

**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

Threatened Wildlife in alphabetical order under Birds to read as follows:

■ 1. The authority citation for part 17 continues to read as follows:

■ 2. Amend § 17.11, in paragraph (h), by adding an entry for “Penguin, emperor” to the List of Endangered and

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
		BIRDS		
*	*	*	*	*
Penguin, emperor .....	<i>Aptenodytes forsteri</i> .....	Wherever found .....	T	87 FR [Insert <b>Federal Register</b> page where the document begins], October 26, 2022; 50 CFR 17.41(m). <sup>4d</sup>
*	*	*	*	*

■ 3. Amend § 17.41 by adding reserved paragraphs (g) through (l) and adding paragraph (m) to read as follows:

**§ 17.41 Special rules—birds.**

\* \* \* \* \*

(g)–(l) [Reserved]

(m) Emperor penguin (*Aptenodytes forsteri*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the emperor penguin. Except as provided under paragraph (m)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale in foreign commerce, as set forth at § 17.21(f) for endangered wildlife.

(vi) Sale or offer for sale in interstate commerce, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to the emperor penguin, you may:

(i) Sell, offer for sale, deliver, receive, carry, transport, or ship in interstate commerce live emperor penguins from one public institution to another public institution. For the purposes of this paragraph, “public institution” means a museum, zoological park, and scientific

or educational institution that meets the definition of “public” at 50 CFR 10.12.

(ii) Take emperor penguins within Antarctica as authorized under implementing regulations for the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*), either in accordance with the provisions set forth at 45 CFR 670.5 or 670.9, or as authorized by a permit under 45 CFR part 670.

(iii) Import emperor penguins into the United States from Antarctica or export emperor penguins from the United States to Antarctica as authorized under implementing regulations for the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*), either in accordance with the provisions set forth at 45 CFR 670.9, or as authorized by a permit under 45 CFR part 670.

(iv) Conduct activities as authorized by a permit under § 17.32.

(v) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife.

(vi) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

(vii) Conduct activities as authorized by a captive-bred wildlife registration under § 17.21(g) for endangered wildlife.

**Madonna Baucum,**

*Chief, Policy and Regulations Branch, U.S. Fish and Wildlife Service.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

[Docket No. 220523–0119; RTID 0648–XC431]

**Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Closure of the General Category October Through November Fishery for 2022**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS closes the General category fishery for large medium and giant (*i.e.*, measuring 73 inches (185 cm) curved fork length or greater) Atlantic bluefin tuna (BFT) for the October through November subquota time period. This action applies to Atlantic Tunas General category (commercial) permitted vessels and highly migratory species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. This action also waives the previously scheduled restricted-fishing days (RFDs) for the remainder of the October through November subquota time period. With the RFDs waived during the closure, 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. On December 1, 2022, the fishery will reopen automatically.

**DATES:** Effective 11:30 p.m., local time, October 24, 2022, through November 30, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ann Williamson, [ann.williamson@noaa.gov](mailto:ann.williamson@noaa.gov), 301-427-8583, Larry Redd, Jr., [larry.redd@noaa.gov](mailto:larry.redd@noaa.gov), 301-427-8503, or Nicholas Velseboer, [nicholas.velseboer@noaa.gov](mailto:nicholas.velseboer@noaa.gov), 978-281-9260.

**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.

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.

The baseline U.S. BFT quota is 1,316.14 mt (§ 635.27(a)). The current baseline quota for the General category is 587.9 mt and the baseline subquota for the October through November time period is 76.4 mt. NMFS recently increased the October through November subquota to 177.9 mt through an inseason quota transfer (87 FR 60938, October 7, 2022).

#### **Closure of the October Through November 2022 General Category Fishery**

To date, reported landings for the General category October through November subquota time-period total approximately 138.1 mt. Based on these landings data, as well as average catch

rates and anticipated fishing conditions, NMFS projects the adjusted October through November 2022 subquota of 177.9 mt will be reached 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 October 24, 2022. 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 intent of this closure is to prevent overharvest of the available October through November subquota. The General category will automatically reopen December 1, 2022, for the December 2022 subquota time period.

#### **Adjustment of the Daily Retention Limit for Selected Dates**

On June 1, 2022 (87 FR 33056), NMFS published a final rule implementing RFDs every Tuesday, Friday, and Saturday through November 30, 2022. Because the fishery will be closed for the remainder of the October through November subquota time period, NMFS has decided to waive the previously scheduled RFDs for the remainder of that period.

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 fisheries 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 category and HMS Charter/Headboat permitted 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 [www.hmspermits.noaa.gov](http://www.hmspermits.noaa.gov), 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 December 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 call the Atlantic Tunas Information Line at 978-281-9260, or access [www.hmspermits.noaa.gov](http://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. 553(b)(B), 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: Specifically, the regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments 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. Providing for prior notice and an opportunity to comment is impracticable and contrary to the public interest. This fishery is currently underway and, based on landings information, delaying this action could result in BFT landings exceeding the adjusted October through November 2022 General category subquota. Taking this action does not raise conservation and management concerns. 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 also finds that pursuant to 5 U.S.C.

