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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 230911–0216]

RTID 0648–XC870

Atlantic Highly Migratory Species; Adjustments to 2023 North Atlantic Albacore Tuna, North and South Atlantic Swordfish, and Atlantic Bluefin Tuna Reserve Category Quotas

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

ACTION: Temporary final rule.

SUMMARY: NMFS adjusts the 2023 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 2022 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). This action to adjust the quotas is only temporary and will be effective through December 31, 2023. On January 1, 2024, full annual baseline allocations of northern albacore, North and South Atlantic swordfish, and the Atlantic bluefin tuna will be available to the U.S. harvest.

DATES: Effective September 20, 2023, through December 31, 2023.

ADDRESSES: Supporting documents, including environmental assessments and environmental impact statements, as well as the 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments, may be downloaded from the Highly Migratory Species (HMS) website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>. These documents also are available upon request from Lisa Crawford or Steve Durkee at the email addresses and telephone numbers below.

FOR FURTHER INFORMATION CONTACT: Lisa Crawford (301–427–8503, lisa.crawford@noaa.gov) or Steve Durkee (301–427–8503, steve.durkee@noaa.gov).

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including northern albacore, swordfish, and bluefin tuna fisheries, are managed under the authority of ATCA (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). The HMS FMP and its amendments are implemented by regulations 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 and describes the annual quota adjustment process for bluefin tuna. 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.

Note that, consistent with how the quotas are established, weight information for northern albacore and bluefin tuna below is shown in metric tons (mt) whole weight (ww), and weight information for swordfish is shown in both dressed weight (dw) and ww.

Northern Albacore Annual Quota and Adjustment Process

Consistent with the northern albacore quota regulations at 50 CFR 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 carryover limits and when complete catch information for the prior year is available and finalized. Consistent with ICCAT Recommendation 21–04, on June 1, 2022, NMFS finalized a final rule that implemented a management procedure for northern albacore (87 FR 33049). This management procedure established a total allowable catch (TAC) of 37,801 mt and maintained the 711.5-mt U.S. northern albacore quota for 2022 and 2023. The annual baseline quota of 711.5 mt is codified at § 635.27(e).

Relevant to the northern albacore quota adjustment in this action, and as codified at § 635.27(e)(2), the maximum underharvest that an ICCAT Contracting Party may carry forward from one year to the next is 25 percent of its baseline quota, which equates to 177.9 mt for the United States. For 2022, the adjusted quota was 889.4 mt (711.5 mt plus 177.9 mt of 2021 underharvest). In 2022, U.S. landings of northern albacore were 310.6 mt, which is an underharvest of 578.8 mt of the 2022 adjusted quota. This underharvest exceeds the 177.9-mt underharvest carryover limit allowed under Recommendation 21–04; therefore, only 177.9 mt may be carried forward to the 2023 fishing year. Thus, the adjusted 2023 northern albacore quota will be 889.4 mt (711.5 mt plus 177.9 mt) (Table 1).

TABLE 1—2023 NORTHERN ALBACORE QUOTA

Northern albacore quota (mt ww)	2022	2023
Baseline Quota	711.5	711.5
Underharvest from Previous Year	573.7	578.8
Underharvest Carryover from Previous Year †	(+)177.9	(+)177.9
Adjusted Quota (Baseline + Underharvest)	889.4	889.4

† Allowable underharvest carryover is capped at 25 percent of the baseline quota allocation (177.9 mt ww).

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 carryover limits and when complete catch information for the prior year is available and finalized. Consistent with ICCAT Recommendation 17–02 as amended by Recommendations 21–02 and 22–03, the U.S. North Atlantic swordfish baseline annual quota through 2023 is 2,937.6 mt dw (3,907.0 mt ww).

