

## Fishery Conservation and Management

## § 635.15

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

(f) *Failure to adequately monitor the gear and catch.* The vessel owner or operator must monitor and maintain the EM system in working condition, which includes ensuring the proper continuous functioning of the EM system, cameras provide clear unobstructed views, and video picture quality is clear. Prior to departing on a trip with pelagic longline gear on board, the vessel owner or operator must test the functionality of the system and contact NMFS or the NMFS-approved contractor if the system is not functioning properly. In that case, or if NMFS independently determines that an EM system fails to meet the requirements of this section, the vessel cannot leave port unless and until NMFS provides written authorization. NMFS may grant such authorization after confirming that an EM system is functioning properly or other circumstances as determined by NMFS warrant authorization.

(g) *Repair and replacement.* If the vessel owner or operator becomes aware that the EM system on the vessel is not functioning properly 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 EM system is repaired. Once in port, an EM system must be functioning properly (*e.g.*, repaired, reinstalled, or replaced) consistent with the installation requirements in this section before the

vessel can fish with pelagic longline gear.

[79 FR 71588, Dec. 2, 2014, as amended at 83 FR 33154, July 17, 2018; 87 FR 59998, Oct. 3, 2022]

### Subpart B—Individual Vessel Measures

#### § 635.14 [Reserved]

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

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

(b) *Eligibility—(1) IBQ shareholder.* An Atlantic Tunas Longline category LAP holder that fished using pelagic longline gear on at least one set (*i.e.*, deployment and retrieval) during a recent 36 month period is eligible to receive an annual IBQ share in accordance with paragraph (c) of this section and is considered an IBQ shareholder. In determining IBQ shareholders, NMFS will use data as described in paragraph (c) of this section. For an IBQ shareholder's vessel to be considered an "eligible vessel," the vessel must have been issued a valid Atlantic Tunas Longline category LAP when set(s) occurred during the relevant 36 month period. In circumstances where a LAP is transferred from one vessel to another during the relevant 36 month period, the eligible vessel(s) is that which deployed the pelagic longline sets.

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

(c) *Annual IBQ share determination.* During the last quarter of each year, NMFS will review the relevant 36 months of best available data to determine eligible IBQ shareholders and the number of pelagic longline sets legally made by each permitted, eligible vessel, and assign IBQ shares based on the criteria below. The 36 month time period is a rolling period that changes annually, and is selected by NMFS based on the availability of recent data and time required by NMFS to conduct determinations under paragraphs (b) and (c) of this section. NMFS intends to include data from the majority of the year prior to the year for which shares are applied and the IBQ allocation distributed. The best available data as determined by NMFS may be a single data source such as VMS data, for which there is a relatively short time period from the time it is submitted by the vessel operator, and the time it can be used by NMFS; or the best available data may include other available data such as logbook, EM, or permit data, in order to accurately determine a vessel's eligibility status and shares. An IBQ shareholder does not need a valid LAP when NMFS makes annual IBQ share determinations, but NMFS will only distribute IBQ allocations to permitted vessels.

(1) *IBQ share calculations.* Annually, NMFS will calculate IBQ shares for each IBQ shareholder based upon the total number of each eligible vessel's pelagic longline sets during the relevant 36 month period, and the relative amount (as a percentage) those pelagic longline sets represent compared to the total number of pelagic longline sets made by all IBQ shareholders' eligible vessels. NMFS will only count one set per calendar day toward a vessel's total number of pelagic longline sets, and will only count a set if a vessel was issued a valid Atlantic Tunas Longline category LAP when the set occurred. The annual IBQ share percentage is used to calculate the annual IBQ allocation (see paragraph (d) of this section).

(2) *Proxy calculation for Deepwater Horizon Oceanic Fish Restoration Project participants.* For valid participants in this Project, the annual IBQ shares will be calculated as described in para-

graph (c)(1) of this section, but in addition, a proxy amount of sets will be added to a vessel's history during the period of its participation in the Project. The proxy will be based upon the average number of sets made by IBQ shareholders' vessels that did not participate in the Project during the period that participants fished under the Project.

