

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 160527473-6999-02]**

**RIN 0648-BG09**

**Atlantic Highly Migratory Species; Individual Bluefin Quota Program; Inseason Transfers**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS modifies the Atlantic highly migratory species (HMS) regulations regarding the distribution of inseason Atlantic bluefin tuna (BFT) quota transfers to the Longline category. This final rule provides NMFS the ability to distribute quota inseason either to all qualified Individual Bluefin Quota (IBQ) share recipients (*i.e.*, share recipients who have associated their permit with a vessel) or only to permitted Atlantic Tunas Longline vessels with recent fishing activity, whether or not they are associated with IBQ shares. This action is necessary to optimize fishing opportunity in the directed pelagic longline fishery for target species such as tuna and swordfish and to improve the functioning of the IBQ Program and its leasing provisions consistent with the objectives of Amendment 7 to the 2006 Consolidated HMS Fishery Management Plan (FMP).

**DATES:** Effective on January 28, 2017.

**ADDRESSES:** Supporting documents, including the Regulatory Impact Review and Final Regulatory Flexibility Analysis, may be downloaded from the HMS website at [www.nmfs.noaa.gov/sfa/hms/](http://www.nmfs.noaa.gov/sfa/hms/).

**FOR FURTHER INFORMATION CONTACT:** Thomas Warren or Sarah McLaughlin, 978-281-9260; Carrie Soltanoff, 301-427-8503.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and implemented by NMFS among the various domestic fishing categories per the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014), and in accordance with implementing regulations. The current baseline U.S. BFT quota and subquotas were established and analyzed in the BFT quota final rule (80 FR 52198, August 28, 2015). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

## **Background**

Background information about the need for additional flexibility within the IBQ Program for distribution of BFT quota transferred to the Longline category inseason was

provided in the preamble to the proposed rule (81 FR 65988, September 26, 2016) and most of that information is not repeated here.

Vessels fishing with pelagic longline gear, which may only catch BFT incidentally while fishing for target species (primarily swordfish and yellowfin tuna), hold limited access Atlantic Tunas Longline permits and utilize Longline category BFT quota. Through Amendment 7, NMFS established the IBQ Program, a catch share program that identified 136 permit holders as IBQ share recipients based on specified criteria, including historical target species landings and the bluefin catch-to-target species ratios from 2006 through 2012. NMFS currently distributes and manages the Longline category BFT quota via the IBQ Program.

The specific objectives of the IBQ Program are to:

1. Limit the amount of BFT landings and dead discards in the pelagic longline fishery;
2. Provide strong incentives for the vessel owner and operator to avoid BFT interactions, and thus reduce bluefin dead discards;
3. Provide flexibility in the quota system to enable pelagic longline vessels to obtain BFT quota from other vessels with available individual quota in order to enable full accounting for BFT landings and dead discards, and minimize constraints on fishing for target species;
4. Balance the objective of limiting bluefin 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 BFT, and the broader objectives of the 2006 Consolidated

HMS FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

IBQ share recipients receive an annual allocation of the Longline category quota based on the percentage share they received through Amendment 7 but only if their permit is associated with a vessel in the subject year (*i.e.*, only “qualified IBQ share recipients” receive annual allocations). Permit holders that were not selected to receive IBQ shares through Amendment 7 may still fish, but they are required to lease quota through the IBQ electronic system. Every vessel must have a minimum amount of quota allocation to fish (*e.g.*, 0.25 metric tons (mt) whole weight (ww) (551 lb ww) for a trip in the Gulf of Mexico and 0.125 mt ww (276 lb ww) for a trip in the Atlantic), whether obtained through shares or by leasing, and every vessel must individually account for its BFT landings and dead discards through the IBQ electronic system.

In July 2015 and January 2016, NMFS transferred quota inseason from the Reserve category to the Longline category (80 FR 45098, July 29, 2015; 81 FR 19, January 4, 2016). In these inseason actions, NMFS distributed the transferred quota in equal amounts to 136 qualified IBQ share recipients. During 2015, 36 of these 136 qualified IBQ share recipients had no pelagic longline fishing activity (*i.e.*, they took no fishing trips with pelagic longline gear). Furthermore, 31 of the 36 qualified IBQ share recipients that did not fish also did not lease IBQ to others (*i.e.*, 31 neither fished nor leased and 5 did not fish but leased out their IBQ allocations). As a result, those 31 IBQ allocations went unused for the year and expired at year's end.

