DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120328229–3656–01]

RIN 0648–BC09

Atlantic Highly Migratory Species; 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan; Amendment 7

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement management measures in Amendment 7 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) to ensure sustainable management of bluefin tuna consistent with the 2006 HMS FMP addressing ongoing management challenges in the Atlantic bluefin tuna fisheries. Amendment 7 also proposes minor regulatory changes related to the management of Atlantic HMS. Amendment 7 was developed by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The proposed measures would reallocate the U.S. bluefin tuna quota among domestic fishing categories. The rule would also implement several actions applicable to the pelagic longline fishery, including: Individual Bluefin Quotas (IBQs); two new Gear Restricted Areas, access to current closed areas based on performance criteria; closure of the pelagic longline fishery when annual bluefin tuna quota is reached; elimination of target catch requirements associated with retention of incidental bluefin tuna in the pelagic longline fishery; mandatory retention of legal-sized bluefin tuna caught as bycatch; expanded monitoring requirements, including electronic monitoring via cameras and bluefin tuna catch reporting via Vessel Monitoring System (VMS); and transiting provisions for pelagic and bottom longline vessels. The proposed rule would also require VMS use and reporting by the Purse Seine category; change the start date of the Purse Seine category to June 1; expand Automated Catch Reporting System use to the General and Harpoon categories; provide additional flexibilities for inseason adjustment of the General category quota and Harpoon category retention limits; and allocate a portion of the Angling category Trophy South subquota to the Gulf of Mexico. Finally, it would adopt several measures not directly related to bluefin tuna management, including implementing a U.S. North Atlantic albacore tuna quota; modifying rules regarding permit category changes; and implementing minor changes in the Highly Migratory Species regulations for administrative or clarification purposes.

DATES: Written comments must be received on or before October 23, 2013.

ADDRESSES: You may submit comments on this proposed rule, identified by ''NMFS–NOAA–2013–0101'', by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docket Detail;D=NOAA-NMFS-2013-0101,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. Do not submit electronic comments to individual NMFS staff.
- *Mail:* Submit written comments to: Thomas Warren, Highly Migratory Species Management Division, NMFS, 55 Great Republic Drive, Gloucester, MA 01930. Please mark the outside of the envelope ''Comments on Amendment 7 to the HMS FMP.''
- *Fax:* 978–281–9347, Attn: Thomas Warren
- *Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and generally will be posted for public viewing on *www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only. NMFS will hold public hearings on this proposed rule and will notify the public through a notice in the **Federal Register.**

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Highly Migratory Species (HMS) Management Division of the Office of Sustainable Fisheries, and be emailed to *OIRA_submission@omb.eop.gov* or faxed to 202 395–7285.

Copies of Amendment 7 to the 2006 Consolidated HMS FMP and other relevant documents are available from the HMS Management Division Web site at *www.nmfs.noaa.gov/sfa/hms.*

FOR FURTHER INFORMATION CONTACT: Thomas Warren or Brad McHale at 978–281–9260.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic tuna fisheries are managed under the 2006 Consolidated HMS FMP and regulations at 50 CFR part 635, pursuant to the authority of the Magnuson-Stevens Act, and ATCA. Under ATCA, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the 2006 Consolidated HMS FMP, which details the management measures for Atlantic HMS fisheries, including the incidental and directed Atlantic bluefin tuna fisheries.

Background

A brief summary of the background of this proposed action is provided below. A complete discussion of the proposed Atlantic HMS management measures and the alternatives can be found in Draft Amendment 7 to the 2006 Consolidated HMS FMP Environmental Impact Statement (Amendment 7 DEIS, July, 2013). Draft Amendment 7, as well as the 2006 Consolidated HMS FMP can be found online at *http://www.nmfs.noaa.gov/sfa/hms/.*

The bluefin tuna fishery is managed principally through a quota. Currently, NMFS implements and codifies the ICCAT-recommended U.S. quota through rulemaking, annually or bi-annually depending on the length of the relevant ICCAT recommendation. Also through rulemaking (the ''quota specifications process'') NMFS annually

adjusts the U.S. baseline bluefin quota to account for any underharvest or overharvest of the adjusted U.S. quota from the prior year; specifies subquotas that result from application of the 2006 Consolidated HMS FMP allocations; and adjusts subquotas as appropriate following consideration of domestic management needs. NMFS must account not only for landings but for bluefin tuna discarded dead. NMFS estimates and accounts for dead discards in the pelagic longline fishery, which cannot target bluefin tuna but catches them while targeting swordfish and other tunas.

National Standard 1 requires that ''conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.'' The Magnuson-Stevens Act defines ''optimum yield'' as the amount of fish that, among other things, provides for rebuilding to a level consistent with producing the maximum sustainable yield from the fishery. In ATCA, Congress also directed NMFS to manage the bluefin fishery to ensure that NMFS provides U.S. fishing vessels ''with a reasonable opportunity to harvest such allocation, quota, or at such fishing mortality level. . . .'' This rule builds upon an extensive regulatory framework for management of the domestic bluefin fishery pursuant to the 20-year rebuilding program adopted in the 1999 FMP and continued under the 2006 Consolidated HMS FMP. As described below, the proposed measures were designed to allow fishery participants to fully harvest, but not exceed, the U.S. bluefin quota by refining the existing management tools. NMFS is proposing a detailed, multi-level approach to resolving challenges in administering and carrying out the current quota system, which, if left unaddressed, could result in overharvests of the U.S. quota in the future. These measures would directly support the goals of reducing overfishing, rebuilding the western bluefin stock, and achieving optimum yield by ensuring that the fishery continues to be managed within the ICCAT-approved TAC, and consistent with National Standard 1's requirements.

Recent trends in the bluefin tuna fisheries and public comment and suggestions indicate that substantive changes to the 2006 Consolidated HMS FMP are warranted with regard to bluefin tuna management. Specific relevant events are described below.

On June 1, 2009, NMFS published an Advanced Notice of Proposed Rulemaking (ANPR; 74 FR 26174) requesting specific comments on regulatory changes that would potentially increase opportunities for U.S. bluefin tuna and swordfish fisheries to fully harvest the U.S. quotas recommended by ICCAT while balancing continuing efforts to end BFT overfishing by 2010 and rebuild the stock by 2019 as set out in the 2006 Consolidated HMS FMP. The ANPR was in response to various public suggestions about bluefin tuna management during the previous two years, precipitated by declines in the total volume of bluefin tuna landings, which were well below the available U.S. quota, and a reduction in the overall allowable western Atlantic bluefin TAC recommended by ICCAT. In the ANPR, NMFS also requested public comment regarding the potential implementation of catch shares, limited access privilege programs (LAPPs), and individual bycatch caps (IBCs) in highly migratory species fisheries. In response, NMFS received a wide range of suggestions for changes to the management of the U.S. bluefin tuna fisheries.

In developing the 2011 bluefin tuna quota rule and specifications (2011 Quota Rule) (76 FR 39019; July 5, 2011), three factors made accounting for anticipated discards more challenging than in previous years: (1) Changes in the ICCAT western Atlantic bluefin tuna management recommendations, including reductions in total allowable catch (TAC), the amount of underharvest that can be carried forward from one year to the next, and the previous elimination of a dead discard allowance separate from the landings quota); (2) increases in domestic pelagic longline dead discard estimates due to changes in estimation methodology and possibly due to an increase in bluefin tuna interactions; and (3) increases in domestic bluefin tuna landings, including directed and incidental landings. It became apparent that the adjusted quota for 2011 would be insufficient to account for anticipated 2011 dead discards while also providing full baseline allocations for the directed fishing categories per the percentages outlined in the 2006 Consolidated HMS FMP. In other words, the combined effect of the domestic quota allocation system and ICCAT requirements have resulted in an annual allocation/accounting challenge: Using the limited amount of available quota, how do we optimize fishing opportunity for all categories and account for anticipated dead discards in a way that meets our fishery management obligations?

After extensive public comment on the proposed 2011 Quota Rule, NMFS accounted for half of the estimated dead discards ''up front,'' by deducting half of the expected dead discards directly from the Longline category quota to provide some incentive for fishermen to reduce bluefin tuna interactions that could result in dead discards. Secondly, NMFS applied half of the underharvest that was allowed to be carried forward to the Longline category and maintained the other half in the Reserve category to provide maximum management flexibility in accounting for 2011 landings and dead discards. The underlying premise was that full and final accounting for dead discards would occur at the end of the fishing year and that full accounting would be possible within the available quota due to the likelihood of unharvested overall quota at the end of the fishing year. The range of comments received on the proposed 2011 Quota Rule (March 14, 2011; 76 FR 13583), and discussions at HMS Advisory Panel meetings demonstrated the need for a comprehensive review of bluefin tuna management. Many comments raised issues that were outside of the scope of that particular rulemaking and would require additional analyses because of the potential impacts on the fisheries and fishery participants. Some of the issues raised include: holding each quota category accountable for their own dead discards and revisiting the methodology used for estimating dead discards, the accounting for bluefin tuna landings relative to the 2006 Consolidated HMS FMP percentage allocations, changing domestic allocations among fishing categories, reducing bluefin tuna bycatch, modifying the permit structure for the fisheries, improving monitoring of catch in all bluefin tuna fisheries, providing strong incentives to the Longline category to reduce interactions with bluefin tuna, and reducing dead discards in the pelagic longline fishery.

In May 2011, in response to a petition to list bluefin tuna as threatened or endangered under the Endangered Species Act (ESA), NOAA determined that listing bluefin tuna as threatened or endangered under the ESA was not warranted; however, bluefin tuna was designated as a species of concern. This placed the species on a watch list for concerns about its status and threats to the species. NOAA has committed to revisit this decision in 2013, or when more information is expected to be available about the effects of the Deepwater Horizon oil spill. The western Atlantic bluefin tuna stock was last assessed in 2012 by ICCAT's Standing Committee on Research and

Statistics (SCRS). The results of that assessment and recommendations stemming from the 2012 ICCAT annual meeting did not substantially change from previous assessments and recommendations. The stock assessment included the use of two alternative recruitment scenarios, one assuming low potential recruitment and one assuming high potential recruitment. Therefore, the stock assessment produced two sets of results, and the status of the stock depends upon which recruitment scenario is considered. Under the low recruitment scenario, the stock is not overfished and overfishing is not occurring, while under the high recruitment scenario, the stock is overfished and overfishing is occurring. The SCRS, as stated in the stock assessment, has no strong evidence to favor either scenario over the other and notes that both are reasonable (but not extreme) lower and upper bounds on rebuilding potential.

In the final 2011 Quota Rule, NMFS stated ''however, in light of the issues involving U.S. quotas and domestic allocations, pelagic longline discards, the need to account for dead discards that result from fishing with other gears, and bycatch reduction objectives, as well as public comment, NMFS intends to undertake a comprehensive review of bluefin tuna management in the near future to determine whether existing management measures need to be adjusted to meet the multiple goals for the bluefin tuna fisheries'' (76 FR 39019; July 5, 2011).

NMFS began to address some of the quota accounting issues described above at the September 2011 meeting of the HMS Advisory Panel, by presenting a summary of some of the recent issues as well as a white paper on bluefin tuna bycatch in the fisheries. The HMS Advisory Panel discussed issues related to the Longline category, as well as issues in the bluefin tuna fisheries as a whole, and offered an array of suggested measures for NMFS's consideration as potential solutions. In preparation for the formal process of evaluating potential changes to the 2006 Consolidated HMS FMP, a preliminary version of a Scoping Document (''Preliminary White Paper'') was presented by NMFS to the HMS Advisory Panel meeting at its March 2012 meeting for its consideration as a scoping document to begin the process of reviewing the current management of bluefin tuna (NMFS, March 2012). The HMS Advisory Panel expressed qualified support for further exploring and analyzing the range of measures in the Preliminary White Paper, and suggested several additional measures. Those additional measures were incorporated into a final Scoping Document (NMFS, April 2012). NMFS made the scoping document available to the public, concurrent with the publication of a Notice of Intent (NOI) in the **Federal Register** (78 FR 24161; April 23, 2012), which announced NMFS' intent to hold public scoping meetings to determine the scope of issues to be analyzed in a DEIS, and a potential amendment to the 2006 Consolidated HMS FMP. The NOI stated that NMFS is examining the regulations that affect all bluefin tuna fisheries, both commercial and recreational, to determine if existing measures are the best means of achieving current management objectives, including continued sustainability of the Atlantic bluefin tuna stock consistent with the measures designed to end overfishing and rebuild the stock, and providing additional flexibility to adapt to management needs in the future. The NOI also announced the availability of the scoping document and notified the public of scoping meetings and consultations with Atlantic, Gulf of Mexico, and Caribbean regional fishery management councils. During May and June of 2012, NMFS conducted public meetings to present the scoping document and receive public comments in Toms River, NJ; Gloucester, MA; Belle Chasse, LA; Manteo, NC; and Portland, ME. During June 2012, NMFS consulted with the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council, and the South Atlantic Fishery Management Council, while the scoping document was shared with the Gulf of Mexico Fishery Management Council and the Caribbean Fishery Management Council. NMFS accepted public comment on the scoping document through July 15, 2012. Details regarding the specifics of the scoping hearings and consultations and the public comments are in the Appendix of the Amendment 7 DEIS.

On September 20, 2012, NMFS presented a Predraft document to the HMS Advisory Panel (NMFS, September 2012). A Predraft, which is a precursor to a DEIS, allows NMFS to obtain additional information and input from the HMS Advisory Panel and the public on potential alternatives prior to development of the formal DEIS and proposed rule. The Magnuson-Stevens Act requires NMFS to ''consult with and consider the comments and views of affected Councils, commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to HMS (ACTA) and the HMS Advisory Panel in preparing and implementing any FMP or amendment.'' As such, NMFS requested comments from the HMS Advisory Panel, and made the document available to the public through the HMS Web site.

NMFS identified the following objectives with regard to this proposed action: (1) Prevent overfishing and rebuild bluefin tuna, achieve on a continuing basis optimum yield, and minimize bluefin bycatch to the extent practicable by ensuring that domestic bluefin tuna fisheries continue to operate within the overall TAC set by ICCAT consistent with the existing rebuilding plan; (2) optimize the ability for all permit categories to harvest their full bluefin quota allocations, account for mortality associated with discarded bluefin in all categories, maintain flexibility of the regulations to account for the highly variable nature of the bluefin fisheries, and maintain fairness among permit/quota categories; (3) reduce dead discards of bluefin tuna and minimize reductions in target catch in both directed and incidental bluefin fisheries, to the extent practicable; (4) improve the scope and quality of catch data through enhanced reporting and monitoring to ensure that landings and dead discards do not exceed the quota and to improve accounting for all sources of fishing mortality; and (5) adjust other aspects of the 2006 Consolidated HMS FMP as necessary and appropriate. These objectives support the goal of continued sustainability of the Atlantic bluefin tuna stock consistent with the measures designed to end overfishing and rebuild the stock.

Northern Albacore Tuna

Amendment 7 also includes proposals for management of north Atlantic albacore (or ''northern albacore'') tuna. Since 1998, ICCAT has adopted recommendations regarding the northern albacore tuna fishery. A multi-year management measure for northern albacore tuna was first adopted in 2003, setting the TAC at 34,500 mt. ICCAT's Standing Committee on Research and Statistics (SCRS) assessed the northern albacore tuna stock in 2009 and concluded that the stock continues to be overfished with overfishing occurring, recommending a level of catch of no more than 28,000 mt to meet ICCAT management objectives by 2020. In response, in 2009 ICCAT established a North Atlantic albacore tuna rebuilding program via Recommendation 09–05, setting a 28,000-mt TAC and including several provisions to limit catches by individual ICCAT parties (for major and minor harvesters) and reduce the

amount of unharvested quota that could be carried forward from one year to the next, from 50 percent to 25 percent of a party's initial catch quota. The 2009 recommendation expired in 2011.

In 2011, ICCAT Recommendation 11–04 again set a TAC of 28,000 mt for 2012 and for 2013 and contained specific recommendations regarding the North Atlantic albacore tuna rebuilding program, including an annual TAC for 2012 and 2013 allocated among the European Union, Chinese Taipei, the United States, and Venezuela. The U.S. quota for 2012 and 2013 is 527 mt. The recommendation limits Japanese northern albacore tuna catches to 4 percent in weight of its total Atlantic bigeye tuna longline catch, and limits the catches of other ICCAT parties to 200 mt. The recommendation also specifies that quota adjustments for a given year's underharvest or overharvest may be made for either 2 or 3 years from the subject year (i.e., adjustments based on 2013 catches would be made in either 2015 or 2016). Pursuant to ATCA and the Magnuson-Stevens Act, NMFS would implement the ICCAT-recommended U.S. quota and establish provisions to adjust the base quota for over or underharvests via annual quota specifications.

Proposed Measures

The proposed measures reflect the Draft Amendment 7 objectives, the goal of continued sustainability of the Atlantic bluefin tuna stock consistent with the measures designed to end overfishing and rebuild the stock, public input from the prescoping and scoping phases, the predraft document and related comments, and subsequent analysis in the DEIS.

Draft Amendment 7 proposes a variety of management measures designed to balance achievement of its diverse objectives. The Amendment 7 DEIS contains a complete description and analysis of the range of alternatives analyzed. A description of the significant alternatives to the proposed measures is provided later in this preamble in the summary of the Initial Regulatory Flexibility Analysis (IRFA). A description of the proposed management measures follows:

1. Quota Reallocation

Codified Quota Reallocation

This measure would increase the amount of quota allocated to the Longline category to fully and more predictably account for Longline category incidental bluefin tuna catch, including both dead discards and landings. Paired with other proposed measures to reduce and control Longline category interactions with bluefin tuna, NMFS proposes a limited, 62.5 mt quota increase that reflects the historic dead discard allowance the United States had in addition to its landings quota under past ICCAT Recommendation 98–07. Under that recommendation (no longer in effect), ICCAT set aside 79 mt of bluefin tuna quota for dead discards in addition to landings. The United States' share of that set-aside was 85.72 percent or 68 mt. The proposed codified reallocation would address the fact that when the current category allocation percentages were first established in 1999, dead discards were not considered in the allocation percentages but were accounted for by the separate 68 mt dead discard allowance then in effect. These percentages were carried over to the 2006 Consolidated HMS FMP without adjustment for the fact that the 1999 percentage allocations were originally intended to cover landings only. NMFS therefore proposes to annually redistribute a specific amount of quota in weight.

To implement the change, NMFS would calculate the bluefin quota for each of the quota categories through the following process: First, 68 mt would be subtracted from the baseline annual U.S. BFT quota for reallocation to the Longline category quota. Second, the remaining quota would be divided among the categories according to the allocation percentages codified at 50 CFR 635.27, and for the Longline category, the 68 mt (derived from all categories) would then be added to its quota.

Therefore, if the baseline annual U.S. quota was 923.7 mt, 32.0 mt would be deducted from the General category (i.e., 47.1 percent of 68 mt), 2.7 mt from the Harpoon category (3.9 percent), 12.6 mt from the Purse Seine category (18.6 percent), 5.5 mt from the Longline category (8.1 percent), 13.4 mt from the Angling category (19.7 percent), and 1.7 mt from the Reserve category (2.5 percent). This 68 mt would be allocated to the Longline category, resulting in a net increase to the Longline category of 62.5 mt (68 mt minus the Longline category's contribution of 5.5 mt).

This methodology would not modify the category quota allocation percentages themselves, because the amount of quota redistributed would not be equivalent to 68 mt if the total U.S. quota changed. The Longline category's percentage of the baseline U.S. bluefin tuna quota would remain at 8.1 percent, but each year the Longline category quota would be increased by 62.5 mt (based on deductions from the other quota categories).

Annual Quota Reallocation

NMFS would annually adjust the purse seine quota, based on the total catch (landings and dead discards) by purse seine vessels in the previous year. Any quota not allocated to the Purse Seine category would be allocated to the Reserve category for possible redistribution to other quota categories, or to support other objectives of the 2006 Consolidated HMS FMP, as amended.

Three thresholds would be defined to create four possible allocation scenarios for the Purse Seine category. The Purse Seine category would be allocated either 100%, 75%, 50%, or 25% of its allocated quota, according the following allocation criteria: If the purse seine catch is between 0 and 20% of the Purse Seine quota in year one, the Purse Seine category would be allocated 25% of the quota in year two, and 75% of the Purse Seine quota would be reallocated to the Reserve Category for that year. If the purse seine catch is greater than 20% and up to 45% of the Purse Seine quota in year one, the Purse Seine category would be allocated 50% of the quota in year two, and 50% of the Purse Seine quota would be reallocated to the Reserve Category for that year. If the purse seine catch is greater than 45% and up to 74% of the Purse Seine quota in year one, the Purse Seine category would be allocated 75% of the quota in year two, and 25% of the Purse Seine quota would be transferred to the Reserve Category for that year. If the purse seine catch is greater than 75% of the Purse Seine quota in year one, the Purse Seine category would be allocated 100% of the baseline quota in year two, and no quota would be transferred to the Reserve Category for that year. These thresholds would apply following the same pattern in years beyond year two, with each year's quota reflecting the previous year's catch. In summary, if Purse Seine vessels catch a large portion of their allocated quota in one year, they receive a large portion of their quota in the next year. If Purse Seine vessels' catch is low in one year, a larger portion of the Purse Seine quota becomes available for other management purposes. The Purse Seine quota would not be 'locked-in' at a low level because the criteria are structured to enable increases in quota. For example, if the Purse Seine catch in year one is between 0 and 20% of the year one baseline Purse Seine quota, the Purse Seine category would be allocated 25% of their baseline quota in year two. If in year two the Purse Seine catch in year

is greater than 20% of its baseline quota, but still within their annual allocation (i.e., catch is between 20% and 25%), the Purse Seine category would be allocated 50% of their baseline quota in year three. The Purse Seine category catch levels and allocation levels have been staggered to allow for an increase in allocation in the following year, without causing the category to exceed the current year's allocation to do so.

This measure would balance the need to provide the Purse Seine category a reasonable amount of fishing opportunity in a predictable manner, while making use of quota that may otherwise be unused. Overall quota accounting in recent years has been facilitated by underharvests in the Purse Seine category. This measure would enhance certainty in the purse seine fishery, yet also provide a flexible means for strategic use of quota to address multiple objectives, including accounting for dead discards and optimizing fishing opportunity in other fisheries.

As described under ''Modifications to the Reserve Category,'' quota that is reallocated to the Reserve Category may be utilized in a variety of ways to meet multiple objectives. For example, using 2011 quota amounts: If, in year one the Purse Seine category catches 46% of its baseline quota (39.5 mt of 85.9 mt), then, in year two, the Purse Seine category would be allocated 50% of its baseline quota (43.0 mt). If, in year two, the Purse Seine category catches 19% of its baseline quota (16.3 mt of 85.9 mt), then, in year three, the Purse Seine category would be allocated 25% of its baseline quota (21.5 mt). NMFS would annually estimate the Purse Seine category catch for that year and publish a notice in the **Federal Register** regarding the amount of quota that would be allocated to the Purse Seine category, as well as the corresponding amount allocated to the Reserve category and any disposition of the quota from the Reserve category for the subsequent year made at that time. After the initial adjustment, NMFS may make additional modifications to the Purse Seine quota inseason in accordance with the criteria for inseason adjustments specified at § 635.27(a), or make subsequent use of quota from the Reserve category.

Modifications to the Reserve Category

This proposed measure would give NMFS management flexibility to augment the amount of quota in the Reserve category and add to the determination criteria NMFS considers in redistributing quota to or from the Reserve category. The potential sources of quota for the Reserve category on top of its baseline allocation of 2.5 percent would be the following: (1) Available underharvest of the U.S. quota that is allowed to be carried forward and (2) unused Purse Seine category quota, under the proposed codified reallocation measure described below. For example, under the proposed Annual Quota Reallocation, NMFS would estimate the amount of Purse Seine quota that had been caught during that year and adjust the Purse Seine allocation in the subsequent year (as a result). The remaining amount of Purse Seine quota would then be reallocated to the Reserve category for that subsequent year. NMFS could utilize quota from the Reserve category inseason after considering defined criteria and objectives. NMFS proposes to add five criteria to the existing nine criteria considered when making inseason or annual quota adjustments (See § 635.27(a)(8)). The current criteria NMFS considers are: (1) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; (2) the catches of the particular category to date and the likelihood of closure of that segment of the fishery if no adjustment is made; (3) the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; (4) the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; (5) effects of the adjustment on BFT rebuilding and overfishing; (6) effects of the adjustment on accomplishing the objectives of the FMP; (7) variations in seasonal distribution, abundance, or migration patterns of BFT; (8) effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and (9) review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds. The additional five criteria would be: (10) optimize fishing opportunity; (11) account for dead discards; (12) facilitate quota accounting; (13) support other fishing monitoring programs through quota allocations and/or generation of revenue; and (14) support research through quota allocations and/or generation of revenue.

For example, Reserve quota could be transferred to the General category if pelagic longline vessels choose to fish under General category rules (see Allow Pelagic Longline Vessels to fish under General Category Rules), or bluefin tuna quota from the Reserve category could be used to augment other quota categories (optimize fishing opportunity and facilitate quota accounting).

These proposed modifications to the Reserve category would increase management flexibility in administering the quota system in a way that takes into account fluctuations in the characteristics of the fishery. Increased flexibility in use of the Reserve category quota would also complement other proposed measures in Draft Amendment 7 that constitute substantial modifications to the current quota system (e.g., the proposed Individual Bluefin Quota system, and Annual Reallocation). A more flexible quota system would be responsive to the current conditions in the fisheries, which are different from those that existed when the quota system was created, and facilitate adaptation to future changes in the fisheries.

2. Gear Restricted Areas

Cape Hatteras Gear Restricted Area, With Conditional Access

This proposed management measure would define an area off Cape Hatteras, NC and would limit access to this area for vessels fishing with pelagic longline gear during the 5-month period from December through April. NMFS would make an annual determination whether vessels would be granted access to the area, based on a formula consisting of the following metrics: ratio of bluefin tuna interactions to designated species catch, compliance with the Pelagic Observer Program requirements, and compliance with HMS logbook reporting requirements. Vessels not qualifying to fish in the area with pelagic longline gear would be those vessels that have not demonstrated their ability to avoid bluefin tuna and/or comply with reporting and monitoring (observer) requirements. Non-qualifying vessels would be allowed to use other gear types authorized for use by pelagic longline vessels, such as buoy gear, green-stick gear, or rod and reel, in the area during the months of the restriction, but they could not fish with pelagic longline gear. Vessel performance would be evaluated annually in order to provide future fishing opportunities and to accommodate changes in fishing or reporting practices.

The principal objective of conditional access would be to balance the objective of reducing dead discards with the objective of providing reasonable fishing opportunity. The second objective would be to provide strong incentives to modify fishing behavior to avoid bluefin

tuna and reduce dead discards, as well as improve compliance with the logbook reporting and observer requirements. This regulatory approach is based on the fact that historically relatively few vessels have consistently been responsible for the majority of the bluefin tuna dead discards within the Longline category. Conditioning access on compliance with reporting and monitoring requirements reflects the critical importance of fishery data to the successful management of the fisheries.

The initial evaluation of performance metrics would be based upon data from 2006 through 2011, and subsequent scores would be based upon the most recent three-consecutive-year period. The three-consecutive-year period may not align precisely with calendar years if data through the end of a calendar year are not available at the time NMFS is making the determination. For example, data through the end of a year may not be available at the time NMFS is compiling such data. Vessels owners would be notified annually of the status of the relevant vessel, and only aggregate information regarding the vessel status would be made public. NMFS would have the authority to revise the conditions for access (via proposed and final rulemaking) in order to ensure that the performance metrics continue to support the objectives of the gear restricted area.

Vessels would be able to appeal their performance scores to NMFS by submitting a written request to appeal, indicating the reason for the appeal and providing supporting documentation for the appeal (e.g., copies of landings records and/or permit ownership, Pelagic Observer Program information, logbook data, etc.). The appeal would be evaluated based upon the following criteria: (1) The accuracy of NMFS records regarding the relevant information; and (2) correct assignment of historical data to the vessel owner/permit holder. The current owner of a permitted vessel may also appeal on the basis of changes in vessel ownership or permit transfers. Appeals based on hardship factors will not be considered.

NMFS would have the authority to terminate access for all pelagic longline vessels or individual pelagic longline vessels to the area via inseason action in order to address issues including: (1) Failure to achieve or effectively balance the objective of reducing dead discards with the objective of providing fishing opportunity; (2) bycatch of bluefin tuna or other HMS species that may be inconsistent with the objectives or regulations or the 2006 Consolidated HMS FMP, or ICCAT recommendations; or (3) bycatch of marine mammals or protected species that is inconsistent with the Marine Mammal Protection Act (MMPA), Pelagic Longline Take Reduction Plan (PLTRP), or the 2004 Biological Opinion (BiOP).

The performance metric formula would enable the majority of vessels to continue to fish in the Cape Hatteras Gear Restricted Area, yet would substantially reduce bluefin tuna dead discards by precluding fishing in the Area by those with a history of high bluefin tuna interaction in relation to other designated species catch. Specifically, NMFS would define three performance metrics to reflect three relevant aspects of vessel performance: (1) The ratio of bluefin tuna interactions to designated species catch; (2) compliance with observer requirements; and (3) compliance with logbook requirements. In order to characterize vessel performance in a manner that is fair, consistent, and feasible to administer, the proposed performance metric formula is based on relatively simple, objective, and quantifiable information. For each of the three performance metrics, a vessel would be scored on a scale of 1 to 5, with 5 reflecting better performance. Vessels with a ratio of bluefin tuna interactions to designated species catch of 1 would not be allowed to fish in the proposed Cape Hatteras Gear Restricted Area using pelagic longline gear. If a vessel's Pelagic Observer Program Compliance score is 2 or less, that vessel would not be allowed to access the area and fish with pelagic longline gear, unless the vessel's logbook compliance score is 4 or 5.

The performance metric formula would reflect bluefin tuna interactions as measured by the ratio of the number of bluefin tuna interactions (landings, dead discards, and live discards, in number of fish) to the weight of designated species landings (in pounds). These designated species would consist of the more common marketable catch harvested by pelagic longline vessels: swordfish; yellowfin, bigeye, albacore, and skipjack tunas; dolphin; wahoo; and porbeagle, shortfin mako, and thresher sharks. The use of a ratio incorporating both designated species landings and bluefin tuna interactions provides a metric that is intended to eliminate bias resulting from the differences among vessels in size or fishing effort.

The Pelagic Observer Program metric would reflect compliance with requirements regarding communications, and timing of communications with the Pelagic Observer Program once selected for observer coverage; requirements regarding observer safety and accommodation (e.g., USCG safety decal, life raft capacity and bunk space); and requirements regarding observer deployment. The scoring system is designed to be neutral with respect to valid reasons that a vessel was selected by the observer program but did not take an observer (e.g., no observer was available, or the vessel did not fish using pelagic longline gear (for a variety of reasons)). The scoring system is also designed to weigh trips that were not observed due to noncompliance with the communication requirements more heavily than those that were not observed due to noncompliance with the safety and accommodation requirements. The system is also designed to consider evidence of fishing activity that may have occurred without required communication or observer coverage.

The logbook reporting metric would reflect compliance with the requirement that the vessel owner/operator must submit the logbook forms postmarked within 7 days of offloading the catch, and, if no fishing occurred during a month, must submit a no-fishing form postmarked no later than 7 days after the end of that month.

