

Dated: October 25, 2018.

**James W. Kurth,**

*Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 180117042-8884-02]

RIN 0648-XG695

#### 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 quota transfer.

**SUMMARY:** NMFS is transferring 19.5 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the 28.9-mt General category December 2019 subquota to the January 2019 subquota period (from January 1 through March 31, 2019, or until the available subquota for this period is reached, whichever comes first). 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 with a commercial sale endorsement when fishing commercially for BFT.

**DATES:** Effective January 1, 2019, through March 31, 2019.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, 978-281-9260, or Larry Redd, 301-427-8503.

**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) 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.

The base quota for the General category is 555.7 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 baseline subquotas for each time period are as follows: 29.5 mt for January; 277.9 mt for June through August; 147.3 mt for September; 72.2 mt for October through November; and 28.9 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.

#### Transfer of 19.5 mt From the December 2019 Subquota to the January 2019 Subquota

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 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, and potentially over a greater portion of the January time period, 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 (including in December 2018 and 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)). Without a quota transfer from December 2019 to January 2019 for the General category at this time, the quota available for the January period would be 29.5 mt (5.3 percent of the General category quota), and participants would have to stop BFT fishing activities once that amount is met, while commercial-sized BFT may remain available in the areas where General category permitted vessels operate. Transferring 19.5 mt of the 28.9-mt quota available for December 2019 (with 28.9 mt representing 5.2 percent of the General category quota) would result in 49 mt (8.8 percent of the General category quota) being available for the January subquota period. This quota transfer would provide additional opportunities to harvest the U.S. BFT quota without exceeding it, while preserving the opportunity for General category fishermen to participate in the winter BFT fishery at both the beginning and end of the calendar year.

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 considered General category landings over the last several years. General category landings in the winter BFT fishery tend to straddle the calendar year as BFT may be available in late November/December and into January of the following year or later. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. Any unused General category quota from the January subperiod that remains as of March 31 will roll forward to the next subperiod within the calendar year (*i.e.*, the June-August time period). In 2018, NMFS transferred 14.3 mt of quota from the December 2018 subquota to the January 2018 subquota period, resulting in a subquota of 39 mt for the January 2018 period and a subquota of 10 mt for the December 2018 period (82 FR 60680, December 22, 2017). NMFS also transferred 10 mt from the Reserve to the General category effective February 28, resulting in an adjusted subquota of 49 mt for the January 2018 period (83 FR 9232, March 5, 2018), and closed the General category fishery for the January subquota period effective March 2, 2018. Under a one-fish General

category daily retention limit (*i.e.*, of large medium or giant BFT, measuring 73 inches (185 cm) curved fork length (CFL) or greater) effective January 1 through March 2, a total of 59.3 mt were landed.

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 2019 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 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.

This transfer would be consistent with the current quotas, which were established and analyzed in the 2018 BFT quota final rule (83 FR 53191, October 11, 2018), and with objectives of the 2006 Consolidated HMS FMP and amendments. (§ 635.27(a)(8)(v) and (vi)). 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 amendments, 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 2018 adjusted U.S. BFT quota will be carried forward to 2019 and placed in the Reserve category, in accordance with the regulations. 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 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 2019 for December fishery participants, even with the quota transfer. 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 2018. NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2019, 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, consider the expected increases in available 2019 quota later in the year, and provide a reasonable opportunity to harvest the full U.S. BFT quota.

Based on the considerations above, NMFS is transferring 19.5 mt of the 28.9-mt General category quota allocated for the December 2019 period to the January 2019 period, resulting in a subquota of 49 mt for the January 2019 period and a subquota of 9.4 mt for the December 2019 period. NMFS will close the General category fishery when the adjusted January period subquota of 49 mt has been reached, or it will close automatically on March 31, 2019, whichever comes first, and it will remain closed until the General category fishery reopens on June 1, 2019.

#### 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, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant bluefin tuna 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). However, at this time, NMFS is maintaining the default daily retention limit of one large medium or giant BFT per vessel per day/trip (§ 635.23(a)(2)) for the January 2019 General category fishery. Regardless of the duration of a fishing trip, no more than a single day's retention limit may be possessed, retained, or landed. For example (and specific to the limit that will apply beginning January 1, 2019), whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of one fish 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 targeting fishing

for BFT, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT fishing commercially for BFT.

Depending on the level of fishing effort and catch rates of BFT including catches of the General category quota during the winter fishery, NMFS may determine that additional action (*e.g.*, quota adjustment, daily retention limit adjustment, or closure) is necessary to enhance scientific data collection from, and fishing opportunities in, all geographic areas, and to ensure available subquotas are not exceeded. 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 for the January 2019 subquota period at this time is impracticable and contrary to the public interest as NMFS could not have proposed this action earlier, as it needed to consider and respond to updated data and information from the 2018 General category fishery, including the recently-available December 2018 data, in deciding to transfer a portion of the December 2019 quota to the January 2019 subquota. If NMFS was to offer a public comment period now, after having appropriately considered that data, it could preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria, and/or could result in selection of a retention limit inappropriately high for the amount of quota available for the 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 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) (Inseason adjustments), and is exempt from review under Executive Order 12866.

