

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 600 and 635**

[Docket No. 210510–0103]

RIN 0648–BI08

**Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries Management**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS is proposing to modify Atlantic Highly Migratory Species (HMS) bluefin tuna (bluefin) management measures applicable to the incidental and directed bluefin fisheries through an amendment to the 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP). Specifically, the proposed measures would make several changes to the Individual Bluefin Quota (IBQ) Program, including the distribution of IBQ shares to only active vessels, implementation of a cap on IBQ shares that may be held by an entity, and implementation of a cost recovery program. The proposed measures would also make changes to bluefin fisheries by discontinuing the Purse Seine category and reallocating that bluefin quota to other directed quota categories; capping Harpoon category daily bluefin landings; modifying the recreational trophy bluefin areas and subquotas; modifying regulations regarding electronic monitoring of the pelagic longline fishery as well as green-stick use; and modifying the regulation regarding permit category changes.

**DATES:** Written comments must be received by July 20, 2021. Public hearings and webinars associated with this rulemaking will be announced in a separate document.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2019–0042, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov/docket/NOAA-NMFS-2019-0042>, click the “Comment” icon, complete the required fields, and enter or attach your comments. Comments sent by any other method, to any other address or individual, or received after the close of the comment period, may not be considered by

NMFS. All comments received are a part of the public record and generally will be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may also be submitted via [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.”

Copies of the supporting documents—including the draft environmental impact statement (DEIS), Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), the Three-Year Review of the IBQ Program, and the 2006 Consolidated HMS FMP and amendments are available from the HMS website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or by contacting Tom Warren ([Thomas.Warren@noaa.gov](mailto:Thomas.Warren@noaa.gov)).

**FOR FURTHER INFORMATION CONTACT:** Tom Warren—(978) 281–9260 ([Thomas.Warren@noaa.gov](mailto:Thomas.Warren@noaa.gov)) or Karyl Brewster-Geisz—(301) 427–8503 ([Karyl.Brewster-Geisz@noaa.gov](mailto:Karyl.Brewster-Geisz@noaa.gov)).

**SUPPLEMENTARY INFORMATION:****Background**

The Atlantic bluefin fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The 2006 Consolidated HMS FMP and its amendments are implemented by regulations at 50 CFR part 635. A brief summary of the background of this proposed rule is provided below. Additional information regarding bluefin management can be found in the DEIS accompanying this proposed rule, the 2006 Consolidated HMS FMP and its amendments, the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Reports, and online at: <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

In 2015, Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7)

(79 FR 71510; December 2, 2014) implemented substantial changes to the regulation of bluefin fisheries. Amendment 7 focused on regulating incidental catch of bluefin in the pelagic longline fishery and implemented the IBQ Program, but also made regulatory changes affecting the other bluefin fisheries. Amendment 7 measures were wide in scope and included: the IBQ Program; modification of bluefin allocations across all quota categories; gear restricted areas in the Atlantic and Gulf of Mexico; and reporting and monitoring requirements for both the incidental and directed fisheries.

Since the implementation of Amendment 7 in 2015, there have been new data that documented changing conditions in the directed and incidental bluefin fisheries, and suggestions from the public and HMS Advisory Panel regarding management of the bluefin fisheries. In Amendment 7, NMFS announced that it would conduct a formal evaluation of the IBQ Program after three years and consider changes to the Program in light of that evaluation. NMFS completed its Three-Year Review of the Individual Bluefin Quota Program (referred to hereafter as the “Three-Year Review”) in 2019. The Three-Year Review found that the IBQ Program was successful in limiting bluefin bycatch in the pelagic longline fishery, and providing flexibility in the IBQ system; however, it is likely that the IBQ Program also contributed to reduced revenue and fishing effort during 2015 to 2017. Further, the Three-Year Review noted that a different method of IBQ share distribution may warrant consideration.

The principal changes in the directed fisheries have been the continued inactivity (or extremely low activity) of the purse seine fishery over the past 15 years, and the continuing evolution of the handgear fisheries, which are extremely dynamic. Currently, there are no purse seine vessels with Purse Seine category permits, and the last year a set was made in the purse seine fishery was in 2015. During the few years prior to Amendment 7, the purse seine fishery was operating at a minimal level. From 2005 through 2012 there was no purse seine fishing activity. In 2013 through 2015, only one Purse Seine category participant fished, making only a few sets, and accounting for only a small percentage of total annual bluefin landings each year (6, 5, and 4 percent, in 2013, 2014, and 2015, respectively). Furthermore, that participant fished pursuant to an Exempted Fishing Permit (EFP) from NMFS, to investigate and gather data on reducing discards in the purse seine fishery, with terms that

exempted the vessel activity from certain regulations. During the same period of time, and since 2015, the total catch from the handgear fisheries has been increasing, there have been periods of very high bluefin availability on the fishing grounds, and there has been public concern about perceived changes in the socioeconomic of the fishery. The socioeconomic changes in the fishery include increased participation, increasing availability of bluefin, market saturation, and curtailed fishing opportunities in other non-HMS directed fisheries pursued by many commercial fishermen.

As a result of the changes in the bluefin fishery, new information on the fisheries noted above (during the five-year period from 2015 to 2019), and the findings of the analyses in the Three-Year Review, in 2019 NMFS began formal consideration of changes to the management of Atlantic bluefin through the process of scoping, including development of an Issues and Options Paper for Amendment 13 to the 2006 Consolidated HMS FMP. During this public process, NMFS considered a range of issues and objectives, as well as possible options for future bluefin management. The management options presented were not intended to be comprehensive with respect to potential modifications to the regulations, but offered a basis for further discussion and refinement of the potential objectives and measures.

On May 21, 2019, NMFS published a Notice of Intent in the **Federal Register** that provided formal notice to the public that NMFS intended to prepare an environmental impact analysis; announced the availability of the Issues and Options Paper and the start of the public scoping process (with a comment period of May 21 through July 31, 2019); and solicited public comments (84 FR 23020). On May 22, 2019, NMFS published a notice that provided the dates and locations of 10 scoping meetings, including a webinar, pertaining to Amendment 13 (84 FR 23519). Also on May 22, 2019, NMFS conducted scoping during the spring HMS Advisory Panel meeting. In the notice, NMFS announced the availability of Draft Amendment 13 to the 2006 Consolidated HMS FMP (Draft Amendment 13), including a DEIS, Draft RIR, an IRFA, and a Draft Social Impact Analysis (see **ADDRESSES** for how to get a copy of Draft Amendment 13) and its proposed implementing regulations. Draft Amendment 13 contains a complete description and analysis of the range of alternatives analyzed. The preferred alternatives in Draft Amendment 13 are the measures

proposed in this rule, described below. A description of the significant alternatives to the proposed measures is provided later in this preamble in the summary of the IRFA.

### Proposed Measures

The objectives of this rulemaking are to: (1) Evaluate and optimize the allocation of U.S. bluefin quota among bluefin quota categories considering historical allocations and use, and recent fishery characteristics and trends, to provide U.S. fishing vessels with a reasonable opportunity to harvest the U.S. quota established by ICCAT, facilitate the ability for active HMS directed permit categories to harvest their full bluefin quota allocations, and facilitate directed fishing for species other than bluefin in the pelagic longline fishery while accounting for incidental bluefin catch; (2) Maintain flexibility of the regulations to account for the highly variable nature of the bluefin fisheries, and maintain fairness among permit/quota categories; (3) Continue to manage the Atlantic pelagic longline fishery consistent with the IBQ Program objectives in Amendment 7 and consistent with the conservation and management objectives of the 2006 Consolidated HMS FMP and its amendments, and consistent with all applicable laws; and (4) Modify the management of the pelagic longline fishery in response to the Three-Year Review and in response to important relevant prevailing trends (*e.g.*, declining fishing effort and revenue for target species).

The proposed measures reflect agency consideration of the Draft Amendment 13 objectives, the Issues and Options Paper, public input from scoping discussions and related written comments, and subsequent analysis in Draft Amendment 13. Draft Amendment 13 analyzes a variety of management alternatives designed to balance achievement of its diverse objectives. In response to public comment on this proposed rule and Draft Amendment 13, the final rule may modify the proposed measures or adopt different or additional alternatives that are not proposed in this rule but would fall within the scope of, or are a logical outgrowth of, the alternatives considered in this proposed rule. A description of the proposed management measures follows:

### Pelagic Longline Fishery

#### *Annual IBQ Share Determination*

Under this proposed rule, NMFS would modify the IBQ Program by implementing a dynamic determination

of IBQ shares. Instead of the existing method for designating IBQ shareholders as implemented by Amendment 7, this measure would annually distribute IBQ shares only to currently active vessels based on specific target species landings as the measure of fishing effort. Other aspects of the IBQ Program would remain the same as follows: An IBQ share is the percentage of the Longline category quota that is associated with an eligible vessel/permit, based upon the IBQ share formula and the relevant vessel history. A shareholder's IBQ allocation is the amount (in metric tons (mt) or pounds) that is distributed to a permitted vessel, based upon its relevant IBQ share and the annual Longline category bluefin quota. Vessels must meet two requirements to be eligible to receive IBQ shares: (1) The vessel must have had a valid Atlantic Tunas Longline category permit; and (2) the vessel must be deemed to be recently "active."

Specifically, this measure would annually define IBQ shareholders and percentage shares based upon each individual permitted vessel's fishing effort, represented by the total weight of each individual vessel's target species landings. In order to have a standardized method of characterizing fishing effort, only certain target species would count in the determination of IBQ shares, with the relevant species termed "designated species." The designated species would be defined as swordfish, and yellowfin, bigeye tuna, albacore, and skipjack tunas, the species that are most frequently targeted by pelagic longline fishermen. Specifically, the measure of fishing effort would be the total weight of each individual vessel's designated species landings relative to the total amount, by weight, of designated species landings by the pelagic longline fleet. This list of designated species differs from the Amendment 7 {XE "Amendment 7"} designated species list by removing dolphin, wahoo, shortfin mako, porbeagle, and thresher sharks. Although dolphin and wahoo are targeted by some vessels with an Atlantic Tunas Longline permit, they are not among the most frequently targeted by pelagic longline fishermen. Furthermore, these species are not managed under the 2006 Consolidated HMS FMP, but are managed under the Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic (South Atlantic Fishery Management Council). Dolphin and wahoo comprise a relatively low portion (by weight) of the total landings (*i.e.*, swordfish, and yellowfin, bigeye tuna,

albacore, and skipjack tunas, including wahoo and dolphin), with wahoo representing one percent and dolphin representing six percent of the total, based on 2016 to 2018 logbook data. Further, it would be difficult for NMFS to compile and analyze the dolphin and wahoo data annually in an accurate and timely manner, because the data must be matched with vessels across separate databases. Certain shark species are not included in the list of designated species because, under current regulations, shortfin mako and porbeagle sharks cannot be landed by vessels with pelagic longline gear on board unless the sharks are dead at haulback. Additionally, ICCAT{XE “ICCAT”} Recommendation 09–07 specifies that member countries should strongly endeavor to ensure that vessels flying their flag do not undertake a directed fishery for species of thresher sharks. Thus, these sharks are not among the species most frequently targeted by PLL fishermen and are not included in the designated species list.

The time period used for determination of eligible vessels would be the three most recent years (36 months) of available data. If, for example, the total amount of designated species landings by the pelagic longline fleet over the previous three years were 6,500,000 lb and a particular vessel accounted for 150,000 lb of designated species landings during that three-year period (*i.e.*, 2.3 percent of 6,500,000 lb) the vessel’s IBQ share would be based upon that percentage. NMFS proposes to assign individual vessels into one of four IBQ share percentages rather than assign each vessel a “customized” share percentage. NMFS would assign individual vessels one of four assigned share percentages, determined annually based upon a vessel’s individual percentage and the range of percentages for all the active vessels. The four assigned IBQ share percentages are based upon analysis of the range of individual vessel percentages (sorting by vessel percentage and calculating the 25th, 50th, 75th, and 100th percentiles of the vessel percentages), the number of vessels in each quartile, and the sum of the percentages in each quartile. For example, based on data from 2016 to 2018, the four assigned IBQ share percentages would be 2.09, 1.18, 0.64, and 0.12 percent, and a vessel with 2.3 percent of the total designated species landings would be assigned an IBQ share of 2.09 percent. A more detailed explanation of the mathematical steps that result in the proposed determination of IBQ shares is contained in the DEIS. In the

development of a system to assign share percentages to individual vessels, NMFS determined that it would be better to assign individual vessels to one of four share percentage values based on quartiles, rather than assign each vessel a “customized” percentage. There were several reasons for this determination: (1) A system of four assigned share percentages is simpler for NMFS to implement accurately and would facilitate communication with the fishery; (2) designation of shares using quartiles eliminates very large and very small percentage shares, which are problematic. Under a customized system and using 2016 to 2018 data, the largest individual percentage share would be 3.11 percent and the smallest would be 0.002 percent. A shareholder with a very small individual percentage such as 0.002 percent may be distributed less than the requisite amount of IBQ{XE “IBQ”} allocation{XE “IBQ allocation”} under quarterly accountability (*e.g.*, 551 lb of GOM designated IBQ allocation). Further, for shareholders with the largest percentage shares, the incentives associated with IBQ allocations and the IBQ Program to reduce the likelihood of bluefin interactions may be eroded.

This system differs from the current IBQ share distribution system where vessels determined to be eligible to receive IBQ shares and the resulting annual IBQ allocation were those vessels that had a valid Atlantic Tunas Longline category permit (as of August 21, 2013) and were deemed to be “active,” defined as vessels that made at least one set using pelagic longline gear from 2006 through 2012 based on HMS logbook data. The formula used to assign IBQ shares to eligible vessels is based on the weight of designated species landings and the ratio of bluefin catch to designated species landings, and IBQ shares are assigned according to tiers. The Low tier receive a share equivalent to at least two bluefin (at 0.25 mt each), the Medium tier share is equivalent to three bluefin, and the High tier share is equivalent to six bluefin. Further, the current IBQ share distribution system is static, and does not reflect recent fishing activity.

Under this proposed measure, IBQ allocation would not be distributed to shareholders with permits that are in either an invalid or NOVESID permit status (*i.e.*, the permit has not been renewed, or is not currently associated with a vessel). Shareholders with permits in invalid or NOVESID status as of January 1 (when IBQ allocations are distributed to shareholders with permitted vessels), would be eligible to receive their percentage of the Longline

category quota later that year if/when the relevant permit is renewed or associated with a vessel. New entrants joining the fishery subsequent to the annual determination of shareholders would have to lease IBQ allocation from other pelagic longline participants to participate in the fishery, but would be eligible shareholders the following year (based on their level of fishing effort), and would then be eligible to receive a percentage of the Longline category quota in that subsequent year. The timing of NMFS’ receipt of finalized landings data is relevant to the precise three-year range of available data that would be utilized to document designated species landings. In other words, NMFS will utilize the most recent 36 months of available data (in contrast to data for particular calendar years). If NMFS transfers bluefin quota inseason from the Reserve category to the Atlantic Tunas Longline category (in accordance with the criteria for inseason transfers of bluefin quota under § 635.27(a)(8)) such bluefin quota distributions would be in equal amounts either to all qualified IBQ share recipients or to only permitted Atlantic Tunas Longline vessels with recent fishing activity (during the current or previous year), whether or not they are associated with IBQ shares.

Under this proposed measure, during the last quarter of each year, NMFS would notify Atlantic Tunas Longline permit holders via electronic methods (such as an email) and/or letter to inform them of their IBQ share, allocation, and the regional designations of those shares and allocations for the subsequent fishing year. This notification would represent the initial administrative determination (IAD) of the permit holder’s IBQ share and allocation. An Atlantic Tunas Longline category permit holder may submit a written petition of appeal of the following aspects of the IAD: (1) Eligibility for quota shares based on ownership of an active vessel with a valid Atlantic Tunas Longline category permit combined with the required shark and swordfish limited access permits; (2) IBQ share amount; (3) IBQ allocation; (4) vessel’s amount of designated species landings; and (5) assignment of target species landings to the vessel owner/permit holder. Appeals must be filed with the National Appeals Office (NAO) within 45 days after the date the IAD is issued, and will be governed by NAO rules of procedures at 15 CFR part 906.

NMFS permit records would be the sole basis for determining permit transfers. Documentation of legal landings of designated species during

the timeframe analyzed by NMFS would be via official NMFS logbook records or weighout slips for landings. Landings data are required to be submitted within 7 days of landing under the applicable regulations. Recognizing that late reporting could have occurred for a variety of reasons, however, NMFS is clarifying that it will consider “documented” landings for appeals purposes to be those reported within 60 days of landing. NMFS would count only those designated species landings that were landed legally when the owner had a valid permit.

Appeals based on landings data or permit history would be based on NMFS logbook data and permit records, and weighout slips (including verifiable sales slips, receipts from registered dealers, state landings records). No other proof of catch history would be considered. Photocopies of the written documents would be acceptable; NMFS may request the originals at a later date. NMFS would refer any submitted materials that are of questionable authenticity to the NMFS Office of Law Enforcement for investigation. Appeals based on hardship factors would not be considered. Consistent with most limited effort and catch share programs, hardship would not be a valid basis for appeal due to the multitude of potential definitions of hardship and the difficulty and complexity of administering such criteria in a fair manner. NMFS may utilize some bluefin quota from the Reserve category to accommodate permitted vessels that are deemed eligible for shares through the appeals process, to provide a permitted vessel an increased quota share.

This proposed measure would give separate consideration to participants in the Deepwater Horizon Oceanic Fish Restoration Project (OFRP). The Deepwater Horizon OFRP is a program conducted as a partnership between NOAA, the National Fish and Wildlife Foundation, and pelagic longline fishermen to restore damage caused by the Deepwater Horizon oil spill. The OFRP program began after Amendment 7, and was therefore not a consideration in the determination of IBQ shares in Amendment 7. More information about the Deepwater Horizon OFRP may be found at <https://www.nfwf.org/programs/deepwater-horizon-oceanic-fish-restoration-project>. Deepwater Horizon OFRP participants, who voluntarily do not fish with pelagic longline gear for set periods of time (months of “Repose” during January through June), would not be disadvantaged under this proposed measure. A proxy amount of effort would be utilized for participating

vessels during the years that they participated in the Deepwater Horizon OFRP. The proxy amount of effort would represent an estimate of pelagic longline fishing effort that each participating vessel would have had if it were not participating as a partner in the Deepwater Horizon OFRP, *i.e.*, the average weight of designated species landings by a pelagic longline vessel in the Gulf of Mexico during the months of January through June (the months of the Repose) during the relevant years.

The proxy amount of effort would be added to the participating vessels’ actual effort during the years of participation (in July through December). This proposed provision for Deepwater Horizon OFRP participants would only be necessary for a limited number of years. The Deepwater Horizon OFRP will conclude when its restoration goals are achieved (likely in approximately three to five years depending on participation levels). As such, the proxies for effort in dynamic determination of IBQ shares would only be needed for relevant years of data used to calculate IBQ shares. After the years of participation in the Deepwater Horizon OFRP are no longer part of the effort calculation, then the proxy effort level would no longer be used. NMFS is soliciting public comment on whether this proposed method for Deepwater Horizon OFRP vessels is appropriate, in the context of the proposed method of annual IBQ share determination.

#### *Regional IBQ Designations*

In conjunction with the dynamic share and subsequent allocation distribution measures, NMFS also proposes to modify regional Gulf of Mexico and Atlantic designations, while maintaining a cap on allowable bluefin catch from the Gulf of Mexico. Under the current IBQ Program established by Amendment 7, IBQ shares and subsequent associated allocation were designated as either “Gulf of Mexico” (GOM) or “Atlantic” (ATL) based on the geographic location of sets used in the determination of allocations. Only Gulf of Mexico allocation could be used to account for bluefin caught in the Gulf of Mexico, while either Atlantic or Gulf of Mexico allocation could be used to account for bluefin caught in the Atlantic. Amendment 7 allocations resulted in 35 percent of the total Longline category quota designated as GOM, and 65 percent designated as ATL. In other words, at most 35 percent of the total IBQ allocation could be caught in the Gulf of Mexico, although that quota could also be used in the Atlantic. The maximum amount was based upon the proportion of total

pelagic longline sets in the Gulf of Mexico during the period 2006 through 2012. The purpose of setting a maximum percentage of IBQ that could be used in the Gulf of Mexico was to avoid increased effort in the Gulf of Mexico.

Under the proposed measure, regional designations of IBQ shares and subsequent allocations would be determined on an annual basis as part of the annual dynamic allocation process, and the accounting rules for the regional IBQ allocations would remain the same. Specifically, regional designations would be based on the location of the relevant pelagic longline fishing activity that took place in the three years used as the basis for annual determination of shares and subsequent allocations under the proposed measure described above (dynamic allocation based on designated species landings). If a vessel had 79,000 lb of designated species landings (during the relevant three-year period), with 67,000 lb from the Gulf of Mexico, and 12,000 lb from the Atlantic, the IBQ share designations for that vessel would be split 85 percent GOM and 15 percent ATL. Under this system, if a vessel does not receive GOM designated IBQ shares and resulting allocation (because the vessel had no designated species landings from the Gulf of Mexico during the previous three years), but wishes to fish in the Gulf of Mexico, they would need to lease GOM designated IBQ allocation initially, and then could receive GOM designated IBQ shares and resulting allocation for the following year.

The area designations at an individual vessel level described above are important because the total amount of effort (represented by designated species landings) by all pelagic longline vessels that fished in the Gulf of Mexico will determine the total amount of GOM-designated IBQ shares. For example, if the total amount of designated species landings fishery wide is 20,000,000 lb, and 15,000,000 lb are from the Atlantic and 5,000,000 lb are from the Gulf of Mexico, then the relative amounts of ATL and GOM designated IBQ shares would be 75 percent and 25 percent, respectively. The GOM-designated IBQ would be complemented by establishing a cap on the amount of bluefin catch in the Gulf of Mexico. The proposed measure would specify that the default GOM cap is 35 percent and cannot exceed 35 percent, the same percent as under Amendment 7. Although Amendment 7 noted the intent to control fishing effort in the Gulf of Mexico, the focus of these proposed measures is on limiting bluefin catch, consistent with the objectives of the IBQ

Program, and because fishing effort in the pelagic longline fishery has been declining for many years, and the dead discards of bluefin in the Gulf of Mexico have been low since 2015 (Three-Year Review of IBQ Program; Table 6.24).