Small Gulf of Mexico Gear Restricted Area

This proposed measure would define an irregularly-shaped area in the Gulf of Mexico and would prohibit the use of pelagic longline gear during the 2-month period from April through May. Other gear types authorized for use by pelagic longline vessels such as buoy gear (see ''Increased Flexibility to use Buoy Gear''), green-stick gear, or rod and reel would be allowed, provided the vessel abides by any rules/regulations that apply to those gear types. Based on past patterns of interaction between pelagic longline gear and bluefin tuna, the proposed Small Gulf of Mexico Gear Restricted Area represents a temporal and spatial combination likely to reduce dead discards but also maintain fishing opportunities for pelagic longline vessels. Because bluefin tuna in the Gulf of Mexico are comprised of large fish that may be sexually mature or spawning, reducing dead discards in the Gulf of Mexico may also enhance spawning potential and thus may enhance stock growth.

Pelagic Longline Vessels Fishing Under General Category Rules

This proposed measure would allow vessels with an Atlantic Tunas Longline category permit that are not granted access to fish in the Cape Hatteras Gear Restricted Area using pelagic longline gear to fish under the rules/regulations

applicable to the General category as they pertain to targeting bluefin tuna with handgear (i.e., rod and reel, handline, harpoon, etc.). This capability would only be allowed in the area defined as the Cape Hatteras Gear Restricted Area, during the time of the restriction (December through April) when the General category is open. In other words, if a vessel is not allowed access to the Cape Hatteras Gear Restricted Area due to the performance metric formula, and the General category fishery is open, the vessel may use handgear to fish under the General category rules. The bluefin tuna landed with authorized handgear would be counted against the General category quota. The objective of this measure is to provide additional fishing opportunity for pelagic longline vessels and mitigate the potential negative economic impacts of the Cape Hatteras Gear Restricted Area, particularly for pelagic longline vessels that may not be able to fish in other areas during the time of the restriction. Before each trip, prior to leaving port, vessels would be required to declare through VMS their intent to fish under the General category rules, and report their catch daily through VMS. Specifically, vessels would be required to report through VMS the length of bluefin tuna retained and discarded. Vessels must submit a VMS catch report for each set with bluefin interactions within 12 hours of completion of the haul-back.

Transiting Closed Areas

This proposed measure would allow vessels with an Atlantic Tunas Longline permit, Swordfish Incidental or Directed Limited Access permit, and/or a Shark Limited Access permit fishing with bottom or pelagic longline gear to transit areas that are closed or restricted to such gear, if they remove and stow the gangions, hooks, and buoys from the mainline and drum. No baited hooks would be allowed. The specific areas to which this transiting provision would apply would include those proposed in this rule (Gulf of Mexico Gear Restricted Area and Cape Hatteras Gear restricted area); the current pelagic longline closed areas (DeSoto Canyon, Florida East Coast, Charleston Bump, Northeastern U.S.); the current bottom longline closed areas (the Mid-Atlantic Shark Area; and the Caribbean closed areas). Current regulations do not allow fishermen to stow their longline gear and transit these areas. Instead, fishermen must go around the areas to remain in compliance with the regulations. This proposed measure would reduce the costs associated with indirect routes of travel (more time at sea, increased fuel consumption, etc.), and address the comments expressed by some fishermen that requiring vessels to steam around restricted areas has caused safety-at-sea concerns. Small closed areas such as the Madison-Swanson and Steamboat Lumps are not included because they are small enough to steam around with little associated costs/concerns.

Conditional Access to Pelagic Longline Closed Areas

This proposed measure would allow limited and conditional access to the following closed areas during the times they are in effect: Charleston Bump closed area (February through April), a portion of the East Florida Coast closed area (year-round), the DeSoto Canyon closed area (year-round), and the Northeastern U.S. closed area (June). The portion of the East Florida Coast closed area open to fishing would be north of 28°17′10″ N. lat., east of the 100 fathoms curve, approximately near Melbourne, FL. The area south of 28°17′10″ N. lat, and west of the 100 fathoms curve would remain closed to fishing due to south Florida's unique importance as a swordfish and tuna migratory corridor, and as juvenile swordfish habitat that is easily accessible to a large population center with many fishermen.

There would be two conditions for access to these areas. The first condition would be based upon the performance metrics and scoring system described above in the ''Cape Hatteras Gear Restricted Area with Access.'' As explained previously, NMFS would define three performance metrics to reflect three relevant aspects of vessel performance: (1) The ratio of bluefin tuna interactions to designated species catch; (2) compliance with observer requirements; and (3) compliance with logbook requirements. NMFS would make an annual determination whether vessels would have access to the pelagic longline closed areas, based on a relatively low rate of interactions with bluefin tuna in the recent past, and past compliance with specific reporting and monitoring requirements. Vessels not allowed to fish in the closed areas would be those vessels that have not demonstrated their ability to avoid bluefin tuna and/or comply with reporting and monitoring requirements.

The second condition would be a requirement that any trip into a closed area be observed. To implement the condition of having an observer onboard, current vessel selection procedures would be used to select vessels using the current strata (i.e., the procedures that select vessels to obtain observer coverage each calendar quarter, and in each of various geographic (statistical) areas). If selected, a vessel would be informed of the statistical area for which the vessel was selected, and the vessel would be allowed to fish within the relevant closed area provided it is within that particular statistical area. For example, if the vessel were selected to take an observer for the Mid-Atlantic Bight statistical area, the vessel would be able to fish in the Northeastern U.S. closed area in June as long as an observer is onboard. If the vessel were selected to take an observer for the Gulf of Mexico, the vessel would be able to fish in the DeSoto Canyon closed area during the quarter selected for observer coverage as long as an observer is on board.

Eligible vessels would be required to declare into the area via their VMS unit prior to leaving the dock, and report their catch daily through VMS. Specifically, vessels would be required to report through VMS the length of bluefin tuna retained and discarded. Vessels must submit a VMS catch report for each set with bluefin interactions within 12 hours of completion of the haul-back.

NMFS would have the authority to terminate access to each area inseason in order to address issues, including:

(1) Failure to achieve or effectively balance the objective of reducing discards with the objective of providing fishing opportunity; (2) bycatch of bluefin tuna or other HMS species that may be inconsistent with the objectives or regulations or the 2006 Consolidated HMS FMP, or ICCAT recommendations; or (3) bycatch of marine mammals or protected species that is inconsistent with the MMPA, PLTRP, or the 2004 BiOP.

When considering whether or not to terminate access to a closed area, NMFS would evaluate the following criteria and other relevant factors relating to the three issues listed above: (1) The usefulness of information on catch obtained from observers, logbooks, VMS reporting, and dealer reports; (2) the type of species caught, numbers caught, rate of catch, animal length, weight, condition, and location; (3) variations in the seasonal distribution, abundance, or migration patterns of a bycatch species or target species; (4) condition or status of the stock or species of concern and impacts of continued access to the closed area on all species; (5) catch data on comparable species from outside the closed area (both target species and bycatch); (6) implications on quota management of relevant stocks; (7) relevant data regarding the effectiveness of other closed areas and their individual or cumulative impacts in

relation to the objectives of the closed areas and the 2006 Consolidated HMS FMP; and (8) the bluefin tuna determination criteria listed under § 635.(27)(a)(8)(as revised by this rule). NMFS would consider relevant data and publish a notice in the **Federal Register** notifying the public that access to the area with pelagic longline gear would be prohibited for the duration of the relevant time period (depending upon the closed area). For year-round closures, the area would be closed for the remainder of the fishing year.

In addition to the ability to terminate access to a closed area inseason, NMFS would be able to make an annual determination whether or not to allow access to these areas, based on the above criteria. NMFS would consider relevant data and publish a notice in the **Federal Register** notifying the public whether or not there would be access to the areas in the subsequent year. NMFS may choose to allow access to certain closed areas and not others. In order to adjust or implement new restrictions for access to closed areas, NMFS would conduct proposed and final rulemaking.

The objective of this proposed measure is to provide additional fishing opportunities for pelagic longline vessels, mitigate the potential negative economic impacts of other draft Amendment 7 alternatives that are proposed, and provide fishery dependent data from within the closure areas. Fishery dependent data from within the closed areas may be utilized in the future as part of the information used to evaluate the effectiveness and/or impacts of closed areas as well as for stock assessments or other management measures. The total number of trips into closed areas would be limited by the level of observer coverage.

3. Quota Controls

NMFS Closure of the Pelagic Longline Fishery

This proposed measure would close the pelagic longline fishery (i.e., prohibit the use of pelagic longline gear) when the total Longline category quota is reached, projected to be reached or exceeded, or, when there is high uncertainty regarding the estimated or documented levels of bluefin tuna catch. These steps would be taken in order to prevent overharvest of the Longline category quota and prevent further discards of bluefin tuna. When NMFS projects that the quota will be reached, it will file a closure action with the Office of the Federal Register for publication. Vessels would be required to offload all bluefin tuna prior to the closure date/time. Criteria for NMFS consideration would include those listed under § 635.27(a)(8) as well as: total estimated bluefin tuna catch (landings and dead discards) in relation to the quota; estimated amount by which the bluefin tuna quota might be exceeded; usefulness of data relevant to monitoring the quota; uncertainty in the documented or estimated dead discards or landings of bluefin tuna; amount of bluefin tuna landings or dead discards within a short time; effects of continued fishing on bluefin tuna rebuilding and overfishing; provision of reasonable opportunity for pelagic longline vessels to pursue the target species; variations in seasonal distribution, abundance or migration patterns of bluefin tuna; and other relevant factors.

Alternatively, NMFS could utilize a historical estimate for pelagic longline dead discards as a proxy for anticipated dead discards, and subtract an estimate of dead discards ''off the top'' of the quota. This would result in a substantially lower quota, which would be a landings quota and result in the closure of the fishery when the landings quota is attained.

Individual Bluefin Quotas (IBQs)

The proposed IBQ management system is summarized and then described in detail below.

Summary

NMFS is proposing IBQs pursuant to section 303A of the MSA, which authorizes development of limited access privilege (LAPP) programs. A LAPP is a permit issued for a period of not more than 10 years, to harvest a quantity of fish expressed by a unit(s) representing a portion of the total allowable catch that may be received or held for exclusive use by a person. Section 303A(c) identifies the requirements for such a program (note that the referendum requirements of section 303A(c)(6)(D) are inapplicable to this program for the Atlantic HMS fisheries). This alternative would implement IBQs for vessels permitted in the Atlantic tunas Longline category (provided they also hold necessary limited access swordfish and shark permits) that would result in prohibiting the use of pelagic longline gear if/when the vessel's annual pelagic longline IBQ has been caught. The specific objectives of the IBQ program are to: (1) Limit the amount of bluefin tuna landings and dead discards in the pelagic longline fishery; (2) provide strong incentives for the vessel owner and operator to avoid bluefin tuna interactions, and thus reduce bluefin tuna dead discards; (3) provide flexibility in the quota system to enable pelagic longline vessels to obtain bluefin tuna quota from other vessels with available IBQ in order to enable full accounting for bluefin tuna landings and dead discards, and minimize constraints on fishing for target species; (4) balance the objective of limiting bluefin tuna landings and dead discards with the objective of optimizing fishing opportunities and maintaining profitability; and (5) balance the above objectives with potential impacts on the directed permit categories that target bluefin tuna, and the broader objectives of the 2006 Consolidated HMS FMP and the Magnuson-Stevens Act.

In order to achieve these objectives, NMFS is proposing a suite of management measures intended to work together, which would comprise the IBQ management system. These measures include the definition of important terms: a quota share is the percentage of the Longline category quota that is associated with a permitted vessel, based upon the quota share formula and the relevant vessel history, and a quota allocation is the amount (mt) of bluefin tuna quota that is associated with a permitted vessel, based upon the relevant quota share(s), and the annual Longline category quota. Active vessels would be eligible to receive a 1.0%, 0.54%, or 0.34% share of the Longline baseline quota, which would be used by the individual vessels to account for all their bluefin tuna landings and dead discards. Quota shares would be designated as either Gulf of Mexico or Atlantic, and vessels would be prohibited from using Atlantic shares to account for bluefin tuna catch in the Gulf of Mexico, thereby limiting potential shifts in effort. Quota allocation could be leased annually among Longline or Purse Seine category vessels, and a minimum amount of bluefin tuna quota would be required for a vessel to depart on a trip in the Atlantic (0.125 mt) using pelagic longline gear. A higher minimum amount of quota would be required for vessels fishing in the Gulf of Mexico (0.25 mt). If a vessel catches bluefin tuna in excess of its quota allocation, it would be required to lease additional quota allocation in order to account for the excess catch, and would not be allowed to fish with pelagic longline gear until the balance was accounted for. A vessel's quota allocation would not carry-over from one year to the next, but if a vessel is unable to satisfy its quota 'debt' in a particular fishing year, quota would be deducted from the vessel's allocation during the subsequent year. Although temporary leasing of bluefin tuna quota allocation

could occur, no sale of bluefin tuna quota shares at the onset of the program is being proposed at this time. Measures to allow sale of bluefin tuna quota shares would be implemented in the future through a separate rulemaking. A phased-in approach would reduce risks for vessel owners during the initial stages of the IBQ program, when the market for bluefin tuna quota shares would be new and uncertain. During the first years of the IBQ program, price volatility may be reduced, as well as undesirable outcomes of selling or buying quota shares at the ''wrong'' time or price. NMFS intends to develop a program to allow the sale of quota share in the future because it would provide a means for vessel owners to plan their business and manage their quota according to a longer time scale than a single year, in a manner that would be informed by several years of the temporary leasing market. NMFS may wait until a formal evaluation of the IBQ program before developing this alternative.

NMFS would implement an internet-based system to track leases of quota allocation; VMS would be used to report bluefin tuna catches to increase the timeliness of dead discard data; and electronic monitoring (cameras) would be required on pelagic longline vessels as one element of the monitoring program. The measurement and accounting of bluefin weight and length in the IBQ management program would be in standardized units designated by NMFS (e.g., the minimum increment of weight for example, such as hundredths of a metric ton). The vessel owner would provide length information on all bluefin discarded dead or retained, and NMFS would derive weight information on the bluefin that are discarded dead through the use of length to weight conversions; or vessel operators would be required to submit weight information based upon a standardized length to weight conversion formula supplied by NMFS. The IBQ program would be evaluated after 3 years, and NMFS would develop a cost recovery program.

What vessels would be eligible to receive initial bluefin tuna quota shares?

Vessels that made at least one set using pelagic longline gear between 2006 and 2011 (based on pelagic longline logbook data) would be defined as ''active'' and eligible to receive bluefin tuna quota shares. This range of 6 years provides a reasonable representation of historical fishing activity, including recent years. Six years is long enough to prevent short-term circumstances from disproportionately impacting a vessel, but not so long so that it does not reflect current fishery participation. One hundred and sixty one vessels would qualify as active under this definition. Vessels with valid Longline permits that do not meet the initial eligibility criteria (i.e., vessels that are not defined as ''active'') would be able to obtain bluefin tuna quota allocation through a lease of quota allocation. Permits that are not associated with a vessel, such as a permit characterized as ''No Vessel ID,'' would not be eligible for an initial quota share but would be eligible to receive quota allocation (through a lease) if and when the permit was reassociated with a vessel. Such a vessel would need to lease quota allocation before fishing with pelagic longline gear. New entrants to the fishery would need to either obtain an Atlantic Tunas Longline permit with associated quota share, or if the valid permit did not have quota share, obtain bluefin tuna quota through lease/sale in order to fish.

How much bluefin tuna quota would each eligible vessel get?

A vessel's share of bluefin tuna quota would be based upon two elements: the amount of bluefin tuna catch between 2006 and 2011, and the amount of designated species landings (i.e., swordfish; yellowfin, bigeye, albacore, and skipjack tunas; dolphin; wahoo; and porbeagle, shortfin mako, and thresher sharks). The use of two factors in the quota share allocation formula is intended to reward past bluefin tuna avoidance, ensure a fair initial allocation, and take into consideration the diversity in vessel fishing patterns and harvest characteristics. Past fishing that resulted in minimal bluefin tuna interactions would result in larger future allocations of bluefin tuna. Landings of designated species are an indicator of both the level of fishing effort and activity as well as vessel success at targeting those species. This method of allocation incorporates the rate of historical bluefin tuna interactions but also includes the amount of designated species landings, recognizing that greater levels of fishing activity are likely to be correlated with a greater number of bluefin tuna interactions. NMFS developed the proposed quota shares as follows: the designated species landings were from NMFS's dealer data (weigh-out slips) and logbook information. Historical bluefin tuna catch (from vessel logbook data) was expressed as the ratio of the number of bluefin tuna interactions to 'designated species' landings (ratio). Because the bluefin tuna interactions to designated species landings ratio is very small, landings were multiplied by 10,000 in order to derive a ratio that is more practical (i.e., 0.95 instead of 0.000095). In order to combine the two metrics, scores were assigned to each metric (the bluefin tuna catch to designated species landings ratio and historical designated species landings) as described below. Active vessels were sorted into three categories, using total designated species landings from 2006 through 2011, based on percentiles of landings from lowest to highest (low, medium, and high, 0 to < 33 percent; 33 to < 66 percent and 66 to 100 percent, respectively). Similarly, the active vessels were sorted according to the ratio of bluefin interactions to HMS landings, from lowest to highest. For example, a vessel with a 2006–2011 weight of designated species landings of greater than or equal to 367,609 lb (the 66 to 100th percentile of landings) would be placed in the ''High'' category and assigned a score of 3. In contrast, a vessel with a total designated species landing of only 95,000 pounds for 2006 through 2011 would receive a designated species landings score of 1. A vessel with a bluefin to designated species landings ratio of less than 0.2884 (66 to 100th percentile of bluefin to designated species landings ratios), would place in the top category and receive a bluefin to designated species landings ratio score of 3. A low ratio indicates relatively few bluefin interactions and therefore receives a high score.

Finally, the two scores were combined to form the basis of the allocation. For each vessel, the score for designated species landings was added to the score for bluefin to designated species ratio. For example, if a vessel scored in the ''High'' category for both designated species landings and bluefin to designated species landings its combined score would be 6 (3 + 3). If a vessel scored High for bluefin ratio, but Low for designated landings, it would be scored a 4 (1 + 3) and it would be placed in the Medium rating score category. Vessels assigned to a particular category would be allocated the same percentage share.

Vessels would be allocated shares of 1.0%, 0.54%, or 0.34% of the Longline category quota. Based on a revised baseline Longline category bluefin tuna quota of 137 mt (baseline plus 62.5 mt), vessels would be allocated 1.37 mt, 0.74 mt, or 0.47 mt of bluefin tuna, respectively. All pelagic longline quota shares and allocations would be designated as either ''Gulf of Mexico'' or ''Atlantic'' based upon the geographic location of sets (associated with the

vessel's fishing history used to determine the vessel's quota share). Gulf of Mexico quota allocation could be used in either the Gulf of Mexico or the Atlantic, but Atlantic quota allocation could only be used in the Atlantic (and not the Gulf of Mexico) to prevent a shift of effort to the Gulf of Mexico. All bluefin tuna quota allocated to Atlantic Tunas Purse Seine vessels would also be designated as ''Atlantic,'' subject to the restriction that it may only be used in the Atlantic (by either a Purse Seine vessel or via a lease to a pelagic longline vessel). For a vessel to fish in the Gulf of Mexico, the vessel would be required to have the minimum amount of bluefin tuna quota allocation (0.25 mt) to depart on a trip to fish with pelagic longline gear, but the quota would have to be Gulf of Mexico quota. In contrast, for a vessel to fish in the Atlantic, it would be required to have a lower minimum amount of quota allocation (0.125 mt), which could be either Gulf of Mexico or Atlantic quota.

If a vessel had fishing history in both the Gulf of Mexico and Atlantic, it may receive quota shares of both the Gulf of Mexico and Atlantic, depending upon the amount of quota share and the proportion of fishing history in the two areas. A relatively small percentage of sets in one area would not be reflected in the quota share. If a vessel would be allocated less than a minimum share amount for a particular area (i.e., less than 0.125 mt for the Atlantic or less than 0.25 mt for the Gulf of Mexico), the allocation would instead be designated as the other of the two designations. Owners of vessels with an active Atlantic Tunas Longline category permit will be sent registered letters informing them of their proposed bluefin quota share, in conjunction with this proposed rule.

Appeals of Initial Allocation of Quota Shares

NMFS is proposing procedural regulations at 15 CFR part 906 that would designate the NMFS National Appeals Office (NAO) as adjudicator of appeals arising under MSA section 303A (see 77 FR 33980; June 8, 2012). This action proposes that appeals of initial IBQ share determinations would be handled pursuant to that process when finalized. NMFS is currently developing the final NAO appeals regulations. Specifically, the items subject to appeal would be: (1) Initial eligibility for quota shares based on ownership of an active vessel with a valid Atlantic Tunas Longline permit combined with the required shark and swordfish limited access permits; (2) the accuracy of NMFS records regarding that vessel's amount of designated species landings and/or bluefin tuna interactions; and (3) correct assignment of designated species landings and bluefin tuna interactions to the vessel owner/permit holder. NMFS permit records would be the sole basis for determining permit transfers. As discussed above, quota share formula is based upon historical data associated with a permitted vessel. Because vessels may have changed ownership or transferred permits during the 2006 through 2011 period, the current owner of a permitted vessel may also appeal on the basis of changes in vessel ownership or permit transfers. Appeals based on landings data would be based on NMFS logbook data, weighout slips, and other relevant information. Appeals based on bluefin tuna interactions may be based on logbook, observer, or other NMFS data. Appeals based on hardship factors would not be considered. In order to appeal, the vessel owner would be required to submit a petition of appeal, including information and documentation required by the final NAO regulations.

Quota Leasing

This measure would allow Longline and Purse Seine category vessels to lease quota allocation to or from other vessels in these categories, so that allocations will become better aligned with catch (i.e., vessels that catch bluefin tuna may be able to obtain quota from those that do not interact with bluefin tuna, or have not used their full allocation of bluefin tuna). Leasing of quota allocations would be allowed among all Longline category vessels with valid limited access permits, regardless of whether they have been allocated their own quota share. If a vessel catches bluefin tuna using quota allocation that it has leased from another vessel, the fishing history associated with the catch of bluefin tuna would be associated with the vessel that catches the bluefin tuna (the lessee, not the lessor vessel). In other words, the lessee (vessel catching the fish) gets the 'credit' for the landings and dead discards, and not the lessor (the vessel that leased the quota allocation to the catching vessel). The future catch of bluefin tuna would not affect the quota shares, but would affect the calculation of the performance metric of each vessel. Sub-leasing of quota would be allowed (i.e., quota leased from vessel A to vessel B, then to vessel C). For a particular calendar year, an individual lease transaction would be valid from the time of the lease until December 31.

There would be no limit on the amount of quota allocation an individual vessel (Longline or Purse Seine) could lease annually, except for the sum of the Longline and Purse Seine categories' collective allocations. This would provide flexibility for vessels to purchase quota in a manner that could accommodate various levels of unintended catch of bluefin tuna, and enable the development of an unrestricted quota market. There would likely be a cost for vessels affected by a restriction on leasing, yet the benefits of such a restriction are unknown, given that the leasing program does not currently exist. The risk associated with no limitation on the quota market is minimal due to the temporary nature of IBQ leases, and the fact that leases are voluntary agreements between the lessor and lessee. It is possible that a limit on quota leasing may be deemed necessary in the future to address fishery management objectives. Such a restriction would be developed through future proposed and final rulemaking. Because the duration of a temporary lease would be limited to a single year, the impacts on an unrestricted market for bluefin tuna quota would be limited in duration. Quota shares in the subsequent year would not be affected, and quota allocations would only be affected in the second year if a vessel had caught bluefin in excess of its allocation and was unable to lease additional quota to account for the bluefin (in which case the 'quota debt' must be satisfied in the subsequent year). Information on this unrestricted market could be used to develop future restrictions if necessary.

This proposed rule does not include a measure that would allow the sale of quota shares thus no provisions are needed at this time to address excessive shares. NMFS would consider the development of measures to allow the sale of quota shares, as well as measures to prevent excessive consolidation in the future, after NMFS and fishery participants have multiple years of experience with the IBQ program. This approach would reduce risks for vessel owners during the initial stages of the IBQ program, when the market for bluefin tuna quota shares would be new and uncertain. During the first years of the IBQ program, price volatility may be reduced, as could undesirable outcomes of selling or buying quota shares at the ''wrong'' time or price. NMFS intends to consider a program to allow the sale of quota share in the future because it would provide a means for vessel owners to plan their business and manage their quota according to a longer time scale than a single year, in a manner that would be informed by

several years of the temporary leasing market. NMFS may wait until a formal evaluation of the IBQ program is completed before developing this alternative.

Quota allocation leases would be executed by the eligible vessel owners, or their representatives, through the internet and a NMFS database. For example, the two vessel owners involved in a quota allocation lease could log in to a password protected web-based computer system (i.e., a NMFS database) and execute the lease. Owner-performed leases would provide the quickest execution of leases because any eligibility criteria would be verified automatically based on information loaded into that system, and would not involve the submission or review of a paper application, or any lag time associated with NMFS staff being directly involved in the lease approval process. NMFS would develop the administrative system to implement the leasing of bluefin quota allocation.

Elimination of Target Catch Requirement

This proposed measure would, if the IBQ system is adopted, eliminate the current target catch requirements for pelagic longline vessels, which restricts the number of incidentally caught bluefin tuna a pelagic longline vessel may retain in relation to the amount of target species retained and sold. In the context of an IBQ system, the current target catch requirement would no longer be necessary. This proposed measure would reduce bluefin tuna dead discards and optimize fishing opportunity for target species.

Specifically, this measure would eliminate the regulation that one large medium or giant bluefin tuna (73″ or greater) per vessel per trip may be landed, provided that at least 2,000 lb of species other than bluefin tuna are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold; two large medium or giant bluefin tuna may be landed incidentally to at least 6,000 lb of species other than bluefin tuna; and three large medium or giant bluefin tuna may be landed incidentally to at least 30,000 lb of species other than bluefin tuna.

Mandatory Retention of Legal-Sized Bluefin Tuna

This proposed measure would, if the IBQ system is adopted, require pelagic longline vessels to retain all legal-sized commercial bluefin tuna that are dead at haul-back, and is intended to function in conjunction with the IBQ system and elimination of the target catch requirements. The IBQ ensures that vessels will not target bluefin due to the scarcity of IBQ and costs associated with leasing additional IBQ or the inability to use PLL once IBQ is attained. Requiring the retention of all legal-sized commercial (i.e., 73″ or greater) dead bluefin tuna is intended to reduce dead discards and make it illegal to discard a legal-sized commercial bluefin tuna, if dead at haul-back. Because these fish would be required to be retained, regulatory discards and the waste of fish would be decreased, and it would be more likely that such fish are accurately accounted for and have a positive use (e.g., marketed, used for scientific information, etc.).

Formal IBQ Program Evaluation

NMFS proposes to formally evaluate the success and performance of the IBQ program in achieving its objectives, after three years of operation and provide the HMS Advisory Panel with a publicly-available written document with its findings. NMFS would utilize its standardized economic performance indicators, developed by its Office of Science and Technology, as part of its review. For example, the standardized economic performance indicators would include catch and landings, effort, revenues, quota accumulation, and cost recovery. Other indicators would include the number of and distribution of bluefin tuna interactions.

Cost Recovery

Section 303A(e) of the Magnuson-Stevens Act provides NMFS with the authority for cost recovery for the costs of management, data collection and analysis, and enforcement activities for a LAPP. Such fees may not exceed 3 percent of the ex-vessel value of fish harvested under the LAPP. As explained above, NMFS proposes not to implement cost recovery until after the IBQ program evaluation (after 3 years). NMFS anticipates that the incremental costs of administering the IBQ program are likely to be low. However, the cost of administering a cost recovery program may be high relative to the amount of money recovered, because some active vessels have very high fishing activity whereas others have relatively low activity. A cost recovery program based on a bycatch species may have inherent limitations or challenges, given the underlying objective of reducing the catch of the bycatch species. Immediate implementation of a cost recovery program, without obtaining further information about the operation of the fishery with IBQs, would be very difficult and would increase costs and uncertainty for fishing vessels during a time period when the fishery would be bearing other new costs and sources of uncertainty. For the above reasons, NMFS proposes not implementing cost recovery until after it conducts the program evaluation.

5. Reporting Measures

Vessel Monitoring System (VMS) Requirements

This alternative would require vessels with an Atlantic Tunas Purse Seine category permit to have an Enhanced Mobile Transmitting Unit (E–MTU) VMS unit installed by a qualified marine electrician in order to remain eligible for the Purse Seine category permit. This alternative would require vessels that intend to fish for Atlantic tunas with purse seine gear or pelagic longline gear to declare through E–MTU VMS their intent to fish with such gear, prior to departing on trip (''hail out''). This alternative would require vessels fishing with pelagic longline gear to report the number of hooks and sets within 12 hours of completion of all pelagic longline haul-backs; and for pelagic longline sets with bluefin tuna interactions to report the length of all bluefin tuna retained or discarded within 12 hours of completion of the pelagic longline haul-back (i.e., reporting of zero bluefin on a set is not required). This alternative would require vessels fishing for Atlantic tunas with Purse Seine gear to report, for each day on which Purse Seine gear is set, the number of sets within 12 hours of the last set; and for Purse Seine sets with bluefin tuna interactions to report the length of all bluefin discarded dead or retained within 12 hours of completion of the set (i.e., reporting of zero bluefin on a set is not required). This measure would support the inseason monitoring of the purse seine and pelagic longline fisheries. Current information on the catch of the purse seine fishery is limited to dealer data on sold fish, and does not include information on discarded bluefin tuna or other species caught and/or discarded, although periodic observer coverage supports the conclusion that catches and discards of bluefin tuna or other species is low. The IBQ program requires the ability to track quota shares and quota allocations, reconcile landings and dead discards against individual quota allocations, and then balance the amounts against the total allowable quota. Although the current pelagic longline reporting requirements and the observer program provide data on pelagic longline landings and discards, and enables inseason monitoring and management based

upon landings, the reporting requirements and monitoring requirements were not designed to support inseason monitoring of dead discards. More timely information on dead discards would be necessary in order to monitor and enforce the proposed IBQ system. Trip declaration requirements would enhance enforcement and quota monitoring.

Electronic Monitoring

This measure would require all vessels issued an Atlantic Tunas Longline permit fishing with pelagic longline gear, to install and maintain video cameras and associated data recording and monitoring equipment in order to record all longline catch and relevant data regarding pelagic longline gear retrieval and deployment. The objective of this alternative is for NMFS to use the recorded data to verify the accuracy of counts and identification of bluefin tuna reported by the vessel owner/operator, as well as observers. Secondly, electronic monitoring would enable the collection of video image and fishing effort data that may be used in conjunction with other sources of information to estimate bluefin tuna dead discards. Lastly, electronic monitoring would augment the ability of an observer to fulfill their duties by providing a record of catch during the time periods the observer may be unable to observe the catch directly.

Specifically, this alternative would require the installation of equipment that may include one to four video cameras, a recording device, video monitor, hydraulic pressure transducer, winch rotation sensor, system control box, or other equipment needed to achieve the objectives. Vessel owner/operators would be required to install and maintain the required equipment, and allow inspection of the equipment by NMFS. There would be a requirement to install the camera(s) to provide a view of the area where the longline gear is retrieved and catch is removed from the hook (prior to placing in the hold or discarding boatside) and a requirement that such a system be connected to the mechanical hauling device so that recording is initiated by gear retrieval. The vessel owner/operator would be required to submit the data to NMFS or a third party, and to store and make the data available to NMFS for at least 120 days from the conclusion of the fishing trip on which the data was recorded. The vessel operator would be responsible for ensuring that all bluefin tuna are handled in a manner that enables the electronic monitoring system to record such fish, and must identify a crew person or employee responsible for ensuring that all handling, retention, and sorting of bluefin tuna occurs in accordance with the regulations.

The requirements associated with this alternative would be phased in over a year due to the complexity, costs, and logistical constraints associated with the implementation of an electronic monitoring program. NMFS would communicate instructional information in writing, via permit holder letters, to the vessel owners during all phases of the program to provide direction and assistance to vessel owners, and facilitate the provision of technical assistance.