NMFS received requests, among other suggestions about the IBQ Program and management of the pelagic longline fishery, that when quota is transferred inseason to the

Longline category, NMFS distribute it only to those vessels that are currently fishing (whether associated with IBQ shares or not) to optimize fishing opportunity and account for dead discards, rather than distributing it equally to all IBQ share recipients, some of whom currently neither fish with pelagic longline gear nor lease quota to other active Longline fishery participants. The proposed rule considered and analyzed that approach and invited public comment.

This final rule modifies the regulations to specify that distribution of quota transferred to the Longline category inseason (*i.e.*, quota beyond the baseline Longline category quota that is distributed to qualified IBQ share recipients according to the three shareholder percentages implemented through Amendment 7) may be *either* to all qualified IBQ share recipients *or* only to permitted Atlantic Tunas Longline vessels with recent fishing activity whether they are associated with IBQ shares or not. NMFS will review information from logbook, vessel monitoring system (VMS), or electronic monitoring data to determine whether any fishing activity has occurred over the course of the subject and previous year thus indicating that there is "recent fishing activity," as discussed in more detail below. For example, for inseason transfers in 2017, NMFS will examine fishing activity data for 2016 and 2017. Providing flexibility in the quota system and maintaining flexibility of the regulations to account for the highly variable nature of the BFT interactions in the pelagic longline fishery was an objective of Amendment 7 (See, *e.g.*, Amendment text at 79 FR 71510 and 71559), and this adjustment to the regulations will further that objective.

In deciding whether to transfer additional quota to the Longline category inseason from the Reserve category, NMFS would first consider the existing 14 regulatory

determination criteria for inseason or annual adjustments at 50 CFR 635.27(a)(8), including the need to "optimize fishing opportunity."

Next, if NMFS decides to transfer quota to the Longline category inseason, NMFS will then decide whether to distribute that quota to all qualified IBQ share recipients or only to permitted Atlantic Tunas Longline vessels with recent fishing activity whether or not the vessel is associated with IBQ shares. This decision will be based on information for the subject year and previous year, including 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, the amount of BFT quota in the Reserve category, 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 which approach will best meet the specific objectives of the IBQ Program as stated in Amendment 7, including the objective of providing "flexibility in the quota system to enable pelagic longline vessels to obtain BFT quota from other vessels with available individual quota in order to enable full accounting for BFT landings and dead discards, and minimize constraints on fishing for target species." For example, in years where leasing by IBQ share recipients is not occurring as anticipated by Amendment 7, distribution to only active vessels might be appropriate to encourage leasing at levels that ensure appropriate functioning of the IBQ system in future years. In years where the leasing program is functioning well and

leasing is occurring as needed and as anticipated by Amendment 7, distribution may be to all of the qualified IBQ share recipients.

If NMFS distributes the inseason quota to all qualified IBQ share recipients, those qualified IBQ share recipients will receive equal amounts of the quota transferred.

If NMFS distributes inseason quota only to those vessels with recent fishing activity, vessels with "recent fishing activity" in the pelagic longline fishery will be based upon available information such as logbook, VMS, dealer, or electronic monitoring data for the subject and previous year. Any vessel activity in the pelagic longline fishery during this date range will be sufficient to qualify as "recent fishing activity." The specific data analyzed for this date range in a given inseason action will be those available when the inseason transfer occurs, and will depend on which complete data are available at that time. For example, logbook data for a particular year are typically not available for use until several months into the following year due to the process of data entry and quality control, as well as late reporting. Therefore, early in a year, NMFS may determine vessel activity for the previous and subject year using VMS data, whereas later in the year, it might use both logbook and VMS data.

Whether NMFS distributes quota to all qualified IBQ recipients or to only those permitted vessels with recent fishing activity, quota transferred inseason will be distributed equally to the vessel accounts associated with the relevant vessels via the electronic IBQ system. In either case, when a qualified IBQ share recipient receives inseason quota, the quota will be designated as either Gulf of Mexico (GOM) IBQ, Atlantic (ATL) IBQ, or both GOM and ATL IBQ, according to the share recipient's regional designations. For vessels with recent fishing activity that are not qualified IBQ

share recipients, NMFS will assign the distributed quota a regional designation based on where the majority of the vessel's "recent fishing activity" occurred for the relevant period analyzed.