NMFS proposes to implement a regulatory mechanism for adjusting the 35 percent default cap to values lower than 35 percent for all of the calendar year, or the remainder of it, as appropriate. Such a determination would be based upon consideration of the existing determination criteria used in making inseason or annual adjustments to quota, which include a wide range of criteria including consistency with the FMP objectives (§ 635.27(a)(8)). These considerations include (but are not limited to): (v) Effects of the adjustment on bluefin rebuilding and overfishing; (vi) Effects of the adjustment on accomplishing the objectives of the fishery management plan; and (vii) Variations in seasonal distribution, abundance, or migration patterns of bluefin. NMFS would notify the public of changes to the 35 percent default cap and publish any modification to the cap in the **Federal Register** and would specify the basis for any decreases to the cap.

During the process of the annual calculation of IBQ shares, if NMFS determines that the amount of GOM-designated IBQ shares (based on designated species landings) would be greater than the 35 percent (or lower) cap, NMFS would reduce the GOM-designated IBQ shares to equal the IBQ share cap in effect. The reduction in total GOM share percentage would be achieved through equal proportional reductions among IBQ shareholders with GOM designated IBQ shares across the four share percentages. The ATL shares would be increased in an analogous manner, so that the total share percentages add up to 100 percent. NMFS would notify affected permit holders of any reductions in their IBQ share percentage resulting from this adjustment. This adjustment would not be subject to appeal, because it is not a determination based on the data associated with an individual shareholder, but based upon the need to reduce the total amount of allocated IBQ across all shareholders with GOM designated shares.

For example, in a given year, if 38 percent of fishing effort based on designated species landings analyzed for the determination of annual allocations were from the Gulf of Mexico (*i.e.*, 38 percent of landings of swordfish, yellowfin, bigeye, albacore, and skipjack tunas) were from the Gulf of Mexico), only 35 percent of the IBQ

allocation would be designated as GOM. NMFS would adjust the share percentages downward, equally across the four share percentages, to reflect the maximum amount of shares that can be issued for the Gulf of Mexico. In this example, each GOM IBQ share would be reduced by multiplying the share percent by 35/38, or 0.92; thus, a 2.1 percent GOM IBQ share would be reduced to 1.9 percent. The ATL shares would be increased in an analogous manner, so that the total share percentages add up to 100 percent.

#### *Cap on IBQ Shares Held or Acquired*

The Magnuson-Stevens Act requires that NMFS must ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges by establishing a maximum share that a privilege holder is permitted to hold, acquire, or use. Existing permit regulations limit the ownership/control of HMS permits to no more than five percent of vessels for which limited access permits have been issued (§ 635.4(l)(2)(iii)), which in effect established a maximum share for a privilege holder. Those regulations remain unchanged, but under this proposed rule, NMFS would cap the percentage of IBQ shares that an entity could hold or acquire at 25 percent of the total IBQ shares and the corresponding amount of IBQ allocation associated with the IBQ shares. The proposed cap is intended to limit acquisition of IBQ shares via acquisition of permits, or changes in the allocation of shares among active permit holders, to prevent a single entity from holding a disproportionate amount of either IBQ shares or allocations. An "entity" is defined in this context as an Atlantic Tunas Longline category permit holder where that holder is an individual, corporation, partnership, or other entity. A cap under this proposed measure would apply to the sum of shares or IBQ allocations an entity controls, whether the entity is associated with a single or multiple Atlantic Tunas longline permits.

Although IBQ shares are not severable from permits, and may not be sold, entities may be issued multiple Atlantic Tunas Longline category permits and transfer them among vessels. The maximum share amount would apply to accrual of shares through the ownership of multiple Atlantic Tunas Longline category permits. NMFS would enforce this restriction based on the best available information such as data submitted in support of permit and IBQ Program requirements. Based on current data, setting a cap at 25 percent of the total amount of IBQ shares would

represent a level four times the current maximum level of IBQ shares held by a single entity (between five and six percent), and would set a maximum level that would preclude additional consolidation above that amount. The 25 percent cap would balance the need to address the Magnuson-Stevens Act requirement to cap shares with the need to provide flexibility for fishery participants. The 25 percent cap would address concerns about consolidation, which may not be fully addressed with a higher cap, and enable fishery participants to operate in a manner that allows bluefin bycatch to be accounted for. Further, it would allow for various business models, including cooperatives and limited consolidation that enhance efficiencies, to remain profitable and competitive in the international seafood market.

#### *IBQ Program Dealer Reporting Requirements*

This proposed rule would modify two aspects of the dealer reporting requirements for the IBQ Program. First, this measure would remove the existing requirement that any pelagic longline vessel owner/operator who discarded dead bluefin enter dead discard information from the trip by coordinating with the dealer and entering that trip's dead discard information into the Catch Shares On-line System via the dealer account. This existing requirement is redundant with another existing requirement that vessel operators must report bluefin dead discards while at sea through the VMS set report, which is integrated into the Catch Shares On-line System. The dealer would continue to be required to enter the data on bluefin landings into the Catch Shares On-line System via the dealer account.

Secondly, this proposed measure would eliminate the current requirement that vessel operators/owners enter the PIN associated with the vessel account to confirm that the landings report information entered into the Catch Shares On-line System by the dealer is accurate. The intent of the PIN requirement was to provide an opportunity for vessel operators to ensure accurate information regarding bluefin transactions with the dealer and correct accounting of bluefin in the Catch Shares On-line System and IBQ vessel accounts. In practice, most vessel owners have not entered their PIN into the Catch Shares On-line System at the time of offloading. Vessel operators have instead provided their vessel's PIN to the dealer with whom they usually conduct business to enable the dealer to retain the PIN and

enter the number each time a bluefin landing (from that particular vessel) occurs, to streamline logistics and communication during offloading.

This proposed measure would be combined with a new email notification by NMFS via the Catch Shares On-line System (or a message within the System) that would inform the vessel owner when a dealer conducts a bluefin landings transaction with that vessel's IBQ account, to provide a means of vessel operator oversight of dealer transactions with their IBQ vessel account.

#### *Measures Related to Electronic Monitoring (EM)*

This proposed rule would require that the vessel operator mail the electronic monitoring system's hard drive(s) within 48 hours after the completion of every other trip (every second trip), instead of after each pelagic longline fishing trip. This requirement would reduce the amount of time and costs required of vessel operators as associated with the EM{XE "EM"} Program. Currently, hard drives are not typically full of data at the completion of one trip, and there is adequate room for the data from more than one trip to be stored on a single hard drive. An exception to this requirement would be if the hard drive is at capacity after one trip, as indicated by the EM System; in that case, the vessel operator must mail the hard drive at the end of that trip. Vessel operators would need to ensure that hard drives have the capacity for the trip(s) they are departing on.

This proposed rule would also clarify the regulations to require installation of hardware, if necessary to mount and install video cameras at locations on vessels to obtain optimal views. Further, the proposed measure would allow NMFS, working in conjunction with the vessel owner/operator, to make relatively minor modifications to the vessel structure to mount cameras in locations that provide required views of the vessel and adjacent areas. For example, NMFS may request the installation of the rail camera in a particular location on the vessel's structure, or installation of hardware such as a boom on a structure near the vessel's rail for the purpose of obtaining a different camera angle necessary to adequately view where the gear and fish are hauled out of the water. A boom would likely be a customized piece of hardware that is fixed or movable (e.g., extended or lowered prior to fishing activities starting). Currently, the rail camera is mounted on the vessel's existing structure at the rail or slightly inboard of the rail, and typically

provides only a partial view of the seaward area of the vessel as a result of the low camera angle (to the side of the vessel). Therefore, the current rail camera configuration usually provides a limited view of the seaward area of the rail where gear is hauled from the water, and where fish capture and some of the discard events occur. This proposed measure would improve the detection of fish (especially fish that are hooked, but not brought aboard the vessel) by the EM{XE "EM"} System, and improve the accuracy of resulting data.

Finally, this proposed rule would require more specific fish handling procedures and the installation/ placement of a measuring grid on deck, in view of one of the cameras. As instructed and specified by NMFS, the vessel crew would be required to place retained fish on a mat with grid lines or a grid painted on deck in view of the processing camera, so the video recording included images of the fish on the mat. The mat or grid would be a standardized size with lines of standard intervals. With the use of a grid measuring tool, size estimation would be less affected by camera placement and angle with respect to fish, and the estimation of size and species identification may be improved. Additionally, a standardized reference grid may facilitate the development and use of computer algorithms and automation of video analysis.

#### *Cost Recovery Program*

Cost recovery, a required element of limited access privilege programs under the Magnuson-Stevens Act, was not initially implemented at the start of the IBQ Program in 2015 in order to gather information about the operation of the fishery under the IBQ Program and reduce initial costs and uncertainty given the bycatch dynamic of the program. The Magnuson-Stevens Act provides NMFS the authority for recovering fees paid by limited access privilege holders of up to three percent of the ex-vessel value of fish harvested under the limited access privilege program to cover the incremental costs (incurred by NMFS) directly related to and in support of management, data collection and analysis, and enforcement activities for the program (e.g., the IBQ Program).

Under this proposed rule, NMFS would implement a flexible cost recovery program. No fees would be charged if the costs of collecting the fees exceed estimated fees to be recovered. Annually, NMFS would estimate its incremental costs associated with the IBQ Program (including costs associated with the cost recovery program) and the

total ex-vessel value of bluefin sold from the pelagic longline fishery (including bluefin caught with green-stick gear), and notify the public whether a cost recovery fee would be charged for the year. If NMFS determines the annual cost recovery fee is warranted, NMFS would notify the permit holders that landed bluefin, including those caught with green-stick gear (based on dealer landings data), of any fees to be charged. Permit holders would be billed based on the ex-vessel value of the bluefin purchased. Permit holders would pay the cost recovery fee through the Catch Shares On-line System website and the associated *pay.gov* link.

The incremental costs to NMFS of implementing the IBQ Program are principally costs associated with labor, both NMFS staff and contracted entities. The types of costs include those associated with IBQ Program oversight, customer service, database maintenance, computer programming (maintenance and development), the EM Program, data monitoring, preparation of fleet communications, providing status reports to the HMS Advisory Panel, preparation of **Federal Register** documents, and enforcement related activities. NMFS would estimate the incremental costs incurred to NMFS of implementing the IBQ Program on an annual basis, including an estimate of the costs of the cost recovery program itself (i.e., the activities associated with the annual process of implementing the cost recovery program).

In the case of the IBQ Program, the relevant ex-vessel value is the value of bluefin landed, not the ex-vessel value of the targeted or designated species that are not managed under the IBQ Program, such as swordfish and yellowfin tuna, which comprise the majority of the value of the fishery. NMFS would determine the fee associated with each pelagic longline vessel that harvests bluefin, based on the total dressed weight of bluefin sold to dealers by a vessel and the total amount of fees that may be recovered fishery-wide. For example, if based on an ex-vessel price of \$4.12 per pound, the total recoverable costs are \$20,682 (not including NED landings) and the total pounds landed is 167,000, then the fee per pound would be \$0.124.

Recoverable fees would be capped at three percent of the total ex-vessel value of bluefin harvested under the IBQ Program. If the estimated recoverable fees are similar to or less than the incremental costs of the Program, no cost recovery fee would be collected. Given the relatively small total ex-vessel value of bluefin landed by pelagic longline vessels, and the incremental

NMFS costs associated with the IBQ Program, NMFS anticipates that cost recovery fees would generally be three percent or less of the ex-vessel value of bluefin sold.

Annually, NMFS will determine whether a cost recovery fee is warranted, and if so, provide formal notice through the **Federal Register**. NMFS would calculate individual fees, notify Atlantic Tunas Longline category permit holders, and provide relevant information on the amount owed and instructions for payment through the Catch Shares On-line System and *pay.gov*. NMFS will also communicate with permit holders in the fishery to educate them about the process, and conduct oversight of collection of fees including follow-up and enforcement. Permit holders who fail to pay the fee or who are delinquent in payment would be subject to relevant non-compliance penalties, enforcement actions, and possible permit revocation.

Given the potential economic impacts of the annual cost recovery fee, and the importance of transparency, NMFS would prepare an annual report, made available to the public, which would summarize relevant fishery-wide information on the cost recovery program.

#### **Modification of Bluefin Quota Category Allocation Percentages**

This proposed rule would simplify the mathematical method used in the annual quota allocation process. Under current regulations, each quota category (including the Longline category) is annually allocated a percentage of the U.S. bluefin quota after 68 mt (*i.e.*, the historical 68-mt dead discard allowance, as described in Amendment 7) is subtracted from the baseline quota and allocated to the Longline category. This process was intended to have all bluefin quota categories contribute proportionally to 68 mt provided to the Longline category annually. This proposed rule would eliminate the two-step process and, instead, make slight revisions to the category allocation percentages.

For example, under the current regulatory formula, the percentage of the U.S. baseline quota for the Longline category is 8.1 percent, and once the 68 mt amount is included, it is 13.1 percent, in effect. The proposed rule would thus revise the Longline category percentage to 13.1 percent, and the other category allocation percentages would be slightly modified accordingly. For example, for the General category, instead of having an annual deduction of 32.1 mt (47.1 percent of 68 mt) and a baseline quota percentage of 47.1

percent, the General category would have a baseline quota percentage of 44.1 percent (and no deduction of 32.1 mt). In the same manner, the baseline Harpoon category quota would change from 3.9 percent to 3.7 percent of the total U.S. quota, the Purse Seine category quota would change from 18.6 percent to 17.6 percent, the Trap category quota would remain 0.1 percent, the Angling category quota would change from 19.7 percent to 18.6 percent, and the Reserve category quota would change from 2.5 percent to 2.4 percent. This methodology would apply regardless of the annual quotas. These category quotas would be further modified under this proposed rule, as described below in the Purse Seine category section. Note that the United States also receives an annual allocation of 25 mt from ICCAT for incidental catch of bluefin related to directed longline fisheries in the Northeast Distant gear restricted area (NED), which is defined at 50 CFR 635.2.

#### **Purse Seine Category**

Under this proposed rule, NMFS would discontinue the Purse Seine category through redistribution of Purse Seine category quota effective upon implementation of the Amendment 13 final rule. NMFS would remove purse seine from the list of authorized gears and remove other references in the regulations to the purse seine fishery, including references to Purse Seine category quota, permits, nets, sets, vessels, and participants. The Purse Seine category is, in effect, allocated 17.6 percent of the U.S. baseline bluefin quota (as discussed above), yet the purse seine fishery has been largely inactive over the past 15 years, and there are no longer any historical Purse Seine category participants actively fishing. There have been no landings from the purse seine fishery since 2015. One purse seine vessel fished in 2014 and 2015 under an exempted fishing permit. The intent of the exempted fishing permit was to determine if modification to the retention limit of the smaller size range bluefin (smaller than the target size range) would result in the reduction of discarded fish. All of the Purse Seine category participants have sold their vessels, likely along with purse seine gear and associated equipment, as they are customized to a vessel and would have been expensive to remove. Discontinuation of the Purse Seine category and reallocation of the quota upon implementation of Amendment 13 would provide additional quota to active fisheries that are, at times, quota-limited, increase the likelihood that more of the U.S. quota will be utilized,

and address various types of uncertainty that result from the inactive status of the Purse Seine category.

Further, NMFS proposes to reallocate the Purse Seine category quota (which is currently allocated 18.6 percent of the quota) proportionally to the other directed bluefin quota categories (General, Angling, and Harpoon) and the Reserve category. Purse Seine category quota (a directed fishing category) would not be reallocated to the Longline or Trap categories that catch bluefin incidentally. The increase in percentages for each directed quota category would be based on the current percentages associated with each quota category, so that the size of the increase reflects the relative size of the current quota categories. For each category, the current and proposed quota percentages, respectively, are as follows: General category: 47.1 percent, 55.8 percent; Angling category: 19.7 percent, 23.4 percent; Harpoon category: 3.9 percent, 4.6 percent; and Reserve category: 2.5 percent, 3.0 percent. Under the currently-established and codified quota, the proposed bluefin category quotas that would result from reallocation from the Purse Seine category and reflect the proposed change to the mathematical method used in the annual quota allocation (described above) would be: General category 696.9 mt (55.8 percent of the overall quota), Angling category 291.5 mt (23.4 percent), Harpoon category 57.7 mt (4.6 percent), and Reserve category 37 mt (3 percent). The Longline and Trap category percentages would be those resulting from the proposed change to the mathematical method used in the annual quota allocation, described above: Longline category 163.5 mt (13.1 percent, versus current level of 8.1 percent), and Trap category 1.2 mt (0.1 percent rounded, versus current level of 0.1 percent).

As noted above, the Longline category allocation is intended to be used to account for incidental catch of bluefin. The IBQ Program balances incentives to avoid bluefin and reduce dead discards with providing flexibility to fish for target species and maintain profitability. Based on the Three-Year Review, it appears that the relative amount of IBQ allocation distributed, in combination with the flexibility for vessels to lease additional IBQ allocation through the IBQ Program were adequate for vessels to account for bluefin during directed fishing operations for target species. Specifically, the relative amount enabled vessels to account for bluefin landings and dead discards, as well as support a successful leasing market (notwithstanding the distributional

issues and costs associated with the Amendment 7 allocation method, noted in the Three-Year Review). Therefore, a substantive increase in the amount of Longline category quota through an increase in its percentage of the overall quota is not proposed. In fact, NMFS has sought ways to facilitate reasonable opportunities to catch the currently available Longline category quota (see, e.g., 85 FR 18812; April 2, 2020) while maintaining incentives to avoid bluefin during directed fishing operations through maintenance of the Longline category quota at the relatively low level determined to be appropriate in Amendment 7. This approach not only is consistent with the objective of the IBQ Program (*i.e.*, accountability for bluefin landings and dead discards, and reducing levels of incidental catch from historical levels), but also ensures that the amount of IBQ allocated is at a level that maintains strong incentives for vessels to modify fishing behavior to avoid interactions with bluefin.

#### Angling Category

Under this proposed rule, NMFS would modify the current Angling category Trophy North subquota areas and allocations specified at 50 CFR 635.27(a)(1), by dividing the northern area into two zones: North and south of 42° N lat. (off Chatham, MA); these newly-formed areas would be named the Gulf of Maine trophy area and the Southern New England trophy area, respectively. The net result would be that the Trophy quota would be divided among four geographic areas (in the Atlantic and Gulf of Mexico) and each area would receive an equal amount of quota (*i.e.*, the Angling category trophy quota would be divided equally four ways).

To create the new trophy suballocation for the Gulf of Maine trophy area, NMFS would increase the allocation for trophy bluefin. Because the amount of school bluefin (27"–<47") is limited in the codified regulations, and in compliance with the ICCAT bluefin recommendation to no more than 10 percent of the annual U.S. bluefin tuna quota, any increase to the trophy subquota would need to be balanced with an equivalent reduction of the subquota for large school/small medium bluefin subquota (47"–<73"), which is the remainder of the Angling category quota once the school bluefin subquota and trophy subquotas are subtracted. For example, referring to the current Angling category quota regulations, NMFS would increase the portion of the Angling category quota allocated for trophy bluefin from 2.3 percent to 3.1 percent. This would

result in a minor decrease in the amount of allocation for large school/small medium bluefin (measuring 47"–<73"). Creation of a Gulf of Maine area and an allocation equivalent to the allocations for the existing areas could provide additional opportunities for anglers fishing north of 42° N Lat. where bluefin are available in summer and fall, including those fishing on HMS{XE "HMS"} Charter/Headboat-permitted vessels. In recent years the northern trophy area has closed between late May and early August, with the quota largely filled with bluefin caught off the states of New York and New Jersey, south of 42° N Lat.

#### Harpoon Category

Under this proposed rule, NMFS would set an overall Harpoon category daily retention limit of 10 commercial-sized bluefin per day or trip (*i.e.*, the combined limit of large medium (73"–<81") and giant (81" or greater) would be 10 fish), and would maintain the current regulations regarding retention of large medium bluefin (73"–<81") (*i.e.*, the range of two (default) to four fish, adjustable through inseason action). For example, if the default limit of two large medium bluefin were in effect, as a result of the overall daily limit of 10 fish, a vessel would be limited to eight giant bluefin.

Current Harpoon category regulations limit the number of large medium bluefin that may be retained to two to four fish, with two fish as the default, but there is no limit on the number of giant bluefin that may be retained. This measure would set an overall limit on the combined number of bluefin (large medium and giant) that may be retained in order to extend Harpoon category fishing opportunities over time within the available quota (*i.e.*, extend the season) and among a larger number of Harpoon category participants. NMFS is soliciting public comment on this measure, including a particular aspect of this measure. The measure as proposed would not make a change to the current retention large medium bluefin limit (range). Currently, NMFS may set the limit of large medium bluefin within a range of two to four fish via inseason action. NMFS requests comment on whether the range of two to four large medium bluefin should be modified to a range of zero to four fish, as well as on whether there should be a range of zero to 10 commercial-sized bluefin per day or trip, that could be modified via inseason action following consideration of the determination criteria at 50 CFR 635.27(a)(8). For comparison, NMFS currently has the ability to use inseason authority to

amend the General category daily retention within the range of zero to five fish per day/trip.

#### Permit Category Change Restrictions

This proposed rule would allow Atlantic tunas permit holders in the General, Harpoon, or Trap category, or Atlantic HMS permit holders in the Angling or Charter/Headboat category, to change permit categories any time during the fishing year, provided the vessel has not landed a bluefin. Current regulations only allow permit changes from 45 days after permit issuance. This measure would not allow vessels to land bluefin from multiple quota categories in a year, thereby preserving the objective of this regulation, but would give vessel owners more flexibility to change their permit type or correct an error in their selection of permit category. The majority of vessel owners that request NMFS to waive the current 45-day requirement did not fish, and are not attempting to circumvent the regulations and/or quota system. Requests for permit category changes are predominately made because the applicant, or someone obtaining the permit on the owner's behalf, made a mistake on the permit application, and/or did not fully understand the requirements associated with a particular permit type. NMFS may incur some administrative burden associated with verifying that vessels have not landed bluefin.

#### Green-Stick Gear by Pelagic Longline Vessels

NMFS issued a rule in 2008 that authorized green-stick gear for the harvest of Atlantic tunas (73 FR 54721, September 23, 2008). Green-stick gear was allowed to be used by vessels with longline gear on board. See 50 CFR 635.2 (defining green-stick gear and pelagic longline). Allowing the use of green-stick gear while pelagic longline gear was also onboard was intended to provide vessel operators flexibility to employ fishing strategies with multiple gear types to optimize their business in a highly dynamic fishery.