NMFS Extrapolation of Observer Data

NMFS solicits public comment on its approach to use of extrapolated observer data for management purposes. Specifically, in order to conduct inseason quota monitoring and to estimate total bluefin tuna dead discards and landings, NMFS may extrapolate observer-generated data (in-season) regarding bluefin tuna discards (rate, number, location, etc.) by pelagic longline vessels, based on reasonable statistical methods and available observer data. NMFS could then use this observer information in conjunction with or in place of vessel-generated estimates of bluefin tuna discards, or electronic monitoring data, in order to develop inseason estimates of total bluefin tuna landings and dead discards. This approach would address the potential for uncertain dead discard data from the pelagic longline fleet that may result from challenges in the implementation of new regulations, technical problems relating to the reporting and monitoring system, or time lags in the availability of data.

Automated Catch Reporting

This proposed measure would require Atlantic Tunas General, Harpoon, and HMS Charter/Headboat categories to report the length of all bluefin tuna retained or dead discards through an automated catch reporting system (for example, via either a web-based, or an interactive voice response telephone system) within 24 hours of the landings or end of each trip. Specifically, vessels would be required to report the number of bluefin tuna retained, and the number of bluefin tuna discarded dead, according to instructions that would be provided by NMFS. NMFS currently operates a similar automated landings reporting system (ALRS) for recreational bluefin tuna catch in the HMS Angling and Charter/Headboat category (when fishing recreationally). Although information on commercial bluefin tuna landings as currently reported by dealers is sufficient for NMFS to monitor the landings (which count toward the relevant sub-quotas), NMFS does not obtain information on bluefin tuna that may be discarded as a result of the capture of fish that are released (either because the fish is less than the required minimum size or for another reason) from all categories. Such discard information would enhance NMFS's ability to more fully and accurately account for all sources of fishing mortality, consistent with ICCAT recommendations. Automated catch information from the diverse participants in the bluefin tuna and HMS fisheries would enhance management of all HMS fisheries. Automated catch reporting would enable NMFS to obtain information about the magnitude of discards. NMFS would be able to share such information, in aggregate, with the bluefin tuna fisheries participants with the objective of reducing regulatory discards. Information on discarding would enable NMFS to consider a wider range of information when making decisions regarding quota management and bluefin tuna management in general. Verification of data through observer coverage of these fisheries would augment the value of this data.

General Category Flexibility for Quota Adjustment

This proposed measure would allow NMFS to proactively transfer General category quota from one or more of the time-periods that follow the January time-period to the January or other preceding sub-quota time periods, either during annual specifications or through inseason action. In other words, under this alternative, NMFS could transfer subquota from one time period to another time period, earlier in the same calendar year. For example, subquota could be transferred from the June 1 through August 31 time period to the January time period, or from the October 1 through November 30 time period to the September time period.

The objective of this alternative is to optimize opportunities for fishery participants, while retaining the current historical structure of the General category quota system. NMFS would add a new objective called ''quota adjustment'' to the current list of criteria and relevant factors NMFS considers when making inseason or annual quota adjustments.

Harpoon Category NMFS Authority to Adjust Retention Limits

This proposed measure would authorize NMFS to increase or decrease

the daily retention limit of large medium bluefin tuna (greater than 73″ CFL and less than 81″ CFL) within a range from two to four fish. This range is based on the former (i.e., two fish) and current (i.e., four fish) daily retention limit of large medium bluefin tuna for the Harpoon category. Any adjustment would be based upon the current regulatory determination criteria under § 635.27(a)(8) (with any adjustments made through Amendment 7) that apply to inseason bluefin tuna adjustments including: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; effects of the adjustment on bluefin tuna rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of bluefin tuna; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and review of dealer reports, daily landing trends, and the availability of the bluefin tuna on the fishing grounds, as well as any other relevant factors.

The default Harpoon category daily retention limit of large medium bluefin tuna would be two fish per vessel (the large medium bluefin tuna daily retention limit that applied prior to the 2011 regulatory change). The retention limit of giant bluefin tuna would remain unlimited. The objective of this proposed measure is to optimize fishing opportunity for the Harpoon category participants within the available quota. NMFS currently cannot adjust this retention limit via inseason action. In contrast, for the General category, NMFS can increase or decrease the daily retention limit for large medium or giant bluefin tuna within a specified range, via inseason action, following consideration of the regulatory determination criteria. This alternative would enhance NMFS's ability to more precisely manage the landing rate of large medium bluefin tuna by the Harpoon category, thereby optimizing opportunities while preventing landings from exceeding the subquota. It would be appropriate that the determination criteria for inseason adjustments would be the same as for the General category because they are both commercial categories, with similar regulatory and fishery conditions.

Angling Category Trophy Subquota Distribution

This proposed measure would allocate a portion of the trophy south subquota specifically for the Gulf of Mexico. The trophy subquota would be divided as follows: 33% to each of the northern area, the southern area outside the Gulf of Mexico, and the Gulf of Mexico. At the current average trophy fish weight, this would allow up to 8 trophy bluefin tuna to be landed annually in each of the three areas. To distinguish bluefin tuna caught in the Gulf of Mexico from those caught in the Atlantic, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at § 600.105(c), which is essentially west of 83°00′ West longitude but also includes the waters off southwestern Florida and north of the Florida Keys.

The objective of this measure is to provide a reasonable fishing opportunity for recreational vessels in the Atlantic and Gulf of Mexico, reduce discards, and account for incidentally caught bluefin tuna. A separate subquota allocation for the Gulf of Mexico would increase the likelihood that there will be trophy quota available to account for incidental catch of bluefin tuna in that area (while still providing incentives not to target bluefin tuna).

Purse Seine Category Fishing Year Start Date

This proposed measure would change the start date of the Purse Seine category fishery from July 15 to June 1, and provide NMFS the ability to delay the season start date from June 1 to no later than August 15, by publishing a notice in the **Federal Register**. The objective of this measure is to optimize fishing opportunity for Purse Seine category vessels. The opportunity for Purse Seine category vessels to harvest their quota, which consists principally of giant bluefin tuna, may be constrained due to the restriction on the amount of large medium bluefin tuna they may retain. A Purse Seine vessel operator may choose not to fish if bluefin tuna schools are composed of a high proportion of large medium fish in addition to giants in order to avoid sets in which a large portion of the catch would have to be discarded due to fish size. In addition to optimizing fishing opportunity, other considerations with respect to the timing of the start date of the fishery are potential gear conflicts and market considerations.

Rules Regarding Permit Category Changes

This proposed measure would allow a vessel owner to modify the category of an Atlantic Tunas or HMS permit issued for up to 45 days from date of issuance, provided the vessel has not landed bluefin tuna as verified via landings data. The current restriction (10 calendar days) was intended to preclude vessels from fishing in more than one category during a year and to discourage speculative use of fishing permits. However, based on feedback NMFS has received over a number of years from vessel owners affected by the 10 day restriction, NMFS has concluded that limiting the time period during which a vessel may change permit categories to 10 calendar days is overly restrictive, and does not allow the flexibility to resolve the problems of a permit issued by mistake. This proposed measure would achieve a better balance of allowing flexibility for vessel owners, while still preventing fishing in more than one permit category during a fishing year.

Northern Albacore Tuna Quota

This proposed measure would implement the U.S. annual quota of northern albacore tuna recommended by ICCAT and would establish provisions for the accounting of overharvest and underharvest of the quota via annual specifications. Specifically, the codified U.S. northern albacore tuna quota would be adjusted as appropriate for prior year catch (up or down), including delayed adjustment (that would skip a year) or adjustments over several years. Consistent with the ICCAT recommendation, carry-forward of unused quota from one year to the next would be limited to 25 percent of the initial quota. NMFS would adjust and implement the following via regulatory framework adjustments: Actions to implement ICCAT recommendations, as appropriate; allocating and refining domestic allocation of the U.S. quota; establishing retention limits; implementing effort restrictions, etc. Although an FMP amendment is not needed, framework adjustments still go through extensive public and analytical review and must be consistent with the MSA and other applicable law.

Minor Regulatory Changes

Amendment 7 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. Several of these items have been identified by constituents over the past few years or were raised during scoping hearings. 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 § 635.5(c)(1), the relevant internet address would be updated. Under § 635.20(a), the method of determining length of Atlantic tunas currently states that it applies only to swordfish permitted vessels, but it should apply regardless of permit type. Regulations at § 635.21(c)(5)(iii)(B), currently refer to an NED ''closed'' area instead of a ''gear restricted area,'' which needs to be corrected because the reference is not accurate. Under § 635.27(a)(7)(i), the reference to research in this paragraph is too specific. ''Fishery-independent research'' would be changed to ''research'' as Reserve category quota is intended to be made available, as needed, for a broad range of research activities. Under § 635.27(a)(1)(iii), the descriptor ''coastwide'' when referring to the General category fishery, is no longer necessary and would be deleted. Under § 635.71(b)(13), the current prohibition would be corrected to clarify that the relevant amount of bluefin tuna is the ''applicable limit'' instead of ''a'' bluefin tuna. These proposed changes were not analyzed because they would not make substantive changes to the regulations.

Request for Comments

Comments on this proposed rule may be submitted via *http://www.regulations.gov,* mail, or fax. NMFS solicits comments on this proposed rule by October 23, 2013.

Classification

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

NMFS prepared a draft environmental impact statement that analyzes the impact on the environment of a range of alternatives that would achieve the objectives of Amendment 7, which are described in the background section of the preamble for this action. As further explained in the Background, in this action, NMFS is proposing measures and minimize bycatch to the extent practicable; optimize fishing opportunity and account for dead discards; reduce bluefin tuna dead discards; enhance reporting; and adjust other aspects of the 2006 Consolidated HMS FMP as necessary and appropriate.

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

An initial regulatory flexibility analysis (IRFA) was prepared, 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 description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of the entire analysis is available from NMFS (see **ADDRESSES**).

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

This proposed rule is expected to directly affect commercial and for-hire fishing vessels that possess an Atlantic Tunas permit or Atlantic HMS Charter/Headboat permit. In general, the HMS Charter/Headboat category permit holders can be regarded as small businesses, while HMS Angling category permit holders are typically obtained by individuals who are not considered small entities for purposes of the RFA. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Previously, a business involved in fish harvesting was classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. In addition, SBA has defined a small charter/party boat entity (NAICS code 713990, recreational industries) as one with average annual receipts of less than $7.0 million. On June 20, 2013, SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 Fed.Reg. 37398; June 20, 2013). The rule increased the size standard for Finfish Fishing from $4.0 to 19.0 million, Shellfish Fishing from $4.0 to 5.0 million, and Other Marine Fishing from $4.0 to 7.0 million. Id. at 37400 (Table 1).

NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS does not believe that the new size standards affect analyses prepared for this action and solicits public comment on the analyses in light of the new size standards. The average annual revenue per active pelagic longline vessel is estimated to be $181,000 based on the 161 active vessels between 2006 and 2011 that produced an estimated $29.2 million in revenue annually. The maximum annual revenue for any pelagic longline vessel during that time period was less than $1.4 million, well below the former SBA size threshold of $4.0 million. Therefore, NMFS considers all Tuna Longline category permit holders to be small entities. NMFS is unaware of any other Atlantic Tunas category permit holders that potentially earn more than $4.0 million in revenue annually. Therefore, NMFS considers all Atlantic Tunas permit holders subject to this rulemaking to be considered small entities. NMFS is also unaware of any charter/headboat businesses that could exceed the SBA thresholds for small entities.

The proposed rule would apply to the 4,361 Atlantic Tunas permit holders based on an analysis of permit holders in October 2012 (NMFS 2012). Of these permit holders, 253 have Longline category permits, 13 have Harpoon category permits, 8 have Trap category permits, 3 have Purse Seine category permits, and 4,084 have General category permits.

The recreational and reporting measures would also impact HMS Angling category and HMS Charter/Headboat category permit holders. In 2012, 4,129 vessel owners obtained HMS Charter/Headboat category permits. It is unknown what portion of these permit holders actively participate in Atlantic HMS fishing or market fishing services for recreational anglers. NMFS has determined that the proposed rule would not likely directly affect any small government jurisdictions.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Would Be Subject to the Requirements of the Report or Record

Several of the proposed measures would modify existing reporting and record-keeping requirements, and add compliance requirements. NMFS estimates that the number small entities that would be subject to these requirements would include the Longline category (253), Charter/Headboat category (4,129), General category (4,084), Harpoon category (13) and Purse Seine category (3), based on the number of permit holders in commercial bluefin tuna fishing categories in 2012.

The proposed Cape Hatteras Gear Restricted Area with Access, and Access

to Closed Areas with Pelagic Longline Gear measures would require that pelagic longline vessels authorized to fish in the areas also submit daily reports to NMFS via E–MTU VMS summarizing their fishing effort, and bluefin tuna catch and harvest. The additional reporting burden is expected to take 5 minutes per report/day at a cost of $0.12 per report. Pelagic longline vessels granted conditional access to certain currently closed areas would also be required to have an observer onboard for any trips into the closed areas. Such observer coverage would be consistent with the current selection criteria and policies, and would not be an additional compliance burden.

Pelagic longline vessels that are not granted conditional access to the Cape Hatteras Gear Restricted Area could choose to fish in the area with other authorized gear under General category rules, and would be required to declare their intent to fish in this way, hail in and out of port, and report their daily catch of bluefin tuna via E–MTU VMS. This reporting burden is expected to be approximately 5 minutes per report at a cost of $0.12 per report.

Potential appeal requests regarding the performance metrics or quota shares are expected to take approximately 2 hours to compile.

Under the proposed IBQ system, leasing of quota allocation would require vessel owners to execute transfers via an online electronic system supported by NMFS. Participants would be required to have access to computers and the Internet. If a participant does not have current access to computers and the Internet, there would be a one-time cost of approximately $1,500 for computer equipment and a $300 annual cost for Internet access. The record-keeping and reporting burden for vessel owners is expected to be approximately 15 minutes per lease. The electronic system would also require interaction with Federal bluefin tuna dealer permit holders that purchase IBQ bluefin tuna; however, electronic dealer reporting for bluefin tuna purchases was previously analyzed and approved by NMFS in the 2006 Consolidated HMS FMP rulemaking (71 FR 58058, October 2, 2006).

Electronic monitoring (i.e., video cameras, etc.) would require both fixed and variable costs over the service life of each camera installed onboard. The cost of an electronic system bought in 2010, over its five year projected lifespan, is about $3,565 a year. This includes 4% of the purchase price for maintenance costs and a 7% interest rate on the loan to buy a system (National Observer Program, 2013). The variable costs for vessel owners include data retrieval ($45/hour; 2 hr per trip; technician travel ($0.5/mile; 100 miles for each trip); fishing activity interpretation ($47/hour; 0.25 hr/trip); and catch data interpretation ($47/hour; 1.5 hr/trip). The estimated total variable costs would be approximately $225 per trip and the annual fixed costs would be $3,835 for the purchase and installation of the equipment, and six services per year; $45/hour; 1 hr six times per year). The proposed reporting requirements associated with the IBQ program would require pelagic longline vessels to use their E–MTU VMS to submit reports of bluefin tuna catch and harvest and fishing effort. Purse seine vessels would be required to purchase and install E–MTU VMS units, and submit daily reports of catch, and effort as well. This alternative would provide more timely data as required by the IBQ system than the current pelagic longline logbook program and dealer reporting requirements. As noted above, the additional reporting burden for the VMS reports is 5 minutes per report/day and $0.12 per report. The cost of installing E–MTU VMS is $3,300 per vessel and daily position reports cost approximately $1.44 per day.

The proposed mandatory retention of legal-sized bluefin tuna caught by pelagic longline gear, as well as NMFS's closure of the pelagic longline fishery when the quota is reached, would not have any additional reporting associated with them. The proposed elimination of the target catch requirement would represent a decrease in regulatory compliance requirements.

The proposed Formal IBQ Program Evaluation would require NMFS to prepare a report summarizing and evaluating the experiences of the program 3 years after IBQ program implementation.

Several of the proposed measures would enhance reporting of bluefin tuna. Three of these include the VMS requirements and electronic monitoring of the Longline category that were discussed above. The last is the proposed measure to require automated catch reporting for General, Harpoon, and Charter/Headboat permit categories. This would require individuals with those vessel permits to report their dead discards after each trip using an automated system such as a Web site or phone recording system. NMFS estimates that each report will take approximately 5 minutes. Based on previous years' landings, NMFS estimates that the total annual reporting burden will be approximately 607 hours and could affect approximately 8,226 permit holders.

The other proposed measures described above in this preamble would change quota allocations, timeframes for General category subquota allocations, permit category changes, and Purse seine start date, authorized gear types, and other management measures, but would not increase reporting or compliance requirements.

Identification of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. 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, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. The proposed rule would not conflict with any relevant regulations, Federal or otherwise.

Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of the Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)–(4)) lists four general categories of ''significant'' alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: ''Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities''; ''Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities''; ''Use of performance rather than design standards''; and, ''Exemptions from coverage of the rule for small entities.''

In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act and the Endangered Species Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. Under the third

category, ''use of performance rather than design standards,'' NMFS considers the proposed ''Cape Hatteras Gear Restricted Area with Access based on Performance,'' the IBQ bluefin tuna quota share formula, and the ''Limited Conditional Access to Closed Areas using Pelagic Longline Gear Based on Performance Criteria'' to all be alternatives that use performance standards. As described below, NMFS analyzed several different alternatives in the DEIS for this proposed rulemaking and provides the rationale for identifying the preferred alternatives (proposed measures) to achieve the desired objective.

In this rulemaking, NMFS considered five different categories of issues to address bluefin tuna management measures where each issue had its own range of alternatives that would meet the objectives of the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP. The first category, allocation alternatives, covers four main alternatives that address various quota reallocation strategies. The second category of alternatives, area based alternatives, explores various gear restricted areas, gear measures, and access to closed areas using pelagic longline gear. The third category of alternatives, bluefin tuna quota controls, covers four main alternatives, which include IBQs, regional and group quotas, and closure of the pelagic longline fishery. The fourth category of alternatives, enhanced reporting measures, covers six main alternatives, which include VMS requirements, electronic monitoring of the Longline category, automated catch reporting, deployment of observers, logbook requirements, and expanding the scope of the Large Pelagics Survey. The fifth category of alternatives, other measures, covers seven main alternatives that address other Tunas permit categories besides Longline and other tuna quotas. The expected economic impacts of the different alternatives considered and analyzed are discussed below.

The potential impacts that these alternatives may have on small entities have been analyzed and are discussed in the following sections. The economic impacts that would occur under these preferred alternatives were compared with the other alternatives to determine if economic impacts to small entities could be minimized while still accomplishing the stated objectives of this rule.

The allocation alternatives would modify the current base allocations for bluefin tuna quota categories (i.e., percentages of the U.S. quota), either by codifying them or adjusting them on an annual basis. The No Action alternative would make no changes to the current percentages that each quota category is allocated (General: 47.1 percent; Harpoon: 3.9 percent; Purse Seine: 18.6 percent; Longline: 8.1 percent; Trap: 0.1 percent; Angling: 19.7 percent; Reserve: 2.5 percent). Dead discards would continue to be accounted for separately from the quota allocations through the annual specification process.

In the short-term, minor to moderate direct adverse economic impacts are likely to be limited to the Longline category due to quota shortages. In 2012, NMFS projected that the Longline category was likely to fully harvest their allocated quota before the end of the fishing year, and closed the southern area on May 29, 2012 (77 FR 31546) and the northern area on June 30, 2012 (77 FR 38011, June 26, 2012). In 2013, the Longline category northern and southern areas were closed on June 25, 2013 (78 FR 36685; June 19, 2013) because the adjusted quota had been reached. In the long-term, there could be additional minor to moderate direct adverse economic impacts if other quota categories are closed early in the fishing year.

The codified reallocation alternatives would reallocate quota among categories and result in increased bluefin tuna quota for the Longline category, and would therefore alleviate some of the current challenges associated with the domestic quota system.

The proposed reallocation of 62.5 mt is based on the historical dead discard allowance and would result in 83.56% increase in the Longline category quota and a decrease of a bit over 7% for the following categories: General, Harpoon, Purse Seine, Angling, and Reserve. This measure would increase the potential revenue from bluefin tuna for the Longline category by approximately $11,263 per permit holder per year, if all of the quota were landed (and not used to account for dead discards). The General category would face a potential reduction in the maximum revenue from bluefin tuna of approximately $896 per permit holder per year. The Harpoon category would face a potential reduction in the maximum revenue from bluefin tuna of approximately $2,355 per permit holder per year. The Purse Seine category could face a potential reduction in the maximum revenue from bluefin tuna of approximately $105,275 per permit holder per year. Although on its fact, the magnitude of revenue loss appears to be high for the Purse Seine category, this alternative would likely have minor adverse economic impacts on Purse Seine fishermen because landings in this category been very low for a number of recent years.

Reallocating the quota allocations for all categories based on recent catch data would result in an 83.56% increase in the Longline category quota and an increase in Angling category of 47.1%. However, this reallocation alternative would result in a decrease in the quotas of the General, Harpoon, Purse Seine, Trap, and Reserve categories of 10.85%, 15.56%, 49.01%, 55.56%, and 48.05%, respectively. This alternative would increase the potential revenue from bluefin tuna for the Longline category by approximately $11,299 per permit holder per year. The General category could face a potential reduction in the maximum revenue from bluefin tuna of approximately $1,321 per permit holder per year. The Harpoon category could face a potential reduction in the maximum revenue from bluefin tuna of approximately $4,886 per permit holder per year. The Purse Seine category could face a potential reduction in the maximum revenue from bluefin tuna of approximately $697,965 per permit holder per year.

The alternative that would reallocate two-fifths of the Purse Seine category to the Longline category and would result in a 91.84% increase in the Longline category quota and a 39.99% decrease in the Purse Seine quota. The reallocation of two-fifths of the Purse Seine category to the Longline category would increase the potential revenue from bluefin tuna for the Longline category by approximately $12,380 per permit holder per year. The Purse Seine category could face a potential reduction in the maximum revenue from bluefin tuna of an equivalent $569,480 per permit holder per year. The other bluefin tuna quota categories would not be impacted by this alternative.

This rule would reallocate the Purse Seine category bluefin tuna quota that is projected to be unused (based on the previous year's landings and dead discards), from the Purse Seine category to other quota categories, including the Reserve category, on an annual basis. In recent years, little of the Purse Seine category quota has been landed. If that continues into the future, under this proposed measure, the Purse Seine quota could be reduced by up to a maximum of 75 percent. The 128.8 mt associated with that reduction would reduce the maximum revenue from bluefin tuna that the purse seine vessel could land by $700,000 annually. However, given the recent bluefin tuna landings history of the purse seine fleet, it is unlikely that future bluefin tuna landings would be constrained

substantially by this reduction and allocations would be re-evaluated on an annual basis. Therefore, the proposed annual reallocation measure would likely only result in minor direct adverse short-term economic impacts to the Purse Seine category. Other categories would benefit from the potential of increased revenue, and this alternative may provide a better business planning environment for NMFS and fishermen by alleviating the large reservoir of unused Purse Seine quota and distributing it prior to the start of the fishing and management season.

The economic impacts of the alternative, which would allocate annual quota to the Purse Seine category commensurate with the number of permitted Purse Seine vessels would be similar to those under proposed annual reallocation alternative. It also would likely only result in minor direct adverse short-term economic impacts resulting from the loss of potential revenue if current bluefin tuna fishing levels remain the same.

Under the No Action alternative, there would be no changes to the allocation to the Reserve category or the determination criteria that are considered prior to making any adjustments to/from this category. This alternative would not impact small entities. The proposed measure would increase the amount of quota that may be put into the Reserve category and increase the potential uses of Reserve category quota. Specifically, it would potentially increase the Reserve category quota beyond the current baseline allocation of 2.5 percent and broaden the determination criteria considered in making adjustments to/from the Reserve category. This proposed measure would result in moderate beneficial economic impacts if unused quota from a previous year could be reallocated to the Reserve category to potentially offset any overharvests in another category, consistent with ICCAT recommendations on carry-forward of unharvested quota.

NMFS considered a range of gear restricted area alternatives from maintaining existing pelagic longline closures (the no action alternative) to a year-round gear restricted area of the entire Gulf of Mexico EEZ (west of 82° longitude) in order to reduce interactions with bluefin tuna. The No Action Alternative would result in the status quo regarding gear restricted areas. Although the current pelagic longline closed areas would remain effective, the data indicate that large numbers of interactions of pelagic longline gear with bluefin tuna occur in consistent areas during predictable time periods, which are outside of the current closed areas. The No Action alternative would not reduce dead discards. The magnitude of the discards in the pelagic longline fishery is more likely to stay the same or increase under the No Action alternative, without implementation of a new gear restricted area. This could result in moderate long-term adverse economic impacts when the Longline category exceeds its quota earlier in the fishing year because of dead discards and is required to close.

The Cape Hatteras Gear Restricted Area alternative would define a modified rectangular area in the Atlantic and would prohibit the use of pelagic longline gear during a 5-month period from December through April. The specific time and area of this gear restricted area alternative would have moderate short and long-term direct adverse economic impacts on 43 vessels that have historically fished in the Cape Hatteras Gear Restricted Area during the months of December through April. The average annual revenue per vessel made in the gear restricted area is approximately $27,400 during the restricted months assuming that fishing effort does not move to other areas. However, it is likely that some of the vessels that would be impacted by this gear restricted area would be able to redistribute their effort to other fishing areas. NMFS estimated that if a vessel historically made less than 40% of their sets in the gear restricted area, it would likely redistribute all of its effort. If a vessel made more than 40%, but less than 75% of its sets in the gear restricted area, it would likely redistribute 50% of its effort impacted by the gear restricted area to other areas. Finally, if a vessel made more than 75% of its sets solely within the gear restricted area, NMFS assumed it would not likely shift its effort to other areas. Based on these redistribution assumptions, the net impact of the Cape Hatteras Gear Restricted Area on fishing revenues after redistribution of effort is estimated to be $18,000 per year.

In contrast, the proposed measure (Cape Hatteras Gear Restricted Area with Access) would restrict fishing in the same area off Cape Hatteras, NC as just described, but would also define criteria for access by HMS permitted vessels fishing with pelagic longline gear during the 5-month period from December through April. Vessels that are determined by NMFS to have relatively low rate of interactions with bluefin tuna based on past performance, and that are compliant with reporting and monitoring requirements, would be allowed to fish in the area using pelagic longline gear. Vessels that have demonstrated an inability to avoid bluefin tuna would not be allowed to fish with pelagic longline gear in this area; or if a vessel can avoid bluefin tuna, but has poor compliance with logbook reporting and Pelagic Observer Program observer requirements, it would not be allowed to fish with pelagic longline gear in this area, from December through April. Individual vessel data would be evaluated annually for the purpose of determining access, in order to provide future opportunities and accommodate changes in fishing behavior, both positively and negatively, based on performance. Based on the proposed performance criteria, NMFS determined that, of 161 active vessels in the entire pelagic longline fleet, 43 vessels fished in the Cape Hatteras Gear Restricted Area or buffer region. Of these 43 active vessels, 18 vessels that fished in the Cape Hatteras Gear Restricted Area or buffer region did not meet the criteria for access based on their inability to avoid bluefin tuna, and/or compliance with POP observer and logbook reporting requirements. The average annual revenue made in the gear restricted area by these 18 vessels is approximately $23,000 per vessel during the restricted months. However, it is likely that some of the vessels that would be impacted by this gear restricted area would be able to redistribute their effort to other fishing areas. The net impact of this proposed measure on fishing revenues after redistribution of effort is estimated to be $16,000 per vessel per year for those 18 vessels.

The proposed measure to allow vessels with an Atlantic Tunas Longline permit to fish under the rules/regulations applicable to the General would result in short-term, direct, minor, beneficial economic impacts for Longline category fishermen that otherwise would not be able to fish for bluefin tuna in the Cape Hatteras Gear Restricted Area. It would result in short-term, direct, minor, adverse economic impacts for General category participants to the extent that any Longline category vessel landings of bluefin tuna under General category rules results in the available subquota being met earlier than it would otherwise. A loss or gain of one fish is approximately $3,500. If a Longline category vessel chooses to fish with General category gear in the Cape Hatteras Gear Restricted Area versus outside the area with pelagic longline gear, the ability to land and sell bigeye, albacore, yellowfin, and skipjack tunas

from that area would result in short-term, direct, minor, beneficial economic impacts, although substantially less so than continuing to use longline gear, which accounts for a much larger proportion of catch of bigeye, albacore, and yellowfin tuna than does handgear. Other proposed measures, such as Annual reallocation from the Purse Seine category or the measure that would provide additional flexibility for General category quota adjustment, may reduce adverse economic impacts for General category participants.

The Gulf of Mexico EEZ Pelagic Longline Gear Restricted Area alternative would prohibit the use of pelagic longline gears in the Gulf of Mexico (GOM) for 3 months each year. This alternative would have moderate short and long-term direct adverse economic impacts on 66 vessels that have historically fished in the Gulf of Mexico EEZ during the months of March through May. The average annual revenue from fishing sets made in the gear restricted area is approximately $22,000 per vessel during the closure months. Based on historical fishing patterns of vessels that fish in the Gulf of Mexico, it is unlikely that effort would be redistributed into areas outside of this region.

The proposed Small Gulf of Mexico Gear Restricted Area would define a rectangular area in the Gulf of Mexico and prohibit the use of pelagic longline gear during the 2-month period from April through May. NMFS designed the Small Gulf of Mexico Gear Restricted Area to maximize the reductions in bluefin tuna interactions while minimizing the area where pelagic longline gear use is restricted. This alternative is expected to have moderate short and long-term direct adverse economic impacts on 34 vessels that have historically fished in the Small Gulf of Mexico Gear Restricted Area during the months of April and May. The average annual revenue from fishing sets made in the gear restricted area is approximately $7,000 per vessel during the restricted months. However, it is likely that some of the vessels that would be impacted by this gear restricted area would be able to redistribute their effort to other fishing areas within the Gulf of Mexico. The net impact of the Small Gulf of Mexico Gear Restricted Area on fishing revenues after redistribution of effort is estimated to be $2,700 per vessel per year.

The alternative, which would prohibit the use of pelagic longlines anywhere in the Gulf of Mexico, year-round, would have moderate short and long-term direct adverse economic impacts on 69 vessels that have historically fished in the Gulf of Mexico EEZ. The average annual revenue from fishing in the gear restricted area is approximately $98,000 per vessel.

The No Action alternative that would maintain the current regulatory situation in which HMS permitted vessels that possess longline gear, inclusive of both pelagic longline and bottom longline, are not allowed to enter the existing longline closed areas, even for purposes of transiting the area, would also apply to the proposed Gear Restricted Area areas. As there are a number of time/area closures for vessels possessing pelagic and bottom longline gear and the current regulations do not provide longline vessels the ability to stow their gear and transit the areas, this alternative would result in direct minor adverse economic impacts by potentially requiring vessels to use more fuel and time in taking indirect routes to and from the fishing grounds. This restriction has also raised safety-at-sea concerns due to the increased and indirect transit times.

The proposed measure would allow HMS vessels that possess bottom or pelagic longline gear on board to transit the closed areas and the proposed Gear Restricted Areas, if they remove and stow the gangions, hooks, and buoys from the mainline and drum. The hooks could not be baited. Allowing pelagic and bottom longline vessels to transit closed and gear restricted areas after removing and stowing gear would result in direct short- and long-term beneficial economic impacts by potentially reducing fuel costs and time at sea for vessels that need to transit the closed or restricted areas. Allowing transit through these areas could also potentially improve safety at sea by allowing more direct transit routes and reducing transit time, particularly during inclement weather.