### **Response to Comments**

NMFS received five written comments on the proposed rule during the comment period, three of which expressed support for the rule as proposed, particularly the flexibility in distribution of inseason BFT quota and efficient use of quota through inseason distribution to vessels with recent fishing activity, including newly-permitted vessels. Two written comments expressed qualified support for the proposed flexibility but suggested modified approaches to quota disbursement. All written comments can be found at <http://www.regulations.gov/>. The comments are summarized below by topic together with NMFS' responses.

*Comment 1:* All comments supported the objective of, and rationale for, the proposed regulatory changes to the IBQ Program. Specifically, comments supported the objective of regulations that would allow NMFS to optimize the distributions of inseason Atlantic BFT quota transfers to the Longline category by distributing inseason BFT quota either to all qualified IBQ share recipients or only to those permitted Atlantic Tunas Longline vessels with recent fishing activity, whether or not they are associated with IBQ shares. Comments supported the underlying rationale of the proposed measure, which they expressed as providing reasonable fishing opportunities for pelagic longline vessels in the context of the constraints of the IBQ Program. Some commenters specifically supported the concept of distributing inseason quota only to active vessels in order to increase efficiency of quota use among vessels, allow the distribution of quota to new

participants in the fishery, and enable the potential for larger amounts of quota for each permit holder. One comment noted that the proposed regulations contribute to balancing the objective of optimizing fishing opportunity and maintaining profitability with the objective of limiting BFT landings and dead discards.

*Response:* NMFS agrees that the regulatory change to the IBQ Program will facilitate accounting for BFT bycatch by permitted Atlantic Tunas Longline vessels actively participating in the HMS pelagic longline fishery and support optimizing the distribution of quota among vessels. When transferring quota from the Reserve category to the Longline category inseason, NMFS will consider specific factors in the fishery and determine whether distribution of inseason quota (in the Longline category) to all qualified IBQ share recipients or only to those permitted Atlantic Tunas Longline vessels with recent fishing activity will best support the objectives of the FMP. Distribution of inseason quota only to active vessels (if the total number of active vessels is a smaller number of vessels than all qualified vessels) may result in a larger amount of quota for each recipient vessel. A larger inseason distribution would help these active vessels to remain fishing longer under fewer quota constraints and would reduce the transaction costs associated with finding additional quota through the leasing program in years where leased quota is not readily available. NMFS agrees that the regulation will be consistent with the objectives of the IBQ Program, which include the objective: “Balance the objective of limiting BFT landings and dead discards with the objective of optimizing fishing opportunities and maintaining profitability”.

*Comment 2:* Three comments further supported the specifics of the proposed regulatory changes, including the data and timeframe that will be analyzed to determine

whether “recent fishing activity” has occurred and equal distribution of inseason BFT quota among the recipients.

One commenter was opposed to the aspect of the proposed rule that considers a vessel to be “active” at any level of activity, without any threshold amount of fishing activity specified. The commenter was concerned that a vessel might “game the system” and deploy a single longline set on a single trip, with the goal of establishing a minimal level of fishing activity that would subsequently enable the vessel to be a recipient of an inseason distribution of BFT quota. The commenter suggested a meaningful increase in the number of pelagic longline sets required, and suggested that the amount of quota distributed to each vessel should vary depending upon the amount of pelagic longline sets completed. For example, if the vessel completed 1 to 25 sets during the previous year, they would be distributed a 0.25 share of BFT quota, and if the vessel completed 26 to 65 sets during the previous year, they would be distributed a 0.50 share of BFT quota, and so on. The commenter also suggested that inactive IBQ share recipients that have leased the full amount of their allocation to other Atlantic Tunas Longline vessels should receive inseason quota.