Under this proposed rule, NMFS would clarify retention and reporting requirements for bluefin caught with green-stick gear by vessels with Atlantic Tunas Longline category permits to allow the retention of one bluefin per trip (73" or greater CFL) taken incidentally while fishing for other target species and with additional regulations applying to such trips. Vessels would be required to submit a VMS set report for each green-stick retrieval that interacts with bluefin and report information on the location of the



set and numbers and length of bluefin within 12 hours (in addition to the VMS reports for pelagic longline sets). This VMS requirement differs from the VMS requirement associated with the use of pelagic longline gear, which requires submission of a report after each pelagic longline set. Regardless of whether sets are made with green-stick gear or pelagic longline gear, vessels would be required to comply with HMS logbook requirements and comply with the IBQ Program requirements regarding accounting for bluefin using IBQ allocation, quarterly accountability, and other applicable regulations. Vessels would continue to be required to monitor the retrieval of longline sets with the EM System, and comply with other monitoring and reporting regulations that are triggered by the presence of pelagic longline gear. However, the use of EM Systems would not be required for haulback with green-stick gear or to record an image of a bluefin caught with green-stick gear, because catch of bluefin caught with green-stick gear are likely to be a rare event, and application of the EM requirement to green-stick gear would increase the complexity and cost of the EM Program.

Under current regulations, pelagic longline vessels must discard bluefin caught on green-stick gear instead of landing and accounting for them via the IBQ Program. The proposed rule would support the minimization of dead discards by allowing the incidental retention of one green-stick caught bluefin per trip. Requiring VMS set reporting, logbook reporting, and IBQ Program participation is consistent with the intent of the 2008 rule that authorized green-stick gear.

#### Minor/Technical Regulatory Changes

Amendment 13 proposes minor regulatory changes (such as minor corrections and clarifications; the removal or modification of obsolete cross-references; and minor changes to definitions and prohibitions) that would improve the administration and enforcement of HMS regulations. The corrections, clarifications, changes in definitions, and modifications to remove obsolete cross-references are consistent with the intent of previously analyzed and approved management measures. Under § 635.2, Definitions, abbreviations were added for Curved Fork Length, Northeast Distant Area, Bluefin Tuna, Electronic Monitoring and Individual Bluefin Tuna Program. A definition for Vessel Monitoring Plan was added, and the definition of Curved Fork Length was clarified.

Under § 635.23(a)(4) and (b)(3), which address the process for inseason changes to the BFT retention limits, the minimum 3-day period between filing an action with the Office of Federal Register and the effective date of the action would be eliminated to provide for additional flexibility, as warranted and supported. The 3-day period has been in regulations since at least 1999. This rule proposes to remove that minimum period to provide for greater flexibility in management response for the General category. The General category is very dynamic: fish may swim from Massachusetts to Virginia in three days, there is limited quota and seasonal allocations, and high and variable levels of fishing pressure. Given all of this, NMFS may need flexibility to more swiftly implement a measure that may provide additional opportunity (in the case of an increased trip limit), or take swift action to slow a catch rate (in the case of a lowered retention limit). NMFS will continue to consider each adjustment on a fact-specific basis, consistent with Administrative Procedure Act requirements and providing for as much notice as possible. Under § 635.27, the subquota period previously referred to as the “January” subquota period will be changed to “January through March” subquota period to reflect the actual duration of the January subquota period, which is not changing.

#### Request for Comments

NMFS is requesting comments on the proposed measures, alternatives, and analyses described in this proposed rule and contained in the DEIS, IRFA, and RIR. Written comments may be submitted via <http://www.regulations.gov> (see **DATES** and **ADDRESSES**). Comments may also be submitted at a public hearing (see Public Hearings below).

#### Public Hearings

Public hearings, which will be announced through a separate notice in the **Federal Register**, may be in person or via conference call, and will be held during the public comment period.

#### Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to the National Environmental Policy Act (NEPA), NMFS prepared a DEIS for this proposed rule that discusses the impact on the environment that would result from this rule. A copy of the DEIS is available from NMFS (see **ADDRESSES**). A Notice of Availability of the DEIS is publishing in the **Federal Register** on May 21, 2021. A summary of the impacts of the alternatives considered is described below.

#### Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

Section 603(b)(1) requires Agencies to describe the reasons why the action is being considered. NMFS is amending the 2006 Consolidated HMS FMP to address bluefin tuna management due to recent trends and characteristics of the bluefin fishery. Section 603(b)(2) of the RFA requires Agencies to state the objective of, and legal basis for, the proposed action. The objectives of this Amendment are: (1) Evaluate and optimize the allocation of U.S. bluefin quota among bluefin quota categories, considering historical allocations and use, and recent fishery characteristics and trends, to provide U.S. fishing vessels with a reasonable opportunity to harvest the U.S. quota established by ICCAT, facilitate the ability for active HMS directed permit categories to harvest their full bluefin quota allocations, and facilitate directed fishing in the pelagic longline fishery while accounting for incidental bluefin catch; (2) Maintain flexibility of the regulations to account for the highly variable nature of the bluefin fisheries, and maintain fairness among permit/quota categories; (3) Continue to manage the Atlantic pelagic longline fishery consistent with the IBQ Program objectives implemented by Amendment 7, consistent with the conservation and management objectives of the 2006 Consolidated HMS FMP and its amendments, and consistent with all applicable laws; and (4) Modify the management of the pelagic longline fishery in response to the Three-Year Review of the IBQ Program, and in response to important relevant

prevailing trends (e.g., declining fishing effort and revenue for target species).

Section 603(b)(3) of the RFA requires Agencies to provide an estimate of the number of small entities to which the rule would apply. For RFA compliance purposes, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS code 11411). NMFS considers all HMS permit holders to be small entities because they had average annual receipts of less than \$11 million for commercial fishing. SBA has established size standards for all other major industry sectors in the United States, including the scenic and sightseeing transportation (water) sector (NAICS code 487210, for-hire), which includes charter/party boat entities. SBA has defined a small charter/party boat entity as one with average annual receipts (revenue) of less than \$8.0 million.

Regarding those entities that would be directly affected by the preferred alternatives, the maximum annual revenue for any pelagic longline vessel between 2006 and 2016 was less than \$1.9 million, well below the NMFS small business size standard for commercial fishing businesses of \$11 million. In 2016, there were 280 Atlantic Tunas Longline category permits, and 85 vessels were actively fishing based on logbook records.

Other non-pelagic longline HMS commercial fishing vessels typically earn less revenue than pelagic longline vessels, and none have annual revenue of \$11 million or more. Therefore, NMFS considers all Atlantic HMS commercial permit holders to be small entities (i.e., they are engaged in the business of fish harvesting, are independently owned or operated, are not dominant in their field of operation, and have combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide). The other (non-Atlantic Tunas Longline) preferred commercial alternatives would apply to 2,721 General category permit holders, 3,769 Charter/Headboat category permit holders, 20 Harpoon category permit holders, and 34 seafood dealers that purchase bluefin (based on 2019 data). There are no Purse Seine category permits issued currently, although the five historical participants in the purse seine fishery have been annually allocated a portion of Purse Seine category bluefin quota based on their previous year's fishing activity, if any, and have been allowed to lease that portion through the IBQ Program to pelagic longline vessels, although it is not IBQ allocation.

NMFS has determined that the preferred alternatives would not likely directly affect any small organizations or small government jurisdictions defined under the RFA, nor would there be disproportionate economic impacts between large and small entities.

Section 603(b)(4) of the RFA requires Agencies to describe any new reporting, record-keeping and other compliance requirements. This proposed rule contains revised or new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden for these collections of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, are estimated below (see Paperwork Reduction Act).

Under section 603(b)(5) of the RFA, Agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed action. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other fishery management measures. These include, but are not limited to, the Magnuson-Stevens Act, ATCA, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, NEPA, the Paperwork Reduction Act, and the Coastal Zone Management Act. This proposed action has been determined not to duplicate, overlap, or conflict with any Federal rules.

One of the requirements of an IRFA is to describe any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. NMFS cannot establish differing compliance or reporting requirements for small entities or exempt small entities from coverage of the rule or parts of it because all of the businesses impacted by this rule are considered small entities and thus the requirements are already designed for small entities. NMFS did incorporate performance standards when developing several of the IBQ dynamic allocation alternatives. As described below, NMFS analyzed several different alternatives in this proposed rulemaking, and provided rationales for identifying the preferred alternatives to achieve the desired objectives. The

alternatives considered and analyzed are described below.

#### *Modifications to IBQ Share Eligibility, Distribution and Allocation Methods*

Alternative A1, the No Action Alternative, would make no changes to the current method of determining IBQ share eligibility, and the distribution of IBQ allocations, including regional designations. This alternative would not result in any changes in the economic impacts to small entities associated with the IBQ Program under Amendment 7. Under the No Action Alternative there would continue to be the inefficiency associated with annual IBQ allocations that are neither used to account for bluefin catch, nor leased to other shareholders, which would be a minor, adverse impact.

Alternative A2 is composed of four sub-alternatives that consider various annual dynamic determination methods for allocating IBQ shares. Under these alternatives, IBQ shareholders would be determined annually, based on the application of eligibility criteria intended to define a pool of recently active vessels. As explained in DEIS section 2.1.1, the intent is to distribute IBQ shares and allocations to vessels that are active and that need to account for bluefin incidental catch, not to encourage leasing by inactive fishermen. However, to estimate and compare economic impacts, the average cost of leasing IBQ allocation is used in the analyses of the sub-alternatives. Under Sub-Alternatives A2a, A2b and A2c, participants in the Deepwater Horizon OFRP would have their fishing effort include a proxy amount of landings used in the calculation of their IBQ shares in years they participated in the project, to ensure that there are no negative impacts associated with voluntary participation in that restoration project.

Sub-Alternative A2a would define IBQ shareholders annually based on the relative number of hooks fished as the measure of fishing effort. The overall economic impact would be minor and beneficial. For most active IBQ shareholders, who are small business entities, the economic impact of this alternative would be positive. Some shareholders would have larger share percentages and some would have smaller share percentages compared to the No Action Alternative, but with more shareholders benefitting from this alternative. One adverse impact for shareholders may be a slightly reduced ability for business planning due to the potential annual variability in share percentages. It should be noted, however, that shareholders would be

aware that a substantive change in their amount of fishing effort may result in slight changes in their share percentage in the following year. Adverse impacts on a shareholder could be partially mitigated through leasing IBQ allocation. Such adverse impacts would only be partially mitigated because of the cost of leasing IBQ allocation. There would be a total of 97 defined shareholders based on the total number of vessels that submitted VMS bluefin reports from 2016 through 2018. Overall, there would be a net increase in IBQ allocation value. Based on the analysis of the data, 66 vessels would have IBQ allocations larger than compared to the No Action Alternative, and be in a better economic position with respect to the amount of IBQ allocation they have (expressed in terms of potential leases costs avoided, or leasing benefits accrued). Using a weighted average cost per pound of leased IBQ allocation from 2017 through 2019 of \$1.70 per pound, the average lease value of IBQ allocation gained would be approximately \$4,015 per shareholder with a range of \$201 to \$10,331. Thirty-one vessels would have IBQ allocations smaller when compared to the No Action Alternative, and would be in a worse economic position with respect to the amount of IBQ allocation they have. Using the same weighted average cost per pound of leased IBQ allocation of \$1.70 per pound, the average lease value of IBQ allocation lost would be approximately \$3,174 per shareholder with a range of \$1,224 to \$6,302. It should be noted that IBQ shares and allocations are subject to change each year (based on fishing effort/number of hooks fished), all active vessels would receive IBQ allocation, and the leasing market is likely to continue to function well, with a price similar to or lower than recent prices, because most vessel allocations would increase. Furthermore, the economic costs associated with reduced allocations would only be realized if shareholders need to lease IBQ allocation to account for bluefin catch in excess of their allocations. The most notable trend is that under dynamic allocation based on hooks, vessels generally would be distributed more IBQ allocation than under the No Action Alternative (with the exception of shareholders in the first quartile). The number of IBQ shareholders would be reduced from 136 to 97, and dynamic allocation would reduce dissatisfaction among active fishery participants that results from the current regulations under which a relatively large number of permit holders who are not active

receive an annual IBQ allocation because they are IBQ shareholders (with a permitted vessel).

Sub-Alternative A2b would define IBQ shareholders annually based on the relative number of pelagic longline sets as the measure of fishing effort. The overall economic impact would be minor and beneficial. For most IBQ shareholders, who are small business entities, the economic impact of this alternative would be positive and similar to Sub-Alternative A2a. There would be 97 defined shareholders based on the total number of vessels that submitted VMS bluefin reports from 2016 through 2018. Overall, there would be a net increase in IBQ allocation value. Based on the data, 66 vessels would have IBQ allocations larger than compared to the No Action Alternative, and be in a better economic position with respect to the amount of IBQ allocation they have (expressed in terms of potential leases costs avoided, or leasing benefits accrued). Using \$1.70 cost per pound (explained under Sub-Alternative A2a), the average lease value of IBQ allocation gained would be approximately \$4,028 per shareholder with a range of \$957 to \$11,331. Thirty-one vessels would have IBQ allocations smaller when compared to the No Action Alternative, and would be in a worse economic position with respect to the amount of IBQ allocation they have. Using the same \$1.70 cost per pound, the average lease value of IBQ allocation lost would be approximately \$3,203 per shareholder with a range of \$1,226 to \$6,304. However, as with Sub-Alternative A2a, it should be noted that IBQ shares and allocations are subject to change each year (based on fishing effort/number of sets), all active vessels would receive IBQ allocation, and the leasing market is likely to continue to function well. The most notable trend is that under dynamic allocation based on sets vessels are generally distributed more IBQ allocation than under the No Action Alternative (with the exception of shareholders in the first quartile). The number of IBQ shareholders would be reduced from 136 to 97, and dynamic allocation would reduce dissatisfaction among active fishery participants that results from the current regulations under which a relatively large number of permit holders who are not active receive an annual IBQ allocation because they are IBQ shareholders (with a permitted vessel).

Sub-Alternative A2c, the preferred alternative, would define IBQ shareholders annually based upon the total amount by weight of each individual permitted vessel's designated species landings relative to the total

amount of designated species landings by pelagic longline fleet, as the measure of fishing effort. The overall economic impact would be minor and beneficial. For most active IBQ shareholders, who are small business entities, the economic impact of this alternative would be positive and similar to Sub-Alternative A2a. Overall, there would be a net increase in IBQ allocation value. Based on the analysis of the data, 57 vessels would have IBQ allocations larger than compared to the No Action Alternative, and be in a better economic position with respect to the amount of IBQ allocation they have (expressed in terms of potential leases costs avoided, or leasing benefits accrued). Using \$1.70 cost per pound (explained under Sub-Alternative A2a), lease value of IBQ allocation gained would be approximately \$4,884 per shareholder with a range of \$248 to \$12,844. Forty-two vessels would have IBQ allocations smaller when compared to the No Action Alternative, and would be in a worse economic position with respect to the amount of IBQ allocation they have. Using the same \$1.70 cost per pound, the average lease value of IBQ allocation lost would be approximately \$2,836 per shareholder with a range of \$136 to \$6,620. However, as with Sub-Alternative A2a, it should be noted that IBQ shares and allocations are subject to change each year (based on fishing effort/designated species landings), all active vessels would receive IBQ allocation, and the leasing market is likely to continue to function well, with a price similar to or lower than recent prices, because most vessel allocations would increase. Furthermore, the economic costs associated with reduced allocations would only be realized if shareholders need to lease IBQ allocation to account for bluefin catch in excess of their allocations. The exclusion of dolphin and wahoo from the list of designated species affected the IBQ share percentages of eight vessels. Compared to the IBQ share percentages that they would have received if the dolphin and wahoo were included, four vessels would increase in share percentage and four vessels would decrease. The difference in percentage shares was relatively minor, with vessel shares moving from one quartile to an adjacent quartile. The most notable trend is that under dynamic allocation based on designated species landings, vessels generally would be distributed more IBQ allocation than under the No Action Alternative (with the exception of shareholders in the first quartile). The number of IBQ shareholders would be reduced from 136 to 99, and dynamic

allocation would reduce dissatisfaction among active fishery participants that results from the current regulations under which a relatively large number of permit holders who are not active receive an annual IBQ allocation because they are IBQ shareholders (with a permitted vessel).

Sub-Alternative A2d would define IBQ shareholders annually, and distribute IBQ allocation in equal amounts to eligible permitted vessels. The overall economic impact would be minor and beneficial. An eligible vessel would be any vessel that landed designated species during recent years (*i.e.*, at least one of the three most recent years of available data). For most active IBQ shareholders, who are small business entities, the economic impact of this alternative would be positive and similar to Sub-Alternative A2a. There would be 98 defined shareholders based on current data for eligible vessels. Based on the analysis of the data, 61 vessels would have IBQ allocations larger than compared to the No Action Alternative, and be in a better economic position with respect to the amount of IBQ allocation they have (expressed in terms of potential leases costs avoided, or leasing benefits accrued). Using \$1.70 cost per pound (explained under Sub-Alternative A2a), lease value of IBQ allocation gained would be approximately \$3,305 per shareholder with a range of \$2,589 to \$6,256. Thirty-seven vessels would have IBQ allocations smaller when compared to the No Action Alternative, and would be in a worse economic position with respect to the amount of IBQ allocation they have. Using the same \$1.70 cost per pound, the average lease value of IBQ allocation lost would be approximately \$1,083 per shareholder. The most notable trend is that under dynamic allocation based equal allocation, vessels currently in the medium and low tiers (93 vessels combined (*i.e.*, under the No Action Alternative, that have 2,157 lb and 1,330 lb, respectively)) would have a larger IBQ share percentage and be distributed more IBQ allocation under this alternative based on equal allocation (3,680 lb), while vessels currently in the high tier (43 vessels) (with 4,317 lb) would have a lower IBQ share percentage and be distributed less IBQ allocation (3,680 lb) under this alternative. The number of IBQ shareholders would be reduced from 136 to 98, and this alternative would reduce dissatisfaction among fishery participants that results from the current regulations under which a relatively large number of permit holders who are

not active receive an annual IBQ allocation because they are IBQ shareholders (with a permitted vessel).

Alternative A3 would distribute IBQ allocation using the same formula used in Amendment 7, but instead of using data during the period from 2006 through 2012, the alternative would define eligible vessels as those that reported making at least one set using pelagic longline gear (based on logbook data, as in Amendment 7) from 2016 through 2018, and the relevant catch data used to designate IBQ shareholders to one of three tiers would also be based on 2016 through 2018. The use of the years 2016 to 2018 is intended to include the years following initial implementation of Amendment 7, and reflect participation in the fishery during that time period, in contrast to the No Action Alternatives and the dynamic alternatives.

The number of tiers (three) would remain the same (high, medium, and low), but the IBQ share percentages would be higher for all tiers. For example, the low tier share percentage under this alternative would be 0.5 percent instead of 0.37 percent and result in a larger annual IBQ allocation. The overall economic impact would be minor and beneficial. Although the defined IBQ share percentages would all be larger, because the alternative entails recalculation of the complex Amendment 7 formula based on more recent data (*i.e.*, 2016 to 2018), for all vessels, some permit holders would change tiers, going either 'up' or 'down' with the net result that under this alternative, some permit holders would have a larger IBQ share percentage and other permit holders would have a smaller IBQ share percentage when compared to the No Action Alternative. Based on the analysis of the data, 71 vessels would have IBQ allocations larger than compared to the No Action Alternative, and be in a better economic position with respect to the amount of IBQ allocation they have (expressed in terms of potential leasing costs avoided, or leasing benefits accrued). Using \$1.70 cost per pound (explained under Sub-Alternative A2a), lease value of IBQ allocation gained would be approximately \$3,181 per shareholder with a range of \$805 to \$10,086. Twenty-eight vessels would have IBQ allocations smaller when compared to the No Action Alternative, and would be in a worse economic position with respect to the amount of IBQ allocation they have. Using the same \$1.70 cost per pound, the average lease value of IBQ allocation lost would be approximately \$1,404 per shareholder with a range of between \$601 and \$4,273. The

distribution of allocation among vessels is similar for the two alternatives, but for the revised Amendment 7 alternative, there are a higher number of vessels that receive larger distributions. For example, under the No Action Alternative, 56 vessels would be allocated the equivalent of between 6 and 10 bluefin, whereas under this alternative (A3), 42 vessels would be allocated between 11 and 15 bluefin. The number of IBQ shareholders would be reduced from 136 to 99, and this alternative would reduce dissatisfaction among active fishery participants that results from the current regulations under which a relatively large number of permit holders who are not active, receive an annual IBQ allocation because they are IBQ shareholders (with a permitted vessel).

#### *Modifications to Rules Closely Linked to IBQ Allocations*

The economic impacts of Alternative B1, the No Action Alternative, would be neutral, and mean continuation of the current IBQ shareholders, associated share percentages, and regional designations. Vessels that currently do not have GOM designated IBQ allocation but would like to fish in the Gulf of Mexico would continue to be required to lease GOM IBQ allocation. The costs associated with vessels leasing GOM designated IBQ allocation would continue.

Alternative B2, the elimination of the regional designations in conjunction with continuing to limit bluefin catch from the Gulf of Mexico to a defined cap (set at 35 percent of the Longline category quota) may have beneficial and adverse economic impacts. There may be a beneficial impact on vessels that under the current regulations (No Action Alternative) have only ATL designated IBQ allocation, and currently must lease GOM designated IBQ allocation in order to fish in the Gulf of Mexico. Such vessels would be able to fish in the Gulf of Mexico without the need to lease, which may reduce or eliminate the need for leasing IBQ allocation by such vessels. Facilitation of fishing opportunities in the Gulf of Mexico may result in increased revenue for such vessels. For vessels that already fish exclusively in the Gulf of Mexico, with all or most of their IBQ allocation designated as GOM, this alternative may have adverse economic impacts. Such vessels that currently have GOM designated IBQ allocation may face increased competition for fishing grounds or markets due to any increased fishing effort in the Gulf of Mexico, or face a smaller market for leasing their GOM allocation to other vessels.

Alternative B3, the preferred alternative, would modify regional GOM and ATL designations for a dynamic allocation system (Sub-Alternatives A2a through A2d) and cap allowable bluefin catch from the Gulf of Mexico. The overall economic impact would be minor and beneficial. Under this alternative, vessels would receive annual GOM-designated shares as a result of fishing with pelagic longline gear in the Gulf of Mexico during the previous year. For vessels that currently only have ATL-designated shares, this alternative would enable them to fish without necessarily needing to lease GOM-designated allocations. Historical fishery participants in the Gulf of Mexico would continue to receive GOM designated IBQ share based on their level of activity (in the Gulf of Mexico). If the number of vessels fishing in the Gulf of Mexico increased, there may be minor, adverse economic impacts to those entities due to increased competition. However, based on the few vessels with homeports in the Atlantic that have fished in the Gulf of Mexico during the past few years, the potential for any adverse economic impact on vessels with home ports in the Gulf of Mexico is very low. In summary, the economic impacts are expected to be minor, short-term and beneficial, as a result of the increased flexibility for vessels currently without GOM designated IBQ allocation.

