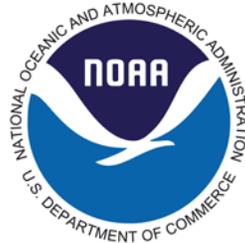


# **Management of the Atlantic Bluefin Tuna General Category “January” Fishery**



*Background paper prepared for the HMS Advisory Panel Meeting  
September 2017  
Silver Spring, MD*

## Management of the Atlantic Bluefin Tuna General Category “January” Fishery

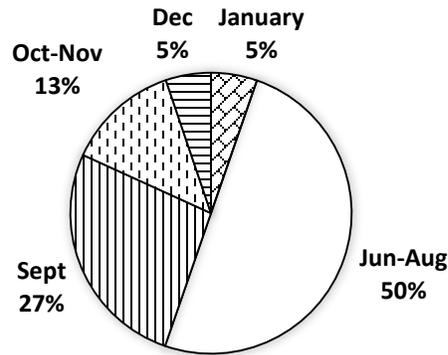
Comments received following the 2014 publication of Amendment 7 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) have demonstrated the need/interest for a review of the management of the General category “January” Atlantic bluefin tuna (BFT) fishery. This background paper focuses on the history and performance of the January fishery in the context of the annual General category BFT quota and overall U.S. BFT quota. The paper attempts to provide some context concerning the issue, including background and measures that have been implemented to date. It also provides some potential options for stakeholders to consider while assisting the Agency in reviewing/exploring potential alternatives to the status quo. While the intent of this document is to focus on issues surrounding the timing of BFT landings in the General category, and specifically in the January subquota fishery, it is important to realize that modifications to the regulations in place for this portion of the fishery would likely have impacts on other fisheries as well. It is also important to note that fish availability, fishing conditions, and catches are highly variable for the General category fishery, and for the December and January time periods in particular.

### Background

#### Current Regulations

Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) subdivide the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP, as amended by Amendment 7. The National Marine Fisheries Service (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.

As described below in the “General category subquota history” section, NMFS began to manage the General category quota through subquotas in 1995. The current U.S. BFT base quota of 1,058.9 mt was established in the 2015 BFT quota final rule, and the subquotas are calculated per the allocations established in the 2006 Consolidated HMS FMP. 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 percentage of the annual General category quota. Although it is called the “January” subquota, the regulations currently allow landings to continue until the subquota is reached or March 31, whichever comes first. Based on the General category base quota of 466.7 mt, the allocations and subquotas for each time period are as shown in the following figure and table:



**Figure 1. General category base subquota allocation (%)**

**Table 1. General category base subquota allocation (%), with current baseline subquota (mt)**

Time period	% of General category baseline quota	Current baseline subquota (mt)
January	5.3	24.7
June-August	50	233.3
September	26.5	123.7
October-November	13	60.7
December	5.2	24.3

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 (for example, unused quota from June-August rolls to September, unused quota from September rolls to October-November etc.).

NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria provided. Therefore, before making any adjustment (e.g., quota transfers and retention limit adjustments), NMFS must consider the following:

- (i) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock.
- (ii) The catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made.
- (iii) The projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year.

- (iv) The estimated amounts by which quotas for other gear categories of the fishery might be exceeded.
- (v) Effects of the adjustment on BFT rebuilding and overfishing.
- (vi) Effects of the adjustment on accomplishing the objectives of the fishery management plan.
- (vii) Variations in seasonal distribution, abundance, or migration patterns of BFT.
- (viii) Effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota.
- (ix) Review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.
- (x) Optimize fishing opportunity.
- (xi) Account for dead discards.
- (xii) Facilitate quota accounting.
- (xiii) Support other fishing monitoring programs through quota allocations and/or generation of revenue.
- (xiv) Support research through quota allocations and/or generation of revenue.

*Note that criteria (x) through (xiv) were added via the Amendment 7 final rule.*

General category fishing regulations apply to vessels permitted in the commercial Atlantic tunas General category and the HMS Charter/Headboat category *while fishing commercially*.

#### General category subquota history

Prior to 2004, the General category quota was available to all commercial handgear tuna fishermen from the opening of the fishing year on June 1 through the end of the season on December 31. Due to high participation and limited quota, NMFS used effort controls such as lower retention limits, restricted fishing days, and time period subquotas to slow down the catch rate and distribute landings both geographically and over time. Despite the implementation of effort controls in the General category, the quota, as well as subquotas, were regularly attained and the General category often closed in late summer to early fall while BFT were still off northern New England states. During the seasonal General category closure, a southern recreational BFT fishery on large mediums and giants emerged off the coast of North Carolina during February and March. In later years, fish began to arrive in the region during the late fall/early winter, and interest in a commercial fishery developed.