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

Dated: December 21, 2018.

**Karen H. Abrams,**

*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 648

[Docket No. 180202111–8353–02]

RIN 0648–XG690

#### Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Mid-Atlantic Scallop Access Area to General Category Individual Fishing Quota Scallop Vessels

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces that the Mid-Atlantic Scallop Access Area is closed to Limited Access General Category Individual Fishing Quota scallop vessels for the remainder of the 2018 fishing year. No vessel issued a Limited Access General Category Individual Fishing Quota permit may fish for, possess, or land scallops from the Mid-Atlantic Scallop Access Area. Regulations require this action once it is projected that 100 percent of trips allocated to the Limited Access General Category Individual Fishing Quota scallop vessels for the Mid-Atlantic Scallop Access Area will be taken.

**DATES:** Effective 0001 hr local time, December 24, 2018, through March 31, 2019.

**FOR FURTHER INFORMATION CONTACT:** Shannah Jaburek, Fishery Management Specialist, (978) 282–8456.

**SUPPLEMENTARY INFORMATION:** Regulations governing fishing activity in the Sea Scallop Access Areas can be found in 50 CFR 648.59 and 648.60. These regulations authorize vessels issued a valid Limited Access General Category (LAGC) Individual Fishing

Quota (IFQ) scallop permit to fish in the Mid-Atlantic Scallop Access Area under specific conditions, including a total of 1,142 trips that may be taken during the 2018 fishing year. Section 648.59(g)(3)(iii) requires the Mid-Atlantic Scallop Access Area to be closed to LAGC IFQ permitted vessels for the remainder of the fishing year once the NMFS Greater Atlantic Regional Administrator determines that the allocated number of trips for fishing year 2018 are projected to be taken.

Based on trip declarations by LAGC IFQ scallop vessels fishing in the Mid-Atlantic Scallop Access Area, analysis of fishing effort, and other information, NMFS projects that 1,142 trips will be taken as of December 24, 2018. Therefore, in accordance with § 648.59(g)(3)(iii), NMFS is closing the Mid-Atlantic Scallop Access Area to all LAGC IFQ scallop vessels as of December 24, 2018. No vessel issued an LAGC IFQ permit may fish for, possess, or land scallops in or from the Mid-Atlantic Scallop Access Area after 0001 local time, December 24, 2018. Any LAGC IFQ vessel that has declared into the Mid-Atlantic Access Area scallop fishery, complied with all trip notification and observer requirements, and crossed the VMS demarcation line on the way to the area before 0001, December 24, 2018, may complete its trip without being subject to this closure. This closure is in effect for the remainder of the 2018 scallop fishing year, through March 31, 2019.

#### Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866. NMFS finds good cause under to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest and impracticable. The Mid-Atlantic Scallop Access Area opened for the 2018 fishing year on April 19, 2018. The regulations at § 648.59(g)(3)(iii) require this closure to ensure that LAGC IFQ scallop vessels do not take more than their allocated number of trips in the area. The projected date on which the LAGC IFQ fleet will have taken all of its allocated trips in an Access Area becomes apparent only as trips into the area occur on a real-time basis and as activity trends begin to appear. As a result, NMFS can only make an accurate projection very close in time to when the fleet has taken all of its trips. To allow LAGC IFQ scallop vessels to continue to take trips in the Mid-Atlantic Scallop Access Area during the period necessary to publish and receive

comments on a proposed rule would likely result in the vessels taking much more than the allowed number of trips in the Mid-Atlantic Scallop Access Area. Excessive trips and harvest from the Mid-Atlantic Scallop Access Area would result in excessive fishing effort in the area, where effort controls are critical, thereby undermining conservation objectives of the Atlantic Sea Scallop Fishery Management Plan and requiring more restrictive future management measures. Also, the public had prior notice and full opportunity to comment on this closure process when it was enacted. For these same reasons, NMFS further finds, under to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period.

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

Dated: December 21, 2018.

**Karen H. Abrams,**

*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 648

[Docket No. 170828822–70999–02]

RIN 0648–XG692

#### Fisheries of the Northeastern United States; Summer Flounder Fishery; 2018 Commercial Quota Harvested for the State of Rhode Island

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces that the 2018 summer flounder commercial quota allocated to the state of Rhode Island has been harvested. Vessels issued a commercial Federal permit for the summer flounder fishery may not land summer flounder in Rhode Island for the remainder of calendar year 2018, unless additional quota becomes available through a transfer from another state. Regulations governing the summer flounder fishery require publication of this notice to advise Rhode Island that the quota has been harvested, and to advise vessel and dealer permit holders that no Federal commercial quota is available to land summer flounder in Rhode Island.

**DATES:** Effective 0001 hours, December 29, 2018, through December 31, 2018.