Alternative B4, the preferred alternative, is the No Action Alternative with respect to how data on fishing activity in the Northeast Distant gear restricted area (NED) is used in calculating IBQ shares (in conjunction with the allocation alternatives). See 50 CFR 635.2 (defining NED). This alternative would maintain the inclusion of any data associated with fishing in the Northeast Distant Area (NED) as part of formulas that determine IBQ shares (and associated allocations),{XE “Amendment 7”} and maintain the current IBQ{XE “IBQ”} catch accounting rules for fishing in the NED (i.e., vessels fishing in the NED do not have to use IBQ allocation to account for bluefin catch until after the 25 mt NED quota is utilized). For example, under the dynamic allocation alternatives, vessels that fish in the NED would continue to be able to fish there with no impact on their associated IBQ share calculation the next year, since that fishing effort (in the NED) would continue to count toward their fishing activity.

Alternative B5 would not include NED fishing activity as part of the data used in calculating IBQ shares. This alternative could have short-term to

long-term minor, adverse economic impacts on vessels that fish in the NED, if excluding NED fishing data results in vessels receiving a lower IBQ share percentage. For example, under Alternative B5 in conjunction with Alternative A2a (dynamic allocation based on hooks), excluding NED fishing activity would mean a substantial reduction in the number of hooks used to determine IBQ shares for the nine vessels that fished in the NED during 2016 to 2018. However, shares are determined based on quartiles, and only one of those nine vessels would have a lower percentage share as a result of excluding NED fishing data. The NED fishery is unique and highly variable, and therefore only a few vessels fish there intermittently. If a vessel fished in the NED during a particular year, their share percentage may be reduced during subsequent years as a result, whether or not any bluefin were caught during that year, and whether or not the vessel chooses to fish in the NED during subsequent years. If those operating in the NED receive a lower IBQ share percentage relative to their total fishing effort than other vessels, this may put them at a competitive disadvantage.

#### *Sale of IBQ Shares*

Preferred Alternative C1 would continue the current regulations under which no sale of IBQ{XE “IBQ”} shares{XE “IBQ shares”} are allowed. This alternative is expected to have minor beneficial economic impacts. There is little need for Atlantic Tunas Longline category permit holders to accumulate additional IBQ shares, because for most permit holders, a situation with annual allocations combined with a minimal amount of leasing is likely to be sufficient for permit holders to account for bluefin catch. Continued prohibition on sale of IBQ shares would reduce uncertainty in the IBQ allocation{XE “IBQ allocation”} leasing market in both the short term and long term, which would be beneficial to the IBQ Program overall.

Alternative C2 would allow sale of IBQ{XE “IBQ”} shares{XE “IBQ shares”}. This alternative is expected to have minor, adverse economic impacts overall. Some impacts may be beneficial and some adverse, with the net socioeconomic impacts being minor and adverse. Sale of IBQ shares provides Atlantic Tunas Longline category permit holders an alternative means of participating in the IBQ leasing market that enables management of their IBQ allocation{XE “IBQ allocation”} and business planning on a longer time scale than a single year. Permit holders may be able to save money through a single

IBQ share transaction instead of via annual IBQ allocation lease transactions, a beneficial impact. On the other hand, allowing sale of IBQ shares would introduce uncertainty in the IBQ allocation leasing market, which is otherwise robust as described in the Three-Year Review{XE “Three-Year Review”}, and that uncertainty could have an adverse impact on the IBQ Program overall. An example of increased uncertainty in the fishery may be a result of the IBQ leasing market. There may be a concern about an individual entity purchasing an amount of IBQ shares that results in a negative impact on other shareholders or on the ability of fishery participants to lease IBQ. There is no demonstrated need for Atlantic Tunas Longline category permit holders to accumulate additional IBQ shares over multiple years, because for most permit holders, annual allocations combined with a minimal amount of leasing is likely to be sufficient for permit holders to account for bluefin catch. Furthermore, sale of IBQ shares would not be consistent with the dynamic allocation alternatives.

#### *Cap on IBQ Shareholder Percentage or IBQ Allocation Use*

Sub-Alternative D1a, the No Action Alternative, would not place a cap on the amount of IBQ shares a single entity may own. This alternative is expected to have neutral economic impacts on small entities. The IBQ Program has been functioning under these regulations since 2015, and there have been no reported or observed issues relating to excessive accumulation of IBQ shares. In 2015–2019, the highest level of IBQ share ownership by one entity was between five and six percent of total IBQ shares, and this percentage remained the same throughout that time period. Overall, IBQ share ownership has been fairly stable over time. In addition, the preferred alternatives under the IBQ allocation alternatives (A alternatives) are designed to update and more closely align the distribution of IBQ shares with the current fishing activity and need for IBQ allocation of the pelagic longline fleet, which could reduce the likelihood that entities would seek to buy additional Atlantic Tunas Longline category permits with IBQ shares, or buy additional IBQ shares if allowed under this Amendment.

Sub-Alternative D1b, which would cap the allowable accumulated sum of IBQ shares that could be held by a single entity at seven percent, is expected to have minor, adverse economic impacts on small entities. In 2015–2019, the highest level of IBQ share ‘ownership’ by one entity was

between five and six percent of total IBQ shares, and this percentage remained the same throughout that time period. Under the allocation method described under the preferred 'A' alternatives, NMFS estimates that the highest level of IBQ shares that a single entity would acquire on an annual basis would be between six and seven percent of total shares. If this trend continues and the maximum percent ownership remains stable over time, implementing a cap at seven percent would not impact the fleet. However, there is the possibility that entities could have business plans to acquire additional shares in the short-term that would be above a seven-percent cap, in which case there could be short-term minor and adverse economic impacts.

In the long-term, if entities have business plans to acquire additional Atlantic Tunas Longline category permits, they would need to determine whether their intended purchase, in combination with their current level of shares, would exceed the share cap of seven percent of the total shares. The entity would be limited by the regulations to either buying a permit that does not cause them to reach the seven percent cap, or to buying a permit with no IBQ shares. Since seven percent is a low cap, it is more likely that an entity could be faced with that limitation in the long-term. Another impact could occur if, under the preferred "A" alternatives, the number of active vessels decreases and therefore the IBQ share percentage to each vessel increases. At a seven-percent cap, an entity could have to forgo purchases (of permits or shares, if allowed) in order to avoid exceeding the cap and being in violation of the regulations. By indirectly limiting the number of Atlantic Tunas Longline category permits an entity could hold (outside of the five-percent vessel limit discussed above at § 635.4(l)(2)(iii)), or limiting the amount of annual IBQ shares an entity could receive (or buy, under Alternative C2), the seven-percent cap could in turn limit the amount of fishing activity. If an entity owned many vessels and caught a large percentage of designated species landings (under the dynamic allocation alternatives), it is possible that a seven percent share cap would result in a disproportionately low percentage share of bluefin could affect their ability to fish for their target species, and prevent increases in lawful fishing activity. It is also possible that, if the overall fishing effort declines, the relative share holdings of an entity would increase, even if they made no changes to the level of their ownership of permits, or

in their level of fishing effort. For these reasons, Sub-Alternative D1b could have long-term adverse economic impacts.

Preferred Sub-Alternative D1c, cap amount of IBQ shares that may be held at 25 percent, is expected to have neutral economic impacts. Based on the same information, analyses and trend discussed in the first paragraph of Sub-Alternative D1b above, a 25 percent cap would not impact the fleet. This cap level would allow flexibility in entities' business planning to acquire more shares, either by acquiring additional Atlantic Tunas Longline category permits or under Alternative C2. In addition, it is not likely that an entity would reach a 25-percent cap through the annual IBQ shares they would receive under the A alternatives. Therefore, impacts would be neutral. However, there is the possibility that entities could have business plans to acquire additional shares that, in the long-term, would be above a 25-percent cap, in which case there could be long-term minor, adverse economic impacts. On the other hand, implementing a cap to prevent acquisition of excessive IBQ shares would prevent a single entity from controlling a portion of the market that may be considered excessive.

Sub-Alternative D1d, which would cap the allowable amount of IBQ shares held by a single entity at 50 percent, is expected to have neutral economic impacts. Based on the same information, analyses and trend discussed in the first paragraph of Sub-Alternative D1b above, a cap at 50 percent would not impact the fleet. This cap level would allow flexibility in entities' business planning to acquire more shares, by acquiring additional Atlantic Tunas Longline category permits or through the purchase of shares as allowed under Alternative C2. In addition, it is not likely that an entity would reach a 50-percent cap through the annual IBQ shares they would receive under the A alternatives. Therefore, impacts would be neutral. In the long-term, Sub-Alternative D1a could have minor, adverse economic impacts if the high cap level of 50 percent is insufficient to prevent acquisition of excessive IBQ shares, allowing a single entity to control an excessive portion of the market. On the other hand, there is the possibility that entities could have business plans to acquire additional shares that, in the long-term, would be above a 50-percent cap, which could also have a long-term minor, adverse economic impact, although this is not likely with the high 50 percent cap level.

#### *Adjustments to Other Aspects of the IBQ Program*

Sub-Alternative E1a, No Action on modifying dealer reporting requirements that were implemented by Amendment 7, would have minor, adverse economic impacts because it requires vessel operators and dealers to collaborate in submitting information that is also supplied independently by the vessel operators by way of VMS. Fishermen and dealers have expressed frustration with the requirement that fishermen submit a PIN when dealers enter landings data. Fishermen were frequently either not available when dealers entered the data, or did not have access to their PIN. As a result, fishermen chose to provide their PINs to dealers, which allowed the data to be entered, but did not provide the data verification that was originally intended.

Sub-Alternative E1b, the preferred alternative that would modify dealer reporting requirements for the IBQ Program, has minor, beneficial, economic impacts for dealers because it would remove the dealer dead discard reporting requirement and the PIN requirement, thus reducing labor costs with these tasks. The requirement has been redundant since the automatic integration of the VMS dead discard data into the Catch Shares Online System database, dealers have been non-compliant with the dead discard reporting aspect of the regulations, and NMFS does not believe the PIN requirement is needed for accurate and secure reporting. During the time-period when it collected dead discard information via two data streams, NMFS was able to verify the information that was collected, and determine that VMS was the best approach for submitting a single stream of dead discard data. Instead of the PIN requirement, this alternative would provide vessel owner oversight over dealer transactions through an email notification to vessel owners from the Catch Shares Online System, when dealers account for bluefin landings from their vessels and their account is debited IBQ allocation. Dead discards would still be reported by vessel operators at sea via the VMS units, as required under current regulations.

Sub-Alternative E2a, the No Action Alternative, would continue the current requirement that electronic monitoring system hard drives be submitted after each trip that used pelagic longline gear. This alternative would have minor, adverse economic impacts when compared to the preferred alternative. Currently, vessel owners or operators

must pull, package and ship hard drives to NMFS after each fishing trip, which results in a higher cost and time burden than the preferred alternative.

Preferred Sub-Alternative E2b would require that the vessel operator mail the hard drives at the completion of every two trips, instead of after each trip fishing with pelagic longline gear. This alternative would have a minor, beneficial economic impact by reducing the costs and time associated with mailing electronic monitoring hard drives. This would reduce the number of shipments by half. Considering the high vessel average number of 34 shipments per year, this would reduce the high average to 17 shipments. Each active vessel would still ship at least one hard drive per year, as NMFS would require any data recorded in a given year be submitted to NMFS prior to the next fishing year. Assuming a shipping cost of \$20 per transaction, this reduction in shipping frequency would save operators an average of \$120 per year. Reducing shipping frequency also saves vessel operators additional time and logistics, by only having to pull, package and ship hard drives after every other trip. The time savings provided by this alternative are difficult to quantify, as vessel operators shipping methods will influence the amount of time saved; however, this would provide a minor beneficial impact by providing time savings to the vessel operators.

Sub-Alternative E3a, the No Action Alternative, would retain the current procedures regarding camera installation. The economic impacts of Sub-Alternative E3a would be neutral compared to the preferred alternative. The No Action Alternative maintains the current camera array requirements and therefore would not provide NMFS the authority to require vessels to install or mount structures that would optimize the placement of the cameras. There would not be any downtime for vessels required for installation of new hardware. This alternative would not cause any behavioral changes for the fleet, vessel operators would not be required to install a boom and would not have to deploy the boom during fishing activity. Vessel operators would continue to operate as they have since implementation of the Electronic Monitoring system requirements in Amendment 7.

Sub-Alternative E3b, the preferred alternative, would provide the authority to NMFS to require installation of hardware such as a boom, to mount and install video cameras at locations on vessels as necessary to ensure views of fish as currently required under 50 CFR 635.9, and allow NMFS, working in

conjunction with the vessel owner/operator, to make relatively minor modifications to the vessel structure to mount cameras in locations that provide views of the vessel and adjacent areas as required under § 635.9. The economic impacts of modifying the camera installation and placement would be minor and adverse for these small entities. Vessel crew would be required to extend, lower, or raise the boom mounted camera during fishing activities if needed. Additional logistics required may represent an increased time burden and a slight increase in the complexity of their fishing operation. Overall, this time burden would only be a couple of minutes to extend, lower or raise the boom at the start and end of each fishing trip. Crew may also be required to access the camera during the trip to clean the lens. The process of cleaning the lens may be more difficult if the camera is mounted on a boom. The cost associated with the booms, including installation, would be paid by NMFS, thus minimizing impacts on small entities. Since NMFS would cover the cost of installations of the boom and re-mounting the camera, there would be no economic burden on the fleet for initial installation of booms.

Sub-Alternative E4a, the No Action Alternative regarding specifying additional fish handling protocols for electronic monitoring, would have neutral economic impacts. No additional handling requirements or measurement tools would be required and there would be no additional labor or equipment costs to vessel operators.

Preferred Sub-Alternative E4b would require more specific fish handling procedures and the installation/ placement of a measuring grid on deck, in view of one of the cameras. This alternative may increase costs in terms of the time required to process fish or costs associated with a measurement tool, such as a processing mat or painted grid on the deck. Non-skid deck paint costs between about \$35 and \$85 per gallon. A 4 foot by 8 foot all-weather mat, custom printed with a grid may cost approximately \$225 per mat. The crew would need to modify their fish handling procedures to place all fish on the grid. Although the requirement would be in place for the long-term, it is anticipated that the impacts would reduce over time as crew practiced the new handling procedure and therefore would have neutral long-term impacts on operations.

Sub-Alternative E5a would make no changes to the current regulations, under which there is no cost recovery program in place for the IBQ Program.

Therefore, it would not have any economic costs on small entities.

Sub-Alternative E5b, the preferred alternative, would implement a cost recovery program. A cost recovery fee, if implemented, would have a minor, adverse economic impact on permit holders that land bluefin. They would incur up to a three percent fee on any sale of bluefin to dealers. The long-term impacts are uncertain given that the fee would not be charged if the costs of collecting the fees exceed estimated recovered costs, and therefore may only be charged intermittently.

#### *Modifications to the Purse Seine Category Management Measures and Other Category Quota Allocations*

Alternative F1 and its sub-alternatives consider changes to the mathematical method used in the annual quota allocation process to reflect the current annual 68 mt allocation to the Longline category. Economic impacts of Sub-Alternative F1a (the "No Action" alternative) are expected to be neutral because the current method remains unchanged: 68 mt is subtracted from the baseline quota then allocation percentages for the different categories are applied. Preferred Sub-Alternative F1b would simplify that two-step process and simply modify the currently codified allocation percentages to incorporate the 68-mt.

Sub-Alternative F1b would have neutral economic impacts to each category because the overall quota and amount of quota (in mt) distributed to each category would not change from the status quo under the current ICCAT quota. If the ICCAT quota increased in the future, this alternative would have minor, positive economic impacts for Longline category participants and minor, negative economic impacts for other categories when compared to the status quo because the Longline category would be allocated slightly more quota than under the No Action Alternative. Conversely, in the event of an ICCAT quota decrease, the impacts for the Longline category would be minor and negative, with minor and positive impacts to the other categories compared to the status quo.

Alternative F2 and its sub-alternatives consider options related to the timing of discontinuing the Purse Seine category and reallocating the quota to other categories. Methods of reallocation are discussed under Alternatives F3 (a and b) and F4. Sub-Alternative 2a, the No Action Alternative, would maintain all aspects of the current quota allocation among categories (subject to quota allocation alternatives considered in Sections G, H, and I, regarding the

General and Harpoon categories) and Purse Seine category regulations. The Purse Seine category fishery participants would continue to receive quota based on their previous year's fishing activity level and could either fish or lease out their annual quota distribution through the IBQ system. The economic impacts of this alternative would be neutral, but there would continue to be the loss of fishing opportunity associated with the unused Purse Seine category quota.

Sub-Alternative F2b, a preferred alternative, would discontinue the Purse Seine category and reallocate quota upon the effective date of Amendment 13. The ability of vessels to obtain an Atlantic tunas Purse Seine category permit would also end. NMFS would remove purse seine from the list of authorized gears and remove other references in the regulations to the purse seine fishery, purse seine gear, purse seine nets, purse seine sets, purse seine vessels, and Purse Seine category, including references to Purse Seine category quota, permits, and participants. This alternative could be implemented in conjunction with one of the methods of reallocation described under Alternatives F3 (a and b) and F4, and is intended only to address the timing of the discontinuation of the Purse Seine category.

Sub-Alternative F2b would have moderate adverse economic impacts to Purse seine category participants compared to the status quo. Under this alternative, quota allocations would no longer be distributed to Purse Seine category participants, so neither fishing for bluefin nor leasing via the IBQ system would be allowed after the effective date of Amendment 13. The economic impacts are estimated based on the loss of potential revenue from these two activities.

Leasing of purse seine annual distributions of quota in the online IBQ System has provided additional revenue for purse seine vessels. The potential annual value of purse seine-related leases can be estimated using leasing data from the last five years (2015–2019). The weighted price per lb for purse seine-related leases shows a declining trend over the last five years, so the most recent cost of \$1.25 per lb was used to estimate likely potential loss. The greatest amount of purse seine category quota leased was 47.7 percent in 2019. Using the average amount of quota leased each year over the time series (30,713 lb) multiplied by \$1.25 per lb, there would be an estimated loss of \$38,391 per year category-wide or \$7,678 per participant. The average amount of quota leased over this five

year period was used as a basis for this estimate because the amount of purse seine related IBQ quota leased was variable, and showed no discernable trend. Although unlikely, the theoretical maximum annual loss would be a total of \$151,568 (\$30,314 per participant), assuming all allocated Purse Seine category quota (121,254 lb) would be leased at \$1.25 per lb.

The other potential negative impact of this alternative is the loss of potential fishing revenue. Purse Seine category participants last landed fish during 2013–2015. It is unlikely that Purse Seine category participants would choose to fish again because of such limited activity over the last 15 years. Purse Seine category participants are not currently economically dependent upon bluefin landings. If they did choose to fish in the future, the value of landings can be estimated using historical data and applying the quota adjustments based on previous year's catches. Dead discards could also be estimated using the observer data collected during the 2013–2015 season. The average annual dead discard estimate is 28.4 percent of catch, or conversely, Landings = Catch  $\times$  71.6 percent. Applying those percentages to the current adjusted quota of 55 mt results in an estimated 39.4 mt in landings and discards up to 15.6 mt, depending upon the number of participants fishing. Catch of 55 mt equates to 11 mt per vessel, which is 25 percent of the 43.9 mt annual allocation. Based on that level of catch, under current regulations (where the annual allocation is based upon the level of catch during the previous year), the allocation for each vessel in the following year would be 50 percent of the base quota level.

The average price for Purse Seine category landings for the three most recent years of activity (2013–2015) was \$4.66 per lb round weight. The most likely estimate of Purse Seine category fishing activity over the next five years is for zero mt landings since the category has not fished since 2015. However, the maximum amount the Purse Seine category could harvest annually (based on the highest level of quota possible and five participants), and as a result the maximum revenue lost for this alternative, taking into consideration dead discards, is estimated to be 1.61 million category-wide, or \$0.32 million per participant. This estimate is based on the maximum Purse Seine category quota (220 mt total, and 157 mt landings) instead of the adjusted Purse Seine category quota (55 mt).

Sub-Alternative F2c would discontinue the Purse Seine category and reallocate quota at a future (sunset) date *i.e.*, the end of Year 2 after Amendment 13 is implemented. Two aspects of this sub-alternative are under consideration: Whether to allow Purse Seine category participants the option of leasing, and whether to allow participants the option of fishing against quota until the sunset date is reached. Sub-Alternative F2c1 would allow leasing and fishing until the sunset date, while Sub-Alternative F2c2 would only allow leasing until the sunset date. Economic impacts for Sub-Alternative F2c1 would be moderate and adverse, the same as Sub-Alternative F2b (discontinue Purse Seine category upon implementation of Amendment 13), but delayed by two years since both fishing and leasing activity would be allowed under this alternative until the end of Year 2. Annual losses for Purse Seine category leasing are estimated to be \$38,391 category-wide and \$7,678 per participant, based on the average amount of quota leased since 2015.

Sub-Alternative F2c2 would discontinue the Purse Seine category at a sunset date (end of Year 2) and only allow leasing until the sunset date. Specifically, this alternative would adjust the Purse Seine category quota to 4.4 percent of the bluefin quota (25 percent of the 17.6 percent allocation that would be provided under Alternative F1b). The remaining 75 percent of the Purse Seine category quota would be reallocated to the other bluefin quota categories in accordance with one of the reallocation alternatives. This alternative would result in a set annual quota percentage, in contrast to the No Action alternative (F2a), which considers the previous year's catch by Purse Seine category participants in determining the amount of quota available to each participant in the current year.

Economic impacts for Sub-Alternative F2c2 would be moderate and adverse, the same as Sub-Alternative F2c1, but since only leasing activity would be allowed under this alternative until the end of Year 2, revenue losses for subsequent years would apply. Like Sub-Alternative F2c1, annual losses for Purse Seine category leasing are estimated to be \$38,391 category-wide and \$7,678 per participant, based on the average amount of quota leased since 2015. Potential loss of fishing revenue is similar to that estimated for Sub-Alternative F2b, since fishing would not be allowed under this alternative. The most likely estimate of Purse Seine category fishing activity over the next five years is for zero mt landings



because the category has not fished since 2015. However, the maximum amount the Purse Seine category could harvest (based on the highest level of quota possible and five participants), and as a result the theoretical maximum revenue lost for this alternative, taking into consideration dead discards, is estimated to be \$1.61 million category-wide, or \$0.32 million per participant.