In the years before the implementation of the 1999 Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (1999 FMP) in 2000, the BFT fishery was managed on a calendar year basis (January through December). During the development of the 1999 FMP, the emergence of a General category BFT fishery in the mid/southern Atlantic region was extensively discussed by the HMS Advisory Panel (AP) and the public (NMFS, 1999). At the time, the majority of General category fishing activity took place in the summer and fall off the New England and New York coasts. Beginning in 1995, NMFS implemented time-period subquotas to increase the likelihood that fishing would continue throughout the summer and for scientific monitoring purposes. In 1995 and 1996, these subquotas were established via

proposed and final effort control rules. For 1995, the subquotas allocations were: June/July: 20%; August: 40%; September: 30%; and October: 10%. For 1996, the subquota allocations were: June/July: 25%; August: 35%; September: 30%; and October: 10%, as well as 10 mt for the New York Bight fishery in October. Beginning in 1997, NMFS established annual subquota allocations, which were based on 1983 through 1996 historical catch patterns, as: June through August: 60%; September: 30%; and October through December: 10% (which included the 10-mt New York Bight set-aside). The New York Bight was defined as the area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W. long. (Shinnecock Inlet) and running 150° true. In 1997, NMFS set the southern boundary for the New York Bight at 38°47' N. lat. These subquota allocations remained in effect until implementation of the 1999 FMP.

The HMS AP did not agree on how the 1999 FMP should address the scope of a southern area late season General category BFT fishery. NMFS changed the fishing year to June through May in the 1999 FMP final rule to give both NMFS and fishery participants adequate time to develop and consider conservation and management measures that would implement ICCAT recommendations (made at ICCAT meetings that are held in November of each year) effectively. The General category subquota allocations remained as they had been, but with the final period extended as follows: June through August: 60%; September: 30%; and October *through May*: 10%. In a 2000 final rule, NMFS clarified that December 31 was the end date for the General category season.

In the early 2000s, NMFS performed a number of inseason quota transfers of BFT, consistent with the transfer criteria established in the 1999 FMP (shown above), which allowed the General category BFT fishery to extend into the winter months (i.e., late November - December). In 2002, NMFS received a Petition for Rulemaking from the North Carolina Division of Marine Fisheries to formalize this winter fishery and extend fishing opportunities for the General category into January. In December 2003, NMFS extended the General category end date from December 31 to January 31 to address some of the concerns raised in the Petition for Rulemaking, as well as to increase fishing opportunities and optimum yield for the fishery overall.

Via the 2006 Consolidated HMS FMP, NMFS modified the General category time period subquotas to allow for a formalized winter fishery (NMFS, 2006). These subquotas remain effective and are shown in the pie chart figure above. The December and January time periods are currently allocated 5.2 percent and 5.3 percent of the General category base quota, respectively. NMFS also reverted management of the fishery to a calendar year basis to establish consistent management cycles for all HMS, and there was an abbreviated fishing year or “bridge period” from June 1, 2007 through December 31, 2007. Thus, as of 2008, the January time period and associated fishing activities now occur at the *beginning* rather than the *end* of the General category season.

The 2006 Consolidated HMS FMP included 18 objectives, several of which pertain to the management of the General category BFT fishery. Please see: Section 1.4.4 at:

[http://www.nmfs.noaa.gov/sfa/hms/documents/fmp/consolidated/feis\\_chapter1.pdf](http://www.nmfs.noaa.gov/sfa/hms/documents/fmp/consolidated/feis_chapter1.pdf)

These include, but are not limited to:

- Prevent or end overfishing of Atlantic tuna, swordfish, billfish, and sharks and adopt the precautionary approach to fishery management
- Consistent with other objectives of this FMP, manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to providing food production for commercial fisheries, enhancing recreational opportunities, preserving traditional fisheries to the extent practicable, and/or taking into account the protection of marine ecosystems
- Better coordinate domestic conservation and management of the fisheries for Atlantic tuna, swordfish, sharks, and billfish, considering the multispecies nature of many HMS fisheries, overlapping regional and individual participation, international management concerns, historical fishing patterns and participation, and other relevant factors
- Simplify and streamline HMS management while actively seeking input from affected constituencies, the general public, and the HMS AP

