

paragraph (g) of this section, the prohibitions against ex parte communications apply following the issuance of a notice of proposed rulemaking. The prohibitions in covered proceedings continue until the proceeding is no longer subject to administrative reconsideration under 49 U.S.C. 1322(c) or judicial review.

*(e) Procedure required of Board Members and Board staff upon receipt of prohibited ex parte communications.*

(1) Any Board Member, hearing officer, or Board employee who receives an ex parte communication not permitted by these regulations must promptly transmit either the written communication, or a written summary of the oral communication with an outline of the surrounding circumstances to the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board. The Section Chief shall promptly place the written material or summary in the correspondence section of the public docket of the proceeding with a designation indicating that it is a prohibited ex parte communication that is not part of the decisional record.

(2) Any Board Member, hearing officer, or Board employee who is the recipient of such ex parte communication may request a ruling from the Board's Designated Agency Ethics Official as to whether the communication is a prohibited ex parte communication. The Designated Agency Ethics Official shall promptly reply to such requests. The Chief, Section of Administration, Office of Proceedings, shall promptly notify the Chairman of the Board of such ex parte communications sent to the Section Chief. The Designated Agency Ethics Official shall promptly notify the Chairman of all requests for rulings sent to the Designated Agency Ethics Official. The Chairman may require that any communication be placed in the correspondence section of the docket when fairness requires that it be made public, even if it is not a prohibited communication. The Chairman may direct the taking of such other action as may be appropriate under the circumstances.

(f) \* \* \*

(3) The Board may censure, suspend, dismiss, or institute proceedings to suspend or dismiss any Board employee who knowingly and willfully violates the rules in this section.

(g) *Ex parte communications in informal rulemaking proceedings; disclosure requirements.* (1) Notwithstanding paragraph (c) of this section, ex parte communications with Board Members in informal rulemaking

proceedings are permitted after the issuance of a notice of proposed rulemaking and until 20 days before the deadline for reply comments set forth in the notice of proposed rulemaking, unless otherwise specified by the Board in procedural orders governing the proceeding. The Board may delegate its participation in such ex parte communications to Board staff. All such ex parte communications must be disclosed in accordance with paragraph (g)(4) of this section. Any person who engages in such ex parte communications must comply with any schedule and additional instructions provided by the Board in the proceeding. Communications that do not comply with this section or with the schedule and instructions established in the proceeding are not permitted and are subject to the procedures and sanctions in paragraphs (e) and (f) of this section.

(2) To schedule ex parte meetings permitted under paragraph (g)(1) of this section, parties should contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance or the Board Member office with whom the meeting is requested, unless otherwise specified by the Board.

(3) Parties seeking to present confidential information during an ex parte communication must inform the Board of the confidentiality of the information at the time of the presentation and must comply with the disclosure requirements in paragraph (g)(4)(iv) of this section.

(4) The following disclosure requirements apply to ex parte communications permitted under paragraph (g)(1) of this section:

(i) Any person who engages in ex parte communications in an informal rulemaking proceeding shall submit to the Board Member office or delegated Board staff with whom the meeting was held a memorandum that states the date and location of the communication; lists the names and titles of all persons who attended (including via phone or video) or otherwise participated in the meeting during which the ex parte communication occurred; and summarizes the data and arguments presented during the ex parte communication. Any written or electronic material shown or given to Board Members or Board staff during the meeting must be attached to the memorandum.

(ii) Memoranda must be sufficiently detailed to describe the substance of the presentation. Board Members or Board staff may ask presenters to resubmit memoranda that are not sufficiently detailed.

(iii) If a single meeting includes presentations from multiple parties, counsel, or persons, a single summary may be submitted so long as all presenters agree to the form and content of the summary.

(iv) If a memorandum, including any attachments, contains information that the presenter asserts is confidential, the presenter must submit a public version and a confidential version of the memorandum. If there is no existing protective order governing the proceeding, the presenter must, at the same time the presenter submits its public and redacted memoranda, file a request with the Board seeking such an order pursuant to § 1104.14 of this chapter.

(v) Memoranda must be submitted to the Board in the manner prescribed no later than two business days after the ex parte communication.