NMFS considered two sub-alternatives that would reallocate the Purse Seine category quota proportionally to all other quota categories. For the Longline category, sub-Alternative F3a would apply the increase to all areas, while Sub-Alternative F3b would only allow the Longline category increase to be fished in the Atlantic (not the Gulf of Mexico). All of the Purse Seine participants have sold their vessels, likely along with their Purse seine gear and associated equipment, thus anticipated economic impacts of the sub-alternatives would be related to quota leasing.

Economic impacts for Sub-Alternative F3a would be moderate and beneficial, and include estimated increases in revenue for the commercial quota categories that would receive the redistributed quota after the Purse Seine category was terminated. Annual revenue increases are estimated as follows: \$1,696,758 for the General category, \$386,516 for Longline, \$131,548 for Harpoon, and \$93,204 for Reserve, resulting in a combined total of \$2,301,026. Annual revenue loss depends on whether quota is reallocated immediately (Sub-Alternative F2b) or in the future (Sub-Alternative F2c). When combined with Sub-Alternative F2b (immediate reallocation), F3a would have moderately beneficial economic impacts on fishery participants as a result of increased bluefin quota and associated revenue (approximately \$2.15 million annually) and estimated annual revenue loss to the Purse Seine category from leasing of \$0.15 million annually. Revenue from leasing rather than fishing was used to calculate net value, because Purse Seine category participants have not fished since 2015, but have been actively leasing quota through 2019.

When combined with Sub-Alternative F2c (delayed reallocation), F3a would result in neutral short-term economic impacts, since there would be no immediate change from the status quo. However, once Purse Seine category quota is reallocated after two years, there would be gains for the categories receiving quota and losses for the Purse Seine category.

Sub-Alternative F3b places a restriction on the regional use of such

quota by the Longline category, which catches bluefin in the context of the IBQ Program. Specifically, that portion of the reallocated Purse Seine category quota that would be allocated to the Longline category would be designated as ATL IBQ allocation, and could not be used to account for bluefin caught in the Gulf of Mexico. The average price per pound for bluefin caught by vessels in the Longline category, purchased during 2017–2019 in the Gulf of Mexico (\$5.11) was slightly higher than Atlantic-caught bluefin (\$5.02/lb); however, only a total of 14.5 mt out of 365.8 mt (3.9 percent) was landed in the Gulf during this time period. The reduction in annual revenue if all bluefin were landed in the Atlantic at the lower price is approximately \$274 per year for the Longline category.

When combined with Sub-Alternative F2b (immediate reallocation of Purse Seine category quota), the socioeconomic impacts for Alternative F3b would be moderately beneficial for participants, with some indirect benefits to dealers and fishery related businesses, except for pelagic longline vessels that fish in the Gulf of Mexico. The calculated economic impacts are the same as described for Sub-Alternative F3a: Beneficial economic impacts of approximately 2.15 million annually and an estimated \$0.15 million annual revenue loss from foregone Purse Seine category leasing.

Preferred Alternative F4 would redistribute Purse Seine category quota only to the directed categories. Economic impacts for Alternative F4 would be moderate and beneficial, and include estimated increases in revenue for the commercial quota categories that would receive the redistributed quota after the Purse Seine category was terminated. Annual revenue increases would be \$2,011,770 for the General category, \$147,046 for the Harpoon category, and \$109,894 for the Reserve category, for a total revenue increase of \$2,268,710. Economic impacts vary depending on whether reallocation of the Purse Seine category quota occurs immediately or is delayed.

Immediate reallocation of Purse Seine category quota (Preferred Alternative F2b) would result in moderately beneficial impacts for directed category participants receiving quota. The estimated annual increase in revenue for these categories totals \$2.26 million. Net impacts are also beneficial, because the estimated annual revenue loss for the Purse Seine category from loss of leasing is \$0.15 million annually, which equals a net increase in revenue of approximately \$2.11 million annually.

Delayed reallocation of Purse Seine category quota (Sub-Alternative F2c1 or

F2c2) after a 2-year sunset period, would likely have a neutral short-term impact and a moderately beneficial long-term impact. There would be economic gains for the categories receiving quota when the sunset of the Purse Seine category occurs after two years, and losses for the Purse Seine category at that time. These annual gains would be approximately \$2.26 million. The estimated annual revenue loss to the Purse Seine category from leasing would be \$0.15 million annually.

#### *Modifications to General Category Subquota Periods and/or Allocations*

Alternative G1, the preferred No Action Alternative, would not make any modifications to the General category {“*General category*”} subquota periods and/or allocations. If no action is taken to modify the General category subquota allocations, economic impacts would be neutral. The status quo subquotas assigned to the time periods generally reflect the historical catch patterns from the 1980s and 1990s as well as formalization of the winter fishery. Recent annual bluefin landings under the General category quota have approached or exceeded the base and adjusted General category quotas (*i.e.*, they were 149 and 101 percent of base and adjusted quotas, respectively, for 2017; 168 and 96 percent of base and adjusted quotas for 2018; and 147 and 104 percent base and adjusted quotas for 2019).

Although ex-vessel prices have been variable over the last several years, high landings relative to quota have led to a modest total increase in ex-vessel gross revenues in 2016 through 2019. Revenues for the General category were \$9.7 million in 2016 and 2018, at the highest level since 2002. Although the preferred alternative (G1) would result in slightly less annual gross revenues, (0.2 to 3.6 percent less than for the other alternatives), the potential for the other General category subquota allocation alternatives to realize increased revenue is strongly subject to availability of fish and fishing conditions during these time periods. Further, the potential gross revenue estimates for Alternatives G2a, G3a, and G3b are based on price assumptions and market dynamics that are uncertain.

Sub-Alternative G2a would modify the General category {“*General category*”} time periods associated with the subquotas from their current structure to 12 equal monthly subquota periods. To calculate potential changes in revenues, the amount of potential landings and the value of those landings associated with the current subquota

time period were estimated, assuming full harvest, and compared to estimated revenue under revised subquota periods of 12 equal months. NMFS used average 2017–2019 price data, by subquota time period, to calculate potential gross revenues. For early season (January through March) General category participants, an additional 109.4 mt would be available if the subquotas were distributed based on 12 monthly equal subquota periods. At \$6.93 per pound as an estimate for the ex-vessel prices, this represents a potential revenue increase of approximately \$1.6 million overall during the period from January through April, nearly five times the current amount. Potential revenues for the current June–August and September periods (based on 12 equal subquota periods) would decrease by approximately \$1.9 million (50 percent) and \$1.5 million (69 percent), respectively, given recent average price (\$6.41 and \$6.66, respectively). For the months of October, November and December, potential revenues would increase by approximately \$309,000 (28 percent) and \$404,000 (60 percent) at \$6.89 per pound and \$10.54 per pound, respectively. Relative to the No Action Alternative (G1), there would generally be substantially increased revenues for January through March and October through December and substantially decreased revenues for June through September, and total annual revenues would increase by approximately \$303,000 (3.6 percent). Thus, impacts are expected to be moderate, and may be beneficial or adverse, depending on quota and fish availability in the various time periods. Of the status quo alternative (G1) and those that modify the time period subquotas (G2a, G3a, and G3b), this alternative (G2a) would result in the highest potential annual gross revenues, but the amount is less than 4 percent greater than for the Preferred Alternative G1. It is important to note that the potential changes in revenues in these General category subquota allocation alternatives is strongly subject to availability of fish and fishing conditions during these time periods. Further, the potential gross revenue estimates are based on price assumptions and market dynamics that are uncertain.

Sub-Alternative G2b, which would modify General category{XE “General category”} time periods to extend the January through March subquota time period through April 30, would increase the likelihood that winter General category participants and Charter/Headboat participants, when fishing commercially, would be able to harvest

the full January subquota, particularly if NMFS increases the January–March subquota via an inseason transfer. Thus, impacts would be minor, and may be neutral or beneficial, depending upon when fishery participants fish. For General category participants fishing in the January through March period, the effects would be beneficial. The likelihood of these economic benefits being realized may not be high. For those fishing later in the year, the impacts are likely to be neutral. To the extent that less unused quota might roll forward to later periods, impacts for General category participants fishing in the later time periods could be slightly adverse, however the January subquota period has been catching most of its quota under the current, shorter time frame. A potential increase in the geographic and temporal distribution of landings may help to more closely approach optimum yield. Increases in positive economic impacts would depend on the availability of bluefin to the fishery from the beginning of April until the available subquota (base or adjusted, as applicable) is reached. Price/pound is also influenced by the amount of bluefin on the market. NMFS estimates the value of an unused mt of January–March subquota, using the January–March 2019 average price per pound of \$6.93, at \$15,277. The value of the 2019 January–March base subquota is estimated at \$2,122,478 assuming full harvest.

Sub-Alternative G3a modifies the General category{XE “General category”} allocation percentage to increase the January through March amount. In 2015 and 2016, June through August subperiod landings were less than the base quota. For the last three years, June through August subperiod landings have exceeded the available base quota, the subquota period has closed, and NMFS has not transferred additional quota to the General category for use in that subperiod. If quota that is anticipated to be unused in the first part of the summer season is made available to January through March period General category participants and bluefin are landed against the January through March subquota, it would potentially result in improved and fuller use of the General category quota. Also, because bluefin price per pound is often higher in the January period than during the summer, shifting quota to this earlier period would result in beneficial impacts to early season General category participants. It is possible, however, that an increase of bluefin on the market in the January through March period could reduce the

average price for that time of year. Participants in the summer fishery may perceive such quota transfer to be a shift away from historical participants in the traditional General category bluefin fishing areas off New England and thus adverse. However, because unused quota rolls forward within a calendar year from one period to the next, any unused quota from the adjusted January through March period would return to the June through August period and onward if not used completely during that period. Overall, impacts would be expected to be neutral or minor and beneficial for January through March fishery participants and neutral or minor and adverse impacts for participants in the June through December time periods.

Sub-Alternative G3b would modify General category{XE “General category”} allocation percentages and increases the September and the October through November amounts and decreases the June through August amount. To the extent that quota that is anticipated to be unused in the first part of the summer season is made available to General category participants for the September and October through November periods and bluefin are landed against those subquotas, it would potentially result in improved and fuller use of the General category quota. In the last three years, however, the June through August base subquota has been exceeded, and the fishery for that time period was closed in 2017 and 2019 prior to August 31. Also, because bluefin price per pound is often higher in the September and October through November periods than during the June through August period, shifting quota to these later periods would result in beneficial impacts to fall General category participants. It is possible, however, that an increase of bluefin on the market in the fall periods could reduce the average price for that time of year. Participants in the summer fishery who may only have access to bluefin at that time may perceive such quota transfer to be adverse. However, summer and fall participants are largely the same. Additionally, any unused quota from the June through August subperiod rolls forward to subsequent periods. Overall, impacts would be expected to be neutral or minor and beneficial for September through November fishery participants and neutral or minor and adverse for participants in the June through August time periods. However, there is a risk in shifting quota allocation to later periods in the fishing year that the full General category quota may not be reached,

depending on fishing conditions and bluefin availability on the fishing grounds.

Sub-Alternative G3c would modify the General category{XE “General category”} allocation percentages such that any increases of General category{XE “General category”} quota resulting from reallocation of Purse Seine Category quota under Alternatives F5 and F6, would be applied to the September and the October through November subquota periods.{XE “Purse Seine”} Under Sub-Alternative G3c, impacts would be neutral or moderate, and beneficial. An additional 110.4 mt (based on reallocation of 75 percent of the current Purse Seine category{XE “Purse Seine category”} quota) or 147.3 mt (based on reallocation of 100 percent of the current Purse Seine category quota) of quota for the General category September period could result in additional potential annual gross revenues of over \$1.6 million (110.4 mt × \$6.66 per pound) or \$2.2 million (147.3 mt × \$6.66 per pound), respectively. An additional 54.2 mt (based on reallocation of 75 percent of the current Purse Seine category quota) or 72.2 mt (based on reallocation of 100 percent of the current Purse Seine category quota) of quota for the General category October–November period could result in additional potential annual gross revenues of over \$823,000 (54.2 mt × \$6.89 per pound) or \$1.1 million (72.2 mt × \$6.89 per pound), respectively.

#### *Modifications to the Angling Category Trophy Fishery*

Alternative H1, the No Action Alternative, is expected to be neutral or minor and adverse, to vary by geographic area, and to be dependent on availability of trophy-sized bluefin on the fishing grounds. For charter vessels, which sell fishing trips to recreational fishermen, economic impacts are expected to be neutral to beneficial for those in the northern mid-Atlantic states and neutral to adverse for those north of that area, including New England states, as the opportunity to land a trophy bluefin may be diminished.

Preferred Alternative H2 would modify the current Angling category{XE “Angling category”} Trophy North subquota areas and allocations specified at § 635.27(a)(1), by dividing the northern area into two zones: North and south of 42° N lat. (off Chatham, MA); these newly-formed areas would be named the Gulf of Maine trophy area and the Southern New England trophy area, respectively. The net result would be that the Trophy quota would be divided among four geographic areas (in

the Atlantic and Gulf of Mexico) and each area would receive the same amount of quota (*i.e.*, the Angling category trophy quota would be divided equally four ways). To create the new trophy suballocation for the Gulf of Maine trophy area, NMFS would increase the allocation for trophy bluefin. Specifically, under the current Angling category quota, the trophy quota would increase from 5.4 mt to 7.2 mt, and each area would be allocated 1.8 mt. This would allow annually up to 11 trophy bluefin to be landed in the new zone north of 42° N lat. (the Gulf of Maine trophy area), using an average weight of approximately 360 lb. There would need to be an equivalent reduction of the subquota for large school/small medium bluefin subquota (47 inches to less than 73 inches) (within the Angling category quota). At an average 2018 weight of approximately 132 lb for large school/small medium bluefin, this represents a reduction of approximately 30 fish from the large school/small medium size class annually. NMFS would not expect fishing behavior to change as a result of this alternative, because there is already targeted recreational effort in that area for bluefin measuring less than 73 inches. There would be minor, beneficial social impacts (and economic impacts for charter vessels) to a small number of vessels in the new area north of 42° N lat. (the Gulf of Maine trophy area) resulting from the small amount of fish that would be allowed to be landed. There would be neutral to minor, adverse social impacts (and economic impacts for charter vessels) for those fishing for large school/small medium bluefin due to the slight reduction in allocation for those size classes. Overall, NMFS anticipates minor, beneficial economic impacts from Alternative H2.

#### *Modifications to Other Handgear Fishery Regulations*

Preferred Sub-Alternative I1a would maintain the current authorized gears applicable to the Atlantic tunas permit categories. This alternative would have neutral economic impacts on permitted HMS Charter/Headboat vessels, which could continue to fish under the Atlantic Tunas General and Angling category regulations using existing authorized gear, and neutral impacts on Atlantic Tunas General category permitted vessels. Total Atlantic Tunas General category revenues, which included sale of commercial-sized bluefin by HMS Charter/Headboat category permitted vessels, for the 2019 fishing year were approximately \$8.3 million. General category fishing year

bluefin base quotas have been reached annually for the last five years.

Sub-Alternative I1b would add harpoon gear as an authorized gear for the HMS Charter/Headboat category permitted vessels. The addition of this gear would only apply to vessels with the ability to carry six or fewer passengers for hire. Harpoon gear could be used on commercial trips by Charter/Headboat category permitted vessels with the commercial sale endorsement. This alternative would have minor, beneficial economic impacts, specifically for those vessels that have success in harpooning bluefin that may be available at the water’s surface. Landings data and information from fishermen indicate that there are times when the feeding behavior of commercial sized bluefin makes hooking a fish difficult. To the extent that a fisherman could harpoon bluefin when the fish are present at the surface, Alternative I1b could increase the potential of filling the General category bluefin daily retention limit and of gaining more ex-vessel revenue per trip. NMFS anticipates that the number of bluefin that would be caught with harpoon gear by HMS Charter/Headboat category permitted vessels is very low. Alternative I1b may have slightly negative economic impacts for existing HMS Charter/Headboat operators due to the potential for Atlantic Tunas General or Harpoon category permit holders to change to the HMS Charter/Headboat category, potentially increasing HMS Charter/Headboat completion for clients. This alternative would provide consistency in the regulations regarding authorized handgear used historically for commercial harvest of bluefin, and would increase opportunities for commercial handgear fishermen to attain the bluefin Atlantic Tunas General category quota.

Sub-Alternative I1c would eliminate harpoon as gear authorized for use by General category permitted vessels. This alternative would result in minor, adverse impacts because it would reduce opportunity for vessels with General category permits that fish with harpoon gear and reduce flexibility and efficiency in harvesting the General category quota. Although NMFS has received comments from General category (quota) participants that harpoon activity fills the available General category quota more quickly, thus reducing opportunities for rod and reel fishermen, an examination of 2019 General category landings data show that 125 fish (less than five percent of the 2,612 fish landed by General category vessels) were reported as harpooned. At an average June through

August ex-vessel General category price per lb of \$5.12 and a 366-lb average General category fish weight for rod-and-reel caught bluefin, this amount of fish could be estimated to represent a potential increase of \$234,240 to General category participants using rod-and-reel gear (*i.e.*, including HMS Charter/Headboat category permitted vessels with a commercial sale endorsement landing bluefin commercially) if harpoon use was prohibited. For General category quota participants using harpoon gear, with an average June through August ex-vessel price per lb of \$5.84 and a 280-lb average fish weight, the inability to land this amount of fish could represent a loss of \$164,979.

Sub-Alternative I2a would maintain the current Harpoon category retention limit regulations: An unlimited number of giant bluefin per day (measuring 81" curved fork length or greater), and two large medium bluefin per vessel per day unless the large medium bluefin retention limit is increased by NMFS through an inseason adjustment to a maximum of four per vessel per day. The economic impact of the No Action Alternative is expected to be neutral to slightly adverse, because participants would continue to be limited to the default of two large medium bluefin (and maximum of four if NMFS were to make an inseason adjustment) if caught while targeting giant bluefin.

Preferred Sub-Alternative I2b would set an overall Harpoon category daily retention limit of 10 commercial-sized bluefin per day or trip (*i.e.*, the combined limit of large medium (73"–<81") and giant (81" or greater) would be 10 fish), and would maintain the current regulations regarding retention of large medium bluefin (73"–<81") (*i.e.*, the range of two (default) to four fish, adjustable through inseason action). This alternative would have neutral or minor, adverse impacts as a result of a few trips being constrained by a ten-fish limit (adverse), but also a potentially longer Harpoon category season (beneficial). On a per-trip basis, impacts would depend on several factors including bluefin fishing conditions and fish availability, the large medium retention limit (default of two but up to four through inseason action), and ex-vessel price, which is subject to numerous factors including fish handling and quality and market saturation. There could be minor, adverse impacts as a result of foregone revenue. For example, using 2019 successful trip data, if the daily limit were set at 10 bluefin, the revenue loss for the fishery as a whole could be that associated with up to 10 bluefin for the

season. The revenue loss is small, because only a few trips would be constrained by a ten-fish limit. At an average 2019 weight of 306 lb and an average price of \$5.37/lb for the Harpoon category, a loss of one to 10 fish would be approximately \$1,640 to \$16,402 for the Harpoon category as a whole for the year. Using average of 2017–2019 price data (an average of \$6.28 for the Harpoon category), the range of potential revenue loss would be \$1,922 to \$19,220 for the year.

Preferred Sub-Alternative I2c would set an overall daily limit of 10 commercial-sized bluefin per day or trip (*i.e.*, the combination of large medium (73"–<81") and giant (81" or greater) would be 10 fish). Secondly, this alternative would allow NMFS to set the daily retention limit of large medium bluefin (73"–<81") over a range of zero to five fish (adjustable through inseason action) instead of the current range of between two and four large medium fish per day or trip. NMFS would maintain the default large medium bluefin limit at two fish. Because a higher limit of large mediums would result in less potential for landing giants per day or trip, ex-vessel revenues could be decreased relative to Sub-Alternative I2b due to less overall weight of fish sold (all other things equal, such as shape, meat quality, etc.). Overall, the impacts are expected to be neutral, because the likelihood of such a change in revenue is low, due to the low likelihood of a trip scenario where the retention of five large medium fish would limit the ability for the vessel to retain giant bluefin.

Preferred Sub-Alternative I3a would maintain the June 1 start date and November 15 closure date for the Harpoon category season. This alternative may have both minor and beneficial, and adverse social and economic impacts, but overall the impacts would be minor and beneficial. The beneficial impacts could be attributed to the Harpoon category season remaining consistent with prior years. A June 1 start date for the Harpoon category means that the Harpoon and General Category seasons start at the same time. The Harpoon and General category seasons starting together would facilitate enforcement and business planning, and provide greater certainty to participants regarding opportunities, participation/effort, and potential impact on market prices. Participants would continue to have the potential to harvest the same percentage of the quota and earn the equivalent share of total ex-vessel revenues. The adverse impacts may result from lost opportunities. To the

extent that bluefin may be available to harpoon gear prior to June 1, opportunities to harpoon fish may be lost, both from the harvest of the fish and the potential for better ex-vessel prices when there may be fewer fish on the market, particularly from the General category, which would not begin until June 1. To the extent that opportunities could extend deeper into the summer, more Harpoon category participants could benefit. It is possible that the No Action Alternative would have some adverse socioeconomic impacts on fishermen, dealers, and the support industries located in New England, where harpoon use has historically occurred, primarily on the fishing grounds off Massachusetts, New Hampshire, and Maine.

Sub-Alternative I3b would lengthen the season for the Harpoon category by implementing a May 1 start date for the fishery instead of the current start date of June 1. The November 15 closure date would remain the same. The overall impacts would be both minor and adverse, and beneficial. The relative magnitudes of the adverse and beneficial impacts are unknown. Starting the Harpoon category season in advance of the General category season (which would remain at June 1) could result in adverse impacts from increased uncertainty for enforcement, business planning, fishing opportunities, participation/effort, and potential impact on market prices. However, this alternative would increase the likelihood of Harpoon category participants being able to harvest the full Harpoon category quota and thus would be minor and beneficial. A potential increase in the geographic and temporal distribution of landings may help to more closely approach optimum yield. Increases in positive economic impacts would depend on the availability of bluefin to the fishery from the beginning of May until the Harpoon category quota (base or adjusted, as applicable) is reached. Recently, the price for Harpoon category bluefin has been higher in June than later in the season, so an earlier start date could be beneficial, although price per pound is also influenced by the amount of bluefin on the market. The value of an unused metric ton of Harpoon category landings is estimated at \$11,838 using the 2019 average ex-vessel price of \$5.37/lb, and \$13,845 using the average 2017–2019 price (\$6.28).

