shark management group. Any such changes would be performed through a separate action. Rather, this action adjusts the annual base commercial quotas for 2016