*Response:* NMFS proposed a simple method of defining what an active vessel is and distributing inseason quota equally among active vessels because inseason distributions of quota are likely to be relatively small amounts of quota compared to annual allocations of IBQ to share recipients. The use of formulas such as that proposed by the commenter to distribute quota may result in amounts distributed that are less than the minimum share amount required to fish. Distributing such small amounts of quota to vessels inseason might have little beneficial impact on fishing operations and could

render the transfer largely meaningless for many vessels. With respect to setting a threshold number of pelagic longline sets as a criterion for receiving inseason allocation, all vessels fishing with pelagic longline gear must possess the minimum amount of IBQ (0.25 mt ww (551 lb ww) in the Gulf of Mexico and 0.125 mt ww (276 lb ww) in the Atlantic) before they can fish, and this requirement applies regardless of the level of fishing activity. Although it is possible that a vessel could conduct a single longline set with the intention of becoming eligible for a potential small future inseason quota distribution, it is likely that there would be few instances of such behavior because the potential costs and uncertainty of any benefit associated with such behavior should serve as adequate disincentive for "gaming the system." Furthermore, the possibility that active vessels may directly receive quota from the Agency when the leasing system is not functioning effectively, may encourage otherwise-inactive vessel owners to more seriously consider leasing out their quota earlier in the season through the IBQ system, rather than waiting to see if leasing prices increase later in the season. Even if limited instances of such activity occurred, NMFS does not believe that such action would undercut the effectiveness of the regulatory change, which is largely aimed at limiting the amount of quota that could be distributed to vessels that have no fishing activity whatsoever.

The commenter also suggests that the amount of quota distributed inseason should be based on the level of vessel activity, suggesting that the amount of quota distributed to each vessel should vary depending upon the amount of pelagic longline sets completed. At the beginning of the year, IBQ share recipients are allocated different amounts of annual IBQ, based upon one of the three defined share percentages associated with the

Atlantic Tunas Longline permit, which was based on a formula that considered many factors through the Amendment 7 process, including indicators of vessel activity. NMFS determined that additional distributions of quota inseason should be in equal amounts largely for simplicity of administration and given the small amounts of quota involved. An inseason quota distribution that is based upon a formula would be more complex to implement than an equal distribution and could diminish the benefits if implementation of the quota transfer and distribution took a prolonged amount of time. Therefore, NMFS finalizes as proposed the provision that will distribute inseason quota equally among selected recipients.

Finally, the commenter suggested that inactive IBQ share recipients that have leased the full amount of their allocation to other Atlantic Tunas Longline vessels should receive inseason quota distributions. Under the conditions at this time, the agency prefers its simpler proposed approach for distributing the small amounts of quota that typically are transferred inseason. By distributing the quota transferred inseason equally to active vessels inseason additional trips may be possible in years that leasing is not occurring as anticipated by Amendment 7. NMFS notes, however, that it will further consider this suggested approach as an incentive for those who fully participate in the leasing program. This could be included in the comprehensive three-year review of the IBQ Program that is required by the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and that NMFS plans to initiate in 2017.

*Comment 3:* One commenter sought changes to other aspects of the IBQ Program regulations, such as modifying the IBQ rules to allow the carryover of unused quota from

one year to the next, and asked that NMFS consider changes to annual allocation of IBQ (*i.e.*, distribution of the baseline Longline category quota).

*Response:* The suggested changes to the regulations were not among the specific management measures considered by the proposed rule and are beyond the scope of this rulemaking. The scope of this rulemaking addressed only inseason transfer criteria regulations; provisions regarding carry-forward and annual allocation of IBQ were established in Amendment 7 and no changes to those provisions were considered in this action. NMFS may consider changes to these provisions and additional topics related to the management of the pelagic longline fishery in future rulemakings and in the comprehensive three-year review of the IBQ Program.

*Comment 4:* One comment stated that the IBQ Program, as implemented under Amendment 7, is not consistent with several requirements of the Magnuson-Stevens Act including: the IBQ Program does not provide pelagic longline fishermen with a reasonable opportunity to harvest the Longline category BFT quota; the IBQ Program does not minimize disadvantages to U.S. fishermen; utilization of BFT quota under the IBQ Program could result in unfair and inequitable allocation of quota to pelagic longline fishermen; the IBQ Program does not provide fair and equitable distribution of access privileges; and the IBQ Program, as a limited access privilege program (LAPP), does not promote fishing safety, fishery conservation and management, or social and economic benefits.