Sub-Alternative I4a would maintain the current provision that allows permit holders to change their Atlantic tunas or HMS permit category once within 45 days of the issuance of their permit, as long as they have not landed a bluefin.

The number of permit holders who might be impacted by this alternative is small, and any impacts would only be for one fishing season. However, for a subset of these permit holders, the impact can be very adverse, if an incorrect permit is obtained that prohibits a commercial fisherman from selling fish or a charter/headboat fisherman from taking paying passengers (e.g., Angling category permit). In these instances, the impact is adverse, but minimal on a fishery-wide basis.

Preferred Sub-Alternative I4b would extend the ability to change permit categories from 45 days to the full fishing year as long as the vessel has not landed a bluefin. For the same reasons described under Sub-Alternative I4a, any impacts of this sub-alternative would be minimal on a fishery-wide basis, but would promote increased flexibility and could be beneficial for a small subset of permit holders.

Sub-Alternative I5a would make no changes to the current regulations that preclude vessels authorized to fish with pelagic longline gear from retaining bluefin caught with green-stick gear. An analysis of self-reported logbook data from sets made with green-stick gear suggest that a small number of vessels use this gear, although the number of unique pelagic longline vessels that use green-stick gear has increased with time. There were no sets reported in 2015 that were attributed to the use of this gear type. The economic impacts of the No Action Alternatives would be minor and adverse for a small number of vessels. Based on logbook data, in 2016 only as single pelagic longline vessels fished with green-stick gear.

Sub-Alternative I5b would clarify retention and reporting requirements for bluefin caught with green-stick gear by vessels with Atlantic Tunas Longline category permits, to allow the retention of one bluefin per trip (73" or greater), provided that pelagic longline gear is not onboard, and that vessels comply with additional regulations applicable to such trips (i.e., VMS set reports, HMS logbook requirements, and IBQ program requirements). This alternative is anticipated to have minor and adverse economic impacts to fishermen, who may want the flexibility to adapt fishing strategies to the conditions on a particular trip. However, as noted above, there appears to be only a very small number of fishermen wishing to use both green-stick and pelagic longline gear, and there is little information regarding the costs and benefits of having different types of gear onboard. Relevant factors for selecting one gear type may include target

species, market factors, available deck space, cost of the gear, and trip length. Green-stick gear selection by fishermen targeting yellowfin could maximize economic returns and efficiency, or reflect adherence to specific requirements if fishing under the Deepwater Horizon OFRP in the Gulf of Mexico.

Preferred Sub-Alternative I5c clarifies retention and reporting requirements for bluefin caught with green-stick gear (by vessels with Longline category permits), to allow the retention of one bluefin per trip (of 73" or greater CFL) and with additional regulations (i.e., VMS set reports, HMS logbook requirements, IBQ program requirements) applying to such trips. This alternative would allow both green-stick and pelagic longline gear on the same vessel at the same time. In comparison to the No Action Alternative, this alternative would have minor, beneficial economic impacts because a vessel would be able to retain a legal-sized bluefin that may otherwise be discarded dead due to a *de facto* prohibition on bluefin retention. Retention of such fish would reduce waste, augment revenue, and reduce the frustration associated with regulatory discarding. Allowing the use of green-stick gear while pelagic longline gear is onboard is intended to provide vessel operators flexibility to employ fishing strategies with multiple gear types to optimize their business in a highly dynamic fishery. Green-stick gear selection by fishermen targeting yellowfin could maximize economic returns and efficiency, or reflect participation in the Deepwater Horizon OFRP in the Gulf of Mexico and the associated gear requirement that prohibit use of pelagic longline gear during the period of participation. As noted above, there appears to be only a very small number of fishermen wishing to use both green-stick and pelagic longline gear, and there is little information regarding the costs and benefits of having different types of gear onboard.

#### *Paperwork Reduction Act*

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA). An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement, unless it displays a currently valid OMB control number.

This rule would change the existing requirements for collection-of-information under OMB Control

Number 0648–0372 by modifying the VMS reporting requirement for vessels issued an Atlantic Tunas Longline permit that are fishing with green-stick gear. Such vessels would be required to submit a VMS set report for each green-stick retrieval that interacts with bluefin and report information on the location and the numbers, length range, and disposition of bluefin within 12 hours (caught using green-stick gear, in addition to the VMS reports for pelagic longline sets). This requirement would increase the number of responses by only 18 per year, because of the low number of vessels expected to use green-stick gear (up to 3 vessels), and the low rate of bluefin incidental catch. This requirement would not change the total number of respondents and would have a de minimus impact on total costs. Public reporting burden for bluefin catch and effort is estimated to average 5 minutes per individual response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Secondly, this proposed rule would remove collection of information approved under OMB Control Number 0648–0372 and associated with the requirements for vessels fishing with purse seine gear to report bluefin information through VMS, because this rule would eliminate the provisions that allow fishing with purse seine gear. The removal of this requirement would reduce the total burden by six hours and reduce the estimated burden cost by two thousand dollars.

This rule would revise the existing requirements for collection-of-information approved under OMB Control Number 0648–0040 by removing two aspects of the dealer reporting requirements for the IBQ Program. First, this rule would eliminate the current requirement that vessel operators or owners confirm that the landing report information entered into the IBQ system by the dealer is accurate, by entering the PIN associated with the vessel account. Secondly, this rule would remove the requirement that any pelagic longline vessel owner or operator who discarded dead bluefin is required to also enter dead discard information from the trip by coordinating with the dealer and entering that trip's dead discard information into the online IBQ system via the dealer account. The vessel operator will continue to be required to report dead discard information via VMS while at sea. NMFS estimates that the number of small entities that would

be subject to these requirements would include participants in the Longline category. As of March 2020, a total of 280 Atlantic Tunas Longline category limited access permits have been issued. It is likely that the number of vessels that would actually be affected by these requirements would not be larger than 60 vessels. Since 2017, no more than 58 different pelagic longline vessels have landed bluefin tuna.

This rule would implement new collection-of-information requirements for Atlantic Tunas Longline permit holders that land bluefin. Annually, NMFS would estimate its incremental costs associated with the IBQ Program (including costs associated with the cost recovery program) and the total ex-vessel value of bluefin harvested under the Program, and notify the public whether a cost recovery fee will be charged for the year. If NMFS determines an annual cost recovery fee is warranted, NMFS would send bills to permit holders that sold bluefin to dealers. Permit holders would be billed based on the ex-vessel value of the bluefin sold by that vessel, and would pay the cost recovery fee through the Catch Shares On-line Program website and the associated *pay.gov* link. NMFS estimates that the number of small entities that could be subject to new cost recovery requirements would include all Atlantic tuna longline permit holders than landed bluefin, which is not likely to exceed 60 vessels, based on 2017 through 2019 IBQ Program data. Public reporting burden for cost recovery is estimated to average 15 minutes per individual response, including the time for logging onto the relevant online website, reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden is estimated to be 15 hours.

NMFS seeks public comment on: Whether these proposed collection-of-information requirements are necessary for the proper performance of the functions of NMFS, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information, including through the use of automated collection techniques or other forms of information technology. Comments on these or any other aspects of the collection-of-information may be submitted with comments to this rule (see **ADDRESSES** section above) or via *www.reginfo.gov/public/do/PRAMain*.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### List of Subjects

##### 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fish, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

##### 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: May 10, 2021.

#### Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR parts 600 and 635 are proposed to be amended as follows:

#### PART 600—MAGNUSON-STEVENS ACT PROVISIONS

- 1. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

##### § 600.725 [Amended]

- 2. In § 600.725, amend the table in paragraph (v), under heading “IX. Secretary of Commerce,” by removing the entry for “Tuna purse seine fishery”.

#### PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

- 3. The authority citation for part 635 continues to read as follows:

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

- 4. In § 635.2:

- a. Add in alphabetical order the definition of “BFT”;
- b. Revise the definition for “CFL”;
- c. Add in alphabetical order, the definitions of “Electronic Monitoring (EM) system”, and “IBQ”;
- d. Revise the definition of “Northeast Distant gear restricted area”;
- e. Add in alphabetical order the definition of “Vessel Monitoring Plan (VMP)”.

The additions and revisions read as follows:

#### § 635.2 Definitions.

\* \* \* \* \*

**BFT** means Atlantic bluefin tuna as defined in § 600.10 of this part.

\* \* \* \* \*

**CFL** (curved fork length) means the length of a fish measured from the tip of the upper jaw to the fork of the tail along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel (*i.e.*, in dorsal direction above caudal keel).

\* \* \* \* \*

**Electronic monitoring (EM) system** means a system of video cameras and recording and other related equipment installed on a vessel.

\* \* \* \* \*

**IBQ** (*Individual Bluefin Quota*) refers to limited access privileges under the IBQ Program (§ 635.15), implemented for the management of Atlantic bluefin tuna incidentally caught by Atlantic Tunas Longline category LAP holders.

\* \* \* \* \*

**Northeast Distant gear restricted area (NED)** means the Atlantic Ocean area bounded by straight lines connecting the following coordinates in the order stated: 35°00′ N lat., 60°00′ W long.; 55°00′ N lat., 60°00′ W long.; 55°00′ N lat., 20°00′ W long.; 35°00′ N lat., 20°00′ W long.; 35°00′ N lat., 60°00′ W long.

\* \* \* \* \*

**Vessel Monitoring Plan (VMP)** means an on-board, EM system reference document required by § 635.9(e)(1).

\* \* \* \* \*

- 5. In § 635.4:

- a. Revise paragraphs (d)(1) and (2);
- b. remove paragraph (d)(5); and
- c. Revise paragraph (j)(3).

The revisions read as follows:

#### § 635.4 Permits.

\* \* \* \* \*

(d) \* \* \*

(1) The owner of each vessel used to fish for or take Atlantic tunas commercially or on which Atlantic tunas are retained or possessed with the intention of sale must obtain an HMS Charter/Headboat category permit with a commercial sale endorsement issued under paragraph (b) of this section, an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, or an Atlantic tunas permit in one, and only one, of the following categories: General, Harpoon, Longline, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas, HMS Angling, HMS Charter/Headboat, or an HMS Commercial Caribbean Small Boat permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch

limits, size classes, and gear applicable to the permit or permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel has a valid permit in the General, Harpoon, Longline, or Trap category of the Atlantic Tunas permit, a valid HMS Charter/Headboat category permit with a commercial sale endorsement, or an HMS Commercial Caribbean Small Boat permit.

\* \* \* \* \*

(j) \* \* \*

(3) A vessel owner issued an Atlantic Tunas permit in the General, Harpoon, or Trap category or an Atlantic HMS permit in the Angling or Charter/Headboat category under paragraph (b), (c), or (d) of this section may change the category of the vessel permit at any time during the fishing year, provided the vessel has not landed BFT during that fishing year as verified by NMFS via landings data.

\* \* \* \* \*

■ 6. In § 635.5, revise paragraphs (a)(3) and (6), and (b)(2)(i)(A) to read as follows:

§ 635.5 Recordkeeping and reporting.

\* \* \* \* \*

(a) \* \* \*

(3) *Bluefin tuna landed by a commercial vessel and not sold.* If a person who catches and lands a large medium or giant bluefin tuna from a vessel issued a permit in any of the commercial categories for Atlantic tunas does not sell or otherwise transfer the bluefin tuna to a dealer who has a dealer permit for Atlantic tunas, the person must contact a NMFS enforcement agent, as instructed by NMFS, immediately upon landing such bluefin tuna, provide the information needed for the reports required under paragraph (b)(2)(i) of this section, and, if requested, make the tuna available so that a NMFS enforcement agent or authorized officer may inspect the fish and attach a tag to it. Alternatively, such reporting requirement may be fulfilled if a dealer who has a dealer permit for Atlantic tunas affixes a dealer tag as required under paragraph (b)(2)(ii) of this section and reports the bluefin tuna as being landed but not sold on the reports required under paragraph (b)(2)(i) of this section. If a vessel is placed on a trailer, the person must contact a NMFS enforcement agent, or the bluefin tuna must have a dealer tag affixed to it by a permitted Atlantic tunas dealer, immediately upon the vessel being removed from the water. All bluefin tuna landed but not sold will be accounted against the quota category

according to the permit category of the vessel from which it was landed.

\* \* \* \* \*

(6) *Atlantic Tunas Longline category permitted vessels.* The owner or operator of a vessel issued, or that should have been issued, an Atlantic Tunas Longline category permit is subject to the VMS reporting requirements under § 635.69(e)(4) and the applicable Individual Bluefin Quota Program and/or leasing requirements under § 635.15(a).

(b) \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) *Landing reports.* Each dealer with a valid Atlantic Tunas dealer permit issued under § 635.4 must submit the landing reports to NMFS for each BFT received from a U.S. fishing vessel. Such reports must be submitted as instructed by NMFS not later than 24 hours after receipt of the BFT. Landing reports must include the name and permit number of the vessel that landed the BFT and other information regarding the catch as instructed by NMFS. When purchasing BFT from eligible IBQ Program participants, permitted Atlantic Tunas dealers must enter landing reports into the Catch Shares Online System established under § 635.15, not later than 24 hours after receipt of the BFT. The dealer must inspect the vessel's permit to verify that it is a commercial category, that the required vessel name and permit number as listed on the permit are correctly recorded in the landing report, and that the vessel permit has not expired.

\* \* \* \* \*

■ 7. In § 635.9:

■ a. Revise paragraphs (a), (b)(2) introductory text, (c)(1)(ii), (c)(6);

■ b. Add paragraph (c)(7); and

■ c. Revise paragraph (e).

The addition and revisions read as follows:

§ 635.9 Electronic Monitoring.

\* \* \* \* \*

(a) *Applicability.* An owner and/or operator of a commercial vessel permitted or required to be permitted in the Atlantic Tunas Longline category under § 635.4, and that has pelagic longline gear on board, are required to have installed and maintain at all times during fishing trips, a fully operational EM system on the vessel, as specified in this section. Vessel owners and/or operators can contact NMFS or a NMFS-approved contractor for more details on procuring an EM system.

(b) \* \* \*

(2) Vessel owners and/or operators, as instructed by NMFS, may be required to

coordinate with NMFS or a NMFS approved contractor to schedule a date or range of dates, and/or may be required to steam to a designated port for EM work on specific NMFS-determined dates. Such EM work may include, but is not limited to EM system installation, repair, or modifications; modifications to vessel equipment to facilitate installation or operation of EM systems, such as installation of a fitting for the pressure-side of the line of the drum hydraulic system; installation, repair or modification to a power supply or power switches/connections for the EM system; installation of additional lighting; or installation of mounting structure(s) for the camera(s) to provide views of areas and fish consistent with paragraphs (c)(1)(i)–(ii).

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) Video camera(s) must be in sufficient numbers (a minimum of two and up to four), with sufficient resolution (no less than 720p (1280 × 720)) for NMFS, the USCG, and their authorized officers and designees, or any individual authorized by NMFS to determine the number and species of fish harvested. To obtain the views required in paragraph (c)(1)(i), at least one camera must be mounted to record close-up images of fish being retained on the deck at the haulback station, and at least one camera must be mounted to provide views of the area from the rail to the water surface, where the gear and fish are hauled out of the water. NMFS or the NMFS-approved contractor will determine the number and placement of cameras needed to achieve the required view, based on the operation and physical layout of the vessel.

\* \* \* \* \*

(6) *EM software.* The EM system must have software that enables the system to be tested for functionality and that records the outcome of the tests.

(7) *Standardized Reference Grid.* The vessel must have a standardized grid on deck in view of the haulback station camera(s) in such a way that the video recording includes an image of each fish on the grid in order to provide a size reference. The standardized grid may be on a removable mat that is placed on the deck before the fish are brought on board, or be painted directly on the deck. The standardized reference grid must have accurate dimensions and grid line intervals as instructed and specified by NMFS via electronic methods, such as email and/or a letter. The vessel owner and/or operator is responsible for ensuring compliance with NMFS instructions and specifications and for

ensuring accurate, straight, clear and complete grid lines with no missing, incomplete, blurry or smudged lines.

\* \* \* \* \*

(e) *Operation.* Unless otherwise authorized by NMFS in writing, a vessel described in paragraph (a) of this section must collect video and sensor data in accordance with the requirements in this section, in order to fish with pelagic longline gear.

(1) *Vessel monitoring plan.* The vessel owner and/or operator must have available onboard a written VMP for its system. At a minimum, VMPs must include: Information on the locations of EM system components; contact information for technical support; instructions on how to conduct a pre-trip system test; instructions on how to verify proper system functions; location(s) on deck where fish retrieval should occur to remain in view of the cameras; procedures for how to manage EM system hard drives; catch handling procedures; periodic checks of the monitor during the retrieval of gear to verify proper functioning; and reporting procedures. The VMP should minimize to the extent practicable any impact of the EM systems on the current operating procedures of the vessel, and should help ensure the safety of the crew.

(2) *Handling of fish and duties of care.* The vessel owner and/or operator must ensure that all fish that are caught, even those that are released, are handled in a manner that enables the video system to record such fish, and must ensure that all handling and retention of BFT occurs in accordance with relevant regulations and the operational procedures outlined in the VMP. The vessel owner or operator must ensure that each retained fish is placed on the standardized reference grid in view of cameras in accordance with NMFS instructions and the operational procedures outlined in the VMP.

(3) *Additional duties of care.* The vessel owner and/or operator is responsible for ensuring the proper continuous functioning of all aspects of the EM system, including that the EM system must remain powered on for the duration of each fishing trip from the time of departure to time of return; cameras must be functioning and cleaned routinely; the hydraulic and gear sensors must be operational; the GPS signal must be functioning; and EM system components must not be tampered with.

(4) *Completion of trip(s).* Except when at capacity after one trip or otherwise stated by NMFS in writing, EM hard drives may be used to record up to two trips. Within 48 hours of completing a

second fishing trip, or within 48 hours of completing one trip in the case where the hard drive does not have sufficient capacity for a second trip, the vessel owner and/or operator must mail the removable EM system hard drive(s) containing all data to NMFS or NMFS-approved contractor, according to instructions provided by NMFS. The vessel owner and/or operator is responsible for using shipping materials suitable to protect the hard drives (e.g., bubble wrap), tracking the package, and including a self-addressed mailing label for the next port of call so replacement hard drives can be mailed back to the sender. Prior to departing on any trip, the vessel owner and/or operator must ensure an EM system hard drive(s) is installed that has the capacity needed to enable data collection and video recording for the entire trip. The vessel owner and/or operator is responsible for contacting NMFS or NMFS-approved contractor if they have requested but not received a replacement hard drive(s) and for informing NMFS or NMFS-approved contractor of any lapse in the hard drive management procedures described in the VMP.

\* \* \* \* \*

■ 8. Revise § 635.15 to read as follows:

**§ 635.15 Individual bluefin tuna quotas (IBQs).**

(a) *General.* This section describes the IBQ Program. As described below, under the IBQ program, NMFS will assign eligible Atlantic Tunas Longline category LAP holders annual IBQ shares and resulting allocations. IBQ allocations are required for vessels with Atlantic Tunas Longline category permits to fish with pelagic longline or green-stick gear. IBQ allocations may be leased by IBQ shareholders and other eligible Atlantic Tunas Longline category LAP holders using the Catch Shares Online System.

(b) *Eligibility—(1) Vessels determined to be active.* Atlantic Tunas Longline category LAP holders whose valid permit is associated with a vessel that is determined by NMFS to be “active” at any time during the most recent 36 months of available data, is eligible to receive an annual IBQ share. The three-year period is a rolling period that changes annually. “Active” vessels are those vessels that have used pelagic longline or greenstick gear and have designated species landings (swordfish and yellowfin, bigeye, albacore, and skipjack tunas), based on data that NFS determines to be the best available data (such as dealer and vessel reported data). In determining a permitted vessel’s annual IBQ share eligibility and calculating the annual IBQ share, NMFS

will use the data associated with the qualifying vessel’s history (and not the permit). If the relevant data indicates that a particular vessel used pelagic longline or green-stick gear and had designated species landings during the relevant three-year period, and the vessel was issued a valid Atlantic Tunas Longline category LAP when the landings occurred, the current permit holder is qualified to receive an annual IBQ share.

(2) *Vessels determined to be inactive.* The current Atlantic Tunas Longline category LAP holder is not eligible to receive an annual IBQ share for a vessel, unless the data associated with that vessel’s history supports the determinations under paragraph (b)(1) of this section. For that vessel, any fishing with pelagic longline gear by the current permit holder on a different vessel is irrelevant. Atlantic Tunas Longline category LAP holders that are ineligible to receive an annual IBQ share need to lease IBQ allocation per paragraph (e) of this section, as well as meet all other applicable requirements, before the vessel could fish with or possess pelagic longline or green-stick gear onboard.

(3) *New Entrants.* New entrants to the fishery need to obtain an Atlantic Tunas Longline category LAP, as well as other required LAPs, as described under § 635.4(l), and would need to lease IBQ allocations per paragraph (e) of this section if the Atlantic Tunas Longline category LAP acquired did not qualify for an annual IBQ share.

(c) *Annual IBQ Share Determination.* During the last quarter of each year, NMFS will review the available data for each permitted vessel’s landings of designated species during the relevant three-year period, and assign IBQ shares based on the criteria described in this paragraph.

(1) *IBQ Share Calculations.* With the exception of permit holders described in paragraph (c)(2) of this section, for each eligible vessel, NMFS will calculate IBQ shares using the following multi-step process. First, based upon the total weight of each vessel’s designated species landings during the relevant three-year period, NMFS will calculate the relative amount (as a percentage) those landings represent compared to the total amount of designated species landings by all eligible vessels. Second, NMFS will rank the percentages associated with each vessel, and assign each vessel to one of four quartiles. Third, NMFS will calculate the IBQ share percentage associated with each quartile, based upon the percentage of total landings in each quartile and number of vessels in each quartile.



NMFS will assign each quartile's IBQ share percentage to each eligible vessel owner in that quartile, who is now a share recipient, as the vessel owner's annual IBQ share percentage, unless adjusted under paragraph (c)(3)(ii) or paragraph (e) of this section. This annual IBQ share percentage is used to calculate the annual IBQ allocation (see paragraph (d) of this section).

(2) *Proxy calculation for Deepwater Horizon Oceanic Fish Restoration Project participants.* For valid participants in this Project, the annual IBQ shares will be calculated as described in paragraph (c)(1) of this section, except that a proxy for designated species landings will be added to the participating vessel's history during the time of its participation. The proxy will be based upon non-participant designated species landings during the time that participants fished under the Project.