Relevant to the North Atlantic swordfish quota adjustment in this action, and as codified at § 635.27(c)(3), the maximum underharvest that the United States may carry forward from one year to the next is 15 percent of the baseline quota, which equates to 440.6 mt dw (586.0 mt ww). For 2022, the adjusted North Atlantic swordfish quota was 3,378.2 mt dw (2,937.6 mt dw baseline quota plus 440.6 mt dw of 2021 underharvest). In 2022, landings U.S.

landings of North Atlantic swordfish, which includes landings and dead discards, was 1,006.9 mt dw, which is an underharvest of 2,371.3 mt dw of the 2022 adjusted quota. This underharvest exceeds the 440.6-mt dw underharvest carryover limit allowed under Recommendation 22–03; therefore, only 440.6 mt dw may be carried forward to the 2023 fishing year. Thus, the adjusted 2023 North Atlantic Swordfish quota will be 3,378.2 mt dw (2,937.6 mt dw plus 440.6 mt dw). In accordance with regulations at § 635.27(c)(1)(i), 50 mt dw of the adjusted quota will be allocated to the Reserve category for inseason adjustments and research, 300 mt dw of the adjusted quota will be allocated to the incidental category, which covers recreational landings and landings by incidental swordfish permit holders, and the remainder of the adjusted quota (3,028.2 mt dw) will be allocated to the directed category, which will be split equally between two seasons in 2023 (January through June, and July through December) (Table 2).

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, if needed, consistent with ICCAT carryover limits and when complete catch information for the prior year is available and finalized. Consistent with ICCAT Recommendation 17–03 as amended by Recommendation 22–04, the U.S. South Atlantic swordfish baseline annual quota through 2026 is 75.2 mt dw (100 mt ww), and the amount of underharvest that the U.S. can carry forward from one year to the next is 75.2 mt dw (100 mt ww) (Table 2). In 2022 there were no landings of South Atlantic swordfish by U.S. fishermen, which is an underharvest of 75.2 mt dw of the 2022 adjusted quota. Of that underharvest 75.2 mt dw may be carried forward to the 2023 fishing year. Under Recommendations 17–03 and 22–04, the United States continues 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. Thus, the adjusted 2023 South Atlantic swordfish quota will be 75.2 mt dw.

TABLE 2—2023 NORTH AND SOUTH ATLANTIC SWORDFISH QUOTAS

North Atlantic swordfish quota (mt dw)	2022	2023
Baseline Quota	2,937.6	2,937.6
Underharvest from Previous Year	2,416.4	2,371.3
Underharvest Carryover from Previous Year †	(+)440.6	(+)440.6
Adjusted Quota (Baseline + Carryover)	3,378.2	3,378.2
Quota Allocation:		
Directed Category	3,028.2	3,028.2
Incidental Category	300.0	300.0
Reserve Category	50.0	50.0
South Atlantic swordfish quota (mt dw)	2022	2023
Baseline Quota	75.2	75.2
International Quota Transfers *	(–)75.2	(–)75.2
Underharvest from Previous Year	75.2	75.2
Underharvest Carryover from Previous Year †	75.2	75.2
Adjusted quota (Baseline + Transfers + Carryover)	75.2	75.2

† Allowable underharvest carryover is capped at 15 percent of the baseline quota allocation (440.6 mt dw) for the North Atlantic and 75.2 dw (100 mt ww) for the South Atlantic.

* Under ICCAT Recommendations 17–03 and 21–03, 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).

Bluefin Tuna Annual Quota and
Adjustment Process

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

In 2022, NMFS implemented relevant provisions of an ICCAT western Atlantic bluefin tuna recommendation [adopted at the 2021 annual meeting] (Rec. 21–07) in a final rule that published on June 1, 2022 (87 FR 33049). That rulemaking implemented the annual U.S. baseline quota of 1,316.1 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 quota of 1,341.1 mt. At the 2022 annual meeting, a management procedure was implemented for bluefin tuna (Rec. 22–09). This management procedure set the western Atlantic bluefin tuna TAC for 2023 through 2025 at the same level as 2021 (Rec. 22–10). As such, the total annual U.S. bluefin tuna quota for 2023 remains 1,341.1 mt

(see § 635.27(a)). Consistent with Recommendation 22–10, the maximum underharvest that the United States can carry forward from one year to the next is 10 percent of its total annual quota, which equates to 134.1 mt.