*Response:* This comment challenges the implementation of Amendment 7 to the 2006 Consolidated HMS FMP, which was adopted through separate notice and comment rulemaking finalized in December 2014. The issues raised in this comment are beyond

the scope of this rulemaking. NMFS notes that in litigation brought against the Secretary of Commerce following issuance of the final rule for Amendment 7, pelagic longline fishermen and dealers alleged that implementation of Amendment 7, including the IBQ Program, failed to comply with provisions of the Magnuson-Stevens Act, similar to the issues raised in this comment. The federal district court for the Eastern District of North Carolina rejected Plaintiffs' claims and upheld Amendment 7 as consistent with the Magnuson-Stevens Act and other applicable law (see *Willie R. Etheridge Seafood Co. v. Pritzker*, 2016 WL 1126014 (E.D.N.C., Mar. 21, 2016)).

### **Classification**

The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, ATCA, and other applicable law.

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

This action is categorically excluded from the requirement to prepare an environmental assessment (EA) in accordance with the National Environmental Policy Act and NOAA administrative order NAO 216-6 (as preserved by NAO 216-6A). This action may be categorically excluded since it is a change to a previously analyzed and approved fishery management plan, and the change will have no substantive effect, individually or cumulatively, on the human environment beyond that already analyzed in the Environmental Impact Statement for Amendment 7 (79 FR 71510, December 2, 2014) and in the EA for the final rule that increased the U.S. BFT quota (for 2015 and until changed) based on the recommendation of the International Commission for the

Conservation of Atlantic Tunas (80 FR 52198, August 28, 2015). Inseason quota allocations to the Longline category do not modify the annual U.S. BFT quota nor the fishing mortality associated with that quota. Minor modifications of allocations to vessels may contribute somewhat to determining when fishing mortality occurs but not in any meaningful way that would change the environmental impacts given the small amounts of quota at issue and the fact that such transfers do not alter the overall allowable mortality under the U.S. BFT quota. Furthermore, this action will not directly affect fishing effort, fishing gear, interactions with threatened or endangered species, or other relevant behaviors that could have additional environmental impacts. Thus, there is no environmental or ecological effect different than what was analyzed previously.

NMFS has prepared a Regulatory Impact Review (RIR), and a Final Regulatory Flexibility Analysis (FRFA), which present and analyze anticipated social, and economic impacts of the alternatives contained in this rule. The list of alternatives and their analyses are provided in the RIR and are not repeated here in their entirety. A copy of the RIR prepared for this final rule is available from NMFS (see **ADDRESSES**).

A FRFA was prepared, as required by section 604 of the Regulatory Flexibility Act (RFA, 5 U.S.C. 604 *et seq.*), and is included below. The FRFA describes the economic impact this final rule will have on small entities. A description of the action, why it is being implemented, and the legal basis for this action are contained in the **SUMMARY** section of the preamble.

The goal of the RFA is to minimize the economic burden of federal regulations on small entities. To that end, the RFA directs federal agencies to assess whether the regulation is likely to result in significant economic impacts to a substantial number of

small entities, and identify and analyze any significant alternatives to the rule that accomplish the objectives of applicable statutes and minimizes any significant effects on small entities.

*Statement of the Need for and Objectives of the Rule*

Section 604(a)(1) of the RFA requires a FRFA to contain a statement of the need for and objectives of the rule. The purpose of this rulemaking, consistent with the 2006 Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable law, is to provide NMFS additional flexibility when distributing quota inseason to the Longline category. Through this final rule, NMFS may distribute quota inseason either to all qualified IBQ share recipients (those who have associated their share with a vessel) or to permitted Atlantic Tunas Longline vessels with recent fishing activity whether or not they are associated with IBQ shares.

Since January 1, 2015, NMFS has received requests (among other suggestions about the IBQ Program and management of the pelagic longline fishery) to distribute quota inseason to those vessels that have recent fishing activity (whether associated with IBQ shares or not) to optimize fishing opportunity and account for dead discards, rather than distributing it equally to all IBQ share recipients, some of whom end up neither using it, nor making it available to other vessel owners through the IBQ leasing program. In advance of and at the March 2016 HMS Advisory Panel meeting, pelagic longline fishery participants expressed concerns about the availability of IBQ allocation as implemented under Amendment 7. Longline fishery participants have stated that, while they were able to obtain sufficient IBQ allocation by leasing it under the conditions that applied in 2015, those conditions were temporary. They are concerned, however, that as

additional requirements began to apply in 2016, the IBQ Program could negatively impact vessel operations and finances given the pricing of IBQ, the distribution of quota among permit holders as implemented by Amendment 7, and the behavior of some permit holders who, for example, they say hold on to IBQ for the entire season without participating in the fishery or engaging in leasing. Longline fishery participants requested that NMFS take further steps to provide more access to quota for those vessels with recent fishing activity to reduce the dependence on qualified IBQ share recipients, some of whom are not participating in the fishery or engaging in leasing.