(3) *Regional designations of IBQ shares.* All IBQ shares and resultant allocations are designated as either "GOM" (Gulf of Mexico) or "ATL" (Atlantic), based upon whether eligible vessels' designated species landings during the relevant three-year period came from the Gulf of Mexico or Atlantic region. The overall percentage of designated species landings for each region, unless modified by the GOM share cap described below, will determine each region's total shares and resultant allocations. Per § 635.28(a)(1), NMFS will file a closure action when a region's IBQ allocations have been caught or are projected to be caught. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. Exclusive Economic Zone (EEZ) west and north of the boundary stipulated at 50 CFR 600.105(c) and the Atlantic region includes all other waters of the Atlantic Ocean including fishing taking place in the NED defined at § 635.2. If a permitted vessel had fishing history in both the Gulf of Mexico and Atlantic, it could receive both GOM and ATL shares. If NMFS determines that a permit holder's regional IBQ share would result in a regional allocation that is less than the minimum amount required to fish in an area (*i.e.*, less than 0.125 mt for the Atlantic or less than 0.25 mt for the Gulf of Mexico as provided under paragraph (f)(2)(i) of this section), NMFS would redesignate the share and allocation to the other regional designation.

(i) *GOM share cap.* The maximum amount of designated GOM IBQ shares among all shareholders is capped at 35 percent of the baseline Longline category quota. Based on the criteria and process under § 635.27(a)(7), NMFS may

make an inseason or annual adjustment to reduce the cap for all, or the remainder of a calendar year.

(ii) *Adjustment of GOM shares to match the GOM share cap.* If NMFS determines that the total amount of GOM-designated IBQ shares would be greater than the GOM share cap, NMFS will reduce the total amount of GOM shares in order to equal the GOM share cap. The reduction in total GOM shares will be achieved through equal proportional reductions among all GOM shareholders. NMFS will adjust the GOM share percentages downward, equally across the four share percentages, to reflect the maximum amount of shares that can be issued for the Gulf of Mexico. The ATL shares will be increased in an analogous manner, so that the total share percentages for the two regions add up to 100 percent. NMFS will notify affected shareholders of any reductions in their GOM share or increases in ATL share resulting from this adjustment. This adjustment is not subject to appeal under paragraph (e)(1)(i) of this section.

(d) *Annual IBQ allocations.* An annual IBQ quota allocation is the amount of BFT (whole weight) in metric tons (mt) that an eligible IBQ share recipient (*i.e.*, a share recipient who has associated their permit with a vessel) is allotted to account for incidental landings and dead discards of BFT during a specified calendar year. Unless otherwise required under paragraph (f)(4) of this section, an Atlantic Tunas Longline permitted vessel's annual IBQ allocation for a particular year is derived by multiplying its IBQ share percentage (calculated under paragraph (c) of this section) by the baseline Longline category quota for that year.

(e) *Notification of IBQ shares and allocations, appeals, and adjustments.* During the last quarter of each year, NMFS will notify Atlantic Tunas Longline permit holders via electronic methods (such as an email) and/or letter to inform them of their IBQ share, their IBQ allocation, and the regional designations of those shares and allocations for the subsequent fishing year. This notification represents the initial administrative determination (IAD) for the permit holder's IBQ share and allocation. NMFS will also notify permit holders of any existing quota debt, and provide instructions for appealing the IAD. Eligible Atlantic Tunas Longline category LAP holders that have not completed the process of permit renewal or permit transfer as of December 31 will be issued IBQ allocation for the relevant fishing year upon completion of the permit renewal or permit transfer, provided the eligible

permit is associated with a vessel. IBQ shares, allocations, and regional designations may change as a result of the following circumstances, in which case NMFS will notify eligible IBQ recipients.

(1) *Appeals.* Appeals will be governed by the regulations and policies of the National Appeals Office at 15 CFR part 906. Per those regulations, Atlantic Tunas Longline Permit holders may appeal the IAD by submitting a written request for an appeal to the National Appeals Office within 45 days after the date the IAD is issued. NMFS will provide further instructions on how to submit a request for an appeal when it issues the IAD.

(i) *Items Subject to Appeal and Adjustment.* A permit holder may appeal: Eligibility for quota shares based on ownership of an active vessel with a valid Atlantic Tunas Longline category permit combined with the required shark and swordfish limited access permits; IBQ shares; IBQ allocations; regional designations of shares and allocations; the vessel's amount of designated species landings; and assignment of designated species landings to the vessel owner/permit holder. Appeals based on hardship factors would not be considered. Consistent with most limited effort and catch share programs, hardship is not a valid basis for appeal due to the multitude of potential definitions of hardship and the difficulty and complexity of administering such criteria in a fair manner. NMFS may utilize bluefin quota from the Reserve category for an adjustment needed due to an appeal.

(ii) *Supporting Documentation for Appeals.* NMFS permit records would be the sole basis for determining permit transfers. Documentation of legal landings of designated species during the timeframe analyzed by NMFS in determining shareholders, would be via official NMFS logbook records or weighout slips for landings. Landings data are required to be submitted within 7 days of landing under the applicable regulations. Recognizing that somewhat-late reporting could have occurred for a variety of reasons, however, NMFS is clarifying that it will consider "documented" landings for appeals purposes to be those reported within 60 days of landing. NMFS would count only those designated species landings that were landed legally when the owner had a valid permit. Appeals based on landings data or permit history would be based on NMFS logbook data, weighout slips, verifiable sales slips, receipts from registered dealers, state landings records, and permit records.

No other proof of catch, landings and permit history would be considered. Photocopies of the written documents are acceptable; NMFS may request the originals at a later date. NMFS would refer any submitted materials that are of questionable authenticity to the NMFS Office of Law Enforcement for investigation into potential violations of Federal law.

(2) *Inseason quota transfers.* NMFS may transfer additional quota to the Longline category inseason as authorized under § 635.27(a), and in accordance with §§ 635.27(a)(7) and (8). NMFS may distribute the quota that is transferred inseason to the Longline category either to all IBQ share recipients or to permitted Atlantic Tunas Longline category LAP vessels that are determined by NMFS to have any recent fishing activity based on participation in the pelagic longline fishery. In making this determination, NMFS will consider factors for the subject and previous year such as the number of BFT landings and dead discards, the number of IBQ lease transactions, the average amount of IBQ leased, the average amount of quota debt, the annual amount of IBQ allocation, any previous inseason allocations of IBQ allocation, the amount of BFT quota in the Reserve category (at § 635.27(a)(6)(i)), the percentage of BFT quota harvested by the other quota categories, the remaining number of days in the year, the number of active vessels fishing not associated with IBQ share, and the number of vessels that have incurred quota debt or that have low levels of IBQ allocation. NMFS will determine if a vessel has any recent fishing activity based upon the best available information for the subject and previous year, such as logbook, vessel monitoring system, or electronic monitoring data. Any distribution of quota transferred inseason will be equal among eligible IBQ share recipients, or active vessels.

(i) *Regional designation of inseason quota distributions for share recipients.* Regional designations described in paragraph (c)(3) of this section will be applied to inseason quota distributed to IBQ share recipients, and subject to the cap specified in paragraph (c)(3)(i).

(ii) *Regional designation of inseason quota distributions for vessels without shares.* For permitted Atlantic Tunas Longline category LAP vessels with recent fishing activity that are not eligible IBQ share recipients, regional designations of ATL or GOM will be applied to the distributed quota based on best available information regarding geographic location of designated species landings as reported to NMFS

during the period of fishing activity analyzed above in this paragraph, with the designation based on where the majority of that activity occurred.

(f) *Using IBQ Shares and Allocations.* Unless specified otherwise, IBQ shares and resultant allocations will be available for use at the start of each fishing year. IBQ shares and allocations expire at the end of each calendar year. IBQ shares and allocation issued under this section are valid for the relevant fishing year unless revoked, suspended, or modified or unless the Atlantic Tunas Longline category quota is closed per § 635.28(a).

(1) *Usage of GOM and ATL shares and allocations.* GOM shares and resultant allocations can be used to satisfy minimum IBQ allocation requirements under paragraph (f)(2) of this section, or to account for BFT caught with pelagic longline gear in either the Gulf of Mexico or the Atlantic regions. ATL shares and resultant allocations can only be used to satisfy minimum IBQ allocation requirements under paragraph (f)(2) of this section, or to account for BFT caught with pelagic longline gear in the Atlantic region. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c) and the Atlantic region includes all other waters of the Atlantic Ocean including fishing taking place in the NED defined at § 635.2.

(2) *Minimum IBQ allocation.* For purposes of this section, calendar year quarters start on January 1, April 1, July 1, and October 1.

(i) *First fishing trip in a calendar year quarter.* Before departing on the first fishing trip in a calendar year quarter, a vessel with an eligible Atlantic Tunas Longline category permit that fishes with or has pelagic longline or greenstick gear onboard must have the minimum IBQ allocation for either the Gulf of Mexico or Atlantic, depending on fishing location. The minimum GOM allocation for a vessel fishing in the Gulf of Mexico, or departing for a fishing trip in the Gulf of Mexico, is 0.25 mt ww (551 lb ww). The minimum ATL or GOM allocation for a vessel fishing in the Atlantic or departing for a fishing trip in the Atlantic is 0.125 mt ww (276 lb ww). A vessel owner or operator may not declare into or depart on the first fishing trip in a calendar year quarter with pelagic longline gear onboard unless the vessel has the relevant required minimum IBQ allocation for the region in which the fishing activity will occur.

(ii) *Subsequent fishing trips in a calendar year quarter.* Subsequent to the

first fishing trip in a calendar year quarter, a vessel owner or operator may declare into or depart on other fishing trips with pelagic longline gear onboard with less than the relevant minimum IBQ allocation for the region in which the fishing activity will occur, but only within that same calendar year quarter.

(3) *Accounting for bluefin tuna that were landed or discarded dead.* The following requirements apply to Atlantic Tunas Longline permit holders fishing with pelagic longline or greenstick gear regarding accounting for all BFT landings and dead discards from a vessel's IBQ allocation.

(i) *Catch deduction from IBQ allocations.* Except as provided under paragraph (f)(6)(i) of this section, for vessels fishing in the NED, all bluefin tuna landings must be deducted from the vessel's IBQ allocation at the end of each trip by providing information to, and coordinating with the dealer. Dead discards will be deducted from the vessel's IBQ allocation by the Catch Shares Online System, provided the vessel operator reports dead discards through VMS as required under paragraph 635.69(e)(4)(i).

(ii) *When catch exceeds IBQ allocation.* If the amount of bluefin tuna landed and discarded dead on a particular trip exceeds the amount of the vessel's IBQ allocation or results in an IBQ balance less than the minimum amount described in paragraph (f)(2) of this section, the vessel may continue to fish, complete the trip, and depart on subsequent trips within the same calendar year quarter. The vessel must resolve any quota debt (see paragraph (f)(4) of this section) before declaring into or departing on a fishing trip with pelagic longline gear onboard in a subsequent calendar year quarter by acquiring adequate IBQ allocation to resolve the debt and acquire the needed minimum allocation through leasing, as described in paragraph (g) of this section.

(iii) *Dealer requirements; End of year transactions.* Federal Atlantic Tunas Dealer permit holders must comply with reporting requirements at § 635.5(b)(2)(i)(A). No IBQ transactions will be processed between 6 p.m. eastern time on December 31 and 2 p.m. Eastern Time on January 1 of each year to provide NMFS time to reconcile IBQ accounts and update IBQ shares and allocations for the upcoming fishing year.

(4) *Exceeding an available allocation.* If the amount of BFT landed or discarded dead for a particular trip (as defined at § 600.10 of this chapter) exceeds the amount of IBQ allocation available to the vessel, the permitted

vessel is considered to have a “quota debt” equal to the difference between the catch and the allocation.

(i) *Quarter level quota debt.* A vessel with quota debt incurred in a given calendar year quarter cannot depart on a trip with pelagic longline gear onboard in a subsequent calendar year quarter until the vessel leases allocation or receives additional allocation (see paragraphs (e) and (g) of this section), and applies allocation for the appropriate region to settle the quota debt such that the vessel has the relevant minimum quota allocation required to fish for the region in which the fishing activity will occur (see paragraph (f)(2) of this section). For example, a vessel with quota debt incurred during January through March may not depart on a trip with pelagic longline gear onboard during April through June (or subsequent quarters) until the quota debt has been resolved such that the vessel has the relevant minimum quota allocation required to fish for the region in which the fishing activity will occur.

(ii) *Annual level quota debt.* If, by the end of the fishing year, a permit holder does not have adequate IBQ allocation to settle its vessel’s quota debt through leasing or additional allocation (see paragraphs (e) and (g) of this section), the vessel’s allocation will be reduced in the amount equal to the quota debt in the subsequent year or years until the quota debt is fully accounted for. A vessel may not depart on any pelagic longline trips if it has outstanding quota debt from a previous fishing year.

(iii) *Association with permit.* Quota debt is associated with the vessel’s Atlantic Tunas Longline permit, and remains associated with the permit if/when the permit is transferred or sold. At the end of the year, if an owner with multiple permitted vessels has a quota debt associated with one or more vessels owned, the IBQ system will apply any remaining unused IBQ allocation associated with that owner’s other vessels to resolve the quota debt.

(5) *Unused IBQ allocation.* Any IBQ allocation that is unused at the end of the fishing year may not be carried forward by a permit-holder to the following year, but would remain associated with the Longline category as a whole, and subject to the quota regulations under § 635.27, including annual quota adjustments.

(6) *The IBQ Program and the NED.* The following restrictions apply to vessels fishing with pelagic longline gear in the NED:

(i) *When NED BFT quota is available.* Permitted vessels fishing with pelagic longline or green-stick gear may fish in

the NED, and any BFT catch will count toward the ICCAT-allocated separate NED quota, and will not be subject to the BFT accounting requirements of paragraph (f)(3) of this section, until the NED quota has been filled. Permitted vessels fishing in the NED must still fish in accordance with all other IBQ Program requirements, including the relevant minimum IBQ allocation requirements specified under paragraph (f)(2) of this section to depart on a trip using pelagic longline or green-stick gear.

(ii) *When NED BFT quota is filled.* Permitted vessels fishing with pelagic longline or green-stick gear may fish in the NED after the ICCAT-allocated separate NED quota has been filled but must abide by all IBQ Program requirements. Notably, when the NED BFT quota is filled, the BFT accounting requirement of paragraph (f)(3) of this section is applicable. BFT catch must be accounted for using the vessel’s ATL or GOM IBQ allocation, as described under paragraphs (f)(1) of this section.

(g) *IBQ Allocation Leasing—(1) Eligibility.* The permit holders of vessels issued valid Atlantic Tunas Longline category LAPs are eligible to lease IBQ allocation to and/or from each other. A person who holds an Atlantic Tunas Longline category LAP that is not associated with a vessel may not lease IBQ allocation.

(2) *Application to lease—(i) Application information requirements.* All IBQ allocation leases must occur electronically through the Catch Shares Online System, and include all information required by NMFS.

(ii) *Approval of lease application.* Unless NMFS denies an application to lease IBQ allocation according to paragraph (g)(2)(iii) of this section, the Catch Shares Online System will provide an approval code to the IBQ lessee confirming the transaction.

(iii) *Denial of lease application.* NMFS may deny an application to lease IBQ allocation for any reason, including, but not limited to: The application is incomplete; the IBQ lessor or IBQ lessee is not eligible to lease per paragraph (g)(1) of this section; the IBQ lessor or IBQ lessee permits is sanctioned pursuant to an enforcement proceeding; or the IBQ lessor has an insufficient IBQ allocation available to lease (*i.e.*, the requested amount of lease may not exceed the amount of IBQ allocation associated with the lessor). As the Catch Shares Online System is automated, if any of the criteria above are applicable, the lease transaction will not be allowed to proceed. The decision by NMFS is the final agency decision; there is no

opportunity for an administrative appeal.

(3) *Conditions and restrictions of leased IBQ allocation—(i) Subleasing.* In a fishing year, an IBQ allocation may be leased numerous times following the process specified in paragraph (g)(2) of this section.

(ii) *History of leased IBQ allocation use.* The fishing history associated with the catch of BFT will be associated with the vessel that caught the BFT, regardless of how the vessel acquired the IBQ allocation (*e.g.*, through initial allocation or lease), for the purpose of any relevant restrictions based upon BFT catch.

(iii) *Duration of IBQ allocation lease.* IBQ allocations expire at the end of each calendar year. Thus, an IBQ lessee may only use the leased IBQ allocation during the fishing year in which the IBQ allocation is applicable.

(iv) *Temporary prohibition on leasing IBQ allocation.* No leasing of IBQ allocation is permitted between 6 p.m. eastern time on December 31 of one year and 2 p.m. eastern time on January 1 of the next year. This period is necessary to provide NMFS time to reconcile IBQ accounts, and update IBQ shares and allocations for the upcoming fishing year.

(h) *Sale of IBQ shares.* Sale of IBQ shares is not permitted.

(i) *Changes in vessel and permit ownership.* In accordance with the regulations specified under § 635.4(l), a vessel owner that has an IBQ share may transfer the Atlantic Tunas Longline category LAP to another vessel that he or she owns or transfer the permit to another person. The IBQ share as described under this section would transfer with the permit to the new vessel, and remain associated with that permit. Within a fishing year, when an Atlantic Tunas Longline category LAP transfer occurs (from one vessel to another), the associated IBQ shares are transferred with the permit, however IBQ allocation is not, unless the IBQ allocation is also transferred through a separate transaction within the Catch Shares Online System. A person or entity that holds an Atlantic Tunas Longline category LAP that is not associated with a vessel may not receive or lease IBQ allocation.

(j) *Evaluation.* NMFS will conduct evaluations of the IBQ Program in accordance with Magnuson-Stevens Act requirements for Limited Access Privilege Programs (Section 303(c)(1)(G)).

(k) *Property rights.* IBQ shares and resultant allocations issued pursuant to this part may be revoked, limited, modified or suspended at any time

subject to the requirements of the Magnuson-Stevens Act, ATCA, or other applicable law. Such IBQ shares and resultant allocations do not confer any right to compensation and do not create any right, title, or interest in any bluefin tuna until it is landed or discarded dead.

(l) *Enforcement and monitoring.* NMFS will enforce and monitor the IBQ Program through the use of the reporting and record keeping requirements described under § 635.5, the monitoring requirements under §§ 635.9 and 635.69, enforcement of the prohibitions in § 635.71, and its authority to close the pelagic longline fishery specified under § 635.28.

(m) *Cost recovery program.* This program of fees is intended to cover costs of management, data collection and analysis, and enforcement activities directly related to and in support of the IBQ Program. This program applies to vessels issued an Atlantic Tunas Longline category LAP that harvested bluefin tuna under the IBQ program. NMFS will undertake the below process on an annual basis.

(1) *Estimation of recoverable cost.* NMFS will calculate the estimated incremental cost of the IBQ Program (e.g., oversight, customer service, database maintenance, electronic monitoring program, data monitoring, preparation of fleet communications, providing status reports to the HMS Advisory Panel, preparation of **Federal Register** documents, and enforcement related activities), including an estimate of the administrative and operational cost of implementing the cost recovery program.

(2) *Estimation of Ex-Vessel Value of Catch Share Species.* NMFS will calculate the ex-vessel value of BFT harvested under the IBQ Program using dealer data on the estimated average ex-vessel value price per pound (paid by the dealer to the vessel) and the total dressed weight of BFT sold to dealers.

(3) *Determination of Fees.* NMFS will compare its incremental cost under paragraph (m)(1) of this section to the estimate of BFT ex-vessel value under paragraph (m)(2) of this section to determine the total amount of fees that may be recovered. Fees shall not exceed 3 percent of the BFT ex-vessel value estimated under paragraph (m)(2) of this section. NMFS will determine the fee associated with each vessel that harvested BFT, based on the total dressed weight of BFT sold to dealers by a vessel, and the total amount of fees that may be recovered (fishery-wide). NMFS will not assess fees, if the amount of fees that may be recovered is similar to or less than the estimated cost of

implementing the cost recovery program.

(4) *Notification of fees.* NMFS will file with the Office of the Federal Register for publication notification of its determination on fees, and notify Atlantic Tunas Longline permit holders, specifying the fees amount owed, and instructions for payment through the Catch Shares Online System or other Federal payment system. Federally permitted vessels (Atlantic Tunas Longline permit holders) that sold bluefin that do not pay the fee or are delinquent in payment would be subject to relevant enforcement penalties, including permit revocation.

(5) *Annual Report.* NMFS will prepare a brief annual report, made available to the public, which summarizes relevant information including the estimation of recoverable costs, estimation of ex-vessel value of BFT, and determination of the cost recovery fee.

(n) *IBQ Shares Cap.* An individual, partnership, corporation or other entity (collectively, "entity" for purposes of this paragraph (n) that holds an Atlantic Tunas Longline category LAP may not hold or acquire more than 25 percent of the total IBQ shares or associated IBQ allocations annually. The cap applies to the sum of IBQ shares or associated IBQ allocations an entity holds, regardless of whether the entity is associated with a single or multiple Atlantic Tunas Longline category permits.

■ 9. In § 635.19, revise paragraph (b) to read as follows:

**§ 635.19 Authorized gears.**

\* \* \* \* \*

(b) *Atlantic tunas.* Primary gears are the gears specifically authorized in this section for fishing for, retaining, or possessing Atlantic BFT and BAYS.

(1) *Atlantic BFT.* A person that fishes for, retains, or possesses an Atlantic BFT may not have on board a vessel or use on board a vessel any primary gear other than those authorized for the specific permit category issued (Atlantic tunas or HMS permit categories) listed in paragraphs (b)(1)(i) through (vi) of this section.

(i) *Angling category.* Rod and reel (including downriggers) and handline (for all tunas).

(ii) *Charter/headboat category.* Rod and reel (including downriggers), bandit gear, handline, and green-stick gear.

(iii) *General category.* Rod and reel (including downriggers), handline, harpoon, bandit gear, and green-stick.

(iv) *Harpoon category.* Harpoon.

(v) *Trap category.* Pound net and fish weir.

(vi) *Longline category.* Longline and green-stick.

(2) *BAYS.* Subject to paragraphs (b)(1) of this section pertaining to BFT, a person may use the primary gears authorized for the Atlantic tunas or HMS permit categories listed in paragraphs (b)(2)(i) through (v) to fish for, retain, or possess BAYS.

(i) *Angling category.* Speargun, rod and reel (including downriggers), bandit gear, handline, and green-stick gear.