553(d), there is good cause to waive the 30-day delay in effectiveness.

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

Dated: October 21, 2022.

**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 648**

[Docket No. 210325-0071; RTID 0648-XC475]

**Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustment to the 2022 Specifications**

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

**ACTION:** Temporary rule; inseason adjustment.

**SUMMARY:** NMFS increases the 2022 Atlantic herring annual catch limit and Area 1A sub-annual catch limit by 1,000

metric tons (mt) for the remainder of 2022. This action is required by the herring regulations when, based on data through October 1, NMFS determines that the New Brunswick weir fishery landed less than 3,012 mt of herring. This notification informs the public of these catch limit changes.

**DATES:** Effective October 21, 2022, through December 31, 2022.

**FOR FURTHER INFORMATION CONTACT:** Carrie Nordeen, Fishery Policy Analyst, (978) 281-99272; or *Carrie.Nordeen@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** NMFS published final 2022 specifications for the Atlantic Herring Fishery Management Plan on January 7, 2022 (87 FR 887), establishing the 2022 annual catch limit (ACL) and area sub-ACLs. Table 1 shows the current herring specifications for 2022 and the specifications as revised by this action for the remainder of the calendar year.

The NMFS Regional Administrator tracks herring landings in the New Brunswick weir fishery each year. The regulations at 50 CFR 648.201(h) require that if the New Brunswick weir fishery landings through October 1 are determined to be less than 3,012 mt, then NMFS subtracts 1,000 mt from the management uncertainty buffer and reallocates that amount to the ACL and

Area 1A sub-ACL. When such a determination is made, NMFS is required to notify the New England Fishery Management Council and publish the ACL and Area 1A sub-ACL adjustment in the **Federal Register**.

Information from Canada's Department of Fisheries and Oceans indicates that the New Brunswick weir fishery landed 1,385 mt of herring through October 1, 2022. Therefore, the Regional Administrator determined that, effective October 21, 2022, 1,000 mt will be reallocated from the management uncertainty buffer to the Area 1A sub-ACL and the ACL. This 1,000 mt reallocation increases the Area 1A sub-ACL from 1,075 mt to 2,075 mt and the ACL from 3,813 mt to 4,813 mt for the remainder of 2022.

Additionally, NMFS will use the adjusted allocations when we project whether catch from Area 1A will reach 92 percent of the Area 1A sub-ACL, or whether overall herring catch will reach 95 percent of the ACL. When Area 1A catch is projected to reach 92 percent of the Area 1A sub-ACL, catch from this area is reduced to 2,000 lb (907 kilogram (kg)) per trip, per calendar day. When overall catch is projected to reach 95 percent of the ACL, then catch in or from all herring management areas is limited to 2,000 lb (907 kilogram (kg)) per trip, per calendar day.

TABLE 1—ATLANTIC HERRING SPECIFICATIONS FOR 2022

	Current specifications (mt)	Adjusted specifications (mt)
Overfishing Limit .....	26,292 .....	26,292.
Acceptable Biological Catch .....	8,767 .....	8,767.
Management Uncertainty .....	4,669 .....	3,669.
Optimum Yield/ACL .....	3,813 .....	4,813.
Domestic Annual Harvest .....	3,813 .....	4,813.
Border Transfer .....	0 .....	0.
Domestic Annual Processing .....	3,813 .....	4,813.
U.S. At-Sea Processing .....	0 .....	0.
Area 1A Sub-ACL .....	1,075 .....	2,075.
Area 1B Sub-ACL .....	0 .....	0.
Area 2 Sub-ACL .....	1,300 .....	1,300.
Area 3 Sub-ACL .....	1,824 .....	1,824.
Fixed Gear Set-Aside .....	30 .....	30.
Research Set-Aside (RSA)* .....	0 percent of each sub-ACL .....	0 percent of each sub-ACL.

\* Because RSA participants are not pursuing RSA in 2022, we did not deduct it from the sub-ACLs. RSA will be revisited for 2023-2025 specifications.

**Classification**

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 648, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public

comment on this inseason adjustment because it would be unnecessary and contrary to the public interest. This action allocates a portion of the management uncertainty buffer to the ACL and Area 1A sub-ACL for the remainder of the calendar year pursuant to a previously published regulation that provides no discretionary decision-making. This reallocation process was the subject of prior notice and comment

rulemaking. The adjustment is routine and formulaic, required by regulation, and is expected by industry. The potential to reallocate the management uncertainty buffer was also outlined in the 2021-2023 herring specifications that were published April 1, 2021 (86 FR 17081), which were developed through public notice and comment. Further, this reallocation provides additional economic opportunity for the