(vi) Ex parte memoranda submitted under this section will be posted on the Board's website in the docket for the informal rulemaking proceeding within five days of submission. If a presenter has requested confidential treatment for all or part of a memorandum, only the public version will appear on the Board's website. Persons seeking access to the confidential version must do so pursuant to the protective order governing the proceeding.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 150121066-5717-02]

RIN 0648-XG061

#### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category Fishery

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

**ACTION:** Temporary rule; General category January fishery for 2018; inseason bluefin tuna quota transfer and closure.

**SUMMARY:** NMFS transfers 10 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the January 2018 subquota period (from January 1 through March 31, 2018, or until the available subquota for this period is reached, whichever comes

first) and closes the General category fishery for large medium and giant BFT until the General category reopens on June 1, 2018. The quota transfer 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 with a commercial sale endorsement when fishing commercially for BFT. The intent of the closure is to prevent overharvest of the available General category January 2018 BFT subquota as adjusted in this action.

**DATES:** The quota transfer is effective February 28, 2018, through March 2, 2018. The closure is effective 11:30 p.m., local time, March 2, 2018, through May 31, 2018.

**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 635. Section 635.27 subdivides 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 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.

NMFS is required, under regulations at § 635.28(a)(1), to file a closure notice for publication with the Office of the Federal Register when a BFT quota is reached or is projected to be reached. On and after the effective date and time of such notification, for the remainder of the fishing year or for a specified period as indicated in the notification, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

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 “subquota” or 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. 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. Effective January 1, 2017, NMFS transferred 14.3 mt of the 24.3-mt General category quota allocated for the December 2018 period to the January 2018 period, resulting in an adjusted subquota of 39 mt for the January period and a subquota of 10 mt for the December 2017 period (82 FR 60680, December 22, 2017).

Although the 2017 ICCAT recommendation regarding western BFT management would result in an increase to the baseline U.S. BFT quota (*i.e.*, from 1,058.79 mt to 1,247.86 mt) and subquotas for 2018 (including an expected increase in General category quota from 466.7 mt to 555.7 mt, consistent with the annual BFT quota calculation process established in Amendment 7), domestic implementation of that recommendation will take place in a separate rulemaking, likely to be finalized in mid-2018.

**Transfer of 10 mt From the Reserve Category to the General Category**

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota. 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)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided to researchers by tuna dealers give NMFS valuable parts and data for ongoing scientific studies of BFT age

and growth, migration, and reproductive status.

NMFS also considered the catches of the General category quota to date (including during the winter fishery in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii)). As of February 26, 2018, the General category landed 31.3 mt (80 percent) of its adjusted January 2018 subquota of 39 mt. Although this Notice also closes the fishery, without a quota transfer, closure may have been necessary sooner or the subquota category could have exceeded its available quota, while some quota is available in the Reserve category and while commercial-sized bluefin tuna may remain available in the areas where General category permitted vessels operate at this time of year. Transferring 10 mt of quota from the Reserve category would result in 49 mt being available for the January fishery, thus providing limited additional opportunities to harvest the U.S. bluefin tuna quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS anticipates that all of the 10 mt of quota will be used by March 2, based on current figures and the relatively small amount of quota being transferred. In the unlikely event that any of this quota is unused, by March 31, such quota will roll forward to the next subperiod within the calendar year (*i.e.*, the June–August time period), and NMFS anticipates that it would be used before the end of the fishing year.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2018 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. In 2016 and 2017, the General category exceeded its adjusted quota (discussed below) but sufficient quota was available to cover the exceedance without affecting the other categories. NMFS will need to account for 2018 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that, even with the 10 mt transfer to the General category for the January fishery.

This transfer would be consistent with the current quotas, which were established and analyzed in the 2015 BFT quota final rule (80 FR 52198, August 28, 2015), and with objectives of the 2006 Consolidated HMS FMP and amendments. (§ 635.27(a)(8)(v) and (vi)). At this time, there is a relatively small amount of quota in the Reserve category available to transfer to other categories or use for scientific research and for prudent responsive management. In the past, we have conducted the annual reallocation of unused Purse Seine category quota to the Reserve category earlier in the year, which resulted in more Reserve category quota available at this time of year. Even if more quota were available, however, we likely would limit the amount of transferred quota, given considerations related to prudent longer-term management for all categories of the fishery this year. 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 (related to § 635.27(a)(8)(x)).