#### 2009 Advance Notice of Proposed Rulemaking (ANPR) and 2011 Regulatory Amendment

From approximately 2004 through 2009, annual landings were substantially lower than both the base and adjusted General category subquotas. Following suggestions for changes that could increase domestic BFT landings within existing quotas and subquotas, and related suggestions regarding the Atlantic swordfish fishery, NMFS published an Advance Notice of Proposed Rulemaking (ANPR), requesting specific comment on potential regulatory changes that would increase fishing opportunities in the BFT and swordfish fisheries. Relevant to the General category season, NMFS specifically requested comment on extending the General category season (which was closed each year during the months of February through May). Comment on this and other issues ranged from complete support by some industry participants (who generally believed that the regulations were needed when initially established to *limit* landings to the quota but should be relaxed now that commercial landings are relatively low compared to available quota) to complete opposition by some recreational fishermen, environmental organizations, and other individuals (who generally were concerned that relaxation of the regulations would compromise NMFS' BFT rebuilding and bycatch reduction efforts).

Following consideration of the wide range of comments received on the ANPR described above, NMFS published a proposed rule on November 4, 2009, to increase fishing opportunities for BFT within the existing U.S. quota, specifically for the General and Harpoon category subquotas due to the persistent underharvest (NMFS, 2009). Regarding the General category season, NMFS proposed to allow the General category to remain open from January 1 until the subquota is reached or May 31, whichever comes first (i.e., it would not automatically close effective February 1 and remain closed through May 31). NMFS also considered, but did not prefer, the status quo and an alternative that would establish a January through December General category fishing season, with equal monthly General category time periods and subquotas. The proposed rule solicited public comment for a 45-day period, ending on December 21, 2009. NMFS extended the original comment period through March 31, 2010, based on public, Congressional, and non-governmental organization requests for NMFS to wait to complete any related final rulemaking until after the March 2010 meeting regarding the

Convention on the International Trade in Endangered Species of Wild Flora and Fauna, and new research expected to be published in 2010.

In May 2010, the Center for Biological Diversity (CBD) petitioned NMFS to list BFT as threatened or endangered under the Endangered Species Act (ESA). NMFS delayed issuing a final rule pending a new ICCAT BFT stock assessment and subsequent ICCAT recommendation on BFT conservation and management in the fall of 2010, as well as the decision on the CBD petition. In May 2011, NMFS determined that listing BFT as threatened or endangered under the ESA was not warranted, but listed BFT as a species of concern.

NMFS issued a final rule on the General and Harpoon category fishing opportunities on November 30, 2011 (76 FR 74003; NMFS, 2011). In the final action, based on public comment, NMFS determined that the Preferred Alternative in the Draft EA should not be adopted as proposed, but should instead be modified to: allow the General category to remain open from January 1 until the subquota is reached or March 31, whichever comes first. NMFS explained that by allowing the possibility of fishing past January 31, this action would achieve the goal of allowing additional opportunities to harvest the available January subquota, but by setting an end-date of March 31, the action would reduce the potential for late spring gear conflicts among fishery participants (i.e., if General category fishing activity were to continue through May while the Harpoon category must wait until June 1 to begin fishing). NMFS added that the action also would reduce the likelihood that total fishing effort and potential bycatch would increase.

In addition to the ESA petition, CBD challenged the November 2011 final action in district court, alleging that it violated the Magnuson-Stevens Act, National Environmental Policy Act, and Administrative Procedure Act. The Defendants' (i.e., NMFS') motion for summary judgment was granted in that case on March 28, 2013, and the case was dismissed.

#### Amendment 7 to the 2006 Consolidated HMS FMP

In 2011, NMFS began the process of amending the 2006 Consolidated HMS FMP to address a variety of issues related to BFT quota management and associated measures, ultimately resulting in Amendment 7 to the 2006 Consolidated HMS FMP. This process included NMFS' preparation of a Preliminary White Paper considered by the HMS AP in March 2012, a public scoping paper published April 2012, a pre-draft considered by the HMS AP in September 2012, a Draft Environmental Impact Statement and a proposed rule issued on August 22, 2013 (78 FR 52123). Relevant to the management of the General category fishery, NMFS considered three alternatives regarding modifying the subquota allocations: (a) No action (allocations as shown in the table above), (b) establishing 12 equal monthly subquotas, and (c) providing additional flexibility for General category quota adjustment (preferred). The preferred alternative (and proposed action) would allow NMFS to proactively transfer quota from one or more of the subquotas following the January subquota to the January or other subquotas (e.g., from the December time period of a given year to the January subquota for that same year).

