

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804. requirements with which vendors must comply.

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a “major rule” may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule has been reviewed and determined by OMB not to be a “major rule” under 5 U.S.C. 804(2).

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule, because an opportunity for public comment is not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see Section II. of this preamble). Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 1812, 1813, 1816, 1819, 1823, 1832, and 1852

Government procurement.

Erica Jones,
NASA FAR Supplement Manager.

Accordingly, 48 CFR parts 1812, 1813, 1816, 1819, 1823, 1832, and 1852 are amended as follows:

■ 1. The authority citation for parts 1812, 1813, 1816, 1819, 1823, 1832 and 1852 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

PARTS 1812, 1813, 1816, 1819, 1823, 1832, and 1852—[AMENDED]

■ 2. In parts 1812, 1816, 1819, 1823, 1832, and 1852 revise all references to “Commercial Items” to read “Commercial Products and Commercial Services.”

■ 3. Amend Part 1832, by—

■ a. Revising the subpart heading of 1832.1.

■ b. Revising the heading to section 1832.111.

■ c. Revising the subpart heading of 1832.4.

The revisions read as follows:

Subpart 1832.1—Other Than Commercial Products and Services Financing

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1832.111 Contractor clauses for other than commercial purchases

Subpart 1832.4—Advance Payments for Other Than Commercial Products and Commercial Services

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220523-0193; RTID 0648-XD337]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category September Time Period Quota Transfer and Closure

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

ACTION: Temporary rule; quota transfer and closure.

SUMMARY: NMFS is transferring 21.7 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category September time period resulting in an adjusted September time period subquota of 210 mt and a Reserve category quota of 5.7 mt. NMFS is also simultaneously closing the General category fishery for large medium and giant (*i.e.*, measuring

73 inches (185 centimeters)) curved fork length or greater) BFT for the September time period. This action also waives the previously scheduled restricted-fishing days (RFDs) for the remainder of the September time period. With the RFDs waived during the closure, fishermen aboard General category permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels may tag and release BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs. On October 1, 2023, the fishery will reopen automatically and previously scheduled RFDs for October will resume.

DATES: The transfer is effective September 17, 2023, through September 30, 2023. The closure is effective 11:30 p.m., local time, September 17, 2023, through September 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

September time period is 188.3 mt. To date, NMFS has published one action that resulted in adjustments to the Reserve category quota, resulting in an adjusted Reserve category quota of 27.4 mt (88 FR 48136, July 26, 2023). In this action, NMFS is transferring 21.7 mt from the Reserve category to the General category September time period. This transfer results in 210 mt (188.3 mt + 21.7 mt = 210 mt) being available for the General category September time period. This transfer also results in 5.7 mt (27.4 mt – 21.7 mt = 5.7 mt) being available in the Reserve category through the remainder of the 2023 fishing year, or until modified in a later action.

Transfer of 21.7 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 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 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)). To date, preliminary landings data indicate that the General category has landed approximately 132.5 mt for the September time period. Without a quota transfer at this time, the General category would have exceeded the available quota and NMFS would have needed to close the General category fishery earlier. If this had happened, participants would have had to stop BFT fishing activities while commercial-sized BFT remain available in the areas where General category permitted vessels operate. A quota transfer of 21.7 mt at this time provides limited additional opportunities to

harvest the U.S. BFT quota while avoiding a large exceedance.

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. Current reports indicate the General category has already harvested almost all of the transferred 21.7 mt. 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. 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 21.7 mt of the available 27.4 mt of Reserve category quota to the General category September time period subquota. Therefore, NMFS adjusts the General category September time period subquota to 210 mt and the Reserve category quota to 5.7 mt for the remainder of the 2023 fishing year, or until modified by a later action.

Closure of the September 2023 General Category Fishery

Under § 635.28(a)(1), NMFS files a closure action with the Office of the Federal Register for publication when a BFT quota (or subquota) is reached or is projected to be reached. Retaining, possessing, or landing BFT under that quota category is prohibited on or after the effective date and time of a closure notice for that category until the opening of the relevant subsequent quota period or until such date as specified.

To date, reported landings for the General category September time period total approximately 132.5 mt. Based on these landings data, NMFS has determined that the adjusted General category September time period subquota of 210 mt is projected to be reached and exceeded shortly. Therefore, retaining, possessing, or landing large medium or giant (*i.e.*, measuring 73 inches (185 cm) curved fork length or greater) BFT by persons aboard vessels permitted in the Atlantic Tunas General category and HMS Charter/Headboat permitted vessels (while fishing commercially) must cease at 11:30 p.m. local time on September 17, 2023. This action applies to Atlantic Tunas General category (commercial) permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT and is taken consistent with the regulations at § 635.28(a)(1). The General category will automatically reopen October 1, 2023, for the October through November 2023 time period, with a default daily retention limit of one BFT per vessel.

Adjustment of Daily Retention Limit for Selected Dates

On May 25, 2023 (88 FR 33839), NMFS published a final rule implementing RFDs every Tuesday, Friday, and Saturday from July 1 through November 30, 2023. Since the fishery will be closed for the remainder of the September time period, NMFS waives the previously scheduled RFDs

for the remainder of that time period. Previously scheduled RFDs will resume on October 1, 2023.

With the RFDs waived during the closure, consistent with § 635.23(a)(4), fishermen aboard General category permitted vessels and HMS Charter/Headboat permitted vessels may tag and release BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the "Careful Catch and Release" brochure available at <https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/>.

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.).

After the fishery reopens on October 1, depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available subquotas are 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 and closure of the General category is impracticable and contrary

to the public interest as the General category fishery is currently underway for the September time period. Based on General category catch rates, a delay in this action would likely result in BFT landings exceeding the adjusted September 2023 General category quota. 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 13, 2023.

Jennifer M. Wallace,

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

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