(ii) *Charter/headboat category.* Rod and reel (including downriggers), bandit gear, handline, and green-stick gear are authorized for all recreational and commercial Atlantic tuna fisheries. Speargun is authorized for recreational Atlantic BAYS tuna fisheries only.

(iii) *General category.* Rod and reel (including downriggers), handline, harpoon, bandit gear, and green-stick.

(iv) *Harpoon category.* Harpoon.

(v) *Longline category.* Longline and green-stick.

(3) A person issued an HMS Commercial Caribbean Small Boat permit may use handline, harpoon, rod and reel, bandit gear, green-stick gear, and buoy gear to fish for, retain, or possess BAYS tunas in the U.S. Caribbean, as defined at § 622.2.

\* \* \* \* \*

■ 10. In § 635.21:

■ a. Revise paragraphs (c)(2)(iv) introductory text, paragraphs (c)(5)(iii)(B) and (C); and

■ b. Remove paragraph (e) and redesignate paragraphs (f) through (k) as paragraphs (e) through (j).

The revisions read as follows:

**§ 635.21 Gear operation and deployment restrictions.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iv) In the NED at any time, unless persons onboard the vessel comply with the following:

\* \* \* \* \*

(5) \* \* \*

(iii) \* \* \*

(B) *Bait.* Vessels fishing outside of the NED, as defined at § 635.2, that have pelagic longline gear on board, and that have been issued or are required to be issued a LAP under this part, are limited, at all times, to possessing on board and/or using only whole finfish and/or squid bait except that if green-stick gear is also on board, artificial bait may be possessed, but may be used only with green-stick gear.

(C) *Hook size and type.* Vessels fishing outside of the NED, as defined at § 635.2, that have pelagic longline gear on board, and that have been issued or are required to be issued a LAP under this part are limited, at all times, to possessing on board and/or using only

16/0 or larger non-offset circle hooks or 18/0 or larger circle hooks with an offset not to exceed 10°. These hooks must meet the criteria listed in paragraphs (c)(5)(iii)(C)(1) through (3) of this section. A limited exception for the possession and use of J hooks when green-stick gear is on board is described in paragraph (c)(5)(iii)(C)(4) of this section.

\* \* \* \* \*

■ 11. In § 635.22, revise paragraph (c)(1) to read as follows:

§ 635.22 Recreational retention limits.

\* \* \* \* \*

(c) \* \* \* (1) The recreational retention limit for sharks applies to any person who fishes in any manner on a vessel that has been issued or is required to have been issued a permit with a shark endorsement, except as noted in paragraph (c)(7) of this section. The retention limit can change depending on the species being caught and the size limit under which they are being caught as specified under § 635.20(e). A person on board a vessel that has been issued or is required to be issued a permit with a shark endorsement under § 635.4 is required to use non-offset, corrodible circle hooks as specified in §§ 635.21(e) and (j) in order to retain sharks per the retention limits specified in this section.

\* \* \* \* \*

- 12. In § 635.23:
■ a. Revise paragraphs (a)(4), (b)(3), (d),
■ b. Remove paragraph (e);
■ c. Redesignate paragraphs (f) and (g) as (e) and (f);
■ d. Revise newly redesignated paragraph (e) introductory text; and
■ e. Add paragraph (e)(3).

The revisions and addition read as follows:

§ 635.23 Retention limits for bluefin tuna.

\* \* \* \* \*

(a) \* \* \*
(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of five per vessel. Such increase or decrease will be based on the criteria provided under § 635.27(a)(7). NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing an adjustment with the Office of the Federal Register for publication. Previously designated RFDs may be waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT under § 635.26(a).

(b) \* \* \*

(3) Changes to retention limits. To provide for maximum utilization of the quota for BFT over the longest period of time, NMFS may increase or decrease the retention limit for any size class of BFT, or change a vessel trip limit to an angler trip limit and vice versa. Such increase or decrease in retention limit will be based on the criteria provided under § 635.27(a)(7). The retention limits may be adjusted separately for persons aboard a specific vessel type, such as private vessels, headboats, or charter boats. NMFS will adjust the daily retention limit specified in paragraph (b)(2) of this section by filing an adjustment with the Office of the Federal Register for publication.

\* \* \* \* \*

(d) Harpoon category. Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land no more than 10 large medium and giant BFT, combined, per vessel per day. Of these 10 BFT per vessel per day, no more than two shall be large medium BFT, unless the retention limits is increased by NMFS through an inseason adjustment to three, or a maximum of four, large medium BFT per vessel per day, based upon the criteria under § 635.27(a)(7). NMFS will implement an adjustment via publication in the Federal Register. If adjusted upwards to three or four large medium BFT per vessel per day, NMFS may subsequently decrease the retention limit down to the default level of two, based on the criteria under § 635.27(a)(7). 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 Harpoon category permit.

\* \* \* \* \*

(e) Longline category. Persons aboard a vessel permitted in the Atlantic Tunas Longline category are subject to the BFT retention restrictions in paragraphs (e)(1),(2), and (3) of this section.

\* \* \* \* \*

(3) A vessel permitted in the Atlantic Tunas Longline LAP category may retain, possess, land, and sell one large medium or giant BFT incidentally caught with green-stick gear per trip, if in compliance with all the IBQ requirements of § 635.15.

\* \* \* \* \*

■ 13. In § 635.24, revise paragraphs (a)(4)(i) and (iii), to read as follows:

\* \* \* \* \*

(a) \* \* \*
(4)(i) Except as provided in § 635.22(c)(7), a person who owns or operates a vessel that has been issued a

directed shark LAP may retain, possess, land, or sell pelagic sharks if the pelagic shark fishery is open per §§ 635.27 and 635.28. Shortfin mako sharks may be retained by persons aboard vessels using pelagic longline, bottom longline, or gillnet gear only if the shark is dead at the time of haulback and consistent with the provisions of §§ 635.21(c)(1), (d)(5), and (f)(6) and 635.22(c)(7).

\* \* \* \* \*

(iii) Consistent with paragraph (a)(4)(ii) of this section, a person who owns or operates a vessel that has been issued an incidental shark LAP may retain, possess, land, or sell no more than 16 SCS and pelagic sharks, combined, per vessel per trip, if the respective fishery is open per §§ 635.27 and 635.28. Of those 16 SCS and pelagic sharks per vessel per trip, no more than 8 shall be blacknose sharks. Shortfin mako sharks may only be retained under the commercial retention limits by persons using pelagic longline, bottom longline, or gillnet gear, only if the shark is dead at the time of haulback and consistent with the provisions at § 635.21(c)(1), (d)(5), and (f)(6). If the vessel has also been issued a permit with a shark endorsement and retains a shortfin mako shark, recreational retention limits apply to all sharks retained and none may be sold, per § 635.22(c)(7).

\* \* \* \* \*

- 14. In § 635.27:
■ a. Revise paragraphs (a) introductory text, (a)(1)(i) and (ii), (a)(2) introductory text, (a)(2)(i) through (iii), and (a)(3);
■ b. Remove paragraph (a)(4) and redesignate paragraphs (a)(5) through (a)(10) as paragraphs (a)(4) through (a)(9); and
■ c. Revise newly redesignated paragraphs (a)(4) and (5),(a)(6)(i) and (ii), (a)(8), (a)(9)(i), (ii), and (v).

The revisions read as follows:

§ 635.27 Quotas

(a) BFT. Consistent with ICCAT recommendations, and with paragraph (a)(9)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. BFT quota, and make the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. BFT quota will be allocated among the General, Angling, Harpoon, Longline, Trap, and Reserve categories, as described in this section. BFT quotas are specified in whole weight. The baseline annual U.S. BFT quota is 1,247.86 mt, not including an additional annual 25-mt allocation provided in paragraph

(a)(3) of this section. This baseline BFT quota is divided among the categories according to the following percentages: General—55.8 percent (696.3 mt); Angling—23.3 percent (290.8 mt), which includes the school BFT held in reserve as described under paragraph (a)(6)(ii) of this section; Harpoon—4.6 percent (57.4 mt); Longline—13.1 percent (163.5) (*i.e.*, total not including the 25-mt allocation from paragraph (a)(3)); Trap—0.1 percent (1.2 mt); and Reserve—3 percent (37.4 mt). NMFS may make inseason and annual adjustments to quotas as specified in paragraphs (a)(8) and (9) of this section.

(1) \* \* \*

(i) Catches from vessels for which Atlantic Tunas General category permits have been issued and certain catches from vessels for which an HMS Charter/Headboat category permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). Pursuant to paragraph (a) of this section, the amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the General category quota is 696.3 mt, and is apportioned as follows, unless modified as described under paragraph (a)(1)(ii) of this section:

(A) January 1 through March 31—5.3 percent;

(B) June 1 through August 31—50 percent;

(C) September 1 through September 30—26.5 percent;

(D) October 1 through November 30—13 percent; and

(E) December 1 through December 31—5.2 percent.

(ii) NMFS may adjust each period's apportionment based on overharvest or underharvest in the prior period, and may transfer subquota from one time period to another time period, earlier in the year, through inseason action or annual specifications. For example, subquota could be transferred from the December 1 through December 31 time period to the January 1 through March 31 time period; or from the October 1 through November 30 time period to the September 1 through September 30 time period. This inseason adjustment may occur prior to the start of that year. In other words, although subject to the inseason criteria under paragraph (a)(7) of this section, the adjustment could occur prior to the start of the fishing year. For example, an inseason action transferring the 2016 December 1 through December 31 time period subquota to the 2016 January 1 through March 31 time period subquota could be filed in 2015.

\* \* \* \* \*

(2) *Angling category quota.* In accordance with the framework procedures as described under § 635.34, prior to each fishing year, or as early as feasible, NMFS will establish the Angling category daily retention limits. In accordance with paragraph (a) of this section, the total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling category permit or an HMS Charter/Headboat category permit has been issued is 290.8 mt. No more than 3.1 percent of the annual Angling category quota may be large medium or giant BFT. In addition, no more than 10 percent of the baseline annual U.S. BFT quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school BFT. The Angling category quota includes the amount of school BFT held in reserve under paragraph (a)(6)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

(i) After adjustment for the school BFT quota held in reserve (under paragraph (a)(6)(ii) of this section), 52.8 percent of the school BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18' N lat. The remaining school BFT Angling category quota may be caught, retained, possessed or landed north of 39°18' N lat.

(ii) After adjustment (Angling category quota minus school and large medium/giant subquotas), resulting in a large school/small medium subquota of 154.5 mt, an amount equal to 52.8 percent may be caught, retained, possessed, or landed south of 39°18' N lat. The remaining large school/small medium BFT Angling category quota may be caught, retained, possessed, or landed north of 39°18' N lat.

(iii) One fourth of the large medium and giant BFT Angling category quota may be caught retained, possessed, or landed, in each of the four following geographic areas: North of 42° N lat.; south of 42° N lat. and north of 39°18' N lat.; south of 39°18' N lat., and outside of the Gulf of Mexico; and in the Gulf of Mexico region. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(3) *Longline category quota.* Pursuant to paragraph (a) of this section, the total amount of large medium and giant BFT that may be caught, discarded dead, or retained, possessed, or landed by vessels that possess Atlantic Tunas Longline category permits is 163.5 mt. In addition, 25 mt shall be allocated for incidental catch by pelagic longline

vessels fishing in the NED, and subject to the restrictions under § 635.15(b)(6).

(4) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels that possess Atlantic Tunas Harpoon category permits is 57.4 mt. The Harpoon category fishery commences on June 1 of each year, and closes on November 15 of each year.

(5) *Trap category quota.* The total amount of large medium and giant BFT, that may be caught, retained, possessed, or landed by vessels that possess Atlantic Tunas Trap category permits is 1.2 mt.

(6) *Reserve category quota.* (i) The total amount of BFT that is held in reserve for inseason or annual adjustments; adjustments to, or appeals of, IBQ allocations (see § 635.15(e)(1)(i)); and research using quota or subquotas is 37.4 mt, which may be augmented by allowable underharvest from the previous year.

(ii) The total amount of school BFT that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent of the total school BFT Angling category quota as described under paragraph (a)(2) of this section. This amount is in addition to the amounts specified in paragraph (a)(6)(i) of this section. Consistent with paragraph (a)(7) of this section, NMFS may allocate any portion of the school BFT Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

\* \* \* \* \*

(8) *Inseason adjustments.* To be effective for all, or part of a fishing year, NMFS may transfer quotas specified under this section, among fishing categories or, as appropriate, subcategories, based on the criteria in paragraph (a)(7) of this section.

(9) \* \* \*

(i) Adjustments to category quotas specified under paragraphs (a)(1) through (6) of this section may be made in accordance with the restrictions of this paragraph and ICCAT recommendations. Based on landing, catch statistics, other available information, and in consideration of the criteria in paragraph (a)(7) of this section, if NMFS determines that a BFT quota for any category or, as appropriate, subcategory has been exceeded (overharvest), NMFS may subtract all or a portion of the overharvest from that quota category or subcategory for the following fishing year. If NMFS determines that a BFT quota for any category or, as

appropriate, subcategory has not been reached (underharvest), NMFS may add all or a portion of the underharvest to, that quota category or subcategory, and/ or the Reserve category for the following fishing year. The underharvest that is carried forward may not exceed 100 percent of each category's baseline allocation specified in paragraph (a) of this section, and the total of the adjusted fishing category quotas and the Reserve category quota are consistent with ICCAT recommendations. Although quota may be carried over for the Longline category as a whole, IBQ shares and IBQ allocations may not be carried over from one year to the next, as specified under § 635.15(f).

(ii) NMFS may allocate any quota remaining in the Reserve category at the end of a fishing year to any fishing category, provided such allocation is consistent with the determination criteria specified in paragraph (a)(7) of this section.

\* \* \* \* \*

(v) NMFS will file any annual adjustment with the Office of the Federal Register for publication and specify the basis for any quota reduction or increases made pursuant to this paragraph (a)(9).

\* \* \* \* \*

■ 15. In § 635.28, revise paragraphs (a)(1) and (2) to read as follows:

**§ 635.28 Fishery closures.**

(a) \* \* \* (1) When a BFT quota specified in § 635.27(a), or a region's IBQ allocations as specified under § 635.15(c)(3), have been reached or are projected to be reached, NMFS will file a closure action with the Office of the Federal Register for publication. On and after the effective date and time of such action, for the remainder of the fishing year or for a specified period as indicated in the notice, fishing for, retaining, possessing, or landing BFT under that quota is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

(2) If NMFS determines that variations in seasonal distribution, abundance, or migration patterns of BFT, or the catch rate in one area, precludes participants in another area from a reasonable opportunity to harvest any allocated domestic category quota, as stated in § 635.27(a), NMFS may close all or part of the fishery under that category. NMFS may reopen the fishery at a later date if NMFS determines that reasonable fishing opportunities are available, e.g., BFT have migrated into the area or weather is conducive for fishing. In determining the need for any

such interim closure or area closure, NMFS will also take into consideration the criteria specified in § 635.27(a)(7).

\* \* \* \* \*

**§ 635.29 [Amended]**

- 16. In § 635.29, remove paragraph (c).
- 17. In § 635.31, revise paragraph (a)(1) to read as follows:

**§ 635.31 Restrictions on sale and purchase.**

(a) \* \* \*

(1) A person that owns or operates a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat category permit with a commercial sale endorsement; a valid General, Harpoon, Longline, or Trap category permit for Atlantic tunas; or a valid HMS Commercial Caribbean Small Boat permit issued under this part, and the appropriate category has not been closed, as specified at § 635.28(a). However, no person may sell a BFT smaller than the large medium size class. Also, no large medium or giant BFT taken by a person aboard a vessel with an Atlantic HMS Charter/Headboat category permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may be sold (see § 635.23(c)). A person may sell Atlantic BFT only to a dealer that has a valid permit for purchasing Atlantic BFT issued under this part. A person may not sell or purchase Atlantic tunas harvested with speargun fishing gear.

\* \* \* \* \*

- 18. In § 635.69:
  - a. Revise paragraphs (a) introductory text, (a)(1), and (a)(4);
  - b. Add paragraph (a)(5); and
  - c. Revise paragraphs (e)(4) introductory text, and (e)(4)(ii).

The addition and revisions read as follows:

**§ 635.69 Vessel monitoring systems.**

(a) *Applicability.* To facilitate enforcement of time/area and fishery closures, enhance reporting, and support the IBQ Program (§ 635.15), an owner or operator of a commercial vessel that has been issued or is required to be issued an Atlantic Tunas Longline category LAP or a vessel that is permitted, or required to be permitted, to fish for Atlantic HMS under § 635.4 and that fishes with pelagic or bottom longline or gillnet gear is required to install a NMFS-approved enhanced mobile transmitting unit (E-MTU) vessel monitoring system (VMS) on board the vessel and operate the

VMS unit under the circumstances listed in paragraphs (a)(1) through (a)(5) of this section. For purposes of this section, a NMFS-approved E-MTU VMS is one that has been approved by NMFS as satisfying its type approval listing for E-MTU VMS units. Those requirements are published in the **Federal Register** and may be updated periodically.

(1) Whenever the vessel has pelagic longline gear on board;

\* \* \* \* \*

(4) A vessel is considered to have pelagic or bottom longline gear on board, for the purposes of this section, when the gear components as specified at § 635.2 are on board. A vessel is considered to have gillnet gear on board, for the purposes of this section, when gillnet, as defined in § 600.10 of this chapter, is on board a vessel that has been issued a shark LAP.

(5) Whenever a vessel issued an Atlantic Tunas Longline permit has green-stick gear on board.

\* \* \* \* \*

(e) \* \* \*

(4) *BFT and fishing effort reporting requirements for vessels fishing with pelagic longline gear or vessels issued an Atlantic Tunas Longline category LAP fishing with green-stick gear.*

\* \* \* \* \*

(ii) *Green-stick gear.* The owner or operator of a vessel with an Atlantic Tunas Longline permit, that is fishing with green-stick gear must report to NMFS using the attached VMS terminal, or using an alternative method specified by NMFS as follows: For each green-stick set that interacts with BFT, as instructed by NMFS, the date and area of the set, and the length of all BFT retained (actual), and the length of all BFT discarded dead or alive (approximate), must be reported within 12 hours of the completion of the retrieval of each set.

\* \* \* \* \*

- 19. In § 635.71:
  - a. Revise paragraphs (a)(14), (a)(37), and (b)(3);
  - b. Remove and reserve paragraphs (b)(8) through (10), (17) through (18), and (20) through (22);
  - c. Revise paragraphs (b)(30), (31), (33), (34), (35), (41), (46), (49);
  - d. Add paragraph (b)(60) and (61); and
  - e. Revise paragraphs (c)(7), (d)(13), (d)(22), (d)(23), (d)(28), (e)(11), (e)(17).

The revisions and additions read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(14) Fail to install, activate, repair, or replace a NMFS-approved E-MTU

vessel monitoring system prior to leaving port with pelagic longline gear, bottom longline gear, or gillnet gear on board the vessel, or with green-stick gear on board a vessel issued an Atlantic Tunas Longline category permit, as specified in § 635.69.

\* \* \* \* \*

(37) Fail to report to NMFS, at the number designated by NMFS, the incidental capture of listed whales with shark gillnet gear as required by § 635.21(f)(1).

\* \* \* \* \*

(b) \* \* \*  
(3) Fish for, catch, retain, or possess a BFT less than the large medium size class by a person aboard a vessel other than one that has on board a valid HMS Angling or Charter/Headboat category permit as authorized under § 635.23(b) and (c).

\* \* \* \* \*

(30) Fish for any HMS, other than Atlantic BAYS tunas, with speargun fishing gear, as specified at § 635.21(h).

(31) Harvest or fish for BAYS tunas using speargun gear with powerheads, or any other explosive devices, as specified in § 635.21(h).

\* \* \* \* \*

(33) Fire or discharge speargun gear without being physically in the water, as specified at § 635.21(h).

(34) Use speargun gear to harvest a BAYS tuna restricted by fishing lines or other means, as specified at § 635.21(h).

(35) Use speargun gear to fish for BAYS tunas from a vessel that does not possess either a valid HMS Angling or HMS Charter/Headboat category permit, as specified at § 635.21(h).

\* \* \* \* \*

(41) Fail to report BFT catch by pelagic longline, through VMS as specified at § 635.69(e)(4).

\* \* \* \* \*

(46) Deploy or fish with any fishing gear from a vessel with a pelagic longline on board that does not have an approved and fully operational working EM system as specified in § 635.9; tamper with, or fail to install, operate or maintain one or more components of the EM system; obstruct the view of the camera(s); or fail to handle bluefin tuna in a manner that allows the camera to record the fish; as specified in § 635.9; or fail to comply with the standardized reference grid, hard drive, vessel monitoring plan and other requirements under § 635.9.

\* \* \* \* \*

(49) Lease BFT quota allocation to or from the owner of a vessel not issued a valid Atlantic Tunas Longline permit as specified under § 635.15(g)(1).

\* \* \* \* \*

(60) Fail to pay cost recovery fees as instructed by NMFS, as specified at § 635.15(m)(4).

(61) Hold or acquire more than 25 percent of the total IBQ shares or associated allocations annually as specified under § 635.15(m).

(c) \* \* \*

(7) Deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination when participating in a tournament for, or including, Atlantic billfish, as specified in § 635.21(e).

\* \* \* \* \*

(d) \* \* \*

(13) Fish for Atlantic sharks with a gillnet or possess Atlantic sharks on

board a vessel with a gillnet on board, except as specified in § 635.21(f).

\* \* \* \* \*

(22) Except when fishing only with flies or artificial lures, fish for, retain, possess, or land sharks without deploying non-offset, corrodible circle hooks when fishing at a registered recreational HMS fishing tournament that has awards or prizes for sharks, as specified in § 635.21(e) and (j).

(23) Except when fishing only with flies or artificial lures, fish for, retain, possess, or land sharks without deploying non-offset, corrodible circle hooks when issued an Atlantic HMS Angling permit or HMS Charter/Headboat category permit with a shark endorsement, as specified in § 635.21(e) and (j).

\* \* \* \* \*

(28) Retain, land, or possess a shortfin mako shark that was caught with pelagic longline, bottom longline, or gillnet gear and was alive at haulback as specified at § 635.21(c)(1), (d)(5), and (f)(6).

\* \* \* \* \*

(e) \* \* \*

(11) Possess or deploy more than 35 individual floatation devices, to deploy more than 35 individual buoy gears per vessel, or to deploy buoy gear without affixed monitoring equipment, as specified at § 635.21(g).

\* \* \* \* \*

(17) Fail to construct, deploy, or retrieve buoy gear as specified at § 635.21(g).

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