

CAPE COD COMMERCIAL  
**FISHERMEN'S  
ALLIANCE**

**Small Boats. Big Ideas.**

December 13, 2023

Office of Senator Edward J. Markey  
975 JFK Federal Building  
15 New Sudbury Street  
Boston, MA 02203

Cc: Jim Cantwell, Ben Thomas, Alex Swanson

Dear Senator Markey,

We write to you on behalf of harpoon-permitted fishermen not just from Cape Cod but across the state of Massachusetts. The Cape Cod Commercial Fishermen's Alliance is a member-based nonprofit organization and is the leading voice for commercial fishermen on Cape Cod. We work extensively with the local fleet to advocate for management measures that support and ensure the viability and future of Cape Cod's fisheries. We ask that you support your constituents by setting up a meeting between the Atlantic Highly Migratory Species (HMS) staff at National Marine Fisheries Service (NMFS) Office of Sustainable Fisheries in Gloucester, MA and harpoon permitted vessels to discuss concerns over harpoon fishing around mobile vessels (groundfish, scallop, or clam dredge vessels).

Background on Bluefin Tuna Fishery and Regulations

Atlantic highly migratory species (HMS) fisheries, including Bluefin Tuna (BFT) are managed under the Atlantic Tunas Convention Act and the Magnuson-Stevens Fishery Conservation and Management Act. NOAA Fisheries manages HMS fisheries such as tunas, sharks, swordfish, and billfish in the U.S. Atlantic Ocean, Gulf of Mexico and Caribbean.

Atlantic Tunas General Category Permit: may retain bluefin tuna subject to current retention limits (§ 635.23). Regardless of the length of a trip, no more than a single day's retention limit of large medium or giant BFT may be possessed or retained aboard a vessel that has an Atlantic Tunas General Category permit. They are subject to daily retention limits depending on the time of year. The default General category retention limit has been one fish per vessel per day for the past several years, with mandatory restricted-fishing days during the week.

Atlantic Tunas Harpoon Category Permit: As of January 1, 2023, the default Harpoon category combined daily retention limit is 10 commercial-sized bluefin (i.e. the combination of large medium (73"- <81" CLF) and giant (81" or greater CFL) bluefin is 10 fish) per vessel per day. Through in-season action, NOAA Fisheries can modify this default limit over a range of 5 to 10 large medium and giant bluefin combined. Amendment 13 maintains the current regulations regarding retention of large medium bluefin to four fish per day or trip, adjustable through in season action.

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Current regulations (50 CFR § 600.10) define harpoon or harpoon gear as: “fishing gear consisting of a pointed dart or iron attached to the end of a line several hundred feet in length, the other end of which is attached to a floatation device. Harpoon gear is attached to a pole or stick that is propelled only by hand, and not by mechanical means.” Harpoon gear for Bluefin Tuna can be used by Harpoon category permit holders under specific quota and trip limits (season opens June 1 and closes Nov. 15 unless closed earlier), and general category permit holders under General category rules.

Regulations ([§ 635.71 Prohibitions](#)) state for Atlantic tunas: “it is unlawful for any person or vessel....to: Engage in fishing with a vessel that has been issued an Atlantic Tunas or Atlantic HMS permit under [§ 635.4](#)....” and states that vessels in the fishery may receive “no assistance from another vessel, except as shown by the operator that the safety of the vessel or its crew was jeopardized or other circumstances existed that were beyond the control of the operator.”

#### Status of a recent petition by bluefin harpoon-only category:

Bluefin Tuna harpoon category permit holders have requested the National Marine Fisheries Service implement a ban on harpooning at night, harpooning within 100 yards of a mobile-gear fishing vessel (groundfish, scallop or clam dredge), and harpooning using bait to lure fish to the surface in the Harpoon-only category. More specifically, they requested no harpooning from a half hour after sunset to a half-hour before sunrise, and no harpooning near mobile gear vessels or using their stream of guts or bycatch as an attractant for harpooning.

The signatories in their petition stated these practices are “inconsistent with the reasons unlimited daily catch was granted to the traditional harpoon-only fishery, which was designed to be weather dependent and involve a high level of skill. Approaching mobile gear vessels while underway is a dangerous practice made more so by the competitive nature of the fishery. Unacceptable levels of bycatch mortality and gear conflict occur when rigging is tangled on mobile gear tow wires. The fish caught in this way are overwhelmingly large and difficult to market, especially early in the season when they are lean, lowering the overall economic value of the Harpoon Category’s small quota allocation.” An original petition for rulemaking was denied in early 2022 but requests continue. The NMFS has been provided with documentation of these activities in the forms of videos, pictures and written and phone testimonials by fishermen.