After looking at the issues raised by the fishery participants and at trends in IBQ leasing and utilization for 2015, it became apparent that additional options are needed regarding the distribution of inseason transfers of BFT quota within the Longline category to assist NMFS in providing reasonable opportunities to fish for target species under the limits imposed by the IBQ Program, to optimize distribution of BFT quota transferred inseason to the Longline category, and to encourage proper functioning of the IBQ leasing program as anticipated under Amendment 7. To account for the highly variable nature of the BFT caught in the pelagic longline fishery and maintain flexibility in the regulations, this action provides NMFS with an additional option when distributing quota inseason to the Longline category.

The objective of this rule is to provide additional flexibility regarding the distribution of inseason Atlantic BFT quota transfers to the Longline category in order to facilitate the management of Atlantic HMS resources in a manner that maximizes resource sustainability and fishing opportunity, while minimizing, to the greatest extent possible, the socioeconomic impacts on affected fisheries.

*Summary of the Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis (IRFA), a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Rule as a Result of Such Comments*

Section 604(a)(2) of the RFA requires a summary of the significant issues raised by the public comments in response to the IRFA, a summary of the Agency's assessment of such issues, and a statement of any changes made in the rule as a result of such comments. NMFS received five written comments on the proposed rule during the comment period, three of which expressed support for the proposed flexibility in distribution of inseason BFT quota and for efficient use of quota through inseason distribution to vessels with recent fishing activity, including new vessels. Two written comments expressed qualified support for the proposed measures but suggested modified approaches to quota disbursement (*i.e.*, a tiered approach based on previous year activity that would not disburse inseason quota equally among recipients but disburse varying amounts based on levels of fishing activity). None of the comments addressed the economic impacts of the proposed measure. No changes were made to the rule as a result of the public comments.

Section 604(a)(3) of the RFA requires the Agency to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made in the rule as a result of such comments. NMFS did not receive any comments from the Chief Counsel for Advocacy of the SBA in response to the proposed rule.

*Description and Estimate of the Number of Small Entities to Which the Rule Will Apply*

Section 604(a)(4) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. The SBA has established size criteria for all major industry sectors in the United States, including fish harvesters. SBA's regulations provide that an agency may develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the **Federal Register**. In a final rule that became effective on July 1, 2016 (80 FR 81194, December 29, 2015), NMFS established a small business size standard of \$11 million or less in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. NMFS considers all HMS Atlantic Tunas Longline permit holders (280 as of October 2015) to be small entities because these vessels have reported annual gross receipts of less than \$11 million for commercial fishing. The average annual gross revenue per active pelagic longline vessel was estimated to be \$187,000 based on the 170 active vessels between 2006 and 2012, and that produced an estimated \$31.8 million in total revenue annually. The maximum annual revenue for any pelagic longline vessel between 2006 and 2015 was \$1.9 million, well below the NMFS small business size threshold of \$11 million in gross receipts for commercial fishing.

NMFS has determined that this rule will apply to the small businesses associated with the 136 Atlantic Tunas Longline permits with IBQ shares and the additional

permitted Atlantic Tunas Longline vessels that fish with quota leased through the IBQ Program. The impacts on these small businesses are described below in the discussion of alternatives considered. NMFS has determined that this action will not likely directly affect any small organizations or small government jurisdictions defined under the RFA.

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

Section 604(a)(5) of the RFA requires Agencies to describe any new reporting, record-keeping and other compliance requirements. This rule does not contain any new collection of information, reporting, or record-keeping requirements.

*Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and the Reason That Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect Small Entities Was Rejected*

One of the requirements of a FRFA is to describe any alternatives which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below. Additionally, the RFA (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: 1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; 2) clarification, consolidation, or

simplification of compliance and reporting requirements under the rule for such small entities; 3) use of performance rather than design standards; and 4) exemptions from coverage of the rule, or any part thereof, for small entities.

