

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

[Docket No. 190904–0021]

RIN 0648–XT006

Atlantic Highly Migratory Species; Adjustments to 2019 Northern Albacore Tuna Quota, 2019 North and South Atlantic Swordfish Quotas, and 2019 Atlantic Bluefin Tuna Reserve Category Quota

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

ACTION: Temporary final rule.

SUMMARY: NMFS adjusts the 2019 baseline quotas for U.S. North Atlantic albacore tuna (northern albacore), North and South Atlantic swordfish, and the Atlantic bluefin Reserve category based on available underharvest of the 2018 adjusted U.S. quotas. This action is necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective September 10, 2019, through December 31, 2019.

ADDRESSES: Supporting documents, including Environmental Assessments, as well as the Fishery Management Plans and their amendments that are described below, may be downloaded from the HMS website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>. These documents also are available upon request from Sarah McLaughlin, Steve Durkee, or Larry Redd at the telephone numbers below.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978–281–9260, Steve Durkee, 202–670–6637, 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 northern albacore, swordfish, and Atlantic bluefin tuna (BFT) by persons

and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27(e) implements the northern albacore annual quota recommended by ICCAT and describes the annual northern albacore quota adjustment process. Section 635.27(c) implements the ICCAT-recommended quotas and describes the quota adjustment process for both North and South Atlantic swordfish. Section 635.27(a) implements the ICCAT-recommended quota for and describes the annual BFT quota adjustment process. 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 quotas.

Note that weight information for northern albacore and BFT below is shown in metric tons (mt) whole weight (ww), and both dressed weight (dw) and ww are shown for swordfish.

Northern Albacore Annual Quota and Adjustment Process

Since 1998, ICCAT has adopted recommendations regarding the northern albacore fishery. ICCAT Recommendation 17–04 on northern albacore (which amends portions of Recommendation 16–06) includes a total allowable catch (TAC) at 33,600 mt for 2018 through 2020 and specific provisions regarding northern albacore conservation and management. The U.S. share of that TAC is a quota for 2019 and 2020 of 632.4 mt, annually, which is codified at § 635.27(e) and will remain in effect until changed.

Portions of ICCAT Recommendation 16–06 remain active. Relevant to the northern albacore quota adjustment in this action, and as codified at § 635.27(e)(2), the maximum underharvest that a Contracting Party may carry forward from one year to the next is 25 percent of its initial catch quota, which would be 158.1 mt for the United States.

Adjustment of the 2019 Northern Albacore Quota

Consistent with regulations at § 635.27(e), NMFS adjusts the U.S. annual northern albacore quota for allowable underharvest, if any, in the previous year. NMFS makes such adjustments consistent with ICCAT limits and when complete catch information for the prior year is available and finalized. Under ICCAT Recommendation 17–04, the maximum underharvest that a Contracting Party may carry forward from one year to the next is 25 percent of its initial catch quota, which, relevant to 2019, would

be 158.1 mt for the United States (25 percent of 632.4 mt).

For 2018, the adjusted quota was 764.15 mt (632.4 mt plus 131.75 mt of 2017 underharvest carried forward to 2018, based on 25 percent of the 527 mt quota in place for 2017) (83 FR 51391, October 11, 2018). The total 2018 northern albacore catch, which includes landings and dead discards, was 102.62 mt, which is an underharvest of 661.53 mt of the 2018 adjusted quota. Of this underharvest, 158.1 mt may be carried forward to the 2019 fishing year. Thus, the adjusted 2019 northern albacore quota is 632.4 mt plus 158.1 mt, totaling 790.5 mt.

North and South Atlantic Swordfish Annual Quota and Adjustment Process*North Atlantic Swordfish*

Consistent with the North Atlantic swordfish quota regulations at § 635.27(c), NMFS adjusts the U.S. annual North Atlantic swordfish quota for allowable underharvest, if any, in the previous year. NMFS makes such adjustments consistent with ICCAT limits and when complete catch information for the prior year is available and finalized. Under ICCAT Recommendation 17–02, the U.S. North Atlantic swordfish baseline annual quota for 2018 through 2021 is 2,937.6 mt dw (3,907 mt ww). The maximum underharvest that the United States may carry forward from one year to the next is 15 percent of the baseline quota, which equals 440.6 mt dw (586.0 mt ww) for the United States.