This rule would make no change to current authorized gear requirements (with respect to the use of buoy gear and associated restrictions on possession of bigeye, albacore, yellowfin, and skipjack tunas (BAYS) and bluefin tuna) applicable to those vessels with an Atlantic Tunas Longline category permit and either a Swordfish Directed or Swordfish Incidental permit. Currently, vessels with an Atlantic Tunas Longline category permit must also have both a Swordfish Directed or Incidental permit, and a Shark Directed or Incidental permit. There are no economic impacts associated with this ''no action'' alternative.

In contrast, a gear alternative analyzed, but not being proposed, would authorize vessels with a Swordfish Incidental permit to fish with buoy gear, except vessels fishing in the East Florida Coast Pelagic Longline Closed Area. Under this alternative, vessels would still be limited to 35 buoys. The rationale for this alternative is to provide increased flexibility and encouragement for pelagic longline vessels to utilize gears other than pelagic longline to maintain and enhance fishing opportunities. This would result in short- and long-term direct beneficial economic impacts by providing greater flexibility in the gear type that can be used and also by reducing the need to acquire a different permit to use buoy gear.

Another gear alternative analyzed, but not being proposed, would allow vessels with an Atlantic Tunas Longline category permit and the Swordfish Directed or Incidental permit to retain BAYS and bluefin tuna when fishing with buoy gear. The rationale for this alternative is the same as for the above: to provide increased flexibility and encouragement for pelagic longline vessels to utilize gears other than pelagic longline to maintain and enhance fishing opportunities in the context of new restrictions that may be implemented by Amendment 7. This would result in short- and long-term direct beneficial economic impacts by increasing the potential revenue opportunities by allowing additional species to be landed when using buoy gear, reducing costs associated with discarding, and reducing the costs associated with the potential need to acquire different permits while fishing with buoy gear. This alternative would have no effect on vessels with a Swordfish Incidental permit, unless the alternative that would allow vessels with a Swordfish Incidental permit to fish with buoy gear were adopted. Without the alternative for Swordfish Incidental permit holders, this alternative would provide additional flexibility for vessels with a Swordfish Directed permit and an Atlantic Tunas Longline permit.

The proposed alternative that would allow restricted and conditional access into certain closed areas would result in potential for increased revenue. The scope of the alternative and its effects would depend upon the level of observer coverage. Currently, eight percent of fishing effort is covered and funded wholly by NMFS. Due to the limits on the level of observers, observer coverage would serve as the principal constraint to the amount of access. There would be minor short- and long-term direct beneficial economic and social impacts associated with the added option for vessels to potentially fish in these areas, which could

potentially increase landings revenues and decrease fishing costs by providing access to closer and/or more productive fishing areas.

The performance criteria associated with the proposed measure may lead to beneficial economic incentives for fishery participants to better comply with reporting and monitoring requirements and reduce bluefin tuna interaction rates. The maximum number of potential observed trips into the closed areas was estimated based on historical rates of observer coverage (per quarter) in various statistical areas, and the fact that observer coverage would be a condition of a trip into a closed area. NMFS estimated the maximum number of trips into the pelagic longline closed areas would be 20 trips into the East Florida Coast closed area at an average revenue of $17,575 per trip, 80 trips into the DeSoto Canyons at an average revenue of $17,692 per trip, two trips into the Northeast closure at an average revenue of $40,726 per trip, and five trips into the Charleston Bump at an average revenue of $17,575 per trip. It is import to note that these revenue estimates are an overestimate, with a large amount of uncertainty. The estimates are high because it is very unlikely that all observed trips in a particular statistical area would fish in a closed area. The estimates are uncertain because the average revenue per trip data is from locations outside the closed areas, and may not represent the potential revenue from inside the closed areas.

The No Action alternative would maintain the current regulations that do not allow vessels to enter a closed area with pelagic longline gear during the time of the closure, unless issued an Exempted Fishing Permit. It would not result in any further costs to small entities.

The proposed measure that would implement IBQs for vessels permitted in the Atlantic tunas Longline category (provided they also hold necessary limited access swordfish and shark permits) would result in prohibiting the use of pelagic longline gear when the vessel's annual pelagic longline IBQ has been caught.

NMFS considered two alternatives for vessel eligibility to receive bluefin tuna quota shares. The first alternative considered any permitted Atlantic Tunas Longline category vessel as eligible to receive an initial allocation of IBQ shares. Based on the most recent number of Atlantic Tuna longline limited access permit holders, NMFS estimates that 253 vessels would be eligible to receive IBQs under this alternative. While this alternative might be more inclusive of all members of the fishery, it would reduce the amount of IBQs allocated to each vessel. There would also likely be negative short-term and potentially long-term direct adverse economic impacts associated with reduced initial allocation of IBQs to the most active participants in the fishery. Their initial allocations would likely be insufficient to be able to maintain their current levels of fishing activity and they may not be able to find IBQs to lease or have sufficient capital to lease a sufficient amount of IBQs.

The proposed measure would consider only active permitted Atlantic Tunas longline vessels as eligible to receive an initial share of bluefin tuna quota. Based on HMS Logbook records from 2006–2011, there were 161 active pelagic longline vessels during that period, with active defined as having reported in the HMS Logbook successfully setting pelagic longline gear at least once between 2006 and 2011. Allocation of quota shares to a smaller number of vessels may reduce the likelihood that a permitted vessel without quota shares would fish and increase the likelihood that available quota would be sufficient for active vessels. The drawback to this alternative is that some inactive vessels may have been planning to be active in the future, invested in preparing to become active in the fishery, but either became active after the period of eligibility or had not yet completed preparations for entering the fishery.

In addition to determining vessels eligible to receive IBQs, NMFS considered four alternatives for how IBQs should be initially allocated to eligible vessel owners. One alternative analyzed the initial allocation of IBQs based on an equal share of the quota to eligible vessels. To estimate the potential landings each vessel could make given its initial IBQ under this alternative, NMFS analyzed the ratio of bluefin tuna landings and dead discards to designated species weight. These estimated potential landings were then compared to average annual historical landings to estimate the reduction in designated species landings. Under the 74.8 mt Longline category quota scenario, NMFS estimates that there could be a reduction of 4.3 million pounds of designated species landings per year if an IBQ allocation based on designated species landings is used and no trading of IBQs occurs. This would be a reduction of annual landings of approximately 51 percent and result in a reduction in annual revenues of approximately $110,000 per vessel. Under the 137 mt Longline category quota scenario, NMFS estimates that there could be a reduction of 2.4 million pounds of designated species landing per year if an IBQ allocation based on designated species landings is used and no trading of IBQs occurs. This would be a reduction of annual landings of approximately 24 percent and result in a reduction in annual revenues of approximately $51,000 per vessel. Under the 216.7 mt Longline category quota scenario, NMFS estimates that there could be a reduction of 1.2 million pounds of designated species landing per year if an IBQ allocation based on designated species landings is used and no trading of IBQs occurs. This would be a reduction of annual landings of approximately 14 percent and result in a reduction in annual revenues of approximately $30,000 per vessel.

Under a second alternative analyzed, NMFS based the initial allocation of IBQs on the historical landings of designated species from 2006 through 2011. The designated species include swordfish; yellowfin, bigeye, albacore, and skipjack tunas; dolphin; wahoo; and blue shark, porbeagle, shortfin mako, and thresher shark. These are the main marketable pelagic species landed by pelagic longline vessels in addition to bluefin tuna. Under the 74.8 mt Longline category quota scenario, NMFS estimates that there could be a reduction of 3.5 million pounds of designated species landing per year if an IBQ allocation based on designated species landings is used and no trading of IBQs occurs. This would be a reduction of annual landings of approximately 42 percent and result in a reduction in annual revenues of approximately $91,000 per vessel. Under the 137 mt Longline category quota scenario, NMFS estimates that there could be a reduction of 2.4 million pounds of designated species landing per year if an IBQ allocation based on designated species landings is used and no trading of IBQs occurs. This would be a reduction of annual landings of approximately 28 percent and result in a reduction in annual revenues of approximately $61,000 per vessel. Under the 216.7 mt Longline category quota scenario, NMFS estimates that there could be a reduction of 1.6 million pounds of designated species landing per year if an IBQ allocation based on designated species landings is used and no trading of IBQs occurs. This would be a reduction of annual landings of approximately 18 percent and result in a reduction in annual revenues of approximately $40,000 per vessel.

Under the proposed bluefin tuna quota share formula, NMFS would base the initial allocation of IBQs based on the historical landings of designated

species from 2006 through 2011 and the ratio of bluefin tuna catch to designated species landings. Using the ratio of bluefin tuna landings and dead discards to designated species weight, NMFS estimated the potential landings each vessel could make given its initial IBQ. These estimated potential landings were then compared to average annual historical landings to estimate the reduction in designated species. Under the 74.8 mt Longline category quota scenario, NMFS estimates that there could be a reduction of 3.1 million pounds of designated species landing per year if an IBQ allocation based on designated species landings is used and no trading of IBQs occurs. This would be a reduction of annual landings of approximately 36 percent and result in a reduction in annual revenues or approximately $79,000 per vessel. Under the 137 mt Longline category quota scenario, NMFS estimates that there could be a reduction of 2.2 million pounds of designated species landing per year if an IBQ allocation based on designated species landings is used and no trading of IBQs occurs. This would be a reduction of annual landings of approximately 26 percent and result in a reduction in annual revenues or approximately $56,000 per vessel. Under the 216.7 mt Longline category quota scenario, NMFS estimates that there could be a reduction of 1.5 million pounds of designated species landing per year if an IBQ allocation based on designated species landings is used and no trading of IBQs occurs. This would be a reduction of annual landings of approximately 17 percent and result in a reduction in annual revenues or approximately $37,000 per vessel.

Amendment 7 would also designate all pelagic longline quota shares and allocations as either ''Gulf of Mexico'' or ''Atlantic'' based upon the geographic location of sets associated with the vessel's fishing history used to determine the vessel's quota share. Gulf of Mexico quota allocation could be used in either the Gulf of Mexico or the Atlantic, but Atlantic quota allocation could only be used in the Atlantic and not in the Gulf of Mexico. For a vessel to fish in the Gulf of Mexico, the vessel would be required to have the minimum amount of bluefin tuna quota to depart on a trip to fish with pelagic longline gear, but the quota would have to be Gulf of Mexico quota. The minimum IBQ amount required to fish in the Gulf of Mexico would be 0.25 mt based on the larger average size of bluefin tuna in the Gulf of Mexico. The minimum IBQ amount required to fish in the Atlantic would be 0.125 mt based on the smaller average size of bluefin tuna encountered in the Atlantic. The economic impact of creating these two regional designations would primarily be associated with the larger minimum quota required to fish in the Gulf of Mexico and the restriction from transferring or using Atlantic quota in the Gulf of Mexico. This would reduce the number of potential trading partners for IBQs in the Gulf of Mexico region, thus potentially leading to less available IBQs that could be leased, making it more difficult to find potential trading partners and therefore increasing transaction costs for conducting a lease.

In defining the scope of IBQ transfer, NMFS considered two alternatives because only two Tuna permit categories are under limited access systems. One alternative would allow transfer of bluefin tuna quota shares or quota allocation among permitted Atlantic Tunas Longline category vessels only, and would not include transferring with other limited access quota categories such as the Atlantic Tunas Purse Seine category. This alternative would constrain the amount of bluefin tuna quota available to the Longline category vessels to the Longline category quota, and not make additional quota available. Quota transfers would be allowed among all Longline category vessels with a valid limited access permit, regardless of whether they have been allocated quota shares. While this alternative would have short-term direct minor beneficial economic impacts, those beneficial impacts would be lower than those under the proposed measure.

The proposed measure would allow transfer of bluefin tuna quota shares or quota allocation between those permitted in the limited access Atlantic Tunas Longline and Purse Seine categories. This measure would provide flexibility for pelagic longline vessels to obtain, lease, or sell quota as necessary, so that allocations may be aligned with catch (i.e., vessels that catch bluefin tuna may be able to obtain quota from those that do not interact with bluefin tuna, or have not used their full allocation of bluefin tuna). This measure would not constrain the amount of bluefin tuna quota available to pelagic longline vessels (i.e., through the Longline category quota), but would make additional quota available if purse seine vessels are willing to lease quota. This measure would also modify the Purse Seine category regulations which currently restrict the transfer of Purse Seine quota to vessels with Purse Seine category permits. Purse Seine quota would be transferable to vessels with an Atlantic tunas longline permit. Similarly, Purse Seine vessels would be able to lease quota allocation from pelagic longline vessels. Quota transfer would be allowed among all Longline category vessels with a valid limited access permit, regardless of whether they have been allocated quota share. This alternative would have short-term direct moderate beneficial economic impacts.

NMFS considered both annual leasing and sale of IBQs. This proposed rule would allow temporary leasing of bluefin tuna quota among eligible vessels on an annual basis. Temporary quota transfer would give vessels flexibility to lease quota, but as a separate and distinct type of transaction from the sale of quota share. Vessel owners would be able to obtain quota on an annual basis to facilitate their harvest of target species. Sub-leasing of quota would be allowed (i.e., quota leased from vessel A to vessel B, then to vessel C). The proposed quota leasing measures would have short-term direct moderate beneficial economic impacts to participants in the fishery. However, in the long-term, the annual transaction costs associated with matching lessors and lessees, the costs associated with drafting agreements, and the uncertainty vessel owners would face regarding quota availability would reduce some of the economic benefits associated with leasing.

The alternative to allow sale of quota share among eligible vessels would have long-term direct moderate beneficial economic impacts to participants in the fishery by allowing the ownership of IBQs to shift to where they provide the best economic benefit in the long-term. However, in the short-term, there could be issues associated with the IBQ market. For example the process of the buyers and sellers arriving at a price for IBQ shares may be difficult or highly variable due to uncertainties such as how to value IBQ shares, information availability, and associated risks. Through this sub-alternative, vessel owners would be able to purchase (or sell) quota share and increase (or decrease) their quota share percentage. Sale of quota share provides a means for vessel owners to plan their business and manage their quota based on a time scale longer than a single year. Vessel owners may be able to save money through a single quota share transaction instead of reoccurring annual quota allocation transactions. Transferable quota shares would be limited to the amount of quota an individual entity could transfer in order to prevent the accumulation of an excessive share of quota. Experiences in other catch share programs have shown that fishermen

may not know how to effectively value the IBQs initially and uncertainty in this new market may cause IBQs to be undervalued in the first few years. This could result in both adverse social and economic impacts in the fishing community if participants sell out of the IBQ market in the early years for less than the long-term value of the IBQs.

Amendment 7 would delay consideration of sale of quota shares among eligible vessel owners until after NMFS and fishery participants have multiple years of experience with the IBQ program. Until NMFS develops and implements an IBQ sale program, vessel owners would only be able to conduct temporary (annual) leasing of quota allocation and therefore vessel owners would not be able to purchase (or sell) quota share in order to increase (or decrease) their quota share percentage. This approach would reduce risks for vessel owners during the initial stages of the IBQ program, when the market for bluefin tuna quota shares would be new and uncertain. During the first years of the IBQ program, price volatility may be reduced, as may undesirable outcomes of selling or buying quota shares at the ''wrong'' time or price. NMFS intends to consider a program to allow the sale of quota share in the future because it would provide a means for vessel owners to plan their business and manage their quota according to a longer time scale than a single year, in a manner that would be informed by several years of the temporary leasing market. NMFS may wait until a formal evaluation of the IBQ program is completed before developing this alternative. While this alternative may result in long-term moderate beneficial economic impacts, the uncertainty regarding the timeline may make business planning for vessel owners and IBQ holders more difficult and result in some minor adverse economic impacts.

Under the proposed measures, quota allocation and/or quota share transfers would be executed by the eligible vessel owners or their representatives. For example, the two vessel owners involved in a lease of quota or sale of quota share could log into a password-protected web-based computer system (i.e., a NMFS database), and execute the quota allocation or quota share transfer. Owner-executed transfers would provide the quickest execution of a transfer because any eligibility criteria would be verified automatically via the user log-in and password, and not involve the submission or review of a paper application for a transfer to/by NMFS. This would result in short- and long-term minor beneficial economic impacts resulting from reduced transactions costs.

Under an alternative analyzed but not proposed, quota and quota share transfers would be executed by NMFS. For example, a paper application for a sale of quota share could be submitted by the two vessel owners involved in the quota share transaction, and NMFS would review and approve the transaction based on eligibility criteria (and enter data into a computer database that would track the transfers of quota). This method would not include the use of a web-based system, but would rely upon mail or facsimile submission of applications by the vessel owners to NMFS. In comparison to the proposed measure this alternative may result in some minor adverse economic impacts if delays in NMFS's review of applications results in increased transactions costs and fewer trades.

The proposed measures would not limit the amount of quota allocation an individual vessel (Longline or Purse Seine) could lease annually. This alternative would provide flexibility for vessels to purchase quota in a manner that could accommodate various levels of unintended catch of bluefin tuna, and enable the development of an unrestricted market. Because the duration of a temporary lease would be limited to a single year, the impacts of an unrestricted market for bluefin tuna quota would be limited in duration. Information on this unrestricted market could be used to develop future restrictions, if necessary. This alternative would result in short- and long-term minor beneficial economic impacts by accommodating the various needs of vessel owners for IBQ trades.

Similarly, the proposed measures would set no limit on the total amount of quota that either the Longline or Purse Seine category (in its entirety) could lease annually. This alternative would provide flexibility for vessels to purchase quota in a manner that could accommodate various levels of unintended catch of bluefin tuna, and enable the development of an unrestricted market. Because the duration of a temporary lease would be limited to a single year, the impacts on an unrestricted market for bluefin tuna quota would be limited in duration. There would likely be a cost for vessels affected by a restriction on leasing, yet the benefits of such a restriction are unknown, given the leasing program does not currently exist. The risk associated with no limitation on the quota market is minimal due to the temporary nature of IBQ leases, and the fact that leases are voluntary agreements between the lessor and lessee. Information on this unrestricted market could be used to develop future restrictions (through proposed and final rulemaking) if necessary. This alternative would result in short- and long-term minor beneficial economic impacts by accommodating the various needs of vessel owners for IBQ trades.

As described above, because Amendment 7 would delay consideration of sale of quota shares among eligible vessel owners until the future, after NMFS and fishery participants have multiple years of experience with the IBQ program, and therefore the proposed measures do not include limits on the amount of quota allocation an individual vessel (Longline or Purse Seine), or the Longline or Purse Seine category (in its entirety), could purchase. The proposed measures related to the monitoring and enforcement of the IBQ program are based on the premise that the success of an IBQ program rests upon the ability to track ownership of quota shares and quota allocation holders; allocate the appropriate amount of annual harvest privileges (quota allocation); reconcile landings and dead discards against those privileges; and then balance the amounts against the total allowable quota. The current pelagic longline reporting requirements and the monitoring program that provide data on pelagic longline bluefin tuna landings and dead discards were not designed to support inseason accounting of dead discards. More timely information on catch would be necessary in order to monitor a pelagic longline IBQ, inclusive of dead discards.

The proposed VMS reporting and electronic monitoring requirements are intended to support the implementation of a pelagic longline IBQ. The economic impacts are detailed in the section below.

The approach that NMFS may extrapolate observer-generated data inseason, would potentially have short-term minor or neutral indirect beneficial economic impacts by addressing the potential for fishery disruptions if there are issues in the transition to an IBQ monitoring system.

The proposed measure to formally evaluate the IBQ program after 3 years of operation and provide the HMS Advisory Panel with a publicly-available written document with its findings, would result in neutral economic impacts because it is administrative in nature. Similarly, the alternative to formally evaluate the IBQ program after 5 years of operation would result in neutral economic and social impacts because it is administrative in nature.

The proposed measure for NMFS to develop and implement a cost recovery program of up to 3 percent of the ex-vessel value of fish harvested under the program, for costs associated with the costs of management, data collection and analysis, and enforcement activities, could result in direct long-term moderate adverse economic impacts to the industry. NMFS estimates that a 3 percent cost recovery fee on ex-vessel value of bluefin tuna landings would be an estimated $27,437 annually for the entire Longline category and $3,432 for the Purse Seine category. On a per vessel basis, NMFS estimates that the annual cost recovery fee would be on average $170 per Longline category vessel and $1,144 per Purse Seine category vessel. However, this per vessel estimate would vary greatly from vessel to vessel and from year to year based on the amount of bluefin tuna landings for each vessel. The use of historic bluefin revenues for estimating the amount of cost recovery may overestimate the amount of the cost recovery fee if future bluefin tuna interactions and landings are reduced in response to the IBQ program and other regulatory provisions considered under Amendment 7.

The proposed appeals process for administrative review of NMFS's decisions regarding initial allocation of quota shares for the IBQ program would result in neutral economic impacts because it would utilize the National Appeals Office procedures and ensure a standardized and centralized appeals process that would provide procedural certainty to the participants.

A control date in association with the proposed IBQ program would implement a control date in conjunction with the implementation (effective date) of the IBQ program. The control date would serve as a reference date that could be utilized with future management measures. The implementation of a control date by itself would have no effect, but would provide NMFS with a potential management tool that may be utilized if necessary as part of a future management measure. A control date would likely have neutral economic impacts and would only result in beneficial short-term economic impacts if it actually discouraged speculative fishing behavior that may have occurred without the control date.

The proposed elimination of the target catch requirements would likely have direct short- and long-term minor beneficial economic impacts. Under the IBQ program, elimination of the target catch requirement could reduce dead discards, and enable vessels to fish for target species in a more flexible manner.

Under the No Action Alternative, the current target catch requirements would remain in effect, and would have neutral economic impacts since it would not change what is currently in place.

Under the proposed measure to require retention of all legal-sized commercial bluefin tuna that are dead at haul-back, legal discards and the waste of fish would be decreased, and it would be more likely that such fish are accurately accounted for, and have a positive use (e.g., marketed, used for scientific information, etc.). However, given that current behavior may be to discard some fish in order to optimize landings value of bluefin tuna, there could be minor adverse economic impacts associated with this alternative since vessel operators would no longer have the option to discard legal-sized bluefin tuna.

Sub-alternative C 2l.2a would maintain the status quo regarding retention of bluefin tuna by pelagic longline vessels. There would be no requirement to retain commercial legal-sized bluefin tuna that are dead at haul back. Vessels would continue to be able to discard bluefin tuna even if they are of commercial legal-size (i.e., 73″ or greater) and dead. If the IBQ program is implemented, all dead discards would be accounted for under that program. This alternative would have neutral economic impacts since it does not change what is currently occurring.

The Regional Quota alternative would implement annual bluefin tuna quotas by region for vessels possessing the Atlantic Tunas Longline category permit (combined with the required shark and swordfish limited access permits) and would result in prohibiting the use of pelagic longline gear when a particular region's annual bluefin tuna quota has been caught. Annual bluefin tuna quotas would be associated with defined geographic regions. While regional quotas may be simpler than an IBQ system and have advantages over a single quota allocated for the entire Longline category, some regions may face chronic shortages of bluefin tuna quota if that region experiences increased fishing effort or bluefin tuna interaction rates. It is difficult to predict the total amount of fishing effort that would occur under regional quotas, and the amount of bluefin tuna quota that would be caught. There is likely to be less fishing effort under the Regional Quota control alternative (compared with the No Action alternative) because a few vessels could catch a large number of bluefin tuna, and because the closure of the entire area to the use of pelagic longline gear. The historical data indicate that the majority of bluefin tuna have been caught by relatively few vessels. The amount of target species catch such as swordfish and yellowfin tuna would depend primarily upon the amount of fishing effort and whether the regional quotas or IBQs become constraining. If the regional quotas reduce pelagic longline fishing effort, there may be some minor adverse economic and social impacts on regional fishing communities where effort is reduced.

The Group Quota alternative would implement a quota system for vessels possessing the Atlantic Tunas Longline category permit (combined with the required shark and swordfish limited access permits) that would define three bluefin tuna quota groups and assign vessels with a valid permit to one of the three groups. Each active vessel would be assigned to a quota group based upon the associated permit's historical bluefin tuna interactions to ''designated species'' landings ratio. Active vessels with relatively high numbers of bluefin tuna interactions would be assigned to one quota group, active vessels with a moderate level of bluefin tuna interactions would be assigned to a second group, and the active vessels with a low level of bluefin tuna interactions would be assigned to a third quota group. Using the current quota allocation (8.1%) and the 2012 Longline category quota (74.8 mt) to illustrate, the low avoider quota group would be allocated 24.1 mt and the medium and high avoider quota groups would be allocated 25.1 mt. Although the three quota groups have almost the identical number of vessels assigned to them (53, 54, 54, respectively), as well as similar quota, the average amount of bluefin tuna that they caught historically varies from group to group. The number of bluefin tuna interactions from 2006 through 2011 for the low, medium, and high avoiders was 8,050, 1,348, and 95, respectively. Converted to averages, the average number of bluefin tuna interactions would be 1,342, 225, and 16. Utilizing a rough conversion factor of a .125 mt per fish, 225 fish is equivalent to 28 mt. The high and medium avoider groups are likely to have adequate quota, whereas the low avoider group would have inadequate quota if the future interaction rate of the vessels is similar. The average number of interactions associated with the low avoider group equates to approximately 168 mt. It is likely that the group quota associated with vessels with the highest historical rate of bluefin tuna

interactions would be attained first. This indicates that there would be potentially significant direct short- and long-term adverse economic impacts to the low avoider group. However, there could be moderate to minor positive economic impacts to the high and medium avoider groups.

Under the No Action Quota Control alternative, the current regulatory situation would continue, in which NMFS does not have the authority to prohibit the use of pelagic longline gear when the bluefin tuna quota is attained. When the quota is projected to be reached, pelagic longline vessels may no longer retain bluefin tuna, but may continue to fish for their target species, and must discard any bluefin tuna caught. The economic impacts of this alternative would lead to short- and long-term direct minor economic and social impacts due the loss of revenue from bluefin tuna. In the long-term, if dead discards are not curtailed, the pelagic longline fishery could face reduced allocations and earnings.

The proposed alternative ''NMFS Closure of the Pelagic Longline Fishery'' would close the pelagic longline fishery (i.e., prohibit the use of pelagic longline gear) when the total Longline category bluefin tuna quota is reached, projected to be reached, or exceeded, or when there is high uncertainty regarding the estimated or documented levels of bluefin tuna catch. The economic impacts of this alternative would depend upon when the closure occurred, ranging from January through December. The time the pelagic longline fishery would be closed would depend upon many factors, including the size of the Longline category quota, the type of quota control alternative and other alternatives implemented by Amendment 7, and non-regulatory factors. The range of quotas that would be available to the Longline category would depend upon the combination of alternatives implemented.

Based on the Longline category being closed in late spring and early summer over the past few years and the 2013 closure occurring in June, NMFS estimates that a June closure is a plausible example to examine. A June closure of the pelagic longline fishery would result in a potential loss of revenue of approximately $19.8 million, or $123,000 per vessel per year. This would result in a major short-term adverse direct economic impact to the pelagic longline fishery and this economic impact would continue into the long-term if landings and dead discard rates continue along the current trend.

The proposed enhanced reporting measures include a requirement that vessels with an Atlantic Tunas Purse Seine category permit have an E–MTU VMS unit installed by a qualified marine electrician in order to remain eligible for the Purse Seine permit. Purse seine vessel owners would be required to provide a hail-out declaration using their E–MTU VMS units, indicating target species and gear possessed onboard the vessel before leaving port on every trip. Purse seine vessel owners would also be required to provide a hail-in declaration, using their E–MTU VMS units, providing information on the timing and location of landing before returning to port. The units would be required to send position information to NMFS every hour.

All three vessels that are currently authorized to deploy purse seine gear for Atlantic tunas have already installed E–MTU VMS units in compliance with regulations for other Council-managed fisheries, including Northeast Multispecies and/or Atlantic scallop. If vessels have not already had a type-approved E–MTU VMS unit installed, or if permits were transferred to vessels that have not yet installed E–MTU VMS, they may be eligible for reimbursement (up to $3,100) to offset the costs of procuring a type-approved unit, subject to the availability of funds. This reimbursement would only cover the cost of the E–MTU VMS and could not be applied to offset installation costs by a qualified marine electrician ($400) or monthly communication costs ($44). Initial costs, per vessel, for compliance with E–MTU VMS requirements included in this alternative would be $3,500 if no reimbursement were received and $400 if a reimbursement were received.

On a monthly basis, vessels would be required to establish a communication service plan corresponding to the type-approved E–MTU VMS selected. Costs vary based on the E–MTU VMS unit and communication service provider selected; however, these costs are $44/month for hourly transmission reporting and a limited amount of hail in and hail out declarations. Charges vary by communication service provider for additional messaging or transmission of data in excess of what is required by the Agency. Furthermore, costs will also vary depending on how many trips a vessel makes on a monthly basis as the number of declarations (hail in/hail out) increase proportionately. If a vessel has already installed a type-approved E–MTU VMS unit, this alternative would have neutral direct and indirect socioeconomic impacts in the short and long-term, as the only expense would be monthly communication service fees, which they are already paying for participation in a Council-managed fishery. If vessels do not have an E–MTU VMS unit installed, or an Atlantic tunas purse seine permit is transferred to another vessel lacking VMS, direct, adverse, short-term socioeconomic impacts are expected as a result of having to pay for the E–MTU VMS unit and a qualified marine electrician to install the unit. In the long-term, direct economic impacts would become minor, because monthly communication service provider costs ($44) would be the only expense. No economic impacts to shore-based businesses, including fish dealers, bait and gear suppliers, and other fishing related industries are expected to result from this requirement.

Pelagic longline vessels are already required to use an E–MTU VMS that has been installed by a qualified marine electrician to provide hourly position reports and hail in/out declarations to provide information on target species, gear possessed, and expected time/location of landing. Therefore, this proposed VMS requirement would result in neutral economic impacts in the short and long-term. Economic impacts to shore-based businesses, including fish dealers, bait and gear suppliers, and other fishing related industries are not expected.

Under the No Action alternative, there would be no requirement under HMS regulations for an Atlantic Tunas Purse Seine category vessel to obtain a VMS unit, and there would be no change to the reporting requirements applicable to purse seine vessels. There would also be no additional VMS requirements under HMS regulations for a vessel using pelagic longline gear.

The proposed enhanced reporting measures would also require vessels fishing for Atlantic tunas with pelagic longline gear to report the number of hooks and sets, and for sets with bluefin interactions, the length of all bluefin discarded dead or retained. Vessels fishing with purse seine gear would be required to report the number of sets, and for sets with bluefin interactions, the length of all bluefin discarded dead or retained. This alternative is intended to support the inseason monitoring of the purse seine and pelagic longline fisheries. Current information on the catch of the purse seine fishery is limited to dealer data on sold fish, and does not include information of discarded bluefin tuna or other species caught and/or discarded. Inseason information on catch, including dead discards, would enhance NMFS' ability

to monitor and manage all quota categories.

The proposed measure would result in neutral economic impacts in the short and long-term because of the fact that the vessel owners would already be paying, on average, $44 per month to cover the costs of a communication service provider. The number of additional transmissions necessary to report bluefin tuna retained and discarded dead are not expected to exceed the typical monthly allowance for data sent using the E–MTU VMS. Economic impacts to shore-based businesses, including fish dealers, bait and gear suppliers, and other fishing related industries are not expected.

HMS logbook data (2006–2011) indicate that, on average, pelagic longline vessels have 1.15 (9,493 interactions/8,250 trips = 1.15 interactions/trip) with a bluefin tuna per vessel per trip. This alternative would require all pelagic longline vessel operators to report catch (kept, discarded dead,) and estimate fish size (> or < than 73″ CFL) using their E–MTU VMS within 12 hours. Furthermore, additional information on fishing effort, including the number of hooks deployed on the set that had a bluefin tuna, would also be reported.