(3) *Regional designations of IBQ shares.* Annually, IBQ shares and resultant allocations will be designated as either "GOM" (Gulf of Mexico) or "ATL" (Atlantic), based upon the location (*i.e.*, in the Gulf of Mexico or Atlantic region) of sets included in the calculation under paragraph (c)(1) of this section. Subject to the GOM share cap described below, each region's total shares and resultant allocations for the year will be based on the percentage of sets designated for the region compared to total sets. Per §635.28(a)(1), NMFS will file a closure action when a region's IBQ allocations have been reached or are projected to be reached. 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 §600.105(c) of this chapter, and the Atlantic region includes all other waters of the Atlantic Ocean including fishing taking place in the NED defined at §635.2. If an IBQ shareholder's vessel had fishing history in both the Gulf of Mexico and Atlantic region, it could receive both GOM and ATL shares.

(i) *GOM share cap.* The maximum amount of designated GOM IBQ shares among all IBQ shareholders is capped at 35 percent of the baseline Longline category quota. Based on the criteria and process under §635.27(a)(7), NMFS may make an inseason or annual adjustment to reduce the default 35-percent cap for all or the remainder of a calendar year.

(ii) *Adjustment of GOM shares to match the GOM share cap.* If NMFS determines that the total amount of GOM-designated IBQ shares would be greater than the GOM share cap (default or adjusted), NMFS will reduce the total amount of GOM shares in order to equal the GOM share cap. The reduction in total GOM shares will be achieved through equal proportional

reductions among all GOM shareholders. The ATL shares will be increased in an analogous manner, so that the total share percentages for the two regions add up to 100 percent. NMFS will notify affected shareholders of any reductions in their GOM shares or increases in ATL shares resulting from this adjustment. This adjustment is not subject to appeal under paragraph (e)(1)(i) of this section.

(iii) *Low GOM-designated share threshold.* If NMFS determines that the total amount of GOM-designated IBQ shares is 5 percent or less of the total IBQ shares, NMFS will file an action with the Office of the Federal Register for publication that suspends for that year the requirement to account for BFT caught in the Gulf of Mexico with GOM-designated shares and resultant allocations (paragraph (f)(1) of this section) and the minimum GOM IBQ allocation requirement (paragraph (f)(2) of this section). NMFS will also notify IBQ shareholders of such action per paragraph (e) of this section. In this situation, IBQ shareholders' vessels could fish in the Gulf of Mexico during that year using ATL-designated IBQ allocations. Any vessels fishing in the Gulf of Mexico would still need to account for BFT catch and have the minimum IBQ allocation of 0.25 mt ww (551 lb ww) before departing on the first fishing trip in a calendar year quarter. Those vessels that fish in the Gulf of Mexico may be issued GOM IBQ shares in the following year per the regional designation of shares process described in paragraph (c)(3) of this section. BFT catch (landings and dead discards) from the Gulf of Mexico by pelagic longline vessels will be capped at the weight of BFT equivalent to the GOM share cap (see paragraph (c)(3)(i) of this section) in the applicable year. If this level of catch is reached, or projected to be reached, NMFS will prohibit fishing with pelagic longline gear in the Gulf of Mexico for the rest of the year pursuant to § 635.28(a)(1).

(d) *Annual IBQ allocations.* An annual IBQ allocation is the amount of BFT (whole weight) in metric tons corresponding to an IBQ shareholder's share percentage, distributed to their vessel to account for incidental landings and dead discards of BFT during a

specified calendar year. NMFS will only distribute IBQ allocations when there is a valid Atlantic Tunas Longline category LAP associated with a vessel. Unless otherwise required under paragraph (f)(4) of this section, an IBQ allocation is derived by multiplying the IBQ share percentage (calculated under paragraph (c)(1) of this section) by the baseline Longline category quota for that year. If the baseline quota is adjusted during the fishing year, the annual IBQ allocation may also be adjusted as specified in paragraph (e)(2) of this section.