On May 9, 2023, there was an Atlantic Highly Migratory Species Advisory Panel meeting, and NOAA presented an HMS Management Rulemaking Update. During that [presentation](#), NOAA shared the following industry members concerns (slide 10-11):

- Activity goes against the intent of the Harpoon category fishery and traditional practices
  - Could cause the Harpoon category quota to be harvested quickly
  - Could bring more and larger vessels into the fishery
- Activity purposely creates a dangerous situation in which vessels could collide or become tangled in one another’s lines
- Increasing number of vessels participating in behavior could exacerbate the above concerns.

#### 2023 Early-Season Closure of the Bluefin Harpoon Category

As described under § 635.27(a)(4), the Harpoon category quota is only available between June 1 and November 15 of each year. NMFS files a closure action when the BFT quota is reached or is projected to be reached. On July 30, 2023, the NMFS announced an early-season closure of the Bluefin Harpoon category fishery for large medium and Atlantic bluefin tuna (BFT) for the remainder

of the 2023 fishing year. It is believed that one or two vessels in the fishery caught roughly one third of the base quota, by fishing behind mobile-gear vessels.

After the early-season closure, bluefin harpoon-only category members joined together and submitted a petition for rulemaking to NMFS-HMS that was discussed at the September 6, 2023, meeting of the HMS Advisory Panel in Silver Springs, Maryland. Specifically, 35 of the 37 permit holders in the commercial Bluefin Tuna “Harpoon-Only” quota category and their crews requested that the National Marine Fisheries Service (NMS) Highly Migratory Species Division create rulemaking to ban the practice of harpooning fish by following behind mobile-gear vessels such as bottom trawl draggers and scallopers.

Since then, the National Marine Fisheries Service (NMFS) continues to receive feedback from the Bluefin Harpoon-only category that harpoon fishing is occurring behind commercial groundfish vessels in New England, and that the fishing is occurring at night, using bait, and not weather dependent (slide 11, [NOAA presentation Bluefin Tuna Year in Review Sept 2023 HMS Advisory Panel Meeting](#)).

### Historical Significance and Concerns Moving Forward

The Harpoon category was established by NMFS on June 13, 1980 with the intent to create a quota category in which harpoons were the only allowable gear type in order to preserve the historical fishery that takes place in New England ([45 FR 40118](#)).

Historically, when the harpoon category was formed, an unrestricted daily retention limit was established because weather is a critical component of this fishery. This fishing method is reduced by the number of weather-working days in the season that are suitable for harpooning. Bluefin tuna tend to swim at or near the surface periodically and are therefore only accessible for harpooning during short intervals in any given day. Spotting the fish and discerning them from other species requires skill and experience. Harpooning is a highly selective and environmentally friendly fishery because only one specific fish is targeted at a time, and no hooks or nets are involved. Therefore, entanglement bycatch of non-target species is not a concern. Harpooners must visually identify the species and size of the targeted fish before killing it, due to the “sight fishing” nature of the fishery.

The Bluefin Tuna General Category fishery, which allows rod and reel fishing, is limited to lower daily retention limits because it is not weather dependent. Fishermen using hooks can catch tuna in fog and at night. For the harpoon fishery, the requirement for fair weather (and daylight) imparts a natural cadence to the fishery that distributes the catch both temporally and geographically, and also serves to smooth out spikes in the market. This is not the case with harpooning fish behind mobile gear vessels. As a result, it is problematic to allow harpooning fish behind mobile gear vessels, because with the help of a mobile-gear vessel, a harpooner could easily fill the boat with bluefin that were caught during the day, night or in the fog, and therefore impact the sustainability of the fishery.

A proposed ban of this type of fishing would be in line with the current prohibition language in CFR 50 Ch VI (b)(1) Part 635.71, which states that vessels in the fishery may receive “no assistance from another vessel” when fishing for HMS. Allowing a mobile gear-based method to harpoon fishing crosses a line and allows those who practice this type of fishing to go 24/7, with no learning curve or regard for the sustainability of the fishery. Absent a ban, the petitioners will be forced to fish this way to ensure they have access to the quota in a foreshortened fishery, accelerating a “race to the bottom” of the potential economic return of the fishery.

## Conclusions and Potential Solutions

To be clear, we are not requesting you create changes in policy. Instead, we request a hearing between the HMS Coordinators (Randy Blankenship, Division Chief, HMS division at the SE Fisheries Science Center, and Brad McHale, Northeast Branch Chief of the HMS Management Division at NMFS Office of Sustainable Fisheries, Gloucester), and harpoon permitted vessels to discuss this issue. We hope you will be able to assist us in getting a necessary process started to support the sustainability of this fishery. Your willingness to host would be invaluable in terms of making sure this communication between stakeholders takes place. We are supportive of a meeting via webinar or an in-person meeting in Gloucester at the Greater Atlantic Regional Office (GARFO) building.

Sincerely,  
Aubrey Church  
Policy Director  
Cape Cod Commercial Fishermen's Alliance