The total 2018 U.S. North Atlantic swordfish catch, which includes landings and dead discards, was 958.6 mt dw, leaving a 1,979.0 mt dw underharvest. This underharvest exceeds the 440.6 mt dw underharvest carryover limit allowed under Recommendation 17–02; thus NMFS is carrying forward 440.6 mt dw, the maximum carryover allowed. The 2,937.6 mt dw baseline quota is increased by the underharvest carryover of 440.6 mt dw, resulting in a final adjusted North Atlantic swordfish quota for the 2019 fishing year of 3,378.2 mt dw (2,937.6 + 440.6 = 3,378.2 mt dw). From that adjusted quota, 50 mt dw will be allocated to the Reserve category for inseason adjustments and research, and 300 mt dw will be allocated to the Incidental category, which includes recreational landings and landings by incidental swordfish permit holders, in accordance with regulations at 50 CFR

635.27(c)(1)(i). This results in an allocation of 3,028.2 mt dw (3,378.2 – 50 – 300 = 3,028.2 mt dw) for the directed category, split equally between two seasons in 2019 (January through June, and July through December) (Table 1).

South Atlantic Swordfish

Consistent with the South Atlantic swordfish quota regulations at § 635.27(c), NMFS adjusts the U.S. annual South Atlantic swordfish quota for allowable underharvest, if any, in the previous year. NMFS makes such adjustments consistent with ICCAT limits when complete catch information

for the prior year is available and finalized. Under ICCAT Recommendation 17–03, the U.S. South Atlantic swordfish baseline annual quota for 2019 is 75.2 mt dw (100 mt ww) and the amount of underharvest that the United States can carry forward from one year to the next is limited to 100 percent of the baseline quota (75.2 mt dw). Recommendation 17–03 continues to require the United States to transfer a total of 75.2 mt dw (100 mt ww) to other countries. These transfers are 37.6 mt dw (50 mt ww) to Namibia, 18.8 mt dw (25 mt ww) to Côte d’Ivoire, and 18.8 mt dw (25 mt ww) to Belize.

U.S. fishermen landed no South Atlantic swordfish in 2018. The adjusted 2018 South Atlantic swordfish quota was 75.1 mt dw due to nominal landings in previous years. Therefore, 75.1 mt dw of underharvest is available to carry over to 2019. NMFS is carrying forward 75.1 mt dw to be added to the 75.2 mt dw baseline quota. The quota is then reduced by the 75.2 mt dw of annual international quota transfers outlined above, resulting in an adjusted South Atlantic swordfish quota of 75.1 mt dw for the 2019 fishing year (Table 1).

TABLE 1—2019 NORTH AND SOUTH ATLANTIC SWORDFISH QUOTAS

	2018	2019
North Atlantic Swordfish Quota (mt dw):		
Baseline Quota	2,937.6	2,937.6
International Quota Transfer	0	0
Total Underharvest from Previous Year	1,925.7	1,979.0
Underharvest Carryover from Previous Year ⁺	(+) 440.6	(+) 440.6
Adjusted Quota	3,378.2	3,378.2
Quota Allocation:		
Directed Category	3,028.2	3,028.2
Incidental Category	300	300
Reserve Category	50	50
South Atlantic Swordfish Quota (mt dw):		
Baseline Quota	75.2	75.2
International Quota Transfers [*]	(–)75.2	(–)75.2
Total Underharvest from Previous Year	75.1	75.1
Underharvest Carryover from Previous Year ⁺	75.1	75.1
Adjusted quota	75.1	75.1

⁺ Allowable underharvest carryover is capped at 15 percent of the baseline quota allocation for the North Atlantic and 75.2 dw (100 mt ww) for the South Atlantic.

^{*} Under Recommendation 17–03, the United States transfers 75.2 mt dw (100 mt ww) annually to Namibia (37.6 mt dw, 50 mt ww), Côte d’Ivoire (18.8 mt dw, 25 mt ww), and Belize (18.8 mt dw, 25 mt ww).

BFT Annual Quota and Adjustment Process

Consistent with the regulations regarding annual BFT quota adjustment at § 635.27(a), NMFS annually announces the addition of available underharvest, if any, to the BFT Reserve category once complete catch information is available and finalized.

NMFS implemented relevant provisions of the current ICCAT western Atlantic BFT recommendation (Rec. 17–06) in a final rule that published in October 2018 (83 FR 51391, October 11, 2018). That rulemaking, implemented the recommended annual U.S. baseline quota of 1,247.86 mt, plus an additional 25 mt to account for bycatch related to pelagic longline fisheries in the Northeast Distant gear restricted area (NED), for a total of 1,272.86 mt. The total annual U.S. BFT quota of 1,272.86 mt is codified at § 635.27(a) and will remain in effect until changed (for instance, if a new ICCAT western Atlantic BFT TAC recommendation is

adopted). The maximum underharvest that a Contracting Party may carry forward from one year to the next is 10 percent of its initial catch quota, which, for the United States, is 127.3 mt for 2019 (10 percent of 1,272.86 mt).