In order to meet the objectives of this final rule, consistent with the Magnuson-Stevens Act and ATCA, NMFS cannot establish differing compliance requirements for small entities or exempt small entities from compliance requirements. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. As for the second category, the objective of this rule is to provide additional flexibility regarding the distribution of inseason Atlantic BFT quota transfers to the Longline category, and therefore does not impact or change compliance and reporting requirements for small entities. The IBQ Program was designed to adhere to performance standards, the third category above; modifications to the regulations implementing the IBQ Program simply make adjustments to the administration of those underlying performance standards. NMFS analyzed several different alternatives in this action and the rationale that NMFS used to determine the alternative for achieving the desired objectives is described below.

The first alternative is the “no action” (status quo) alternative. The second alternative, the selected alternative, will provide NMFS the flexibility to allocate quota inseason to qualified IBQ share recipients (those who have associated their share with a vessel) or to permitted Atlantic Tunas Longline vessels with any recent fishing activity, whether or not they are associated with IBQ shares. The third alternative would provide NMFS the flexibility to allocate quota inseason to qualified IBQ share recipients with

recent fishing activity or IBQ leasing activity. The economic impacts of these three alternatives are detailed below.

Under all three alternatives, NMFS would continue to consider the regulatory determination criteria for inseason or annual adjustments under 50 CFR 635.27(a)(8), and if NMFS decided that inseason allocation to the Longline category was warranted to increase the amount of quota available to pelagic longline vessels, NMFS would allocate additional quota. The difference among the alternatives is the specific Atlantic Tunas Longline permit holders that would receive distribution of inseason BFT quota.

Under the “no action” alternative, NMFS would distribute the transferred quota in equal amounts to all 136 qualified IBQ share recipients, which include vessels actively fishing and vessels not actively fishing. This is the manner in which NMFS conducted inseason transfers from the Reserve to the Longline category in July 2015 and January 2016 (80 FR 45098, July 29, 2015; 81 FR 19, January 4, 2016). For each of these 34 mt quota transfers, 0.25 mt (551 lb) of IBQ were distributed equally to each of the 136 qualified IBQ share recipients under Amendment 7. IBQ allocation was distributed via the electronic IBQ system to the vessel accounts with permits with IBQ shares associated with a vessel. For those permits with IBQ shares that were not associated with a vessel at the time of the quota transfer, the IBQ is not usable by the permit holder (*i.e.*, may not be leased or used to account for BFT) until the permit is associated with a vessel. Based on the average 2015 IBQ lease price of \$3.34 per pound, the economic value of such an inseason transfer of 551 lb per vessel would be approximately \$1,840 per vessel owner under the “no action” alternative.

Under the selected alternative, NMFS may allocate quota inseason either to each of the 136 qualified IBQ share recipients or to all permitted Atlantic Tunas Longline vessels with recent fishing activity. In 2015, there were 104 active pelagic longline vessels (based on logbook data). If NMFS assumes, for example, a future inseason transfer of 34 mt distributed equally among vessels with recent fishing activity, each of those 104 active vessels would receive 0.327 mt (721 lb) under the selected alternative. Based on the average 2015 IBQ lease price of \$3.34 per pound, the economic value of such an inseason transfers of 721 lb per vessel would be approximately \$2,408 per vessel owner under the selected alternative. Active vessel owners would receive \$568 more in value (31 percent more quota) than under the “no action” (status quo) alternative.

This increased allocation will help these active vessels to remain fishing longer under fewer quota constraints and reduce the transaction costs associated with finding the same amount of additional quota. The qualified IBQ share recipients with no fishing activity (36 in 2015) would not receive the 551 lb of IBQ worth approximately \$1,840 per vessel that they could have received under the status quo alternative *if* they were to lease their quota to other permit holders. Thus, the cost of this alternative will mainly be limited to the forgone ability to lease out allocation that they otherwise would have received. Under Amendment 7, the purpose of leasing is to accommodate various levels of unintended catch of BFT and to facilitate directed fishing for Atlantic swordfish, other tunas, and other pelagic species. The few Atlantic Tunas Longline vessels that fished that were not associated with IBQ shares but that leased allocation from qualified IBQ share recipients (four in 2015) will receive quota under the selected alternative worth

approximately \$2,408 per vessel. Such an inseason transfer will help facilitate participation by new entrants to the fishery by lowering their costs to obtain quota.

