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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 170823804-7932-01]

RIN 0648-BH17

**Atlantic Highly Migratory Species; Individual Bluefin Quota Program;
Accountability for Bluefin Tuna Catch**

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

ACTION: Proposed rule; request for comments and notice of public hearing.

SUMMARY: NMFS proposes to modify the Atlantic highly migratory species (HMS) regulations to require vessels in the pelagic longline fishery to account for bycatch of bluefin tuna (bluefin) using Individual Bluefin Quota (IBQ) on a quarterly basis instead of before commencing any fishing trip with less than the minimum required IBQ balance or with quota debt. Specifically, vessels would be allowed to fish with an IBQ balance below the minimum amount currently required to depart on a fishing trip with pelagic longline gear, or with quota debt incurred by exceeding their IBQ balance, during a given calendar quarter; however, vessels would be required to reconcile quota debt and satisfy the minimum IBQ requirement prior to departing on a pelagic longline fishing trip in the subsequent calendar quarter. The action will further optimize fishing opportunity in the directed pelagic longline fishery for target species such as tuna and swordfish and improve the functionality of the IBQ Program and its accounting provisions, consistent

with the objectives of Amendment 7 to the 2006 Consolidated HMS Fishery Management Plan (FMP).

DATES: Written comments must be received on or before [*insert date 30 calendar days after the date of publication in the FEDERAL REGISTER*]. NMFS will host an operator-assisted public hearing conference call and webinar on October 31, 2017, from 2:00 to 4:00 p.m. EDT, providing an opportunity for individuals from all geographic areas to participate. See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: You may submit comments on this document, identified by “NOAA-NMFS-2017-0119,” by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0119, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Thomas Warren, Highly Migratory Species (HMS) Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: 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 by NMFS. 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 (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly

accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The public hearing conference call information is phone number (888) 391-7048; participant passcode 8277768. Participants are strongly encouraged to log/dial in 15 minutes prior to the meeting. NMFS will show a brief presentation via webinar followed by public comment. To join the webinar, go to:

<https://noaaevents3.webex.com/noaaevents3/onstage/g.php?MTID=e54f7226a1f5760de0610e7545c3e472e>; meeting number: 990 093 099; password: NOAA. Participants who have not used WebEx before will be prompted to download and run a plug-in program that will enable them to view the webinar.

Supporting documents, including the Regulatory Impact Review and Initial Regulatory Flexibility Analysis, may be downloaded from the HMS website at www.nmfs.noaa.gov/sfa/hms/. These documents also are available by contacting Thomas Warren at the mailing address specified above.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, 978-281-9260; or 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) 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

Bluefin fishing is managed domestically through a quota system (on a calendar-year basis), in conjunction with other management measures including permitting, reporting, gear restrictions, minimum fish sizes, closed areas, trip limits, and catch shares. NMFS implements the ICCAT U.S. quota recommendation, and divides the quota among U.S. fishing categories (*i.e.*, the General, Angling, Harpoon, Purse Seine, Longline, and Trap categories) and the Reserve category on an annual basis. Vessels fishing with pelagic longline gear, which catch bluefin incidentally while fishing for target species (primarily swordfish and yellowfin tuna), hold limited access Atlantic Tunas Longline permits and utilize Longline category 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. The objectives of the IBQ Program include limiting the amount of BFT landings and dead discards in the pelagic longline fishery; providing strong incentives for the vessel owner and operator to avoid

bluefin interactions and thus reduce bluefin dead discards; and balancing the objective of limiting bluefin landings and dead discards with the objective of optimizing fishing opportunities and maintaining profitability.

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 did not receive IBQ shares through Amendment 7 may still fish, but they are required to lease IBQ. Leasing occurs through the IBQ electronic system. Through rulemaking, NMFS modified the regulations to optimize quota transferred inseason by authorizing distribution of quota only to permitted Atlantic Tunas Longline vessels with recent fishing activity (81 FR 95903; December 29, 2016). Every vessel must have a minimum amount of quota allocation to fish (described below), whether obtained through their shares or by leasing, and every vessel must individually account for its bluefin landings and dead discards through the IBQ electronic system.