(e) *Notification of IBQ shares and allocations, appeals, and adjustments.* During the last quarter of each year, NMFS will notify Atlantic Tunas Longline permit holders via electronic methods (such as an email) and/or letter to inform them of their IBQ shares, their IBQ allocations, and the regional designations of those shares and allocations for the subsequent fishing year; whether adjustments were made to GOM-designated shares due to the GOM shares cap; and whether the low GOM-designated share threshold has been triggered. This notification represents the initial administrative determination (IAD) for the permit holder's IBQ share and allocation. NMFS will also notify permit holders of any existing quota debt, and provide instructions for appealing the IAD. As of December 31, if an IBQ shareholder does not have a valid Atlantic Tunas Longline category LAP associated with a vessel due to a permit renewal or transfer, NMFS will issue IBQ allocation for the relevant fishing year if/when the permit renewal or transfer is completed and a valid LAP is associated with a vessel. IBQ shares, allocations, and regional designations may change as a result of the following circumstances, in which case NMFS will notify eligible IBQ recipients.

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

submit a request for an appeal when it issues the IAD.

(i) *Items subject to appeal and adjustment.* A permit holder may appeal their: eligibility for IBQ shares based on ownership of an active vessel with a valid Atlantic Tunas Longline category permit; IBQ share percentage; IBQ allocations; and regional designations of shares and allocations. A permit holder may also appeal NMFS' determination of the number of pelagic longline sets legally made by its permitted vessel. However, an adjustment of GOM shares under paragraph (c)(3)(ii) of this section or inseason quota adjustment under paragraph (e)(3) of this section is not subject to appeal. Appeals based on hardship factors will not be considered. Consistent with most limited effort and catch share programs, hardship is not a valid basis for appeal due to the multitude of potential definitions of hardship and the difficulty and complexity of administering such criteria in a fair manner. NMFS may utilize BFT quota from the Reserve category for any adjustment needed due to an appeal.

(ii) *Supporting documentation for appeals.* NMFS permit records would be the sole basis for determining permit transfers, permit renewals, and the validity of permits. NMFS will only use the relevant 36 months of data described under paragraph (c) of this section to determine the numbers of pelagic longline sets made. NMFS will count only pelagic longline sets legally made when the permit holder had a valid permit. No other proof of sets or permit history will be considered. Photocopies of written documents are acceptable; NMFS may request originals at a later date. NMFS may refer any submitted materials that are of questionable authenticity to the NMFS Office of Law Enforcement for investigation into potential violations of Federal law.

(2) *Inseason quota transfers.* NMFS may transfer additional quota to the Longline category inseason as authorized under § 635.27(a), and in accordance with § 635.27(a)(7) and (8). NMFS may distribute the quota that is transferred inseason to the Longline category either to all IBQ shareholders or to all permitted Atlantic Tunas Longline

category LAP vessels that are determined by NMFS to have any recent fishing activity in the pelagic longline fishery. In making this decision, NMFS will consider factors for the subject and previous year such as the number of BFT landings and dead discards, the number of IBQ lease transactions, the average amount of IBQ leased, the average amount of quota debt, the annual amount of IBQ allocation, any previous inseason allocations of IBQ allocation, the amount of BFT quota in the Reserve category (at § 635.27(a)(6)(i)), the percentage of BFT quota harvested by the other quota categories, the remaining number of days in the year, the number of active vessels fishing not associated with IBQ share, and the number of vessels that have incurred quota debt or that have low levels of IBQ allocation. NMFS will determine if a vessel has any recent fishing activity based upon the best available information for the subject and previous year, such as logbook, vessel monitoring system, or electronic monitoring data. Any distribution of quota transferred inseason will be equal among eligible IBQ shareholders or active vessels, and include regional designations of IBQ allocations (see paragraph (c)(3) of this section).

(3) *Inseason quota adjustments.* NMFS may increase or decrease the baseline Longline quota on an inseason basis as authorized under § 635.27(a). When doing so, NMFS would apply each IBQ shareholder's share percentage to the amount of quota increase or decrease, and will notify IBQ shareholders of any resulting changes in their IBQ allocations. This adjustment is not subject to appeal under paragraph (e)(1)(i) of this section. Regional designations described in paragraph (c)(3) of this section will be applied to inseason quota distributed to IBQ shareholders, and subject to the applicable cap and other provisions under paragraph (c)(3) of this section.