The proposed measure is expected to have neutral to minor adverse economic impacts on pelagic longline vessel operators and owners in the short and long-term. Economic impacts to shore-based businesses, including fish dealers, bait and gear suppliers, and other fishing related industries are not expected. Existing regulations require all pelagic longline vessel operators to provide hail out/in declarations and provide location reports on an hourly basis at all times while they are away from port. In order to comply with these regulations, vessel owners must subscribe to a communication service plan that includes an allowance for sending similar declarations (hail out/in) describing target species, fishing gear possessed, and estimated time/location of landing using their E–MTU VMS. This alternative would require, on average, 1.15 additional reports per trip that describe bluefin tuna interactions and fishing effort. Because of the minimal time (approximately 5 minutes) required to submit these reports and the fact that owners would already be enrolled in a communication service plan that would accommodate these additional transmissions, adverse economic impacts are not expected.

The proposed measure to require the use of electronic monitoring, including video cameras, by all vessels issued an Atlantic Tunas Longline permit that intend to fish for highly migratory species, would require both fixed and variable costs over the service life of each camera installed onboard. Specifically, vessels would be required to install and maintain video cameras and associated data recording and monitoring equipment in order to record all longline catch and relevant data regarding pelagic longline gear retrieval and deployment. Only a portion of the recorded information would be utilized to identify bluefin tuna catch. The requirements associated with this alternative would be phased in over a period of time due to the complexity, costs, and logistical constraints associated with the implementation of an electronic monitoring program. NMFS would communicate in writing with the vessel owners during all phases of the program to provide information to assistant vessel owners, and facilitate the provision of technical assistance.

This alternative would require both fixed and variable costs over the service life of each camera installed onboard. The cost of an electronic system bought in 2010, over its 5 year projected lifespan, is about $3,565 a year. This includes 4% of the purchase price for maintenance costs and a 7% interest rate on the loan to buy a system (National Observer Program, 2013). The variable costs for vessel owners include data retrieval ($45/hour; 2 hr per trip; technician travel ($0.5/mile; 100 miles for each trip); fishing activity interpretation ($47/hour; 0.25 hr/trip); and catch data interpretation ($47/hour; 1.5 hr/trip). The estimated total variable costs would be approximately $225 per trip and the annual fixed costs would be $ 3,835 for the purchase and installation of the equipment, and six services per year; ($45/hour; 1 hr six times per year). This alternative would result in direct and indirect adverse economic impacts to pelagic longline vessel owners in the short and long-term.

Under the No Action alternative, NMFS would maintain the status quo and would not implement a requirement for permitted pelagic longline vessels to install electronic devices such as cameras in order to support the monitoring or verification of bluefin tuna catch under an IBQ quota system. This alternative would not result in economic impacts because it would maintain existing requirements.

The proposed enhanced reporting measures would require Atlantic Tunas General, Harpoon and HMS Charter/Headboat permit holders to report their bluefin tuna catch (i.e., landings and discards) using an expanded version of the bluefin tuna recreational automated landings reporting system (ALRS). The automated system includes two reporting options, one that is web-based and an interactive voice response telephone system. The primary impacts of the preferred alternative are the amount of time the new reporting requirement would take, and the reporting costs, respectively. NMFS estimated the potential annual catch for each permit category based on previous years data and multiplied it by the 5 minutes it takes to complete a report (NMFS 2013) for each fish to estimate a total reporting burden of 607 hours affecting a total of potentially 8,226 permit holders as a result of this alternative. Since the data are collected online or via telephone, there are no monetary costs to fishermen or direct economic impacts to fishermen from this alternative.

Adjustments to both the online and IVR systems of the ALRS to implement catch reporting for General, Harpoon, and HMS Charter/Headboat category permit holders are estimated to cost NMFS between $15,000 and $35,000. Annual maintenance would likely cost approximately $8,700 per year, which is the current cost for maintaining the ALRS and the call-in system for reports of other recreational HMS landings (NMFS 2013).

The No Action alternative would not require Atlantic Tunas General, Harpoon and HMS Charter/Headboat permit holders to report their bluefin tuna catch (i.e., landings and discards) using an expanded version of the bluefin tuna recreational automated landings reporting system (ALRS), and would have no social or economic impacts.

Under the No Action alternative regarding observer coverage, there would be no changes to the current observer coverage in the Atlantic Tunas Longline, General, Purse Seine, Harpoon, or HMS Charter/Headboat categories. Therefore, there would be no additional cost to small businesses.

The alternative which would increase the level of NMFS-funded observers on a portion of trips by vessels fishing under the Atlantic Tunas Longline, General, Purse Seine, Harpoon, or HMS Charter/Headboat categories could result in some minor costs to vessel operators if there is an increased chance that they will be selected for observer coverage and will have to accommodate an observer.

One of the alternatives for enhanced reporting (not proposed) would require the reporting of catch by Atlantic Tunas General, Harpoon, and HMS Charter/Headboat category vessels targeting bluefin tuna through submission of an HMS logbook to NMFS. The direct

social and economic impacts of this non-preferred alternative include the amount of time to complete logbook forms and the cost of submission (i.e., mailing) for all fishermen permitted in the affected permit categories. These impacts would be minor, adverse, and long-term. A high-end proxy for the impacts of this alternative is the current reporting burden and cost for the entire HMS logbook program, which have been estimated for all commercial HMS fisheries (28,614 permits, NMFS 2011a). The annual reporting burden for the entire program is estimated at 36,189 hours and costs are $94,779 for postage. A more refined estimate is 6,735, which is the number of fishermen likely to conduct directed fishing trips for bluefin tuna based on the total number of General, Charter/Headboat, and Harpoon category permit holders in the states from Maine through South Carolina. This is likely also an over-estimate, since many General and Charter/Headboat permit holders in these states fish for yellowfin, or other tunas rather than bluefin tuna, or, for Charter/Headboat permit holders, other HMS. NMFS estimates a total annual reporting burden of 16,526 hours and a cost of $8,263.

This rule proposes no action with respect to the current logbook requirements and would make no changes to the current logbook requirements applicable to any of the permit categories. It would have no economic impact on fishing vessel owners.

This rule would make no changes to the scope of the Large Pelagic Survey, and would therefore have no social or economic impacts associated with this alternative.

In contrast, the alternative that would expand the Large Pelagics Survey to include May, November, and December, and add surveys to the states south of VA, including the Gulf of Mexico, would result in minor, adverse, and long-term impacts. The direct economic impact of this alternative is the amount of time that fishermen would expend participating in the survey. There are no financial costs to fishermen since the survey is conducted in person and over the phone, and there would be no direct economic impacts to fishermen for this alternative. NMFS estimates that the dockside survey takes 5 minutes on average, the phone survey takes 8 minutes, and collection of supplemental biological information takes about 1 minute. Previously, NMFS estimated that annual implementation of the Large Pelagics Survey throughout Atlantic and Gulf coastal states using the current target sample-size of 7,870 for the dockside survey, 10,780 for the phone survey and 1,500 for the biological survey would result in a reporting burden of 656 hours, 924 hours, and 25 hours respectively, for a total reporting burden of 1,730 hours (NMFS 2011b). This estimate could be used as a high-end proxy for the reporting burden associated with this alternative. Another method for estimating the reporting burden associated with this alternative is to use a ratio comparing the sample frame (i.e., number of permits) used in the coastwide estimate with the sample frame for the alternative (i.e., number of permits in states south of VA). Using this method, the reporting burden estimate is 559 hours. Because of the sampling design, adding the months of May, November, and December is not expected to add any reporting burden or cost (Ron Salz, pers. comm.).

The alternative to establish 12 equal monthly sub-quotas, was considered in the 2011 Environmental Assessment for a Rule to Adjust the Atlantic Bluefin Tuna General and Harpoon Category Regulations. It would allow the General category to remain open year-round and would revise subquotas so that they are evenly distributed throughout the year (i.e., the base quota of 435.1 mt would be divided into monthly subquotas of 8.3 percent of the General category base quota, or 36.1 mt). NMFS would continue to carry forward unharvested General category quota from one time period to the next time period. This alternative would result in increased harvest in the earlier portions of the General category bluefin tuna season and decreased harvest in the later portions of the season. For early season (January–March) General category participants, an additional 85.2 mt would be available (i.e., 108.3–23.1 mt). At $9.13/lb, this represents potential increased revenue of approximately $1.7 million overall during this time period, nearly five times the current amount. NMFS does not have General category price/lb information for April or May since there is currently no General category fishing during those months, but using $9.13/lb as an estimate, potential revenues for each of those months would be $726,621. Potential revenues for the current June–August and September periods would decrease by approximately $2.2 million (50%) and $1.7 million (69%), given recent average price ($9.13 and $9.61, respectively). For October–November and for December, potential revenues would increase by approximately $317,000 (28%) and $287,000 (60%) at $9.21/lb and $9.65/lb, respectively. Relative to the No Action alternative, under Alternative E 1b, there would generally be substantially increased revenues for January through May and October through December and substantially decreased revenues for June through September, and total annual revenues would decrease by approximately $100,000 (1%).

Under the alternative that would take no action to modify the General category sub-period allocations, economic impacts would be neutral and largely would vary by geographic area, with continued higher potential revenues during the summer months in the northeast and lower amounts to winter fishery participants off the mid- and south Atlantic states. General category participants that fish in the January bluefin tuna fishery may continue to perceive a disadvantage as the available quota for that period is relatively small (5.3% of the General category quota) and that they do not benefit from the rollover of unused quota either inseason, from one time period to the next, nor do they benefit from prior-year underharvest because of the timing of the annual final quota specifications (published in the middle of the year).

The proposed measure would provide NMFS flexibility to transfer General category quota within the year and could result in a shift in the distribution of quota and thus fishing opportunities to the earlier portion of the year. For example, in 2011 and 2012, June through August General category landings totaled 140.3 mt and 192.2 mt, out of an available (base) quota of 217.6 mt. In 2010, June through August General category landings totaled 125.4 mt of an available (adjusted) quota of 269.4 mt. If quota that is anticipated to be unused in the first part of the summer season is made available to January period General category participants and bluefin tuna are landed against the January period subquota, it would potentially result in improved and more complete use of the General category quota. Also, because bluefin tuna's price per lb 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 off the mid- and south Atlantic states. It is possible, however, that an increase of bluefin tuna on the market in the January 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 tuna 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 period would return to the June through August period and onward if not used completely during that period. Overall, short-term, direct impacts depend on the amount and timing of quota transferred inseason and would be expected to be neutral to minor, beneficial impacts for January fishery participants and neutral to minor, adverse impacts for participants in the June through December General category fishery.

Under the No Action alternative to ''Adjust Harpoon Category Retention Limits Inseason,'' Harpoon category participants would continue to have the ability to retain and land up to four large medium fish per vessel per day, as well as unlimited giants. The economic impact of the No Action alternative is expected to be direct and neutral to slightly beneficial and short-term as participants would continue to be able to retain and land a 3rd and 4th large medium bluefin tuna, if available, and would not have to discard these fish if caught while targeting giant bluefin tuna. In 2012, the first year following implementation of the four-fish limit on large mediums, there were only two trips on which three large mediums were landed and two trips on which four large mediums were landed, or 6% total of successful trips. Harpoon quota revenues in 2012 were 24 percent lower than 2011 and 71 percent higher than in 2010.

In contrast, the proposed measure would implement the daily retention limit of large medium bluefin tuna over a range of two to four bluefin tuna, and the default large medium limit would be set at two fish. On a per-trip basis, there would be minor short-term direct adverse social and economic impacts that would depend on availability of large mediums to Harpoon category vessels on a per trip basis and the actual retention limit that NMFS sets inseason (or that is in place by default). Looking at successful 2012 trips, NMFS can estimate potential impacts of this change by determining the number of trips on which three or four large mediums were landed in 2012 and assuming that those fish may not be able to be landed under this alternative. Using 2012 successful trip data, if the limit was set at two large mediums, the revenue from up to six large mediums would be foregone for the season, and with a three fish limit, the revenue of up to two large mediums would be foregone. At an average 2012 weight of 296 lbs. and an average price of $9.13/lb for the Harpoon category, a loss of one to six fish would be approximately $2,702 to $16,215 for the Harpoon category as a whole for the year.

Potentially beneficial economic impacts are possible if a lower limit at the beginning of the season results in the Harpoon category quota lasting longer into the season, as the average price/lb is generally higher in July and August than it is in June. NMFS has not needed to close the Harpoon category in recent years (i.e., as a result of the quota being met) but, depending on the size of the amount of quota available and the number of Harpoon category participants, this may be a consideration.

Under the No Action alternative regarding the Angling category subquota distribution, Angling category participants fishing south of 39°18′ N. lat. (approximately, Great Egg Inlet, NJ) would continue to have their landings of trophy bluefin tuna count toward a shared 66.7% of the Angling category large medium and giant bluefin tuna subquota. The social impact of the No Action alternative is expected to vary by geographic area and to be dependent on availability of trophy-sized bluefin tuna on the fishing grounds. If the pattern of high activity off Virginia and North Carolina continues, fishermen in the mid-Atlantic may have greater opportunities to land a bluefin tuna and participants in the Gulf of Mexico may have no opportunity to land a bluefin tuna when the fish are in their area as the southern trophy fishery may already be closed for the year. Based on the last 2 years, NMFS would expect direct, beneficial, short-term social impacts for Angling and Charter/Headboat trophy fishery participants in the mid-Atlantic and direct, adverse, short-term impacts for participants south of that area, including the Gulf of Mexico. The issue of economic costs for Angling category participants is not relevant, as there is no sale of tunas by Angling category participants. For charter vessels, which sell fishing trips to recreational fishermen, economic impacts are expected to be neutral to beneficial for those in the mid-Atlantic and neutral to adverse for those south of that area, including the Gulf of Mexico, as the perceived opportunity to land a trophy bluefin tuna may be diminished. This should be tempered in the Gulf of Mexico, where there is no directed fishing for bluefin tuna allowed. Given that the current southern trophy bluefin tuna subquota of 2.8 mt represents approximately 17–30 individual fish, impacts are expected to be minor.

Under the proposed measure, a portion of the trophy south subquota would be allocated specifically for the Gulf of Mexico. Specifically, the trophy subquota would be divided as 33% each to the northern area, the southern area outside the Gulf of Mexico, and the Gulf of Mexico. At the current average trophy fish weight, this would allow annually up to 8 trophy bluefin tuna to be landed in each of the three areas. There would be minor, short-term, direct, beneficial social impacts to a small number of vessels in the Gulf of Mexico given the small amount of fish that would be allowed to be landed (as well as indirect beneficial economic impacts for charter vessels), but the perception of greater fairness among southern area participants may result in indirect, longer-term, beneficial, social impacts. There would be minor, short-term, direct and indirect adverse social impacts (and economic impacts for charter vessels) for those outside the Gulf of Mexico as the perceived opportunity to land a trophy bluefin tuna may be diminished.

Under the No Action alternative to ''Change Start Date of Purse Seine Category to June 1,'' there would be no change to the start date of the Purse Seine category fishery, which is currently set at July 15. Economic impacts would be expected to be direct and neutral to adverse depending on availability of schools of bluefin tuna for purse seine operators to decide to make a set on. That is, currently, if conditions would warrant making a set (e.g., based on information from spotter pilots) before July 15, purse seine operators would not be able to fish and would miss the economic opportunity to land and sell bluefin tuna while the other commercial bluefin tuna fisheries are open. Social impacts would be minor and neutral to adverse for purse seine fishery participants and would be minor and neutral to beneficial for fishermen in other categories due to reduced actual or perceived gear conflict from June 1 through July 14.

Under the proposed measure, the start date of the Purse Seine category fishery would be set at June 1 (unless modified by NMFS) to allow more flexibility for purse seine operators to choose when to fish, based on availability of schools of appropriate-sized bluefin tuna and market price. Economic impacts would be expected to be direct and neutral to moderate and beneficial depending on availability of schools of bluefin tuna for purse seine operators to decide to make a set on and market conditions. Social impacts would be minor and neutral to beneficial for purse seine fishery participants and would be minor and neutral to adverse for fishermen in other categories due to increased actual or perceived gear conflict from June 1 through July 14. In 2012, the average

price per pound was $12.46, although the price likely reflects the relatively small amount of purse seine-caught bluefin tuna on the market that year. In 2009, the last year in which there were Atlantic purse seine bluefin tuna landings, the average price per pound was $5.96.

Under the No Action alternative, regarding the rules pertaining to permit category changes, there would be no changes made to current regulations regarding the ability of an applicant to make a correction to their open-access HMS permit category. The current regulations prohibit a vessel issued an open-access Atlantic Tunas or an HMS permit from changing the category of the permit after 10 calendar days from the date of issuance. This No Action alternative is administrative in nature, and therefore the social and economic impacts associated with it would be neutral for most applicants. However, for those applicants who discover their permit category may not allow the vessel to fish in a manner as intended, they may experience moderate adverse social and economic impacts at an individual level. For example, if a commercial fishermen obtained an Angling category permit (recreational) versus a General category permit (commercial) and did not discover the error until after the 10 calendar day window, their vessel would not be allowed to fish commercially for Atlantic tunas for the remainder of that year. Likewise, if recreational fishermen obtained a General category permit (commercial) versus an Angling category permit (commercial) and did not discover the error until after the 10 calendar day window, their vessel would not be allowed to fish under the recreational rules and regulations for the remainder of the year. These two examples demonstrate the potential in lost fishing opportunities as a result of the No Action alternative.

Under the proposed measures, NMFS would allow category changes to an open-access HMS permit issued for a time period greater than 10 calendar days (e.g., 30, 45, or 60 days), provided the vessel has not fished as verified via landings data. This alternative would result in neutral social and economic impacts for most applicants, as there are approximately 20 requests annually that would fall outside the 10 calendar day window. However, for those applicants who discover their permit category may not allow the vessel to fish in a manner as intended (~20 per year), they would experience moderate beneficial social and economic impacts provided they discover the error in the liberalize window (e.g., 30, 45, or 60 days). Using the two examples illustrated above, and assuming no bluefin tuna were caught in either case, each applicant would be allowed to correct their open-access HMS permit category to match their intended fishing practices for the remainder of that year, thereby mitigating the potential of lost fishing opportunities, as well as potential income.

The No Action ''Northern Albacore Tuna Quota'' alternative would maintain the current northern albacore tuna quota. In the last 10 years, U.S. catches reached or exceeded the current U.S. initial quota (527 mt for 2013) in 2004 with 646 mt and in 2007 with 532 mt. However, catches have been less than the adjusted U.S. quotas (currently about 659 mt) for the last several years. Under the No Action alternative, there is no domestic mechanism to limit annual catches of northern albacore tuna beyond the current requirements for Atlantic tunas or HMS vessel permits, authorized gear, observers/logbooks, and time/area closures. Therefore, expected short-term, direct economic impacts and social impacts under the No Action alternative would be neutral. If future overharvests result in the United States being out of compliance with the ICCAT recommendation, the United States would need to put control measures in place and neutral to adverse longer-term direct economic and social impacts could occur if the resulting annual quota needs to be reduced by the amount of the overharvest.

If, under the proposed measure, NMFS implements a domestic quota for northern albacore tuna and recent catch levels continue, and the U.S. quota (including the adjusted quota) recommended by ICCAT is maintained at the current amount, economic and social impacts would not be expected. However, if either the U.S. quota is reduced as part of a new TAC recommendation or catches increase above the current adjusted U.S. quota, there could be adverse impacts resulting from reduced future fishing opportunities and ex-vessel revenues. At an average price of $1.29/lb for commercially-landed albacore tuna in 2011, a reduction of one mt would represent approximately $2,800 under a full quota use situation. Actual impacts would largely depend on the availability of northern albacore tuna and the ability of fishery participants to harvest the quota. In addition, any adverse social and economic impacts of exceeding the TAC, which was adopted as part of the overall ICCAT northern albacore tuna rebuilding program, would be reduced and, in the long term, may be beneficial for fishermen as the stock grows. There may be slight differences in the level of economic and social impacts experienced by the specific individuals of the northern albacore tuna fishery, as well as by participants within a particular fishery sector.

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 (PRA). These requirements have been submitted to OMB for approval. Public reporting burden for these collections of information are estimated to average, as follows:

1. Purse Seine VMS hail out & in, OMB #0648–0372, (5 min/response);
2. Pelagic Longline VMS declaration in Cape Hatteras Gear Restricted Area, or Closed Areas, OMB #0648–0372, (5 min/response);
3. Pelagic Longline VMS declaration into General Category Rules in Cape Hatteras Gear Restricted Area, OMB #0648–0372, (5 min/response);
4. Pelagic Longline and Purse Seine catch reports, OMB #0648–0372, (5 min/response);
5. Electronic Monitoring of Pelagic Longline Vessels, Installation of Camera,
6. Electronic Monitoring of Pelagic Longline Vessels, Maintenance
7. Electronic Monitoring of Pelagic Longline Vessels, Data Retrieval
8. General, Harpoon, and Charter/Headboat reporting via automated systems, OMB #0648–0328, (5 min/response)
9. Pelagic Longline appeal of Performance Metrics, OMB #XXX–XXX, (2 hr/response)
10. Pelagic Longline appeal of Quota Shares, OMB #XXX–XXX, (2 hr/response)
11. Pelagic Longline IBQ Trade Execution and Tracking, Transfer of Allocation, OMB #XXX–XXX, (5 min/response)
12. Pelagic Longline IBQ Trade Execution and Tracking, Online Account Initial Application, OMB #XXX–XXX, (10 min/response)
13. Pelagic Longline IBQ Trade Execution and Tracking, Online Account Renewal Application, OMB #XXX–XXX, (10 min/response)

Public comment is sought on whether these proposed collections of information 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 of information, including through the use

of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Highly Migratory Species Division of the Office of Sustainable Fisheries, at the **ADDRESSES** above, and by email to *OIRA-submission@omb.eop.gov* or fax to (202) 395–7285. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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 in 50 CFR Part 635

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

Dated: August 13, 2013.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. 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.*

■ 2. In § 635.2:

■ a. Revise the definitions of ''Bottom longline,'' ''Green-stick gear,'' and ''Pelagic longline,'' and

■ b. Add the definitions of ''Cape Hatteras gear restricted area,'' ''In transit,'' ''Lessee,'' ''Lessor,'' ''Small Gulf of Mexico gear restricted area,'' and ''Transiting'' in alphabetical order.

The revisions and additions read as follows:

§ 635.2 Definitions.

* * * * *

Bottom longline means a longline that is deployed with enough weights and/or anchors to maintain contact with the ocean bottom. For the purposes of this part, a vessel is considered to have bottom longline gear on board when a power-operated longline hauler, a mainline, weights and/or anchors capable of maintaining contact between the mainline and the ocean bottom, and leaders (gangions) with hooks are on board. Removal of any of these elements constitutes removal of bottom longline gear. Bottom longline vessels may have a limited number of floats and/or high flyers onboard for the purposes of marking the location of the gear but removal of these floats does not constitute removal of bottom longline gear.

* * * * *

Cape Hatteras gear restricted area means the area within the Atlantic Ocean bounded by straight lines connecting the following coordinates in the order stated: 34°50′ N. lat., 75°10′ W. long.; 35°40′ N. lat., 75°10′ W. long.; 35°40′ N. lat., 75°00′ W. long.; 37°10′ N. lat., 75°00′ W. long.; 37°10′ N. lat., 74°20′ W. long.; 34°50′ N. lat., 74°20′ W. long.; 34°50′ N. lat., 75°10′ W. long.

* * * * *

Green-stick gear means an actively trolled mainline attached to a vessel and elevated or suspended above the surface of the water with no more than 10 hooks or gangions attached to the mainline. The suspended line, attached gangions and/or hooks, and catch may be retrieved collectively by hand or mechanical means. Green-stick does not constitute a pelagic longline or a bottom longline as defined in this section.

* * * * *

In transit means non-stop progression through an area.

* * * * *

Lessee means a vessel owner who receives a temporary lease of individual bluefin tuna quota allocation from another vessel through the Bluefin Quota Allocation Leasing Program specified at § 635.15(c).

Lessor means a vessel owner who temporarily leases individual bluefin tuna quota allocation associated with the vessel owner's vessel to another vessel through the Bluefin Quota Allocation Leasing Program specified at § 635.15(c).

* * * * *

Pelagic longline means a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom. For the purposes of this part, a vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks are on board. Removal of any of these elements constitutes removal of pelagic longline gear.

* * * * *

Small Gulf of Mexico gear restricted area means the area within the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 26°30′ N. lat., 94°49′ W. long.; 27°40′ N. lat, 94°49′ W. long.; 27°40′ N. lat., 90°40′ W. long.; 26°30′ N. lat., 90°40′ W. long.; 26°30′N. lat., 94°49′ W. long.

* * * * *

Transiting means progressing through an area without stopping.

* * * * *

■ 3. In § 635.4:

■ a. As revised in a final rule published elsewhere in this issue of the **Federal Register**, paragraph (j)(3) is further revised; and

■ b. Paragraph (o)(4) is revised.

The revisions read as follows:

§ 635.4 Permits and fees.

* * * * *

(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 once within 45 calendar days of the date of issuance of the permit, provided the vessel has not landed bluefin tuna during those 45 calendar days as verified by NMFS via landings data. After 45 calendar days from the date of issuance of the permit, the vessel owner may not change the permit category until the following fishing season.

* * * * *

(o) * * *

(4) The owner of a vessel issued an HMS Commercial Caribbean Small Boat permit may fish for, take, retain, or possess only BAYS tunas, Atlantic swordfish, and Atlantic sharks, subject to the trip limits specified at § 635.24 and may possess unauthorized gears onboard as stated at § 635.19(a).

* * * * *

■ 4. In § 635.5:

■ a. Paragraph (a)(3) is revised;

■ b. Paragraph (a)(4) is redesignated as paragraph (a)(5);

■ c. New paragraph (a)(4) is added; and

■ d. Paragraph (c)(1) is revised.

The revisions and addition 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, at a number designated 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 applied to the quota category according to the permit category of the vessel from which it was landed.

(4) *Bluefin tuna discarded dead, or landed by a commercial vessel and sold.* The owner of a vessel that has been permitted or that should have been permitted in the Atlantic Tunas General or Harpoon categories, or permitted or should have been permitted under the HMS Charter/Headboat category and fishing under the General category quotas and daily limits as specified at § 635.23(c) of this part, must report all discards and/or landings of bluefin tuna through the NMFS automated catch reporting system within 24 hours of the landings or end of trip. Such reports may be made by calling a phone number designated by NMFS or submitting the required information electronically in the method designated by NMFS. The owner of a vessel that has been permitted in a different bluefin tuna category must report as specified elsewhere in this section.

* * * * *

(c) * * *

(1) *Bluefin tuna.* The owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report the catch of all bluefin tuna discarded dead and/or retained under the Angling category quota designated at § 635.27(a) through the NMFS automated catch reporting system within 24 hours of the landing. Such reports may be made by calling a phone number designated by NMFS or submitting the required information electronically in the method designated by NMFS.

* * * * *

■ 5. Add § 635.9 to subpart A to read as follows:

§ 635.9 Electronic monitoring.

(a) *Applicability.* An owner or operator of a commercial vessel permitted, or required to be permitted, to fish for Atlantic HMS under § 635.4 and that has pelagic longline gear on board must, as specified in this section, install, operate and maintain a video system on the vessel.

(b) *Video System.* The video system, which is comprised of video camera(s), recording equipment, and other related equipment (e.g., video monitor, hydraulic pressure transducer, winch rotation sensor, or system control box), must meet the following requirements:

(1) Video camera(s) must be mounted and placed so as to provide clear, unobstructed views of the area(s) where the pelagic longline gear is retrieved and of catch being removed from hooks prior to being placed in the hold or discarded.

(2) Video camera(s) must be in sufficient numbers, with sufficient resolution 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.

(3) Video recording must be initiated by gear retrieval.

(4) The video system must record all periods of time when the gear is being retrieved and catch is removed from the hooks prior to being placed in the hold or discarded.

(c) *Data maintenance, storage, and viewing.* The video system must have the capacity to allow NMFS, the USCG, and their authorized officers and designees, or any individual authorized by NMFS on board the vessel to monitor the video in real time. The video data must be maintained and made available to the afore-mentioned entities and individuals, upon request. These data must be retained onboard the vessel for no fewer than 120 days after the conclusion of a trip, unless NMFS has notified the vessel operator that the video data may be retained for less than this 120-day period.

(d) *Operation.* The vessel operator must ensure that all bluefin tuna, even those that are released, are handled in a manner than enables the video system to record such fish, and must ensure that all handling and retention of bluefin tuna occurs in accordance with the regulations.

(e) *Failure to adequately monitor the gear and catch.* The video system must be maintained in working condition. If NMFS determines that a video system fails to meet the requirements of paragraphs (b) through (d) of this section, then the vessel owner or operator must ensure that the vessel is in compliance with those requirements before the vessel leaves port. The vessel owner or operator must document changes made to address deficiencies and submit that information to NMFS. The vessel cannot leave port until all changes are approved in writing by NMFS.

(f) *Repair and replacement.* If the vessel owner or operator becomes aware that the video system on the vessel has stopped working at sea, the vessel owner or operator must contact NMFS and follow the instructions given. Such instructions may include but are not limited to returning to port until the video system is repaired. Once in port, the video system must be repaired or reinstalled before the vessel can leave port.

Subpart B—Individual Vessel Measures

■ 6. Revise the subpart B heading to read as set forth above.

■ 7. Add § 635.14 to subpart B to read as follows:

§ 635.14 Performance metrics.

(a) *General.* For purposes of § 635.21(c)(3), NMFS will determine ''qualified'' vessels based on the performance metrics in paragraph (b) of this section. Specifically, NMFS will use fishery dependent and fishery independent data to evaluate vessel performance based on avoidance of bluefin tuna interactions while fishing with a pelagic longline gear and history of compliance with the observer and logbook requirements of §§ 635.7 and 635.5, respectively.

(b) *Calculation of performance metrics.* In year one of implementation, NMFS will analyze the relevant data from the period 2006 to 2011 to determine a vessel's score and qualification status. Subsequently, NMFS will analyze available data from the most recent three consecutive year period to determine a vessel's score and qualification status. NMFS will communicate the results of the annual determination to individual permit holders in writing. NMFS may revise, through a framework action, the scoring system to reflect changes in the fishery or ensure that it provides the desired incentives and meets the goals of this program. The process used to calculate the performance metrics is described fully in Amendment 7 to the 2006 Consolidated HMS FMP. The main metrics are summarized below.

(1) *Bluefin tuna interactions performance metric.* The basis for the

bluefin tuna interactions performance metric is the ratio of the number of bluefin tuna interactions (i.e., the number of fish landed, discarded dead, and discarded alive) to the total weight of designated target species landings (in pounds). For the purposes of this section, the designated target species are: swordfish; yellowfin, bigeye, albacore, and skipjack tunas; dolphin; wahoo; and porbeagle, shortfin mako, and thresher sharks. A relatively low bluefin tuna interaction to designated species ratio ('bluefin tuna ratio') indicates that the vessel has successfully avoided catching bluefin tuna while fishing with pelagic longline gear in the performance metric period.

(2) *Observer compliance performance metric.* NMFS will score vessels based on both the vessel owner's and the operator's compliance with the observer requirements outlined in § 635.7 of this part and § 600.746 of this chapter. In addition, the scoring system will consider the number of trips for which an individual vessel was selected to carry an observer, the number of trips actually observed, the reason why a particular trip was not observed, and other relevant observer information. The scoring system is neutral with respect to valid reasons that a vessel may have been selected by the observer program, but did not take an observer (e.g., no observer was available or the vessel was not fishing with pelagic longline gear). The scoring system is designed to weigh trips that were not observed due to noncompliance with the communication requirements more heavily than those not observed due to noncompliance with the safety and accommodation requirements. The scoring system is also designed to consider evidence of fishing activity that may have occurred without required communication or observer coverage.

(3) *Logbook compliance performance metric.* NMFS will score vessels based on both the vessel owner's and vessel operator's compliance with the logbook reporting requirements outlined in § 635.5 of this part. This metric will reflect the timeliness of the submission of the logbooks (for example, the amount of time elapsed between the offloading of the catch and the logbook submission).