Adjustment of the 2019 BFT Reserve Category Quota

The United States may carry forward the full, allowable 127.3 mt for 2019. In 2018, the adjusted BFT quota was 1,381.24 mt (baseline quota of 1,272.86 mt + 108.38 mt of 2017 underharvest carried over to 2018). The total 2018 BFT catch, including landings and dead discards, was 1,027.8 mt, which is 353.44 mt less than the 2018 adjusted quota and exceeds the allowable carryover of 127.3 mt. When carrying over underharvest from one year to the next, NMFS uses it to augment the BFT Reserve category quota. Thus, for 2019, NMFS augments the Reserve category quota with the allowable carryover of 127.3 mt. The codified Reserve category quota is 29.5 mt. Effective February 25,

2019, NMFS adjusted the Reserve category quota for 2019 to 143 mt by reallocating 164.5 mt of Purse Seine quota to the Reserve category (based on 2018 catch by Purse Seine category participants) and also transferred 25 mt of Reserve category quota to the General category (84 FR 6701, February 28, 2019). Effective July 18, 2019, NMFS transferred 30 mt from the Reserve category quota to the Harpoon category (84 FR 35340, July 23, 2019). Effective August 1, 2019 NMFS transferred 15 mt from the Reserve category quota to the Harpoon category (84 FR 38143, August 6, 2019) for a total of 98 mt in the Reserve category plus 127.3 mt carried forward for 2018. Thus, as of the effective date of this action (September 10, 2019), the adjusted 2019 Reserve category quota is 225.3 mt (143 mt – 45 mt + 127.3 mt).

Classification

The Assistant Administrator for NMFS (AA) has determined that this temporary final rule is consistent with

the Magnuson-Stevens Act, the 2006 Consolidated Atlantic HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law.

Pursuant to section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)), the AA finds that it would be unnecessary and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the reasons described below.

The rulemaking processes for Amendment 7 to the 2006 Consolidated HMS FMP in 2015 (79 FR 71509, December 2, 2014) and for the 2016 North and South Atlantic Swordfish Quota Adjustment Rule (81 FR 48719, July 26, 2016) specifically provided prior notice of, and accepted public comment on, the formulaic quota adjustment processes for the northern albacore, Atlantic bluefin tuna, and swordfish fisheries and the manner in which they occur. These processes have not changed, and the application of these formulas in this action does not have discretionary aspects requiring additional agency consideration. Thus it would be unnecessarily duplicative to accept public comment for this action. Because there are no new quotas for 2019 and the quota formulas are the same as in previous years, NMFS is issuing this temporary final rule to adjust the northern albacore, North and South Atlantic swordfish, and western Atlantic BFT quotas for 2019.

There is good cause under U.S.C. 553(d)(3) to waive the 30-day delay in effective date and to make the rule effective upon publication in the **Federal Register**. The fisheries for northern albacore, North and South

Atlantic swordfish, and BFT began on January 1, 2019. NMFS monitors northern albacore, North and South Atlantic swordfish, and BFT annual catch and measures the annual catch data against the applicable available quotas. Delaying the effective date of these quota adjustments would complicate the management of the northern albacore, North and South Atlantic swordfish, and BFT fisheries, all of which rely on management flexibility to respond quickly to fishery conditions to ensure that fishermen have a reasonable opportunity to catch the available quotas. For example, under the northern albacore fishery closure regulations, NMFS must close the fishery when the annual fishery quota is reached. Closure of the fishery based only on the baseline (codified) quota versus the adjusted northern albacore quota could preclude the fishery from harvesting northern albacore that are legally available consistent with the ICCAT recommendations and the 2006 Consolidated HMS FMP, as amended. Adjusting the North and South Atlantic swordfish quota allows the United States to take advantage of the ICCAT allowance to carry over quota underharvest and to comply with the South Atlantic swordfish recommendation's obligation to transfer quota internationally. Adjusting the BFT Reserve category as soon as possible provides NMFS the flexibility to transfer quota from the Reserve to other fishing categories inseason after considering the regulatory determination criteria, including fishery conditions at the time of the transfer. The amount of quota currently in the BFT Reserve category is relatively low, and NMFS may need to transfer quota soon in order to reduce

the likelihood of fishery closure during the remaining subquota time periods. NMFS could not appropriately adjust the annual quotas for 2019 sooner because the data needed to make the determination (*i.e.*, regarding 2018 underharvest) did not become available until recently, and additional time was needed for agency analysis and consideration of the data.

Additionally, to prevent confusion and potential overharvests, these adjustments should be in place as soon as possible in order to allow the impacted sectors to benefit from any subsequent quota adjustments to the fishing categories, give them a reasonable opportunity to catch available quota, and provide them the opportunity for planning operations accordingly.

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

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

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

Dated: September 4, 2019.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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