(f) *Using IBQ shares and allocations.* Unless specified otherwise, IBQ shares and resultant allocations will be available for use at the start of each fishing year and expire at the end of each fishing year. IBQ shares and allocations issued under this section are valid for

the relevant fishing year unless revoked, suspended, or modified or unless the Atlantic Tunas Longline category quota is closed per § 635.28(a).

(1) *Usage of GOM and ATL shares and allocations.* GOM shares and resultant allocations can be used to satisfy minimum IBQ allocation requirements under paragraph (f)(2) of this section, or to account for BFT caught with pelagic longline gear in either the Gulf of Mexico or the Atlantic regions. ATL shares and resultant allocations can only be used to satisfy minimum IBQ allocation requirements under paragraph (f)(2) of this section, or to account for BFT caught with pelagic longline gear in the Atlantic region, unless the provisions of paragraph (c)(3)(iii) of this section are in effect. 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 § 600.105(c) of this chapter, and the Atlantic region includes all other waters of the Atlantic Ocean including fishing taking place in the NED defined at § 635.2.

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

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

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

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

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

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

(iii) *End-of-year IBQ transactions by dealers.* Federal Atlantic Tunas Dealer permit holders must comply with reporting requirements at § 635.5(b)(2)(i)(A). No IBQ transactions will be processed between 6 p.m. eastern time on December 31 and 2 p.m.

Eastern Time on January 1 of each year to provide NMFS time to reconcile IBQ accounts and update IBQ shares and allocations for the upcoming fishing year.

(4) *Exceeding an available allocation.* If the amount of BFT landed or discarded dead for a particular trip (as defined in §600.10 of this chapter) exceeds the amount of IBQ allocation available to the vessel, the permitted vessel is considered to have a “quota debt” equal to the difference between the catch and the allocation.

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

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

(iii) *Association with permit.* Quota debt is associated with the vessel’s Atlantic Tunas Longline permit, and remains associated with the permit if/when the permit is transferred or sold. At the end of the year, if an owner with

multiple permitted vessels has a quota debt associated with one or more vessels owned, the IBQ system will apply any remaining unused IBQ allocation associated with that owner’s other vessels to resolve the quota debt.

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

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

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

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

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

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

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

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

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

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

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

(iv) *Temporary prohibition on leasing IBQ allocation.* No leasing of IBQ allocation is permitted between 6 p.m. eastern time on December 31 of one

year and 2 p.m. eastern time on January 1 of the next year. This period is necessary to provide NMFS time to reconcile IBQ accounts, and update IBQ shares and allocations for the upcoming fishing year.

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

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

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

(k) *Property rights.* IBQ shares and resultant allocations issued pursuant to this part may be revoked, limited, modified or suspended at any time subject to the requirements of the Magnuson-Stevens Act, ATCA, or other applicable law. Such IBQ shares and resultant allocations do not confer any right to compensation and do not create any right, title, or interest in any BFT until it is landed or discarded dead.

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

(m) *Cost recovery program.* This program of fees is intended to cover costs of management, data collection and analysis, and enforcement activities directly related to and in support of the IBQ Program. This program applies to vessels issued an Atlantic Tunas Longline category LAP that harvested BFT under the IBQ Program. NMFS will undertake the process described in paragraphs (m)(1) through (5) of this section, on an annual basis.

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

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

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

(4) *Notification of fees.* NMFS will file with the Office of the Federal Register for publication a notification of its determination on fees, and notify Atlan-

tic Tunas Longline permit holders, specifying the fee amount owed, and instructions for payment through the Catch Shares Online System or other Federal payment system. Federally permitted vessels (Atlantic Tunas Longline permit holders) that sold BFT that do not pay the fee or are delinquent in payment would be subject to relevant enforcement penalties, including permit revocation.

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

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

[87 FR 59999, Oct. 3, 2022]

**§ 635.16 [Reserved]**

**Subpart C—Management Measures**

**§ 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), 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