(4) *Combining performance metrics.* The performance metrics described under paragraphs (b)(1) through (3) will be combined through the use of a decision formula described in Amendment 7 to the 2006 Consolidated HMS FMP. The decision formula will result in a designation for each vessel of ''qualified'' or ''not qualified.''

(c) *Annual notification.* NMFS will notify vessel owners annually of the score of their vessel (i.e., ''qualified'' or ''not qualified'') by certified mail. The score applies for only one year. NMFS will make aggregate data regarding access to closed and gear restricted areas available to the general public.

(d) *Appeals.* Vessel owners can appeal performance score determinations through the National Appeals Office pursuant to procedures in 15 CFR part 906. During the appeal, the vessel will be deemed ''not qualified.'' Hardship factors (e.g., illness of vessel owner, divorce of vessel owner, etc.) will not be considered as a basis for an appeal. Appeals will be evaluated based upon the following criteria:

(1) The accuracy of NMFS records regarding the relevant information;

(2) Correct assignment of historical data to the vessel owner/permit holder; and,

(3) The current owner of a permitted vessel may also appeal on the basis of a potential inequity based upon historical changes in vessel ownership or permit transfers (e.g., the current vessel owner is disadvantaged due the history generated by a previous owner of the vessel).

■ 8. Add § 635.15 to subpart B to read as follows:

§ 635.15 Individual bluefin tuna quotas.

(a) *General.* This section establishes an individual bluefin tuna quota (IBQ) program for vessels issued a permit under this part that use pelagic longline gear.

(1) *Overview.* Under the IBQ program, NMFS will assign eligible vessels initial quota shares equivalent to a percentage of the annual Longline category quota.

(2) *Objectives.* The IBQ system is intended to achieve the following objectives:

(i) Limit the amount of bluefin tuna landings and dead discards in the pelagic longline fishery;

(ii) Provide strong incentives for the vessel owner and operator of each individual vessel to avoid bluefin tuna interactions, and thus reduce bluefin tuna dead discards;

(iii) Provide flexibility for pelagic longline vessel owners and operators to obtain bluefin tuna quota from other vessels, if needed, and thus enable a full accounting of bluefin tuna landings and dead discards while also minimizing constraints on fishing for target species;

(iv) Balance the objective of limiting bluefin tuna landings and dead discards with the objective of optimizing fishing opportunities and maintaining profitability; and

(v) Balance the above objectives with potential impacts on the Atlantic Tunas permit categories that target bluefin tuna, and the broader objectives of the 2006 Consolidated HMS FMP and MSA.

(b) *Quota allocation.* A quota allocation is the amount, in metric tons (mt), of quota that is associated with a permitted vessel, based upon the relevant quota share(s) and the annual quota available. Unless otherwise required under paragraph (b)(5) of this section, a vessel's quota allocation for a particular year is derived by multiplying a shareholder's quota share (percentage) by the Longline category quota for that year.

(1) *Annual calculation and notification of individual bluefin quota allocations.* Annually, NMFS will notify IBQ participants of their quota allocation for the next calendar year.

(2) *Regional designations.* All quota shares and allocations are designated as either ''Gulf of Mexico'' or ''Atlantic'' based upon the geographic location of sets as reported to NMFS under the requirements of § 635.5 of this part. Gulf of Mexico quota shares and allocations can be used to fish with pelagic longline gear in either the Gulf of Mexico or the Atlantic regions. Atlantic quota shares and allocations can only be used to fish 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.

(3) *Minimum bluefin tuna quota allocation.* A vessel with an Atlantic Tunas Longline Category permit that fishes with pelagic longline gear, has pelagic longline gear onboard, or intends to fish for, possess, or retain bluefin tuna must have the minimum bluefin tuna quota allocation for either the Gulf of Mexico or Atlantic, depending upon fishing location. The minimum bluefin tuna quota 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 (551.1 lb ww). The minimum bluefin tuna quota allocation for a vessel fishing in the Atlantic or departing for a fishing trip in the Atlantic is 0.125 mt ww (275.6 lb ww). A vessel owner or operator may not declare into or depart on a fishing trip with a pelagic longline onboard unless it has the relevant required minimum bluefin tuna quota allocation for the region in which the fishing activity will occur.

(4) *Accounting for the bluefin tuna caught.* All bluefin tuna dead discards and landings must be accounted within the quota allocation associated with that vessel. If the amount of bluefin tuna

discarded dead and/or retained on a particular trip exceeds the amount of the vessel's bluefin tuna quota allocation, the vessel may land the bluefin tuna, but must resolve its quota debt, as described in paragraph (b)(5) of this section, prior to declaring into or departing on a fishing trip with pelagic longline gear on board by acquiring additional allocation through leasing, as described in paragraph (c) of this section.

(5) *Exceeding an IBQ.* If a the combined amount of bluefin tuna dead discards and landings for a particular trip (as defined at 600.10) exceeds the amount of bluefin tuna quota allocation associated with the vessel, the vessel is considered to have a quota debt equal to the difference between the catch and the bluefin quota allocation. For example, if a vessel has a quota allocation of 0.40 mt, and catches 0.50 mt bluefin tuna on a trip, that vessel would have a quota debt of 0.10 mt. Vessels with a quota debt cannot fish in any region with pelagic longline gear until the quota debt is settled by leasing quota allocation for the appropriate region (per paragraph (c) of this section) and the vessel has at least the minimum quota allocation required to fish and as specified in paragraph (b)(3) of this section. If, by December 1, the vessel owner is unable to obtain the requisite amount of quota allocation to settle the quota debt, the vessel's quota allocation would be reduced accordingly in the subsequent year, or years, until the quota debt is fully settled.

(6) *Duration.* Bluefin tuna quota allocation issued under this section is valid for the relevant fishing year unless it is revoked, suspended, or modified or unless the bluefin tuna Longline category quota is closed per § 635.28(a) of this part.

(7) *Unused IBQ allocation.* Any quota allocation that is unused at the end of the fishing year may not be carried forward to the following year.

(c) *Bluefin Quota Allocation Leasing Program.* Vessel owners of eligible vessels, as specified in paragraph (c)(1) of this section, may lease bluefin tuna quota allocation to and from other vessel owners of eligible vessels, in accordance with the restrictions and conditions of this section.

(1) *Eligible permit holders.* The vessel owner of a vessel issued a valid Atlantic Tunas Longline permit or a valid Atlantic Tunas Purse Seine permit is eligible to lease bluefin tuna quota allocation to or from another such vessel owner. A person who holds an Atlantic Tunas Longline permit that is not associated with a vessel may not lease bluefin quota allocation.

(2) *Application to lease*—(i) *Application information requirements.* The lessor and lessee of bluefin tuna quota allocation must complete a lease application, including all information required by NMFS, and submit the application following instructions provided by NMFS. Information obtained from the lease application will be treated as confidential as provided under applicable Federal law.

(ii) *Approval of lease application.* Unless an application to lease bluefin tuna quota allocation is denied according to paragraph (c)(2)(iii) of this section, NMFS shall confirm application approval to both lessor and lessee.

(iii) *Denial of lease application.* NMFS may deny an application to lease bluefin quota allocation for any of the following reasons, including, but not limited to: the application is incomplete; the lessor or lessee has not been issued a valid Longline or Purse Seine permit or is otherwise not eligible; the lessor's or lessee's Longline or Purse Seine permit is sanctioned pursuant to an enforcement proceeding; NMFS determines that the lessor or lessee vessel is not in compliance with the conditions, restrictions, and requirements of this part; or the lessor has an insufficient bluefin tuna quota allocation available to lease (i.e., the requested amount of lease may not exceed the amount of quota allocation associated with the lessor). Upon denial of an application to lease bluefin tuna quota allocation, NMFS shall notify the applicants describing the reason(s) for application rejection. The decision by NMFS is the final agency decision.

(3) *Conditions and restrictions of leased bluefin tuna quota allocation*—(i) *Subleasing.* In a fishing year, a lessor or lessee may sub-lease bluefin tuna quota allocation that has already been leased from another vessel by following the process specified in paragraph (c)(2) of this section.

(ii) *Carry-forward of leased bluefin quota allocation.* Leased bluefin tuna quota allocation that remains unused at the end of the fishing year may not be carried forward to the subsequent fishing year.

(iii) *History of leased bluefin quota use.* The history of leased bluefin tuna quota allocation used shall be associated with the lessee vessel, for the purpose of calculation of the performance metrics described under § 635.14(b), or other relevant restrictions based upon bluefin discards or landings.

(iv) *Duration of lease.* A lessee may only use the leased bluefin tuna quota allocation during the fishing year in which the quota allocation is applicable.

(v) *Prohibition of leasing allocation during December of each year.* No bluefin tuna quota allocation may be leased during December of each year. This period is necessary to provide NMFS sufficient time to reconcile IBQ accounts, and update quota shares and allocations for the upcoming fishing year.

(vi) *Owners of multiple vessels.* Owners of multiple eligible vessels, as specified in paragraph (k)(1) of this section, may lease quota allocation from one of their vessels to another vessel irrespective of the regional designation of the quota allocation being leased by following the process described in paragraph (c)(2) of this section, but such quota allocation is still subject to the restrictions on the use described under paragraph (b) of this section.

(d) *Sale of IBQ quota shares.* Sale of quota shares between vessel owners is not permitted. NMFS may develop a program to allow and manage the sale of quota shares through a future action.

(e) *Changes in vessel and permit ownership.* In accordance with the regulations specified under § 635.4(l), a vessel owner that has a bluefin tuna quota share may transfer the Atlantic Tunas Longline category permit to another vessel that he or she owns or transfer the permit to another person. The quota share as described under this section, as well as the bluefin tuna fishing history associated with that permit, would transfer with the permit to the new vessel, and remain associated with that permit permanently. As described under paragraphs (c)(1) and (k)(1) of this section, a person that holds an Atlantic Tunas Longline permit that is not associated with a vessel may not receive or lease bluefin tuna quota shares or allocation.

(f) *Annual notification of shares and allocations.* By the start of each fishing year, NMFS will notify vessel owners of eligible vessels, as specified in paragraph (k)(1) of this section, of the quota share associated with the vessel and the resulting quota allocation, based on the available bluefin tuna Longline category quota and any quota debt existing for the vessel. NMFS will provide this information in writing and will also update the electronic monitoring system. Unless specified otherwise, those quota share and allocations will be available for use starting at the start of each fishing year.

(g) *Evaluation.* NMFS will continually monitor the program in light of the objectives listed in paragraph (a)(2) of this section and make any changes through future rulemakings as deemed necessary to meet those objectives. Three years after implementation,

NMFS will publish a written report describing any findings.

(h) *Property rights.* Quota shares and allocations issued pursuant to this part represent may be revoked, limited, modified or suspended at any time subject to the requirements of the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, or other applicable law. Such quota shares and 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.

(i) *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, and its authority to close the pelagic longline fishery specified under § 635.28 of this part.

(j) *Cost recovery.* In a future action, NMFS will develop and implement cost recovery for the IBQ program that will cover costs of management, data collection and analysis, and enforcement activities. Fees shall be collected from quota share and/or allocation holders for the IBQ program pursuant to MSA sections 303A(e) and 304(d)(2). Such fees shall not exceed 3 percent of the ex-vessel value of fish harvested under the program.

(k) *Initial quota shares.* During year one of implementation of the IBQ program described in this section, NMFS will issue quota shares to vessel owners of eligible vessels, as specified in paragraph (k)(1) of this section. New vessel owners that have not participated in the pelagic longline fishery or who have recently obtained the limited access permits needed to fish with pelagic longline gear would need to obtain an Atlantic Tunas Longline permit, as described under § 635.4(l) of this part, and lease quota allocations per paragraph (c) of this section.

(1) *Eligible vessels.* Only vessel owners of vessels with a valid Atlantic Tunas Longline category permit as of the date of the proposed rule regarding this action and that are ''active'' would be eligible to receive an initial quota share. ''Active'' vessels are those vessels that have used pelagic longline gear on at least one set between 2006 and 2011 as reported to NMFS on logbooks, per the requirements of § 635.5 of this part. For the purposes of this section, the vessel owner at the time of reporting is not relevant. If the logbook reports indicate that a particular vessel used pelagic longline gear for at least one set between 2006 and 2011, and the vessel is currently issued a valid Atlantic Tunas Longline category permit, the current vessel owner is qualified to receive an initial quota share even if the current vessel owner did not own the vessel between 2006 and 2011. Similarly, if the logbook reports indicate that a particular vessel did not use pelagic longline gear for at least one set between 2006 and 2011, and the vessel is currently issued a valid Atlantic Tunas Longline category permit, the current vessel owner is not qualified to receive an initial quota share even if the current vessel owner fished with pelagic longline gear on a different vessel between 2006 and 2011. Persons that hold an Atlantic Tunas Longline category permit that is not associated with a vessel would not be eligible for an initial quota share or a bluefin tuna quota allocation. Once a valid Atlantic Tunas Longline category permit becomes associated with such a vessel, that vessel owner would need to lease quota allocation per paragraph (c) of this section before the vessel could fish with pelagic longline gear onboard.

(2) *Quota share determination* Vessel owners as described under paragraph (k)(1) of this section will be allocated a quota share based on dealer and logbook information reported to NMFS, associated with trips on which the eligible vessel used pelagic longline gear from 2006 through 2011. NMFS will review each vessel's reported bluefin tuna interactions (all discards and landings) and landings of designated species (swordfish, yellowfin, bigeye, albacore, and skipjack tunas; dolphin; wahoo; and porbeagle, shortfin mako and thresher sharks) and place each vessel into one of three categories: low, medium and high ratio of bluefin tuna interactions. The quota share will be allocated based on the three categories, as set forth in Amendment 7 to the 2006 Consolidated HMS FMP.

(3) *Regional designations* All initial quota shares and allocations are designated as either ''Gulf of Mexico'' or ''Atlantic'' based upon the geographic location of sets as reported to NMFS under the requirements of § 635.5 of this part. Vessel owners may use Gulf of Mexico quota shares and allocations to fish in either the Gulf of Mexico or the Atlantic regions. Vessel owners may use Atlantic quota shares and allocations only to fish in the Atlantic region.

(4) *Notification of initial quota share and allocation.* NMFS will notify vessel owners of eligible vessels of the vessel quota share (percentage) and the resulting quota allocation (mt) for the relevant fishing year, based on the bluefin Longline category quota.

(5) *Appeal of initial quota share and allocation.* Vessel owners can appeal initial quota share and allocation determinations through the National Appeals Office pursuant to procedures in 15 CFR part 906. Hardship factors (e.g., illness of vessel owner, divorce of vessel owner, etc.) will not be considered as a basis for an appeal. Appeals will be evaluated based upon the following criteria:

(i) Initial eligibility for quota shares based on ownership of an active vessel with a valid Atlantic Tunas Longline permit combined with the required shark and swordfish limited access permits;

(ii) The accuracy of NMFS's records regarding that vessel's amount of designated species landings and/or bluefin interactions; and

(iii) The correct assignment of designated species landings and bluefin tuna interactions to the vessel owner/permit holder.

■ 9. Add § 635.19 to subpart C to read as follows:

§ 635.19 Authorized gears.

(a) *General.* No person may fish for, catch, possess, or retain any Atlantic HMS with gears other than the primary gears specifically authorized in this part. Consistent with § 635.21(a) of this part, secondary gears may be used at boat side to aid and assist in subduing, or bringing on board a vessel, Atlantic HMS that have first been caught or captured using primary gears. For purposes of this part, secondary gears include, but are not limited to, dart harpoons, gaffs, flying gaffs, tail ropes, etc. Secondary gears may not be used to capture, or attempt to capture, free-swimming or undersized HMS. Except for vessels permitted under § 635.4(o) or as specified in this section, a vessel using or having onboard in the Atlantic Ocean any unauthorized gear may not possess an Atlantic HMS on board.

(b) *Atlantic tunas.* A person that fishes for, retains, or possesses an Atlantic bluefin tuna may not have on board a vessel or use on board a vessel any primary gear other than those authorized for the category for which the Atlantic tunas or HMS permit has been issued for such vessel. Primary gears are the gears specifically authorized in this section. When fishing for Atlantic tunas other than bluefin tuna, primary gear authorized for any Atlantic Tunas permit category may be used, except that purse seine gear may be used only on board vessels permitted in the Purse Seine category and pelagic longline gear may be used only on board vessels issued an Atlantic Tunas Longline category tuna permit, a LAP other than handgear for swordfish, and a LAP for sharks. A person issued an

HMS Commercial Caribbean Small Boat permit who fishes for, retains, or possesses BAYS tunas in the U.S. Caribbean, as defined at § 622.2, may have on board and use handline, harpoon, rod and reel, bandit gear, green-stick gear, and buoy gear.

(1) *Angling.* Speargun (for BAYS tunas only), and rod and reel (including downriggers) and handline (for all tunas).

(2) *Charter/headboat.* 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.

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

(4) *Harpoon.* Harpoon.

(5) *Longline.* Longline and green-stick.

(6) *Purse seine.* Purse seine.

(7) *Trap.* Pound net and fish weir.

(c) *Billfish.* (1) Only persons who have been issued a valid HMS Angling or valid Charter/headboat permit, or who have been issued a valid Atlantic Tunas General category or Swordfish General Commercial permit and are participating in a tournament as provided in § 635.4(c) of this part, may possess a blue marlin, white marlin, or roundscale spearfish in, or take a blue marlin, white marlin, or roundscale spearfish from, its management unit. Blue marlin, white marlin, or roundscale spearfish may only be harvested by rod and reel.

(2) Only persons who have been issued a valid HMS Angling or valid Charter/Headboat permit, or who have been issued a valid Atlantic Tunas General category or Swordfish General Commercial permit and are participating in a tournament as provided in § 635.4(c) of this part, may possess or take a sailfish shoreward of the outer boundary of the Atlantic EEZ. Sailfish may only be harvested by rod and reel.

(d) *Sharks.* No person may possess a shark in the EEZ taken from its management unit without a permit issued under § 635.4. No person issued a Federal Atlantic commercial shark permit under § 635.4 may possess a shark taken by any gear other than rod and reel, handline, bandit gear, longline, or gillnet. No person issued an HMS Commercial Caribbean Small Boat permit may possess a shark taken from the U.S. Caribbean, as defined at § 622.2, by any gear other than with rod and reel, handline or bandit gear. No person issued an HMS Angling permit or an HMS Charter/headboat permit under § 635.4 may possess a shark if the shark was taken from its management unit by any gear other than rod and reel or handline, except that persons on a vessel issued both an HMS Charter/headboat permit and a Federal Atlantic commercial shark permit may possess sharks taken with rod and reel, handline, bandit gear, longline, or gillnet if the vessel is not engaged in a for-hire fishing trip.

(e) *Swordfish.* (1) No person may possess north Atlantic swordfish taken from its management unit by any gear other than handgear, green-stick, or longline, except that such swordfish taken incidentally while fishing with a squid trawl may be retained by a vessel issued a valid Incidental HMS squid trawl permit, subject to restrictions specified in § 635.24(b)(2). No person may possess south Atlantic swordfish taken from its management unit by any gear other than longline.

(2) An Atlantic swordfish may not be retained or possessed on board a vessel with a gillnet. A swordfish will be deemed to have been harvested by gillnet when it is onboard, or offloaded from, a vessel fishing with or having on board a gillnet.

(3) A person aboard a vessel issued or required to be issued a valid directed handgear LAP for Atlantic swordfish or an HMS Commercial Caribbean Small Boat permit may not fish for swordfish with any gear other than handgear. A swordfish will be deemed to have been harvested by longline when the fish is on board or offloaded from a vessel fishing with or having on board longline gear. Only vessels that have been issued a valid directed or handgear swordfish LAP or an HMS Commercial Caribbean Small Boat permit under this part may utilize or possess buoy gear.

(4) Except for persons aboard a vessel that has been issued a directed, incidental, or handgear limited access swordfish permit, a Swordfish General Commercial permit, an Incidental HMS squid trawl permit, or an HMS Commercial Caribbean Small Boat permit under § 635.4, no person may fish for North Atlantic swordfish with, or possess a North Atlantic swordfish taken by, any gear other than handline or rod and reel.

(5) A person aboard a vessel issued or required to be issued a valid Swordfish General Commercial permit may only possess North Atlantic swordfish taken from its management unit by rod and reel, handline, bandit gear, green-stick, or harpoon gear.

■ 10. Section 635.21is revised to read as follows:

§ 635.21 Gear operation, restricted areas, and deployment restrictions.

(a) *All Atlantic HMS fishing gears.* (1) An Atlantic HMS harvested from its management unit that is not retained must be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water.

(2) If a billfish is caught by a hook and not retained, the fish must be released by cutting the line near the hook or by using a dehooking device, in either case without removing the fish from the water.

(3) *Restricted gear and closed areas for all Atlantic HMS fishing gears.* (i) No person may fish for, catch, possess, or retain any Atlantic highly migratory species or anchor a fishing vessel that has been issued a permit or is required to be permitted under this part, in the areas and seasons designated at § 622.34(a)(3) of this chapter.

(ii) From November through April of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson closed area or the Steamboat Lumps closed area, as defined in § 635.2.

(iii) From May through October of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson or the Steamboat Lumps closed areas except for surface trolling. For the purposes of this section, surface trolling is defined as fishing with lines trailing behind a vessel which is in constant motion at speeds in excess of four knots with a visible wake. Such trolling may not involve the use of down riggers, wire lines, planers, or similar devices.

(iv) From January through April of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Edges 40 Fathom Contour closed area, as defined in § 635.2.

(b) *Longline—general restrictions.* (1) All vessels that have pelagic or bottom longline gear onboard and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must possess inside the wheelhouse the document provided by NMFS entitled ''Careful Release Protocols for Sea Turtle Release with Minimal Injury,'' and must also post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS.

(2) Transiting and gear stowage: If a vessel issued a permit under this part is in a closed or gear restricted area

described in this section with pelagic or bottom longline gear on board, it is a rebuttable presumption that any fish on board such a vessel were taken with pelagic or bottom longline in the closed or gear restricted area except where such possession is aboard a vessel transiting a closed area with all fishing gear stowed appropriately. Longline gear is stowed appropriately if all gangions and hooks are disconnected from the mainline and are stowed on or below deck, hooks are not baited, and all buoys and weights are disconnected from the mainline and drum (buoys may remain on deck).

(3) When a marine mammal or sea turtle is hooked or entangled by pelagic or bottom longline gear, the operator of the vessel must immediately release the animal, retrieve the pelagic or bottom longline gear, and move at least 1 nm (2 km) from the location of the incident before resuming fishing. Similarly, when a smalltooth sawfish is hooked or entangled by bottom longline gear, the operator of the vessel must immediately release the animal, retrieve the bottom longline gear, and move at least 1 nm (2 km) from the location of the incident before resuming fishing. Reports of marine mammal entanglements must be submitted to NMFS consistent with regulations in § 229.6 of this title.

(4) Vessels that have pelagic or bottom longline gear on board and that have been issued, or are required to have been issued, a permit under this part must have only corrodible hooks on board.

(c) *Pelagic longlines.* (1) If a vessel issued or required to be issued a permit under this part:

(i) Is in a closed area designated under paragraph (c)(2) of this section and has bottom longline gear onboard, the vessel may not, at any time, possess or land any pelagic species listed in table 2 of appendix A to this part in excess of 5 percent, by weight, of the total weight of pelagic and demersal species possessed or landed, that are listed in tables 2 and 3 of appendix A to this part.

(ii) Has pelagic longline gear on board, persons aboard that vessel may not possess, retain, transship, land, sell, or store silky sharks, oceanic whitetip sharks, or scalloped, smooth, or great hammerhead sharks.

(2) Except as noted in paragraph (c)(3) of this section, if pelagic longline gear is on board a vessel issued or required to be issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear:

(i) In the Northeastern United States closed area from June 1 through June 30 each calendar year;

(ii) In the Charleston Bump closed area from February 1 through April 30 each calendar year;

(iii) In the East Florida Coast closed area at any time;

(iv) In the Desoto Canyon closed area at any time;

(v) In the Cape Hatteras gear restricted area from December 1 through April 30 each year;

(vi) In the Small Gulf of Mexico gear restricted area from April 1 through May 30 each year;

(vii) In the Northeast Distant gear restricted area at any time, unless persons onboard the vessel comply with the following:

(A) The vessel is limited to possessing onboard and/or using only 18/0 or larger circle hooks with an offset not to exceed 10 degrees. The outer diameter of the circle hook at its widest point must be no smaller than 2.16 inches (55 mm) when measured with the eye on the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis), and the distance between the circle hook point and the shank (i.e., the gap) must be no larger than 1.13 inches (28.8 mm). The allowable offset is measured from the barbed end of the hook and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side. The only allowable offset circle hooks are those that are offset by the hook manufacturer. If green-stick gear, as defined at § 635.2, is onboard, a vessel may possess up to 20 J-hooks. J-hooks may be used only with green-stick gear, and no more than 10 hooks may be used at one time with each green-stick gear. J-hooks used with green-stick gear may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook; and,

(B) The vessel is limited, at all times, to possessing onboard and/or using only whole Atlantic mackerel and/or squid bait, except that artificial bait may be possessed and used only with green-stick gear, as defined at § 635.2, if green-stick gear is onboard; and,

(C) Vessels must possess, inside the wheelhouse, a document provided by NMFS entitled, ''Careful Release Protocols for Sea Turtle Release with Minimal Injury,'' and must post, inside the wheelhouse, sea turtle handling and release guidelines provided by NMFS; and,

(D) Required sea turtle bycatch mitigation gear, which NMFS has approved under paragraph (c)(5)(iv) of this section, on the initial list of ''NMFS-Approved Models For Equipment Needed For The Careful Release of Sea Turtles Caught In Hook And Line Fisheries,'' must be carried onboard, and must be used in accordance with the handling requirements specified in paragraphs (c)(2)(vii)(E) through(G) of this section; and,

(E) Sea turtle bycatch mitigation gear, specified in paragraph (c)(2)(vii)(D) of this section, must be used to disengage any hooked or entangled sea turtles that cannot be brought on board, and to facilitate access, safe handling, disentanglement, and hook removal or hook cutting from sea turtles that can be brought on board, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines specified in paragraph (c)(2)(vii)(C) of this section, and in accordance with the onboard handling and resuscitation requirements specified in § 223.206(d)(1).

(F) Boated turtles: When practicable, active and comatose sea turtles must be brought on board, with a minimum of injury, using a dipnet approved on the initial list specified in paragraph (c)(2)(vii)(D) of this section. All turtles less than 3 ft. (.91 m) carapace length should be boated, if sea conditions permit. A boated turtle should be placed on a standard automobile tire, or cushioned surface, in an upright orientation to immobilize it and facilitate gear removal. Then, it should be determined if the hook can be removed without causing further injury. All externally embedded hooks should be removed, unless hook removal would result in further injury to the turtle. No attempt to remove a hook should be made if the hook has been swallowed and the insertion point is not visible, or if it is determined that removal would result in further injury. If a hook cannot be removed, as much line as possible should be removed from the turtle using approved monofilament line cutters from the initial list specified in paragraph (c)(2)(vii)(D) of this section, and the hook should be cut as close as possible to the insertion point, using bolt cutters from that list, before releasing the turtle. If a hook can be removed, an effective technique may be to cut off either the barb, or the eye, of the hook using bolt cutters, and then to slide the hook out. When the hook is visible in the front of the mouth, an approved mouth-opener from the initial list specified in paragraph (c)(2)(vii)(D) of this section may facilitate opening the turtle's mouth, and an approved gag from that list may facilitate keeping the mouth open. Short-handled dehookers for ingested hooks, long-nose pliers, or needle-nose pliers from the initial list

specified in paragraph (c)(2)(vii)(D) of this section should be used to remove visible hooks that have not been swallowed from the mouth of boated turtles, as appropriate. As much gear as possible must be removed from the turtle without causing further injury prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (c)(2)(vii)(C) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

(G) Non-boated turtles: If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear, specified in paragraph (c)(2)(vii)(D) of this section, must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in paragraph (c)(2)(vii)(C) of this section. Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. A front flipper or flippers of the turtle must be secured, if possible, with an approved turtle control device from the list specified in paragraph (c)(2)(vii)(D) of this section. All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using an approved line cutter from the list specified in paragraph (c)(2)(vii)(D) of this section. If the hook can be removed, it must be removed using a long-handled dehooker from the initial list specified in paragraph (c)(2)(vii)(D) of this section. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (c)(2)(vii)(C) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

(3) *Restricted access to closed and gear restricted areas.* Vessels that have been issued, or are required to have been issued, a limited access permit issued under this part may fish with pelagic longline gear in the closed areas or gear restricted areas described in paragraph (c)(2)(i) through (iv) of this section, under the conditions described in paragraphs (c)(3)(i) through (v) of this section. Vessels that have been issued, or are required to have been issued, a limited access permit issued under this part may fish in the Cape Hatteras gear restricted area under the conditions described in paragraph (c)(3)(vi) of this section.

(i) *Eligible vessels.* Vessels must be determined by NMFS to be ''qualified,'' using the performance metrics described in § 635.14 of this part.

(ii) *Observer requirement.* Vessels must be selected as part of the observer program described in § 635.7 of this part to carry an observer in the statistical area of a closed or gear restricted area, and must have a NMFS approved observer on board.

(iii) *VMS requirement.* Vessels must ''declare in'' to the closed or gear restricted area via VMS prior to leaving the dock and report species caught and fishing effort daily via VMS per the requirements of § 635.69 of this part.

(iv) *East Florida Coast closed area restriction.* Within the East Florida Coast closed area, vessels would have access only to the waters north of 28°17′10″ N. lat. and east of the 100 fathoms curve.

(v) *NMFS authority to terminate access.* On an annual basis or during the fishing season, NMFS may terminate access to each or all of the closed and restricted gear areas for all vessels fishing with pelagic longline gear. NMFS will file any termination action with the Office of the Federal Register for publication and base its action on the following criteria and other relevant factors as needed:

(A) The usefulness of information on catch obtained from observers, logbooks, VMS reporting, and dealer reports;

(B) The species caught; number of animals caught; rate of catch and animal length, weight, condition, and location;

(C) Variations in the seasonal distribution, abundance, or migration patterns of a bycatch or target species;

(D) Condition or status of the stock or species of concern and impacts of continued access to the closed area on all species;

(E) Catch data on comparable species from outside the closed area (both target species and bycatch);

(F) Implications on quota management of relevant stocks;

(G) Relevant data regarding the effectiveness of other closed areas and their individual or cumulative impacts in relation to the objectives of the closed areas, and the 2006 Consolidated HMS FMP; and

(H) The criteria listed under § 635.27(a)(8).

(vi) *Access to the Cape Hatteras gear restricted area.* (A) Vessels that are determined by NMFS to be ''qualified,'' using the performance metrics described in § 635.14 of this part, may fish with pelagic longline gear in the Cape Hatteras gear restricted area during the year for which they are qualified, subject to the restrictions in this paragraph (c)(3).

(B) When the General category is open per § 635.28(a), and provided no pelagic longline gear is on board, vessels determined to be ''not qualified'' using the performance metrics described in § 635.14 may target bluefin tuna with gear authorized under the General category per § 635.19(b)(3) within the Cape Hatteras gear restricted area. Vessels fishing pursuant to this provision are subject to the bluefin tuna retention limits in effect for the General category under § 635.23(a). Bluefin tuna landed with authorized handgear would be counted against the General category quota. Such vessels would be required to ''declare in'' to the area via VMS and report species caught and effort daily via VMS per the requirements of § 635.69 of this part.