The following is a summary of the comments on the proposed action:

- NMFS should consider that the General category quota regularly goes unfilled.
- NMFS should allow more flexibility in the General category.

- NMFS should consider the fact that inseason quota transfers will have the effect of moving quota from traditional Northeast fishery to the mid-Atlantic and South; the proposed action will negatively impact Northeast fishermen.
- NMFS should provide more quota to the January time period.
- NMFS should give a share of the quota to North Carolina to fish from January to June; the current 5.3 percent of quota in January to June is caught in less than 14 days.
- NMFS should take no action on General category time-period subquotas.
- NMFS should establish 12 equal monthly subquotas.
- NMFS should shift subquota for December to the January subquota period; many North Carolina and other east coast fishermen have been unable to utilize quotas when BFT are available (e.g., 60% of available General category quota landed), and an Amendment 7 goal is to “explore management alternatives for HMS having minimal economic impacts while maximizing available quotas.”
- NMFS should provide half of the General category quota to the first half of the year and half to the second half of the year.

NMFS published the Amendment 7 Final Environmental Impact Statement (FEIS) in August 2014 (NMFS, 2014). During the review period on that document, the North Carolina Division of Marine Fisheries (NCDMF) reiterated support of the flexibility concept but suggested modifying the action to allow the January fishery to remain open until May 31 or until the January time period subquota is landed, as BFT could be available to the General category off the North Carolina in the months of April and May, and stated that this option would be within the National Environmental Policy Act-required range of analyzed options in Amendment 7 and should be preferred as it would address the second Amendment 7 objective, specifically to optimize the ability for all permit categories to harvest their full BFT quota and maintain flexibility of the regulations). The South Atlantic Fishery Management Council made a similar comment.

In the Amendment 7 final rule on December 2, 2014 (79 FR 71510), NMFS finalized the preferred alternative as proposed because, relative to the other two alternatives NMFS considered, it would potentially result in improved and fuller use of the General category quota overall and may result in beneficial economic impacts to early season General category participants.

The General category season issue was raised by some HMS AP members at the Fall 2015 through Fall 2016 meetings, with discussion for and against a year-round fishery (divided or not into subperiods), as well as for and against allowing the January fishery to continue until the available quota is met. See Table 2 for a summary of General category daily retention limits, landings, subquota use, and inseason actions, by time period for 2015 through 2017 to date.

In a December 12, 2016, letter to NMFS commenting on management of the 2016 General category season (in which NMFS needed to close the General category on November 4, after the adjusted General category quota was reached), the NCDMF requested that NMFS manage the General category in the future through conservative retention limits during periods of abundant landings to prevent negative impacts on those fishing in following subquotas or months within a subquota. NCDMF stated that, due to the January and December quotas being at the

beginning and end of the fishing year, respectively, underharvest and transfers are often unavailable to these subquotas, and requested that a portion of these underharvests and transfers be shared with the January and December subquotas using the same allocation amounts as for the subquotas (i.e., 10.5% combined for January and December).

NMFS took three inseason actions regarding the January 2017 subquota, as detailed in Table 2. First, in December 2016, NMFS transferred 16.3 mt of BFT quota from the 24.3-mt December 2017 subquota to the January 2017 subquota, for a revised January 2017 subquota of 41 mt, and set the retention limit for the January period to three large medium or giant BFT per vessel per day/trip. In March 2016, NMFS transferred 40 mt of BFT quota from the Reserve category to the General category January 2017 subquota, and reduced the daily retention limit to one large medium or giant BFT per vessel per day/trip. NMFS closed the January 2017 General category fishery on March 29, 2017.

At the May 2017 HMS AP meeting, there was further discussion surrounding the issue of potentially modifying the General category January fishery regulations. Those in support clarified that request is for flexibility to use the January quota fully vs. a request for a subquota *allocation increase*. They indicated that this flexibility, in turn, could contribute to overall annual U.S. quota use, and that a change in the January fishery end date also would recognize variability in fishing conditions and availability. Those opposed expressed concern about potential inseason quota transfers from the Reserve category to the January subquota would represent/result in a *de facto* suballocation change, that there may be substantial political pressure to make such transfers, and that additional transfers would also increase likelihood of the January fishery stretching in to May. In response to these points, some AP members commented on the substantial amount of quota (192 mt from the Reserve and 18 mt of unused Harpoon category quota, for a total of 210 mt) that NMFS transferred to the General category in late (i.e., October) 2016, noting that it was appropriate that NMFS transfer 40 mt from the Reserve to the General category in March 2017. See Table 2. It was also noted that there are often late winter navigation issues affecting safety and the ability of vessels to use the usual ports, and that timing flexibility could mitigate those concerns. Lastly, some AP members cautioned against using terminology such as “traditional” participants when arguing for or against issues affecting quota allocation, stating that the fishery is a U.S. resource, managed by time versus geographical area, and that some vessels travel great distances from their principal fishing areas to participate at various times of year.