NMFS also anticipates that some underharvest of the 2017 adjusted U.S. BFT quota will be carried forward to 2018 and placed in the Reserve category, in accordance with the regulations, later this year. This, in addition to the fact that any unused General category quota will roll forward to the next subperiod within the calendar year, as well as the anticipated increase in the U.S. quota and subquotas for 2018 as a result of ICCAT recommendations and NMFS' plan to actively manage the subquotas to avoid any exceedances, makes it likely that General category quota will remain available through the end of 2018 for December fishery participants, after the fishery re-opens later this year. NMFS also may choose to transfer unused quota from the Reserve or other categories, inseason, based on consideration of the determination criteria, as NMFS did for late 2017 (*i.e.*, transferred 156.4 mt from the Reserve category, effective October 1, 2017 (82 FR 46000, October 3, 2017)), and later transferred another 25.6 mt from the Harpoon category, effective December 1 (82 FR 55520, November 22, 2017). NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in

2018, through active inseason management such as retention limit adjustments and/or the timing of quota transfers, as practicable. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds to the extent consistent with the available amount transferrable quota and other management objectives, while avoiding quota exceedance.

Based on the considerations above, NMFS is transferring 10 mt of the 24.8-mt Reserve category quota to the General category for the January 2018 fishery, resulting in a subquota of 49 mt for the January 2018 fishery and 14.8 mt in the Reserve category.

#### **Closure of the January 2018 General Category Fishery**

Based on the best available bluefin tuna General category landings information (*i.e.*, 31.3 mt landed as of February 26, 2018) as well as average catch rates and anticipated fishing conditions, NMFS projects that the General category January subquota of 49 mt, as adjusted in this action, will be reached by March 2, 2018, and that the fishery should be closed to avoid exceedance of the enhanced quota. Through this action, we are closing the General category bluefin tuna fishery effective 11:30 p.m., March 2, 2018, through May 31, 2018. The fishery will reopen on June 1, 2018, with a quota of 233.3 mt available for the June through August time period. Therefore, retaining, possessing, or landing large medium or giant BFT by persons aboard vessels permitted in the Atlantic tunas General and HMS Charter/Headboat categories must cease at 11:30 p.m. local time on March 2, 2018. The General category will reopen automatically on June 1, 2018, for the June through August 2018 subquota period. This action applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT, and is taken consistent with the regulations at § 635.28(a)(1). The intent of this closure is to prevent overharvest of the available General category January BFT subquota.

Fishermen may catch and release (or 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 [www.nmfs.noaa.gov/sfa/hms/](http://www.nmfs.noaa.gov/sfa/hms/).

#### **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 and HMS Charter/Headboat 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) or by using the HMS Catch Reporting App.

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action (*e.g.*, quota adjustment, daily retention limit adjustment, or closure) is 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 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 quota transfers and fishery closures 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. These fisheries are currently underway and the currently available quota for the subcategory is projected to be reached shortly. Affording prior notice and opportunity for public comment to implement the quota transfer is impracticable and contrary to the public interest as such a delay would likely result in exceedance of the General category January fishery subquota or earlier closure of the fishery while fish are available on the fishing grounds. 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. 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 all of the above reasons, there also is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.27(a)(9) and 635.28(a)(1), and is exempt from review under Executive Order 12866.

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

Dated: February 28, 2018.

**Jennifer M. Wallace,**

*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 679

[Docket No. 170817779-8161-02]

RIN 0648-XG048

#### Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

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

**ACTION:** Temporary rule.

**SUMMARY:** NMFS is reallocating the projected unused amounts of the Aleut Corporation's and the Community Development Quota pollock directed fishing allowances from the Aleutian Islands subarea to the Bering Sea subarea directed fisheries. These actions are necessary to provide opportunity for harvest of the 2018 total allowable catch of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 28, 2018, until 2400 hrs, A.l.t., December 31, 2018.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In the Aleutian Islands subarea, the portion of the 2018 pollock total allowable catch (TAC) allocated to the Aleut Corporation's directed fishing allowance (DFA) is 14,700 metric tons (mt) and the Community Development Quota (CDQ) DFA is 1,900 mt as established by the final 2018 and 2019 harvest specifications for groundfish in

the BSAI (83 FR 8369, February 27, 2018).