(4) In the Gulf of Mexico, pelagic longline gear may not be fished or deployed from a vessel issued or required to have a permit under this part with live bait affixed to the hooks; and, a person aboard a vessel issued or required to have a permit under this part that has pelagic longline gear on board may not possess live baitfish, maintain live baitfish in any tank or well on board the vessel, or set up or attach an aeration or water circulation device in or to any such tank or well. For the purposes of this section, the Gulf of Mexico includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(5) The operator of a vessel permitted or required to be permitted under this part and that has pelagic longline gear on board must undertake the following sea turtle bycatch mitigation measures:

(i) *Possession and use of required mitigation gear.* Required sea turtle bycatch mitigation gear, which NMFS has approved under paragraph (c)(5)(iv) of this section as meeting the minimum design standards specified in paragraphs (c)(5)(i)(A) through (M) of this section, must be carried onboard, and must be used to disengage any hooked or entangled sea turtles in accordance with the handling

requirements specified in paragraph (c)(5)(ii) of this section.

(A) *Long-handled line clipper or cutter.* Line cutters are intended to cut high test monofilament line as close as possible to the hook, and assist in removing line from entangled sea turtles to minimize any remaining gear upon release. NMFS has established minimum design standards for the line cutters, which may be purchased or fabricated from readily available and low-cost materials. The LaForce line cutter and the Arceneaux line clipper are models that meet these minimum design standards. One long-handled line clipper or cutter meeting the minimum design standards, and a set of replacement blades, are required to be onboard. The minimum design standards for line cutters are as follows:

(*1*) *A protected and secured cutting blade.* The cutting blade(s) must be capable of cutting 2.0–2.1 mm (0.078 in.-0.083 in.) monofilament line (400-lb test) or polypropylene multistrand material, known as braided or tarred mainline, and must be maintained in working order. The cutting blade must be curved, recessed, contained in a holder, or otherwise designed to facilitate its safe use so that direct contact between the cutting surface and the sea turtle or the user is prevented. The cutting instrument must be securely attached to an extended reach handle and be easily replaceable. One extra set of replacement blades meeting these standards must also be carried on board to replace all cutting surfaces on the line cutter or clipper.

(*2*) *An extended reach handle.* The line cutter blade(s) must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the height of the vessel's freeboard, or 6 feet (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. There is no restriction on the type of material used to construct this handle as long as it is sturdy and facilitates the secure attachment of the cutting blade.

(B) *Long-handled dehooker for ingested hooks.* A long-handled dehooking device is intended to remove ingested hooks from sea turtles that cannot be boated. It should also be used to engage a loose hook when a turtle is entangled but not hooked, and line is being removed. The design must shield the barb of the hook and prevent it from re-engaging during the removal process. One long-handled device, meeting the minimum design standards, is required onboard to remove ingested hooks. The minimum design standards are as follows:

(*1*) *Hook removal device.* The hook removal device must be constructed of 5/16-inch (7.94 mm) 316 L stainless steel and have a dehooking end no larger than 1–7/8-inches (4.76 cm) outside diameter. The device must securely engage and control the leader while shielding the barb to prevent the hook from re-engaging during removal. It may not have any unprotected terminal points (including blunt ones), as these could cause injury to the esophagus during hook removal. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) *Extended reach handle.* The dehooking end must be securely fastened to an extended reach handle or pole with a minimum length equal to or greater than 150 percent of the height of the vessel's freeboard, or 6 ft. (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. The handle must be sturdy and strong enough to facilitate the secure attachment of the hook removal device.

(C) *Long-handled dehooker for external hooks.* A long-handled dehooker, meeting the minimum design standards, is required onboard for use on externally-hooked sea turtles that cannot be boated. The long-handled dehooker for ingested hooks described in paragraph (c)(5)(i)(B) of this section would meet this requirement. The minimum design standards are as follows:

(*1*) *Construction.* A long-handled dehooker must be constructed of 5/16-inch (7.94 mm) 316 L stainless steel rod. A 5-inch (12.7-cm) tube T-handle of 1-inch (2.54 cm) outside diameter is recommended, but not required. The design should be such that a fish hook can be rotated out, without pulling it out at an angle. The dehooking end must be blunt with all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) *Extended reach handle.* The handle must be a minimum length equal to the height of the vessel's freeboard or 6 ft. (1.83 m), whichever is greater.

(D) *Long-handled device to pull an ''inverted V.''* This tool is used to pull a ''V'' in the fishing line when implementing the ''inverted V'' dehooking technique, as described in the document entitled ''Careful Release Protocols for Sea Turtle Release With Minimal Injury,'' required under paragraph (a)(3) of this section, for disentangling and dehooking entangled sea turtles. One long-handled device to pull an ''inverted V'', meeting the minimum design standards, is required onboard. If a 6-ft (1.83 m) J-style dehooker is used to comply with paragraph (c)(5)(i)(C) of this section, it will also satisfy this requirement. Minimum design standards are as follows:

(*1*) *Hook end.* This device, such as a standard boat hook or gaff, must be constructed of stainless steel or aluminum. A sharp point, such as on a gaff hook, is to be used only for holding the monofilament fishing line and should never contact the sea turtle.

(*2*) *Extended reach handle.* The handle must have a minimum length equal to the height of the vessel's freeboard, or 6 ft. (1.83 m), whichever is greater. The handle must be sturdy and strong enough to facilitate the secure attachment of the gaff hook.

(E) *Dipnet.* One dipnet, meeting the minimum design standards, is required onboard. Dipnets are to be used to facilitate safe handling of sea turtles by allowing them to be brought onboard for fishing gear removal, without causing further injury to the animal. Turtles must not be brought onboard without the use of a dipnet. The minimum design standards for dipnets are as follows:

(*1*) *Size of dipnet.* The dipnet must have a sturdy net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm) to accommodate turtles below 3 ft. (0.914 m) carapace length. The bag mesh openings may not exceed 3 inches (7.62 cm). There must be no sharp edges or burrs on the hoop, or where the hoop is attached to the handle.

(*2*) *Extended reach handle.* The dipnet hoop must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the height of the vessel's freeboard, or at least 6 ft (1.83 m), whichever is greater. The handle must made of a rigid material strong enough to facilitate the sturdy attachment of the net hoop and able to support a minimum of 100 lbs (34.1 kg) without breaking or significant bending or distortion. It is recommended, but not required, that the extended reach handle break down into sections.

(F) *Tire.* A minimum of one tire is required onboard for supporting a turtle in an upright orientation while it is onboard, although an assortment of sizes is recommended to accommodate a range of turtle sizes. The required tire must be a standard passenger vehicle tire, and must be free of exposed steel belts.

(G) *Short-handled dehooker for ingested hooks.* One short-handled

device, meeting the minimum design standards, is required onboard for removing ingested hooks. This dehooker is designed to remove ingested hooks from boated sea turtles. It can also be used on external hooks or hooks in the front of the mouth. Minimum design standards are as follows:

(*1*) *Hook removal device.* The hook removal device must be constructed of ¼-inch (6.35 mm) 316 L stainless steel, and must allow the hook to be secured and the barb shielded without re-engaging during the removal process. It must be no larger than 15–16 inch (3.33 cm) outside diameter. It may not have any unprotected terminal points (including blunt ones), as this could cause injury to the esophagus during hook removal. A sliding PVC bite block must be used to protect the beak and facilitate hook removal if the turtle bites down on the dehooking device. The bite block should be constructed of a 3–4-inch (1.91 cm) inside diameter high impact plastic cylinder (e.g., Schedule 80 PVC) that is 10 inches (25.4 cm) long to allow for 5 inches (12.7 cm) of slide along the shaft. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) *Handle length.* The handle should be approximately 16–24 inches (40.64 cm–60.69 cm) in length, with approximately a 5-inch (12.7 cm) long tube T-handle of approximately 1 inch (2.54 cm) in diameter.

(H) *Short-handled dehooker for external hooks.* One short-handled dehooker for external hooks, meeting the minimum design standards, is required onboard. The short-handled dehooker for ingested hooks required to comply with paragraph (c)(5)(i)(G) of this section will also satisfy this requirement. Minimum design standards are as follows:

(*1*) *Hook removal device.* The dehooker must be constructed of 5/16-inch (7.94 cm) 316 L stainless steel, and the design must be such that a hook can be rotated out without pulling it out at an angle. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) *Handle length.* The handle should be approximately 16–24 inches (40.64 cm–60.69 cm) long with approximately a 5-inch (12.7 cm) long tube T-handle of approximately 1 inch (2.54 cm) in diameter.

(I) *Long-nose or needle-nose pliers.* One pair of long-nose or needle-nose pliers, meeting the minimum design standards, is required on board. Required long-nose or needle-nose pliers can be used to remove deeply embedded hooks from the turtle's flesh that must be twisted during removal. They can also hold PVC splice couplings, when used as mouth openers, in place. To meet the minimum design standards such pliers must generally be approximately 12 inches (30.48 cm) in length, and should be constructed of stainless steel material.

(J) *Bolt cutters.* One pair of bolt cutters, meeting the minimum design standards, is required on board. Required bolt cutters may be used to cut hooks to facilitate their removal. They should be used to cut off the eye or barb of a hook, so that it can safely be pushed through a sea turtle without causing further injury. They should also be used to cut off as much of the hook as possible, when the remainder of the hook cannot be removed. To meet the minimum design standards such bolt cutters must generally be approximately 17 inches (43.18 cm) in total length, with 4-inch (10.16 cm) long blades that are 2¼ inches (5.72 cm) wide, when closed, and with 13-inch (33.02 cm) long handles. Required bolt cutters must be able to cut hard metals, such as stainless or carbon steel hooks, up to ¼-inch (6.35 mm) diameter.

(K) *Monofilament line cutters.* One pair of monofilament line cutters is required on board. Required monofilament line cutters must be used to remove fishing line as close to the eye of the hook as possible, if the hook is swallowed or cannot be removed. To meet the minimum design standards such monofilament line cutters must generally be approximately 7½ inches (19.05 cm) in length. The blades must be 1 in (4.45 cm) in length and ⅝ in (1.59 cm) wide, when closed, and are recommended to be coated with Teflon (a trademark owned by E.I. DuPont de Nemours and Company Corp.).

(L) *Mouth openers/mouth gags.* Required mouth openers and mouth gags are used to open sea turtle mouths, and to keep them open when removing ingested hooks from boated turtles. They must allow access to the hook or line without causing further injury to the turtle. Design standards are included in the item descriptions. At least two of the seven different types of mouth openers/gags described below are required:

(*1*) *A block of hard wood.* Placed in the corner of the jaw, a block of hard wood may be used to gag open a turtle's mouth. A smooth block of hard wood of a type that does not splinter (e.g. maple) with rounded edges should be sanded smooth, if necessary, and soaked in water to soften the wood. The dimensions should be approximately 11 inches (27.94 cm) 1 inch (2.54 cm) 1 inch (2.54 cm). A long-handled, wire shoe brush with a wooden handle, and with the wires removed, is an inexpensive, effective and practical mouth-opening device that meets these requirements.

(*2*) *A set of three canine mouth gags.* Canine mouth gags are highly recommended to hold a turtle's mouth open, because the gag locks into an open position to allow for hands-free operation after it is in place. A set of canine mouth gags must include one of each of the following sizes: small (5 inches) (12.7 cm), medium (6 inches) (15.24 cm), and large (7 inches) (17.78 cm). They must be constructed of stainless steel. A 1-inch (4.45 cm) piece of vinyl tubing (¾-inch (1.91 cm) outside diameter and ⅝-inch (1.59 cm) inside diameter) must be placed over the ends to protect the turtle's beak.

(*3*) *A set of two sturdy dog chew bones.* Placed in the corner of a turtle's jaw, canine chew bones are used to gag open a sea turtle's mouth. Required canine chews must be constructed of durable nylon, zylene resin, or thermoplastic polymer, and strong enough to withstand biting without splintering. To accommodate a variety of turtle beak sizes, a set must include one large (5½–8 inches (13.97 cm–20.32 cm) in length), and one small (3½–4½ inches (8.89 cm–11.43 cm) in length) canine chew bones.

(*4*) *A set of two rope loops covered with hose.* A set of two rope loops covered with a piece of hose can be used as a mouth opener, and to keep a turtle's mouth open during hook and/or line removal. A required set consists of two 3-foot (0.91 m) lengths of poly braid rope (⅜-inch (9.52 mm) diameter suggested), each covered with an 8-inch (20.32 cm) section of ½ inch (1.27 cm) or ¾ inch (1.91 cm) light-duty garden hose, and each tied into a loop. The upper loop of rope covered with hose is secured on the upper beak to give control with one hand, and the second piece of rope covered with hose is secured on the lower beak to give control with the user's foot.

(*5*) *A hank of rope.* Placed in the corner of a turtle's jaw, a hank of rope can be used to gag open a sea turtle's mouth. A 6-foot (1.83 m) lanyard of approximately 3/16-inch (4.76 mm) braided nylon rope may be folded to create a hank, or looped bundle, of rope. Any size soft-braided nylon rope is allowed, however it must create a hank of approximately 2–4 inches (5.08 cm–10.16 cm) in thickness.

(*6*) *A set of four PVC splice couplings.* PVC splice couplings can be positioned inside a turtle's mouth to allow access to the back of the mouth for hook and line removal. They are to be held in place with the needle-nose pliers. To ensure proper fit and access, a required set must consist of the following Schedule 40 PVC splice coupling sizes: 1 inch (2.54 cm), 1¼ inch (3.18 cm), 1½ inch (3.81 cm), and 2 inches (5.08 cm).

(*7*) *A large avian oral speculum.* A large avian oral speculum provides the ability to hold a turtle's mouth open and to control the head with one hand, while removing a hook with the other hand. The avian oral speculum must be 9-inches (22.86 cm) long, and constructed of 3/16-inch (4.76 mm) wire diameter surgical stainless steel (Type 304). It must be covered with 8 inches (20.32 cm) of clear vinyl tubing (5/16-inch (7.9 mm) outside diameter, 3/16-inch (4.76 mm) inside diameter).

(M) *Turtle control devices.* One turtle control device, as described in paragraph (c)(5)(i)(M)(*1*) or (*2*) of this section, and meeting the minimum design standards, is required onboard and must be used to secure a front flipper of the sea turtle so that the animal can be controlled at the side of the vessel. It is strongly recommended that a pair of turtle control devices be used to secure both front flippers when crew size and conditions allow. Minimum design standards consist of:

(*1*) *Turtle tether and extended reach handle.* Approximately 15–20 feet of ½-inch hard lay negative buoyance line is used to make an approximately 30-inch loop to slip over the flipper. The line is fed through a ¾-inch fair lead, eyelet, or eyebolt at the working end of a pole and through a ¾-inch eyelet or eyebolt in the midsection. A ½-inch quick release cleat holds the line in place near the end of the pole. A final ¾-inch eyelet or eyebolt should be positioned approximately 7-inches behind the cleat to secure the line, while allowing a safe working distance to avoid injury when releasing the line from the cleat. The line must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the height of the vessel's freeboard, or a minimum of 6 feet (1.83 m), whichever is greater. There is no restriction on the type of material used to construct this handle, as long as it is sturdy. The handle must include a tag line to attach the tether to the vessel to prevent the turtle from breaking away with the tether still attached.

(*2*) *T&G ninja sticks and extended reach handles.* Approximately 30–35 feet of ½-inch to ⅝-inch soft lay polypropylene or nylon line or similar is fed through 2 PVC conduit, fiberglass, or similar sturdy poles and knotted using an overhand (recommended) knot at the end of both poles or otherwise secured. There should be approximately 18–24 inches of exposed rope between the poles to be used as a working surface to capture and secure the flipper. Knot the line at the ends of both poles to prevent line slippage if they are not otherwise secured. The remaining line is used to tether the apparatus to the boat unless an additional tag line is used. Two lengths of sunlight resistant ¾-inch schedule 40 PVC electrical conduit, fiberglass, aluminum, or similar material should be used to construct the apparatus with a minimum length equal to, or greater than, 150 percent of the height of the vessel's freeboard, or 6 feet (1.83 m), whichever is greater.

(ii) *Handling and release requirements.* (A) Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(A) through (D) of this section, must be used to disengage any hooked or entangled sea turtles that cannot be brought onboard. Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(E) through (M) of this section, must be used to facilitate access, safe handling, disentanglement, and hook removal or hook cutting of sea turtles that can be brought onboard, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines specified in paragraph (a)(3) of this section, and in accordance with the onboard handling and resuscitation requirements specified in § 223.206(d)(1) of this title.

(B) *Boated turtles.* When practicable, active and comatose sea turtles must be brought on board, with a minimum of injury, using a dipnet as required by paragraph (c)(5)(i)(E) of this section. All turtles less than 3 ft. (.91 m) carapace length should be boated, if sea conditions permit.

(*1*) A boated turtle should be placed on a standard automobile tire, or cushioned surface, in an upright orientation to immobilize it and facilitate gear removal. Then, it should be determined if the hook can be removed without causing further injury.

(*2*) All externally embedded hooks should be removed, unless hook removal would result in further injury to the turtle. No attempt to remove a hook should be made if it has been swallowed and the insertion point is not visible, or if it is determined that removal would result in further injury.

(*3*) If a hook cannot be removed, as much line as possible should be removed from the turtle using monofilament cutters as required by paragraph (c)(5)(i) of this section, and the hook should be cut as close as possible to the insertion point before releasing the turtle, using boltcutters as required by paragraph (c)(5)(i) of this section.

(*4*) If a hook can be removed, an effective technique may be to cut off either the barb, or the eye, of the hook using bolt cutters, and then to slide the hook out. When the hook is visible in the front of the mouth, a mouth-opener, as required by paragraph (c)(5)(i) of this section, may facilitate opening the turtle's mouth and a gag may facilitate keeping the mouth open. Short-handled dehookers for ingested hooks, long-nose pliers, or needle-nose pliers, as required by paragraph (c)(5)(i) of this section, should be used to remove visible hooks from the mouth that have not been swallowed on boated turtles, as appropriate.

(*5*) As much gear as possible must be removed from the turtle without causing further injury prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (a)(3) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

(C) *Non-boated turtles.* If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear required by paragraphs (c)(5)(i)(A) through (D) of this section must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in paragraph (a)(3) of this section.

(*1*) Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. A front flipper or flippers of the turtle must be secured with an approved turtle control device from the list specified in paragraph (c)(2)(v)(D) of this section.

(*2*) All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as

possible must be removed prior to release, using a line cutter as required by paragraph (c)(5)(i) of this section. If the hook can be removed, it must be removed using a long-handled dehooker as required by paragraph (c)(5)(i) of this section.

(*3*) Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (a)(3) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) for additional information.

(iii) *Gear modifications.* The following measures are required of vessel operators to reduce the incidental capture and mortality of sea turtles:

(A) *Gangion length.* The length of any gangion on vessels that have pelagic longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must be at least 10 percent longer than any floatline length if the total length of any gangion plus the total length of any floatline is less than 100 meters.

(B) *Hook size, type, and bait.* Vessels fishing outside of the NED gear restricted area, as defined at § 635.2, that have pelagic longline gear on board, and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, are limited, at all times, to possessing on board and/or using only whole finfish and/or squid bait, and the following types and sizes of fishing hooks:

(*1*) 18/0 or larger circle hooks with an offset not to exceed 10°; and/or,

(*2*) 16/0 or larger non-offset circle hooks.

(*i*) For purposes of paragraphs (c)(5)(iii)(C)(*1*) and (*2*) of this section, the outer diameter of an 18/0 circle hook at its widest point must be no smaller than 2.16 inches (55 mm), and the outer diameter of a 16/0 circle hook at its widest point must be no smaller than 1.74 inches (44.3 mm), when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). The distance between the hook point and the shank (i.e., the gap) on an 18/0 circle hook must be no larger than 1.13 inches (28.8 mm), and the gap on a 16/0 circle hook must be no larger than 1.01 inches (25.8 mm). The allowable offset is measured from the barbed end of the hook, and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side. The only allowable offset circle hooks are those that are offset by the hook manufacturer. In the Gulf of Mexico, as described at § 600.105(c), circle hooks also must be constructed of corrodible round wire stock that is no larger than 3.65 mm in diameter.

(*ii*) [Reserved]

(*3*) If green-stick gear, as defined at § 635.2, is onboard, a vessel may possess up to 20 J-hooks. J-hooks may be used only with green-stick gear, and no more than 10 hooks may be used at one time with each green-stick gear. J-hooks used with green-stick gear may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook. If green-stick gear is onboard, artificial bait may be possessed, but may be used only with green-stick gear.

(iv) *Approval of sea turtle bycatch mitigation gear.* NMFS will file with the Office of the Federal Register for publication an initial list of required sea turtle bycatch mitigation gear that NMFS has approved as meeting the minimum design standards specified under paragraph (c)(5)(i) of this section. Other devices proposed for use as line clippers or cutters or dehookers, as specified under paragraphs (c)(5)(i)(A), (B), (C), (G), (H), and (K) of this section, must be approved as meeting the minimum design standards before being used. NMFS will examine new devices, as they become available, to determine if they meet the minimum design standards, and will file with the Office of the Federal Register for publication notification of any new devices that are approved as meeting the standards.

(d) *Bottom longlines.* (1) If bottom longline gear is onboard a vessel issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in the following areas:

(i) The mid-Atlantic shark closed area from January 1 through July 31 each calendar year;

(ii) The areas designated at § 622.33(a)(1) through (3) of this chapter, year-round; and

(iii) The areas described in paragraphs (d)(1)(iii)(A) through (H) of this section, year-round.

(A) *Snowy Grouper Wreck.* Bounded by rhumb lines connecting, in order, the following points: 33°25′ N. lat., 77°04.75′ W. long.; 33°34.75′ N. lat., 76°51.3′ W. long.; 33°25.5′ N. lat., 76°46.5′ W. long.; 33°15.75′ N. lat., 77°00.0′ W. long.; 33°25′ N. lat., 77°04.75′ W. long.

(B) *Northern South Carolina.* Bounded on the north by 32°53.5′ N. lat.; on the south by 32°48.5′ N. lat.; on the east by 78°04.75′ W. long.; and on the west by 78°16.75′ W. long.

(C) *Edisto.* Bounded on the north by 32°24′ N. lat.; on the south by 32°18.5′ N. lat.; on the east by 78°54.0′ W. long.; and on the west by 79°06.0′ W. long.

(D) *Charleston Deep Artificial Reef.* Bounded by rhumb lines connecting, in order, the following points: 32°04′ N. lat., 79°12′ W. long.; 32°08.5′ N. lat., 79°07.5′ W. long.; 32°06′ N. lat., 79°05′ W. long.; 32°01.5′ N. lat., 79°09.3′ W. long.; 32°04′ N. lat., 79°12′ W. long.

(E) *Georgia.* Bounded by rhumb lines connecting, in order, the following points: 31°43′ N. lat., 79°31′ W. long.; 31°43′ N. lat., 79°21′ W. long.; 31°34′ N. lat., 79°29′ W. long.; 31°34′ N. lat., 79°39′ W. long; 31°43′ N. lat., 79°31′ W. long.

(F) *North Florida.* Bounded on the north by 30°29′ N. lat.; on the south by 30°19′ N. lat.; on the east by 80°02′ W. long.; and on the west by 80°14′ W. long.

(G) *St. Lucie Hump.* Bounded on the north by 27°08′ N. lat.; on the south by 27°04′ N. lat.; on the east by 79°58′ W. long.; and on the west by 80°00′ W. long.

(H) *East Hump.* Bounded by rhumb lines connecting, in order, the following points: 24°36.5′ N. lat., 80°45.5′ W. long.; 24°32′ N. lat., 80°36′ W. long; 24°27.5′ N. lat., 80°38.5′ W. long; 24°32.5′ N. lat., 80°48′ W. long.; 24°36.5′ N. lat., 80°45.5′ W. long.

(2) The operator of a vessel required to be permitted under this part and that has bottom longline gear on board must undertake the following bycatch mitigation measures to release sea turtles, prohibited sharks, or smalltooth sawfish, as appropriate.

(i) *Possession and use of required mitigation gear.* The equipment listed in paragraph (c)(5)(i) of this section must be carried on board and must be used to handle, release, and disentangle hooked or entangled sea turtles, prohibited sharks, or smalltooth sawfish in accordance with requirements specified in paragraph (d)(2)(ii) of this section.

(ii) *Handling and release requirements.* Sea turtle bycatch mitigation gear, as required by paragraph (d)(2)(i) of this section, must be used to disengage any hooked or entangled sea turtle as stated in paragraph (c)(5)(ii) of this section. This mitigation gear should also be employed to disengage any hooked or entangled species of prohibited sharks as listed under heading D of Table 1 of appendix A of this part, any hooked or entangled

species of sharks that exceed the retention limits as specified in § 635.24(a), and any hooked or entangled smalltooth sawfish. In addition, if a smalltooth sawfish is caught, the fish should be kept in the water while maintaining water flow over the gills and the fish should be examined for research tags. All smalltooth sawfish must be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water or any research tags from the fish.

(3) If a vessel issued or required to be issued a permit under this part is in a closed area designated under paragraph (d)(1) of this section and has pelagic longline gear onboard, the vessel may not, at any time, possess or land any demersal species listed in Table 3 of Appendix A to this part in excess of 5 percent, by weight, of the total weight of pelagic and demersal species possessed or landed, that are listed in Tables 2 and 3 of Appendix A to this part.

(e) *Purse seine*—(1) *Mesh size.* A purse seine used in directed fishing for bluefin tuna must have a mesh size equal to or smaller than 4.5 inches (11.4 cm) in the main body (stretched when wet) and must have at least 24-count thread throughout the net.

(2) *Inspection of purse seine vessels.* Persons that own or operate an Atlantic Tunas purse seine vessel must have their fishing gear inspected for mesh size by an enforcement agent of NMFS prior to commencing fishing for the season in any fishery that may result in the harvest of Atlantic tunas. Such persons must request such inspection at least 24 hours before commencement of the first fishing trip of the season. If NMFS does not inspect the vessel within 24 hours of such notification, the inspection requirement is waived. In addition, at least 24 hours before commencement of offloading any bluefin tuna after a fishing trip, such persons must request an inspection of the vessel and catch by notifying NMFS. If, after notification by the vessel, NMFS does not arrange to inspect the vessel and catch at offloading, the inspection requirement is waived.

(f) *Rod and reel.* Persons who have been issued or are required to be issued a permit under this part and who are participating in a ''tournament'', as defined in § 635.2, that bestows points, prizes, or awards for Atlantic billfish must deploy only non-offset circle hooks when using natural bait or natural bait/artificial lure combinations, and may not deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination.

(g) *Gillnet.* (1) Persons fishing with gillnet gear must comply with the provisions implementing the Atlantic Large Whale Take Reduction Plan, the Bottlenose Dolphin Take Reduction Plan, the Harbor Porpoise Take Reduction Plan, and any other relevant Take Reduction Plan set forth in §§ 229.32 through 229.35 of this title. If a listed whale is taken, the vessel operator must cease fishing operations immediately and contact NOAA Fisheries as required under part 229 of this title.

(2) While fishing with a gillnet for or in possession of any of the large coastal, small coastal, and pelagic sharks listed in section A, B, and/or C of table 1 of appendix A of this part, the gillnet must remain attached to at least one vessel at one end, except during net checks.

(3) Vessel operators fishing with gillnet for, or in possession of, any of the large coastal, small coastal, and pelagic sharks listed in sections A, B, and/or C of table 1 of appendix A of this part are required to conduct net checks every 0.5 to 2 hours to look for and remove any sea turtles, marine mammals, or smalltooth sawfish. Smalltooth sawfish should not be removed from the water while being removed from the net.

(h) *Buoy gear.* Vessels utilizing buoy gear may not possess or deploy more than 35 floatation devices, and may not deploy more than 35 individual buoy gears per vessel. Buoy gear must be constructed and deployed so that the hooks and/or gangions are attached to the vertical portion of the mainline. Floatation devices may be attached to one but not both ends of the mainline, and no hooks or gangions may be attached to any floatation device or horizontal portion of the mainline. If more than one floatation device is attached to a buoy gear, no hook or gangion may be attached to the mainline between them. Individual buoy gears may not be linked, clipped, or connected together in any way. Buoy gears must be released and retrieved by hand. All deployed buoy gear must have some type of monitoring equipment affixed to it including, but not limited to, radar reflectors, beeper devices, lights, or reflective tape. If only reflective tape is affixed, the vessel deploying the buoy gear must possess on board an operable spotlight capable of illuminating deployed floatation devices. If a gear monitoring device is positively buoyant, and rigged to be attached to a fishing gear, it is included in the 35 floatation device vessel limit and must be marked appropriately.

(i) *Speargun fishing gear.* Speargun fishing gear may only be utilized when recreational fishing for Atlantic BAYS tunas and only from vessels issued either a valid HMS Angling or valid HMS Charter/Headboat permit. Persons fishing for Atlantic BAYS tunas using speargun gear, as specified in § 635.19 of this part, must be physically in the water when the speargun is fired or discharged, and may freedive, use SCUBA, or other underwater breathing devices. Only free-swimming BAYS tunas, not those restricted by fishing lines or other means, may be taken by speargun fishing gear. ''Powerheads'', as defined at § 600.10 of this chapter, or any other explosive devices, may not be used to harvest or fish for BAYS tunas with speargun fishing gear.

(j) *Green-stick gea*r. Green-stick gear may only be utilized when fishing from vessels issued a valid Atlantic Tunas General, Swordfish General Commercial, HMS Charter/Headboat, or Atlantic Tunas Longline category permit. The gear must be attached to the vessel, actively trolled with the mainline at or above the water's surface, and may not be deployed with more than 10 hooks or gangions attached.

■ 11. In § 635.23, the section heading and paragraphs (d) and (f) are revised to read as follows:

§ 635.23 Retention limits for bluefin tuna.

* * * * *

(d) *Harpoon category.* Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land an unlimited number of giant bluefin tuna per day. An incidental catch of two large medium bluefin tuna per vessel per day may be retained, possessed, or landed, unless the retention limits is increased by NMFS through an inseason adjustment to three, or a maximum of four, large medium bluefin tuna per vessel per day, based upon the criteria under § 635.27(a)(8). NMFS will implement an adjustment via publication in the **Federal Register**. If adjusted upwards to three or four large medium bluefin tuna 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)(8).

* * * * *

(f) *Longline category.* Persons aboard a vessel permitted in the Atlantic Tunas Longline category are subject to the bluefin tuna retention restrictions in this paragraph.

(1) *Fishing with pelagic longline gear.* (i) A vessel fishing with pelagic longline gear may retain, possess, land and sell large medium and giant bluefin tuna

taken incidentally when fishing for other species if in compliance with all the IBQ requirements of section § 635.15 of this part, including the requirement that a vessel may not declare into or depart on a fishing trip with pelagic longline onboard unless it has the required minimum bluefin tuna quota allocation required for the region where fishing activity will occur.

(ii) A vessel with pelagic longline gear onboard must retain all dead bluefin tuna that are 73 inches or greater CFL.

(2) *Fishing with gear other than pelagic longline.* A vessel issued an Atlantic Tunas Longline category permit that does not have pelagic longline gear onboard may not retain, land or sell bluefin tuna, unless fishing under the provisions of § 635.21(c)(3)(vi)(B).

* * * * *

■ 12. In § 635.27:

■ a. Paragraphs (a) introductory text, (a)(1) through (3), (a)(4)(i) and (iii), (a)(5) and (6), (a)(7) heading, and (a)(7)(i) are revised; and

■ b. Paragraphs (a)(4)(v), (a)(8)(x) through (xiv), and (e) are added.

The revisions and additions read as follows:

§ 635.27 Quotas.