## Next Steps/Topics for Discussion with AP

NMFS is interested in feedback from stakeholders concerning options for management of the BFT General category fishery that 1) ensure consistency with ATCA and the Magnuson-Stevens Act and that 2) consider the highly variable nature of the BFT fishery as it relates to any suggestions for regulatory changes and/or inseason management.

### Potential management actions

- Status quo
  - Continue/do not continue to exercise authority to transfer quota inseason from Reserve category, consistent with regulatory determination criteria
  - Unused quota rolls forward to subsequent time period
- Allow the General category to remain open from January 1 until the subquota is reached or **May 31**, whichever comes first
  - Continue/do not continue to exercise authority to transfer quota inseason from Reserve category, consistent with regulatory determination criteria
  - Unused quota rolls forward to subsequent time period
- Other?
  - Allocation changes among quota categories?
  - Modify the subquota structure and/or allocations?
  - Manage without time period subquotas?

### Issues to Consider

- The U.S. BFT quota

*The western Atlantic BFT Total Allowable Catch, from which the U.S. BFT base quota is derived, will be renegotiated in November 2017 based on ICCAT's consideration of the 2017 western Atlantic BFT stock assessment, which is not yet complete. It will be considered complete when it is accepted by ICCAT's Standing Committee on Research and Statistics in early October 2017 and adopted by the ICCAT Commission in November 2017.*
- Impacts to BFT stock, which is currently considered overfished with overfishing not occurring
- Bycatch of undersized BFT and/or, other species
- Quota use and implications for future ICCAT negotiations.
- Concerns about Agency adjusting/not adjusting the January subquota inseason (concerns re: *de facto* allocation shifts)
- Community impacts (North Carolina, Northeast)
- Compliance with data reporting requirements, which is essential for management to be effective, particularly those that require quick Agency response/action.
- Timing of regulatory actions

**Table 2. 2015-2017 Retention Limits, Landings, and Quota Use, by General Category Subquota**

	Daily Retention Limit	Landings (mt)	Subquota (mt) and use (%)	Notes
<b>2015</b>				
January	3	31.4	Base: 21.4 (147%) Adjusted: 42.4 (74%)	Transferred full Dec. 2015 subquota to Jan. 2015 effective Jan. 1; <i>January fishery remained open through Mar. 31</i>
June-Aug	4	173.6	Base: 201.5 (86%)	
Sept	4	158.9	Base: 106.8 (149%)	
Oct-Nov	4 through Nov. 27 3 Nov. 28-30	239.7	Base: 52.4 (457%)  See Total for adjustment*	Transferred 65 mt from Reserve and 35 mt from Harpoon effective Oct. 30; transferred 80 mt from Reserve effective Nov. 25
Dec	3	10.9	Base: 21 Adjusted: 0	
TOTAL		614.8**	Base: 466.7 (132%) Adjusted: 646.7 (95%)	
<b>2016</b>				
January	3	51.5	Base: 24.7 (209%) Adjusted: 49 (105%)	Transferred full Dec. 2016 subquota to Jan. 2016 effective Jan. 1; <i>January fishery remained open through Mar. 31</i>
June-Aug	5	226	Base: 233.3 (97%)	
Sept	5	185.8	Base: 123.7 (150%)	
Oct-Nov	5 through Oct. 8 4 Oct. 9-16 2 through Nov. 4  CLOSED Nov. 5 through Nov. 30	287.5  (78.2 at 4 BFT, 112.1 at 2 BFT)	Base: 60.7 (474%)  See Total for adjustment*	Transferred 125 mt from Reserve effective Oct. 6; transferred 67 mt from Reserve and 18 mt from Harpoon effective Oct. 14
Dec	CLOSED	0	Base: 24.3 (0%) Adjusted: 0	
TOTAL		750.5**	Base: 466.7 (161%) Adjusted: 676.7 (111%)	

2017				
January	3 through Mar. 5 1 through Mar. 29  CLOSED through Mar. 31	107.7	Base: 24.7 (436%) Adjusted: 81 (133%)	Transferred 2/3 of Dec. 2017 subquota to Jan. 2017 effective Jan. 1; transferred 40 mt from Reserve effective March 2
June-Aug	4 through Aug. 4 2 Aug. 5-16  CLOSED through Aug. 31	324.9  (240.3 at 4 BFT, 112.1 at 2 BFT)	Base: 233.3 (139%)	
Sept	1			
Oct-Nov				
Dec				
TOTAL			Base: 466.7 Adjusted to date: 506.7	

Data Source: BFT Dealer Report Database and published monthly reports; data through Aug. 24, 2017.