As of February 27, 2018, the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that 12,200 mt of Aleut Corporation's DFA and 1,900 mt of pollock CDQ DFA in the Aleutian Islands subarea will not be harvested. Therefore, in accordance with § 679.20(a)(5)(iii)(B)(4), NMFS reallocates 12,200 mt of Aleut Corporation's DFA and 1,900 mt of pollock CDQ DFA from the Aleutian Islands subarea to the 2018 Bering Sea subarea allocations. The 1,900 mt of pollock CDQ DFA is added to the 2018 Bering Sea CDQ DFA. The remaining 12,200 mt of pollock is apportioned to the AFA Inshore sector (50 percent), AFA catcher/processor sector (40 percent), and the AFA mothership sector (10 percent). The 2018 Bering Sea subarea pollock incidental catch allowance remains at 47,888 mt. As a result, the 2018 harvest specifications for pollock in the Aleutian Islands subarea included in the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8369, February 27, 2018) are revised as follows: 2,500 mt to Aleut Corporation's DFA and 0 mt to CDQ DFA. Furthermore, pursuant to § 679.20(a)(5), Table 4 of the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8369, February 27, 2018) is revised to make 2018 pollock allocations consistent with this reallocation. This reallocation results in adjustments to the 2018 Aleut Corporation and CDQ pollock allocations established at § 679.20(a)(5).

TABLE 4—FINAL 2018 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) <sup>1</sup>

[Amounts are in metric tons]

| Area and sector                           | 2018 Allocations | 2018 A season <sup>1</sup> |                                | 2018 B season <sup>1</sup> |
|---|------------------|----------------------------|--------------------------------|----------------------------|
|   |                  | A season DFA               | SCA harvest limit <sup>2</sup> | B season DFA               |
| Bering Sea subarea TAC <sup>1</sup>       | 1,378,441        | n/a                        | n/a                            | n/a                        |
| CDQ DFA                                   | 138,334          | 62,250                     | 38,734                         | 76,084                     |
| ICA <sup>1</sup>                          | 47,888           | n/a                        | n/a                            | n/a                        |
| Total Bering Sea non-CDQ DFA              | 1,192,219        | 536,499                    | 333,821                        | 655,720                    |
| AFA Inshore                               | 596,109          | 268,249                    | 166,911                        | 327,860                    |
| AFA Catcher/Processors <sup>3</sup>       | 476,888          | 214,599                    | 133,529                        | 262,288                    |
| Catch by C/Ps                             | 436,352          | 196,358                    | n/a                            | 239,994                    |
| Catch by CVs <sup>3</sup>                 | 40,535           | 18,241                     | n/a                            | 22,294                     |
| Unlisted C/P Limit <sup>4</sup>           | 2,384            | 1,073                      | n/a                            | 1,311                      |
| AFA Motherships                           | 119,222          | 53,650                     | 33,382                         | 65,572                     |
| Excessive Harvesting Limit <sup>5</sup>   | 208,638          | n/a                        | n/a                            | n/a                        |
| Excessive Processing Limit <sup>6</sup>   | 357,666          | n/a                        | n/a                            | n/a                        |
| Aleutian Islands subarea ABC              | 40,788           | n/a                        | n/a                            | n/a                        |
| Aleutian Islands subarea TAC <sup>1</sup> | 4,900            | n/a                        | n/a                            | n/a                        |
| CDQ DFA                                   | 0                | 0                          | n/a                            | 0                          |
| ICA                                       | 2,400            | 1,200                      | n/a                            | 1,200                      |
| Aleut Corporation                         | 2,500            | 2,500                      | n/a                            | 0                          |
| Area harvest limit <sup>7</sup>           | n/a              | n/a                        | n/a                            | n/a                        |