(a) *Bluefin tuna.* Consistent with ICCAT recommendations, and with paragraph (a)(10)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. bluefin tuna 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. bluefin tuna quota will be allocated among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories, as described in this section. The baseline annual U.S. bluefin tuna quota is 923.7 mt ww, not including an additional annual 25 mt ww allocation provided in paragraph (a)(3) of this section. The bluefin quota for the quota categories is calculated through the following process. First, 68 mt ww is subtracted from the baseline annual U.S. bluefin tuna quota and allocated to the Longline category quota. Second, the remaining quota is divided among the categories according to the following percentages: General—47.1 percent (403 mt ww); Angling—19.7 percent (168.6 mt ww), which includes the school bluefin tuna held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon—3.9 percent (33.4 mt ww); Purse Seine—18.6 percent (159.1 mt ww); Longline—8.1 percent (69.3 mt ww) plus the 68 mt ww allocation (137.3 mt ww total not including 25 mt ww allocation from paragraph (a)(3)); Trap—0.1 percent (0.9 mt ww); and Reserve—2.5 percent (21.4 mt ww). NMFS may make inseason and annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section, including quota adjustments as a result of the Annual reallocation of Purse Seine quota described under paragraph (a)(4)(v). Bluefin tuna quotas are specified in whole weight.

(1) *General category quota.* (i) Catches from vessels for which General category Atlantic Tunas permits have been issued, catches from vessels issued an Atlantic Tunas Longline permit fishing under the provisions of § 635.21(c)(3)(vi)(B) and certain catches from vessels for which an HMS Charter/headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). The amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold under the General category quota is 403 mt ww, and is apportioned as follows, unless modified as described under paragraph (a)(1)(ii):

(A) January 1 through the effective date of a closure notice filed by NMFS announcing that the January subquota is reached, or projected to be reached under § 635.28(a)(1), or until March 31, whichever comes first—5.3 percent (21.4 mt ww);

(B) June 1 through August 31—50 percent (201.5 mt ww);

(C) September 1 through September 30—26.5 percent (106.8 mt ww);

(D) October 1 through November 30—13 percent (52.4 mt ww); and

(E) December 1 through December 31—5.2 percent (21 mt ww).

(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 June 1 through August 31 time period to the January time period; or from the October 1 through November 30 time period to the September time period.

(iii) When the General category fishery has been closed in any quota period specified under paragraph (a)(1)(i) of this section, NMFS will publish a closure action as specified in § 635.28. The subsequent time-period subquota will automatically open in accordance with the dates specified under paragraph (a)(1)(i) of this section.

(2) *Angling category quota.* In accordance with the framework procedures of the Consolidated HMS FMP, prior to each fishing year, or as early as feasible, NMFS will establish the Angling category daily retention limits. The total amount of bluefin tuna that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 168.6 mt ww. No more than 2.3 percent (3.9 mt ww) of the annual Angling category quota may be large medium or giant bluefin tuna. In addition, over each 2-consecutive-year period (starting in 2011, inclusive), no more than 10 percent of the annual U.S. bluefin tuna quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school bluefin tuna (i.e., 94.9 mt ww). The Angling category quota includes the amount of school bluefin tuna held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for bluefin tuna are further subdivided as follows:

(i) After adjustment for the school bluefin tuna quota held in reserve (under paragraph (a)(7)(ii) of this section), 52.8 percent (40.8 mt ww) of the school bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining school bluefin tuna Angling category quota (36.5 mt ww) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(ii) An amount equal to 52.8 percent (36.9 mt ww) of the large school/small medium bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining large school/small medium bluefin tuna Angling category quota (32.9 mt ww) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(iii) One third (1.3 mt ww) of the large medium and giant bluefin tuna angling category quota may be caught retained, possessed, or landed, in each of the three following geographic areas: (1) North of 39° 18′ N. lat.; (2) south of 39° 18′ N. lat., and outside of the Gulf of Mexico; and (3) in the Gulf of Mexico. 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.* The total amount of large medium and giant bluefin tuna that may be caught discarded dead, or retained, possessed, or landed by vessels that possess Longline category Atlantic Tunas permits is 137.3 mt ww. In addition, 25 mt ww shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area.

(4) * * *

(i) The total amount of large medium and giant bluefin tuna that may be caught, retained, possessed, or landed by vessels that possess Purse Seine category Atlantic Tunas permits is 159.1 mt ww, unless changed pursuant to the provisions of paragraph (4)(v). The directed purse seine fishery for bluefin tuna commences on June 1 of each year, unless NMFS takes action to delay the season start date. Based on cumulative and projected landings in other commercial fishing categories, and the potential for gear conflicts on the fishing grounds or market impacts due to oversupply, NMFS may delay the bluefin tuna purse seine season start date from June 1 to no later than August 15, by filing an adjustment action with the Office of the Federal Register for publication. The Purse Seine category fishery closes on December 31 of each year.

* * * * *

(iii) Annually, NMFS will make equal allocations of the available size classes of bluefin tuna among purse seine vessel owners so requesting, adjusted as necessary to account for underharvest or overharvest by each participating vessel or the vessel it replaces from the previous fishing year, consistent with paragraphs (a) introductory text, (a)(4)(v), and (a)(10)(i) of this section. Such allocations are freely transferable, in whole or in part, among vessels that have Purse Seine category Atlantic Tunas permits. Any purse seine vessel owner intending to land bluefin tuna under a bluefin tuna quota allocation transferred from another purse seine vessel owner must lease that allocation through the Individual Bluefin Quota Allocation Leasing Program procedures at § 635.15(c)(3). Trip or seasonal catch limits otherwise applicable under § 635.23(e) are not affected by transfers of bluefin tuna allocation. Purse seine vessel owners who, through landing and/or transfer, have no remaining bluefin tuna quota allocation may not use their permitted vessels in any fishery in which Atlantic bluefin tuna might be caught, regardless of whether bluefin tuna are retained, unless such vessel owners lease additional allocation through the Individual Bluefin Quota Allocation Leasing Program.

* * * * *

(v) *Annual reallocation of Purse Seine quota.* Annually, by the end of the year, NMFS will determine the amount of quota available to be allocated to the Purse Seine category for the upcoming fishing year. NMFS will allocate the Purse Seine category either 100%, 75%, 50%, or 25% of its annual baseline quota, described in paragraph (a)(4)(i) of this section, according the allocation criteria in this paragraph. Any quota not allocated to the Purse Seine category would be allocated to the Reserve category. If the purse seine catch (landings and dead discards) in year one is between 0 and 20% of the year one baseline Purse Seine quota, the Purse Seine category would be allocated 25% of their baseline quota in year two, and 75% of the Purse Seine quota would be reallocated to the Reserve Category for that year. If the purse seine catch in year one is greater than 20% and up to 45% of the year one baseline Purse Seine quota, the Purse Seine category would be allocated 50% of their baseline quota in year two, and 50% of the Purse Seine quota would be reallocated to the Reserve Category for that year. If the purse seine catch in year one is greater than 45% and up to 74% of the year one baseline Purse Seine quota, the Purse Seine category would be allocated 75% of their baseline quota in year two, and 25% of the Purse Seine quota would be transferred to the Reserve Category for that year. If the purse seine catch in year one is greater than 75% of the year one baseline Purse Seine quota, the Purse Seine category would be allocated 100% of their baseline quota in year two, and no quota would be transferred to the Reserve Category for that year. These criteria would apply following the same pattern in years beyond year two. NMFS will inform the owners of vessels with Purse Seine permits of its determination regarding the amount of quota that will be available to be allocated to the Purse Seine category for the subsequent year, based upon the information available at the time. Thereafter, NMFS may modify the quota allocated to Purse Seine category based on revisions to the total bluefin tuna quota, or other new information.

(5) *Harpoon category quota.* The total amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 33.4 mt ww. The Harpoon category fishery commences on June 1 of each year, and closes on November 15 of each year.

(6) *Trap category quota.* The total amount of large medium and giant bluefin tuna that may be caught, retained, possessed, or landed by vessels that possess Trap category Atlantic Tunas permits is 0.9 mt ww.

(7) *Reserve category quota.* (i) The total amount of bluefin tuna that is held in reserve for inseason or annual adjustments and research using quota or subquotas is 21.4 mt ww, and may be augmented by underharvest from the previous year, or annual reallocation of Purse Seine quota as described under paragraph (4)(v) of this section. Consistent with paragraphs (a)(8), (a)(9), and (a)(10) of this section, NMFS may allocate any portion of this quota for inseason or annual adjustments to any category quota in the fishery.

* * * * *

(8) * * *

(x) Optimize fishing opportunity.

(xi) Account for dead discards.

(xii) Facilitate quota accounting.

(xiii) Support other fishing monitoring programs through quota allocations and/or generation of revenue.

(xiv) Support research through quota allocations and/or generation of revenue.

* * * * *

(e) *Northern albacore tuna*—(1) *Annual quota.* Consistent with ICCAT recommendations and domestic management objectives, the total baseline annual fishery quota is 527 mt ww. The total quota, after any adjustments made per paragraph (e)(2) of this section, is the fishing year's total amount of northern albacore tuna that may be landed by persons and vessels subject to U.S. jurisdiction.

(2) *Annual adjustments.* Consistent with ICCAT recommendations and domestic management objectives, and based on landings statistics and other information as appropriate, if for a particular year, the total landings are above or below the annual quota for that year, the difference between the annual quota and the landings will be subtracted from, or added to, the following year's quota, respectively, or subtracted or added through a delayed, or multi-year adjustment. Carryover adjustments shall be limited to 25 percent of the baseline quota allocation for that year. NMFS will file with the Office of the Federal Register for publication any adjustment or apportionment made under this paragraph (e)(2).

■ 13. In § 635.28, paragraphs (a)(1) and (2) and (b)(1) are revised, and (a)(4), (c)(3), and (d) are added to read as follows:

§ 635.28 Fishery closures.

(a) *Bluefin tuna.* (1) When a bluefin tuna quota, other than the Purse Seine category or Longline category quota specified in § 635.27(a), is reached, or is 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 bluefin tuna under that quota is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

(2) From the commencement date of the directed purse seine fishery, as provided under § 635.27(a)(4)(i), through December 31, the owner or operator of a vessel that has been allocated a portion of the Purse Seine category quota under § 635.27(a)(4), or leased bluefin tuna quota allocation under § 635.15(c), may fish for bluefin tuna. Such vessel may be used to fish for yellowfin, bigeye, albacore, or skipjack tuna at any time, however, landings of bluefin tuna taken incidental to fisheries targeting other Atlantic tunas or in any fishery in which bluefin tuna might be caught will be deducted from the individual vessel's quota for the following bluefin tuna fishing season. Upon reaching its individual vessel allocation of bluefin tuna, the vessel may not participate in a directed purse seine fishery for Atlantic tunas or in any fishery in which bluefin tuna might be caught for the remainder of the fishing year.

* * * * *

(4) When the bluefin tuna Longline category quota is reached, projected to be reached, or exceeded, or when there is high uncertainty regarding the estimated or documented levels of bluefin tuna catch, 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 closure action, vessels that have been issued or are required to have a limited access permit under § 635.4 of this part and that have pelagic longline gear onboard are prohibited from leaving port, regardless of the amount of bluefin tuna quota allocation remaining to each vessel or the amount of fishery quota remaining for other species. In addition to providing notice in the **Federal Register**, NMFS will also notify vessels of any closures and their timing via VMS and may use other electronic methods, such as email. Vessels would be required to return to port prior to the closure date/time. When considering whether to close or reopen the Longline category quota, NMFS may consider the following factors:

(i) Total estimated bluefin tuna catch (landings and dead discards) in relation to the quota;

(ii) The estimated amount by which the bluefin tuna quota might be exceeded;

(iii) The usefulness of data relevant to monitoring the quota;

(iv) The uncertainty in the documented or estimated dead discards or landings of bluefin tuna;

(v) The amount of bluefin tuna landings or dead discards within a short time;

(vi) The effects of continued fishing on bluefin tuna rebuilding and overfishing;

(vii) The provision of reasonable opportunity for pelagic longline vessels to pursue the target species;

(viii) The variations in seasonal distribution, abundance or migration patterns of bluefin tuna; and

(viii) Other relevant factors.

(b) *Sharks.* (1) If quota is available as specified by a publication in the **Federal Register**, the commercial fishery for the shark species or complexes specified in § 635.27(b)(1) will remain open. If the bluefin tuna Longline category quota is closed as specified in paragraph (a)(4) of this section, vessels that have pelagic longline gear on board cannot possess or land sharks.

* * * * *

(c) * * *

(3) *Bluefin tuna longline category closure.* If the bluefin tuna Longline category quota is closed as specified in paragraph (a)(4) of this section, vessels that have pelagic longline gear on board cannot possess or land any North Atlantic swordfish.

(d) *Northern albacore tuna*—When the annual fishery quota specified in § 635.27(e) is reached, or is projected to be reached, NMFS will file a closure action with the Office of the Federal Register for publication. When the fishery for northern albacore tuna is closed, northern albacore tuna may not be retained. If the bluefin tuna Longline category quota is closed as specified in paragraph (a)(4) of this section, vessels that have pelagic longline gear on board cannot possess or land any northern albacore tuna.

■ 14. In § 635.31, paragraphs (a)(1) and (2), (c)(1) and (4), and (d)(1) and (2) are revised 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 permit; a valid General, Harpoon, Longline, Purse Seine, 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 bluefin tuna smaller than the large medium size class. Also, no large medium or giant bluefin tuna taken by a person aboard a vessel with an Atlantic HMS Charter/Headboat 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 bluefin tuna only to a dealer that has a valid permit for purchasing Atlantic bluefin tuna issued under this part. A person may not sell or purchase Atlantic tunas harvested with speargun fishing gear.

(2) Dealers may purchase Atlantic tunas only from a vessel that has a valid commercial permit for Atlantic tunas issued under this part in the appropriate category and the appropriate category has not been closed, as specified at § 635.28(a).

(i) Dealers may purchase Atlantic bluefin tuna only from a vessel that has a valid Federal commercial permit for Atlantic tunas issued under this part in the appropriate category. Vessel owners and operators of vessels that have been issued an Atlantic Tunas Longline category permit can sell bluefin tuna and dealers can purchase bluefin tuna from such vessels only if the Longline category is open, per § 635.28(a)(4) and if:

(A) The vessel has met the minimum quota allocation and accounting requirements at § 635.15 for vessels departing on a trip with pelagic longline gear onboard; or

(B) The vessel has removed pelagic longline gear from the vessel and fished in the Cape Hatteras gear restricted area under General Category rules, as specified at §§ 635.15 and 635.69.

(ii) Dealers may first receive BAYS tunas only if they have submitted reports to NMFS according to reporting requirements at § 635.5(b)(1)(ii) and only from a vessel that has a valid Federal commercial permit for Atlantic tunas issued under this part in the appropriate category. Vessel owners and operators of vessels that have been issued an Atlantic Tunas Longline category permit can sell BAYS tunas and dealers can purchase BAYS tunas from such vessels only if the Longline category is open per § 635.28(a)(4). Individuals issued a valid HMS Commercial Caribbean Small Boat permit, and operating in the U.S. Caribbean as defined at § 622.2, may sell their trip limits of BAYS tunas, codified at § 635.24(c), to dealers and non-

dealers. Persons may only sell albacore tuna and dealers may only first receive albacore tuna if the northern albacore tuna fishery has not been closed as specified at § 635.28 (d).

* * * * *

(c) * * *

(1) Persons that own or operate a vessel that possesses a shark from the management unit may sell such shark only if the vessel has a valid commercial shark permit issued under this part. Persons may possess and sell a shark only to a federally-permitted dealer and only when the fishery for that species group and/or region has not been closed, as specified in § 635.28(b). Persons that own or operate a vessel that has pelagic longline gear onboard can only possess and sell a shark if the bluefin tuna Longline category has not been closed, as specified in § 635.28(a)(4).

* * * * *

(4) Only dealers that have a valid a Federal Atlantic shark dealer permit and who have submitted reports to NMFS according to reporting requirements at § 635.5(b)(1)(ii) may first receive a shark from an owner or operator of a vessel that has, or is required to have, a valid federal Atlantic commercial shark permit issued under this part. Atlantic shark dealers may purchase, trade for, barter for, or receive a shark from an owner or operator of a vessel that does not have a federal Atlantic commercial shark permit if that vessel fishes exclusively in state waters. Atlantic shark dealers may first receive a sandbar shark only from an owner or operator of a vessel who has a valid shark research permit and who had a NMFS-approved observer on board the vessel for the trip in which the sandbar shark was collected. Atlantic shark dealers may first receive a shark from an owner or operator of a fishing vessel that has a permit issued under this part only when the fishery for that species group and/or region has not been closed, as specified in § 635.28(b). Atlantic shark dealers may first receive a shark from a vessel that has pelagic longline gear onboard only if the bluefin tuna Longline category has not been closed, as specified in § 635.28(a)(4).

* * * * *

(d) * * *

(1) Persons that own or operate a vessel on which a swordfish in or from the Atlantic Ocean is possessed may sell such swordfish only if the vessel has a valid commercial permit for swordfish issued under this part. Persons may offload such swordfish only to a dealer who has a valid permit for swordfish issued under this part; except that individuals issued a valid HMS Commercial Caribbean Small Boat permit, and operating in the U.S. Caribbean as defined at § 622.2, may sell swordfish, as specified at § 635.24(b)(3), to non-dealers. Persons that own or operate a vessel that has pelagic longline gear onboard, can only possess and sell a swordfish if the bluefin tuna Longline category has not been closed, as specified in § 635.28(a)(4).

(2) Atlantic swordfish dealers may first receive a swordfish harvested from the Atlantic Ocean only from an owner or operator of a fishing vessel that has a valid commercial permit for swordfish issued under this part and only if the dealer has submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii). Atlantic swordfish dealers may first receive a swordfish from a vessel that has pelagic longline gear onboard only if the bluefin tuna Longline category has not been closed, as specified in § 635.28(a)(4).

* * * * *

■ 15. In § 635.34:

■ a. As revised by a final rule published elsewhere in this issue of the **Federal Register**, paragraph (a) is further revised;, and

■ b. Paragraphs (b) and (d) are revised. The revisions read as follows:

§ 635.34 Adjustment of management measures.

(a) NMFS may adjust the quota shares or allocations for bluefin tuna, as specified in § 635.15; catch limits for bluefin tuna, as specified in § 635.23; the quotas for bluefin tuna, shark, swordfish, and northern albacore tuna as specified in § 635.27; the regional retention limits for Swordfish General Commercial permit holders, as specified at § 635.24; the marlin landing limit, as specified in § 635.27(d); and the minimum sizes for Atlantic blue marlin, white marlin, and roundscale spearfish as specified in § 635.20.

(b) In accordance with the framework procedures in the Highly Migratory Species Fishery Management Plan, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: maximum sustainable yield or optimum yield based on the latest stock assessment or updates in the SAFE report; domestic quotas; recreational and commercial retention limits, including target catch requirements; size limits; fishing years or fishing seasons; shark fishing regions or regional quotas; species in the management unit and the specification of the species groups to which they belong; species in the prohibited shark species group; classification system within shark species groups; permitting and reporting requirements; workshop requirements; Atlantic tunas Purse Seine category cap on bluefin tuna quota; the quota shares or allocations for bluefin tuna; administration of the IBQ program (e.g. requirements pertaining to leasing of quota allocations, regional or minimum quota share requirements, etc.); time/area restrictions; allocations among user groups; gear prohibitions, modifications, or use restriction; effort restrictions; observer coverage requirements; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

* * * * *

(d) When considering a framework adjustment to add, change, or modify time/area closures, gear restricted areas, or access to a closed area, NMFS will consider, consistent with the FMP, the Magnuson-Stevens Act, and other applicable law, but is not limited to, the following criteria: any Endangered Species Act related issues, concerns, or requirements, including applicable BiOps; bycatch rates of protected species, prohibited HMS, or non-target species both within the specified or potential closure area(s) and throughout the fishery; bycatch rates and post-release mortality rates of bycatch species associated with different gear types; new or updated landings, bycatch, and fishing effort data; evidence or research indicating that changes to fishing gear and/or fishing practices can significantly reduce bycatch; social and economic impacts; and the practicability of implementing new or modified closures compared to other bycatch reduction options. If the species is an ICCAT managed species, NMFS will also consider the overall effect of the U.S.'s catch on that species before implementing time/area closures, gear restricted areas, or access to closed areas.

■ 16. In § 635.69, paragraph (a) introductory text and (a)(1) and (4) are revised and paragraph (e)(4) is added to read as follows:

§ 635.69 Vessel monitoring systems.

(a) *Applicability.* To facilitate enforcement of time/area and fishery closures, enhance reporting and support the Individual Bluefin Quota program (§ 635.15), an owner or operator of a commercial vessel permitted, or required to be permitted, to fish for Atlantic HMS under § 635.4 and that fishes with pelagic or bottom longline, gillnet, or purse seine gear, is required to install a NMFS-approved enhanced mobile transmitting unit (E–MTU) vessel monitoring system (VMS) on board the vessel comply with the

requirements listed in paragraphs (a)(1) through (a)(4) 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 is away from port with pelagic longline or purse seine 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, is on board a vessel that has been issued a shark LAP. A vessel is considered to have purse seine gear on board, for the purposes of this section, when the gear as defined at § 600.10 is onboard a vessel that has been issued an Atlantic tunas Purse Seine Category permit.

* * * * *

(e) * * *

(4) *Reporting Requirements for vessels issued either an Atlantic Tunas Longline or Purse seine category permit*—(i) *Bluefin tuna and fishing effort reporting.* Unless otherwise required under paragraphs (e)(4)(ii) or (iii) of this section, the vessel owner or operator of a vessel that has pelagic longline gear on board must report to NMFS using the attached VMS terminal, or using an alternative method specified by NMFS as follows: The number of hooks and sets must be reported within 12 hours of the completion of all pelagic longline haul-backs; and for pelagic longline sets with bluefin interactions, the length of all bluefin discarded dead must be reported within 12 hours of the completion of the haul-back. Reporting of zero bluefin possessed or discarded dead is not required. Unless otherwise required under paragraphs (e)(4)(ii) or (iii) of this section, the vessel owner or operator of a vessel that has Purse Seine gear on board must report to NMFS using the attached VMS terminal, or using an alternative method specified by NMFS as follows: For each day on which Purse Seine gear is set, the number of sets must be reported within 12 hours of the last set. For Purse Seine sets with bluefin interactions, the length of all bluefin discarded dead or retained within 12 hours of completion of the set, must be reported. Reporting of zero bluefin possessed or discarded dead is not required.

(ii) *Atlantic Tunas Longline category fishing under General category rules.* Before leaving port, a vessel operator of a vessel that has been issued or is required to be issued an Atlantic Tunas Longline category permit and that no longer has pelagic longline gear on board, and who intends to fish within the Cape Hatteras gear restricted area, under the General Category rules must, as specified at § 635.21(c)(3)(vi)(B) of this part, declare to NMFS using the attached VMS terminal or alternative method specified by NMFS that the vessel is fishing under General Category rules. Once the declaration is made, at least once every 24 hours while away from port or before returning to port for a one day trip, the vessel operator must report using the attached VMS terminal or alternative method specified by NMFS the total amount of bluefin tuna retained, the total amount of bluefin tuna discarded, and total fishing effort (e.g., number of hooks).

(iii) *Vessels fishing in a closed area.* A vessel operator of a vessel with pelagic longline gear and a NMFS-approved observer on board that fishing within a closed area, as specified at § 635.21(c)(3) of this part, must declare to NMFS using the attached VMS terminal or alternative method specified by NMFS that the vessel operator intends to fish with pelagic longline gear within a closed or restricted gear area. Once the declaration is made, at least once every 24 hours while away from port, the vessel operator must report using the attached VMS terminal or alternative method specified by NMFS the species caught and total fishing effort.

* * * * *

■ 17. In § 635.71:

■ a. Paragraphs (a)(14), (a)(19), (a)(23), (a)(31), (a)(33), (a)(34), and (a)(40) are revised;

■ b. Paragraphs (a)(57) through (60) are added;

■ c. Paragraphs (b)(5), (b)(7), (b)(8), (b)(13), (b)(23), (b)(36), and (b)(38) are revised;

■ d. Paragraphs (b)(41) through (54) are added;

■ e. Paragraphs (c)(1) and (7) and (d)(12) and (13) are revised;

■ f. As revised by a final rule published elsewhere in this issue of the **Federal Register**, paragraph (e)(8) is further revised;

■ g. Paragraphs (e)(11) and (16) are revised; and

■ h. As added by a final rule published elsewhere in this issue of the **Federal Register**, paragraph (e)(18) is revised.

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, gillnet gear, or purse seine gear on board the vessel as specified in § 635.69.

* * * * *

(19) Utilize secondary gears as specified in § 635.19(a) to capture, or attempt to capture, any undersized or free swimming Atlantic HMS, or fail to release a captured Atlantic HMS in the manner specified in § 635.21(a).

* * * * *

(23) Fail to comply with the restrictions on use of pelagic longline, bottom longline, gillnet, buoy gear, speargun gear, or green-stick gear as specified in § 635.21.

* * * * *

(31) Deploy or fish with any fishing gear from a vessel with a pelagic longline on board in any closed or gear restricted areas during the time period specified at § 635.21(c) except under the conditions listed at § 635.21 (c)(3).

* * * * *

(33) Deploy or fish with any fishing gear from a vessel with pelagic or bottom longline gear on board without carrying the required sea turtle bycatch mitigation gear, as specified at § 635.21(c)(5)(i) for pelagic longline gear and § 635.21(d)(2) for bottom longline gear. This equipment must be utilized in accordance with § 635.21(c)(5)(ii) and (d)(2) for pelagic and bottom longline gear, respectively.

(34) Fail to disengage any hooked or entangled sea turtle with the least harm possible to the sea turtle as specified at § 635.21 (c)(5) or (d)(2).

* * * * *

(40) Deploy or fish with any fishing gear, from a vessel with bottom longline gear on board, without carrying a dipnet, line clipper, and dehooking device as specified at § 635.21(d)(2).

* * * * *

(57) Fail to appropriately stow longline gear when transiting a closed or gear restricted area, as specified in § 635.21(b)(2).

(58) Depart on a fishing trip or deploy or fish with any fishing gear from a vessel with a pelagic longline on board in a closed or gear restricted area per the exemptions at § 635.21(c)(3) without an observer on board, as specified at § 635.21(c)(3)(ii), or without following the VMS requirements, as specified at §§ 635.21(c)(3)(iii) and 635.69(e).

(59) Fish for, retain, possess, or land any HMS from a vessel with a pelagic

longline on board when the Atlantic Tunas Longline category fishery is closed, as specified in § 635.28(a)(4), (b)(1), (c)(3), and (d).

(60) Buy, trade, or barter for any HMS from a vessel with a pelagic longline on board when the Atlantic Tunas Longline category fishery is closed, as specified in § 635.31(a)(2), (c), and (d).

(b) * * *

(5) Fail to report a large medium or giant bluefin tuna that is not sold, as specified in § 635.5(a)(3), or fail to report a bluefin tuna that is sold, as specified in § 635.5(a)(4).

* * * * *

(7) Fish for, catch, retain, or possess a bluefin tuna with gear not authorized for the category permit issued to the vessel or to have such gear on board when in possession of a bluefin tuna, as specified in § 635.19(b).

(8) Fail to request an inspection of a purse seine vessel, as specified in § 635.21(e)(2).

* * * * *

(13) As a vessel with a General category Atlantic tuna permit, fail to immediately cease fishing and immediately return to port after catching the applicable limit of large medium or giant bluefin tuna on a commercial fishing day, as specified in § 635.23(a)(3).

* * * * *

(23) Fish for, catch, possess, or retain a bluefin tuna except as specified under § 635.23(f), or if taken incidental to recreational fishing for other species and retained in accordance with § 635.23(b) and (c).

* * * * *

(36) Possess J-hooks onboard a vessel that has pelagic longline gear onboard, and that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, except when green-stick gear is onboard, as specified at § 635.21(c)(2)(vii)(A) and (c)(5)(iii)(C)(*3*).

* * * * *

(38) Possess more than 20 J-hooks onboard a vessel that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, when possessing onboard both pelagic longline gear and green-stick gear as defined at § 635.2.

* * * * *

(41) Fish within the Cape Hatteras gear restricted area under General category rules with a pelagic longline on board, as specified in § 635.21(c)(3)(vi)(B), or fail to abide by all applicable General category rules including those specified under § 635.23(a).

(42) As the owner or operator of a vessel issued a limited access permit that has removed pelagic longline gear from the vessel, depart on a fishing trip or fish within Cape Hatteras gear restricted area under General Category rules without following the VMS requirements, as specified in § 635.69(e)(5).

(43) Fish for, retain, possess, or land albacore tuna when the fishery is closed, as specified in § 635.28(d).

(44) Buy, purchase, trade, or barter for albacore tuna when the fishery is closed, as specified in § 635.31(a)(2)(ii).

(45) Fail to report bluefin tuna retained, bluefin tuna discarded, and total fishing effort via a vessel monitoring system while away from port when pelagic longline gear is on board or when a vessel issued an Atlantic tunas Longline category permit is in the Cape Hatteras gear restricted area fishing under the General category rules without pelagic longline gear on board, as specified in § 635.69(e).

(46) Deploy or fish with any fishing gear from a vessel with a pelagic longline on board that does not have an approved and working electronic monitoring system as specified in § 635.9; tamper with, or fail to install, operate or maintain one or more components of the electronic monitoring 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.

(47) Depart on a fishing trip or deploy or fish with any fishing gear from a vessel with a pelagic longline on board without a minimum amount of bluefin tuna quota allocation available for that vessel, as specified in § 635.15(b)(3).

(48) Depart on a fishing trip or deploy or fish with any fishing gear from a vessel with a pelagic longline on board without accounting for bluefin caught on a previous trip as specified in § 635.15(b)(4), or accounting for bluefin caught during a previous fishing year, as specified in as specified in § 635.15(b)(5), as applicable.

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

(50) Fish in the Gulf of Mexico with pelagic longline gear on board if the vessel has only IBQ designated as Atlantic quota allocation, as specified under § 635.15(b)(2).

(51) Depart on a fishing trip or deploy or fish with any fishing gear from a vessel with a pelagic longline on board in the Gulf of Mexico, without a minimum amount of GOM designated bluefin tuna quota allocation available for that vessel, as specified in § 635.15(b)(3).

(52) If leasing bluefin quota allocation, fail to provide all required information on the application, as specified under § 635.15(c)(2).

(53) Lease bluefin quota allocation in an amount that exceeds the amount of bluefin allocation associated with the lessor, as specified under § 635.15(c)(2).

(54) Sell quota share, as specified under § 635.15(d).

(c) * * *

(1) As specified in § 635.19(c), retain a billfish harvested by gear other than rod and reel, or retain a billfish on board a vessel unless that vessel has been issued an Atlantic HMS Angling or Charter/Headboat permit or has been issued an Atlantic Tunas General category permit and is participating in a tournament in compliance with § 635.4(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(f).

* * * * *

(d) * * *

(12) Fish for Atlantic sharks with unauthorized gear or possess Atlantic sharks on board a vessel with unauthorized gear on board as specified in § 635.19(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(g).

* * * * *

(e) * * *

(8) Fish for North Atlantic swordfish from, possess North Atlantic swordfish on board, or land North Atlantic swordfish from a vessel using or having on board gear other than pelagic longline, green-stick gear, or handgear, except as specified at § 635.19(e).

* * * * *

(11) As the owner of a vessel permitted, or required to be permitted, in the swordfish directed, swordfish handgear limited access permit category, or issued a valid HMS Commercial Caribbean Small Boat permit and utilizing buoy gear, to 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(h).

* * * * *

(16) Possess any HMS, other than Atlantic swordfish, harvested with buoy gear as specified at § 635.19 unless issued a valid HMS Commercial Caribbean Small Boat permit and operating within the U.S. Caribbean as defined at § 622.2.

* * * * *

(18) As the owner of a vessel permitted, or required to be permitted, in the Swordfish General Commercial permit category, possess North Atlantic swordfish taken from its management unit by any gear other than rod and reel, handline, bandit gear, green-stick, or harpoon gear, as specified in § 635.19 (e).

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