Under the third alternative, NMFS would have the flexibility to distribute quota inseason to qualified IBQ share recipients with any recent fishing activity or qualified IBQ share recipients that leased out quota to other Atlantic Tunas Longline permit holders. This differs from the selected alternative in two key ways. First, under the third alternative, only qualified IBQ share recipients with recent activity would receive an inseason transfer, while under the selected alternative all permitted Atlantic Tunas Longline vessels with recent activity would receive an inseason transfer. Secondly, under the third alternative, relevant activity would include IBQ leasing activity in addition to the recent fishing activity required under the selected alternative. In 2015, of the 104 pelagic longline vessels with recent fishing activity, 100 vessels were associated with IBQ shares (four vessels were not associated with IBQ shares in 2015). In addition, 5 vessels were associated with IBQ shares that did not fish but did lease their allocation to other vessels. If NMFS assumes a future inseason transfer of 34 mt, each of those 105 vessels associated with IBQ shares (100 with recent fishing activity and 5 that leased IBQ allocation) would receive 0.324 mt (714 lb) under the third alternative. Based on the average 2015 IBQ lease price of \$3.34 per pound, the economic value of such an inseason transfer of 714 lb per vessel would be approximately \$2,385 per vessel owner. Vessels associated with IBQ shares with recent fishing activity or IBQ leasing activity would receive \$545 more in value (30 percent more quota) than under the “no action” (status quo) alternative. This is \$23 less per vessel than under the selected alternative. In addition, under the third alternative, fewer vessels with recent fishing activity would

receive quota and new entrants would not receive quota. For these reasons, NMFS did not prefer the third alternative.

**List of Subjects in 50 CFR Part 635**

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

Dated: December 22, 2016

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is 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 § 635.15, revise paragraph (b) introductory text and add paragraph (b)(9) to read as follows:

**§ 635.15 Individual bluefin tuna quotas.**

\* \* \* \* \*

(b) *IBQ allocation and usage.* An initial IBQ quota allocation is the amount of bluefin tuna (whole weight) in metric tons (mt) that a qualified IBQ share recipient (*i.e.*, a share recipient who has associated their permit with a vessel) is allotted to account for

incidental catch of bluefin tuna during a specified calendar year. Unless otherwise required under paragraph (b)(5) of this section, an Atlantic Tunas Longline permitted vessel's initial IBQ allocation for a particular year is derived by multiplying its IBQ share (percentage) by the initial Longline category quota for that year. NMFS may transfer additional quota to the Longline category inseason as authorized under § 635.27(a), and in accordance with § 635.27(a)(8) and (9), and may distribute the transferred quota within the Longline category in accordance with paragraph (b)(9) of this section.

\* \* \* \* \*

(9) *Distribution of additional Longline category quota transferred inseason.*

NMFS may distribute the quota that is transferred inseason to the Longline category either to all IBQ share recipients as described under paragraph (k)(1) of this section or to permitted Atlantic Tunas Longline vessels that are determined by NMFS to have any recent fishing activity based on participation in the pelagic longline fishery. In making this determination, NMFS will consider factors for the subject and previous year such as the number of BFT landings and dead discards, the number of IBQ lease transactions, the average amount of IBQ leased, the average amount of quota debt, the annual amount of IBQ allocation, any previous inseason allocations of IBQ, the amount of BFT quota in the Reserve category (at § 635.27(a)(7)(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 selected recipients; when inseason distribution is only to Atlantic Tunas Longline permit holders with IBQ shares, it will therefore not be based on the initial IBQ share determination as specified in paragraph (k)(2) of this section.

(i) Regional designations described in paragraph (b)(2) of this section will be applied to inseason quota distributed to IBQ share recipients.

(ii) For permitted Atlantic Tunas Longline vessels with recent fishing activity that are not qualified IBQ share recipients, regional designations of Atlantic (ATL) or Gulf of Mexico (GOM) will be applied to the distributed quota based on best available information regarding geographic location of sets as reported to NMFS during the period of fishing activity analyzed above in this paragraph, with the designation based on where the majority of that activity occurred.

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