\*adjusted time period subquotas not applicable (not adjusted specific for that period but to General category overall)

\*\*Totals subject to rounding error – using monthly reports

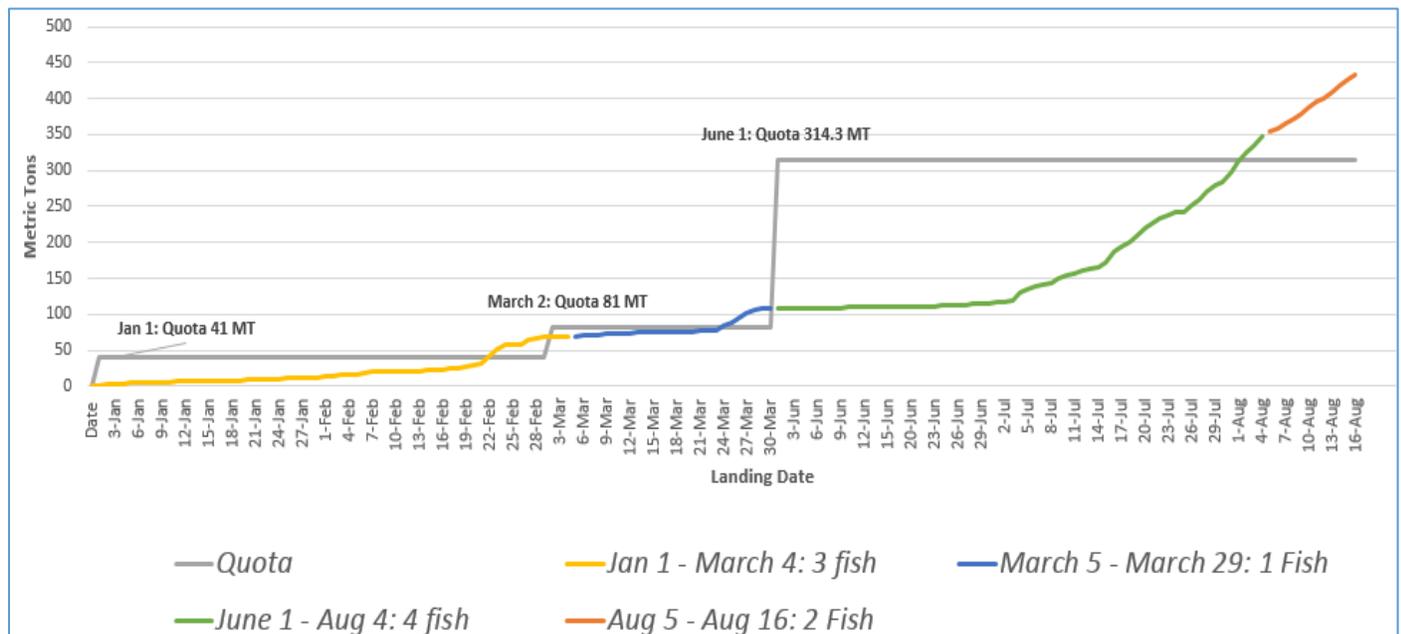


Figure 2. General Category Cumulative Landings through August 16, 2017

## References

NMFS. 1999. Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks. NOAA, NMFS, Highly Migratory Species Management Division.

NMFS. 2006. Final Consolidated Atlantic HMS FMP. NOAA, NMFS, Highly Migratory Species Management Division.

NMFS. 2009. Federal Register Notice 74 FR 57128; Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Season and Retention Limit Adjustments; Proposed Rule; Request for Comments; Notice of Public Hearings.

NMFS. 2011. Federal Register Notice 76 FR 74003; Atlantic Highly Migratory Species; Adjustments to the Atlantic Bluefin Tuna General and Harpoon Category Regulations; Final Rule.

NMFS. 2014. Final Amendment 7 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan. NOAA, NMFS, Highly Migratory Species Management Division.