In 2022, the adjusted U.S. quota was 1,468.4 mt and the U.S. catch, including

landings and dead discards, totaled 1,361.9 mt. Thus, the 2022 underharvest was 106.5 mt, which is less than the underharvest carryover limit (134.1 mt). As such, the United States is carrying forward the allowable 106.5 mt underharvest to 2023. Per § 635.27(a) this underharvest augments the Reserve

category quota. The 2023 Reserve category quota of 38.2 mt was recently adjusted to 27.4 mt (88 FR 48136, July 26, 2023). Thus, the adjusted 2023 Reserve category quota is now, through this action, 133.9 mt (106.5 mt plus 27.4 mt) (Table 3).

TABLE 3—2023 BLUEFIN TUNA QUOTA

Bluefin tuna quota (mt ww)	2022	2023
Baseline Quota	1,316.1	1,316.1
Total Quota (Baseline Quota + Bycatch Allocation) *	1,341.1	1,341.1
Underharvest from Previous Year	194.5	106.5
Underharvest Carryover from Previous Year †	(+)127.3	(+)106.5
Adjusted Quota (Total quota + Carryover)	1,468.4	1,447.7
Baseline Reserve Category Quota	38.2	‡ 38.2
Adjusted Reserve Category Quota (Reserve quota + Carryover)	306.7	133.9

Values in this table are subject to rounding error.

* The United States is allocated an additional 25 mt to account for bycatch related to pelagic longline fisheries in the Northeast Distant gear restricted area (NED).

† Allowable underharvest carryover is capped at 10 percent of the total annual quota (134.11 mt ww).

‡ The 2023 Reserve category quota of 38.2 mt was recently adjusted to 27.4 mt (88 FR 48136, July 26, 2023).

Classification

NMFS is issuing this rule pursuant to 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) has determined that this final rule is consistent with the 2006 Consolidated HMS FMP, Amendment 13 to the 2006 Consolidated Atlantic HMS FMP, ATCA, and other applicable law.

The AA finds that pursuant to 5 U.S.C. 553(b)(B), it is unnecessary to provide prior notice of, and an opportunity for public comment on, this action for the following reasons. The rulemaking processes for Amendment 13 to the 2006 Consolidated HMS FMP (87 FR 59966, October 3, 2022), the 2022 Atlantic bluefin tuna and northern albacore quota rule (87 FR 33049, June 1, 2022), and 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 to the relevant quotas in this temporary final rule is a routine action that does not have discretionary aspects requiring additional agency consideration. There are no new baseline quotas for the relevant species for 2023. Additionally, similar actions to adjust the quotas based on the previous year's

underharvest occur annually and the regulated community expects similar adjustments in 2023. Thus, it is unnecessary to provide prior notice and an additional opportunity for public comment on this rule.

There is good cause under 5 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**. This rule is a routine action that the regulated community anticipates annually and does not need time to prepare for. The 2023 fisheries for northern albacore, North and South Atlantic swordfish, and bluefin tuna opened on January 1, 2023. NMFS monitors northern albacore, North and South Atlantic swordfish, and bluefin tuna annual catch and uses the previous year's catch data to calculate the legally allowable quotas for the current year. However, these adjustments to the 2023 quotas could not occur earlier in the year because the final 2022 landings data—which first must be collected, compiled, and submitted in association with ICCAT reporting requirements—were not available until now. Given that these fisheries are currently open and permit-holders are actively fishing, delaying the effective date of this rule's quota adjustments would in turn lead to premature closure of one or more affected fisheries if the unadjusted quota limit is reached within the next 30 days. Such an event would negatively affect the regulated fisheries' reasonable opportunity to catch the available quotas, contrary to Magnuson-Stevens Act requirements and overall purpose of sound conservation and management of

fisheries—including highly migratory species—in a manner that achieves optimum yield. Furthermore, delaying the effective date of this rule would delay the application of North and South Atlantic swordfish quota transfers pursuant to ICCAT obligations to U.S. quota limits, contrary to requirements under ATCA, and delay NMFS' ability to transfer quota inseason, as needed, from the bluefin Reserve category to other fishing categories to ensure fishing opportunities and avoid premature fishery closures. As with the quota adjustments, such a delay would be contrary to the Magnuson-Stevens Act requirement to allow U.S. vessels reasonable opportunity to harvest highly migratory species allocations and quotas under relevant international fishery agreements such as the ICCAT Convention.

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 14, 2023.

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

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