Delayed effective dates for some of the regulations implemented through Amendment 7 assisted in the transition to measures adopted in Amendment 7, which substantially increased individual vessel accountability for bluefin bycatch (landings and dead discards) in the Longline fishery. During 2015, the first year of implementation of the IBQ Program, a pelagic longline vessel that had insufficient IBQ to account for its landings and dead discards (*i.e.*, went into “quota debt”) was allowed to continue to fish, however any additional landings and dead discards continued to accrue, and the cumulative quota debt needed to be accounted for no later than December 31, 2015. A

vessel that did not resolve its quota debt by December 31, would retain the quota debt into 2016, and its quota debt would be deducted from its annual IBQ allocation (allocated January 1 to shareholders associated with permitted vessels). In contrast, as of January 1, 2016, a vessel fishing with pelagic longline gear onboard must have a minimum IBQ allocation to embark on a trip. A minimum allocation required to fish is 0.25 mt (551 lb) whole weight (ww) for a trip in the Gulf of Mexico and 0.125 mt ww (276 lb ww) for a trip in the Atlantic. Pelagic longline vessels may lease IBQ allocation from other such vessels or from Purse Seine fishery participants in the IBQ Program to obtain sufficient allocation for their trips or to account for quota debt.

The IBQ Program has been operating since its implementation (both in 2015 under annual accountability and in 2016 and 2017 under trip-level accountability). Pelagic longline vessel owners have been accounting for bluefin catch using the IBQ Program and leasing quota among themselves (and from Purse Seine fishery participants) as needed in order to fully account for bluefin catch using IBQ. Notably, estimates of 2015 and 2016 dead discards of bluefin (17.1 mt and 22.6 mt, respectively) by the pelagic longline fishery indicate substantial reductions of greater than 50 percent compared to the pre-2015 levels (159.6 mt on average for 2006 through 2014). However, since implementation, pelagic longline fishery participants have consistently requested additional flexibility due to the constraints and costs associated with the accounting and leasing requirements of the IBQ Program, which affects profitability of target species catch (primarily swordfish and yellowfin tuna) and causes uncertainty in a vessel owner's short-term and long-term plans. Vessel owners stated that their ability to account for bluefin using allocated IBQ or IBQ leased at an affordable price is key to the success of

the IBQ Program. A vessel that has below the minimum amount of IBQ to fish or is in quota debt is uncertain about their ability to depart on a subsequent fishing trip. Specifically, vessels have been concerned that the IBQ Program, including the trip-level accountability requirements, could negatively impact vessel operations and finances given the timing restrictions, lease 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, do not appear to be actively fishing nor engaged in any leasing activities. They also say that the expense of leasing IBQ allocation when needed can impact other operational costs such as crew pay. If availability of IBQ is limited, or costs are prohibitive, the operational impacts increase. IBQ Program data generally reflect that, for leasing transactions that occurred, sales revenue received per pound approximated the cost per pound of leasing IBQ. However, IBQ Program participants (which include any permit holder or vessel that leases quota to facilitate pelagic longline operations) and potential lessees have communicated that there were instances where the cost at which lessors were willing to lease their IBQ was prohibitive and leasing did not occur and this information would not be reflected in NMFS data. Furthermore, expanded opportunities to fish with pelagic longline gear within the available swordfish quota are contingent on access to additional quota to account for bluefin bycatch and discards. Longline fishery participants requested that NMFS take further steps to provide more flexibility regarding timing for vessel owners to lease IBQ needed to cover bluefin catch.

Therefore, pelagic longline fishery participants consistently requested additional flexibility in the regulations due to the dynamics and costs associated with leasing IBQ described above, which can affect profitability of target species catch, increase

uncertainty, and negatively affect the ability to plan their business. Such effects may be compounded by the impacts of other constraints associated with Amendment 7, including additional gear restricted areas and VMS and electronic monitoring requirements, as well as non-Amendment 7 related constraints (e.g., market demands etc.).

In light of these challenges facing the fishery, as well as the Amendment 7 objectives which include “minimizing constraints on fishing for target species,” as well as “optimizing fishing opportunities and maintaining profitability,” NMFS has utilized its authority to transfer quota inseason to the Longline category (80 FR 45098; July 29, 2015; 81 FR 19; January 4, 2106; 82 FR 12296; March 2, 2017) to foster conditions in which vessel owners become more willing to lease IBQ, optimize fishing opportunity, and reduce uncertainty in the fishery.

During its May 2017 Advisory Panel Meeting, pelagic longline vessel owners acknowledged the effectiveness of NMFS’ actions in support of the IBQ Program objectives, but reiterated the need for additional flexibility and offered suggestions for high priority regulatory changes to achieve such flexibility.

NMFS received requests, among other suggestions about the IBQ Program and management of the pelagic longline fishery, to allow more time for vessel owners to resolve quota debt and achieve a minimum balance of IBQ, rather than require vessels to have a minimum balance of IBQ as a prerequisite of every longline trip. In light of past fishery dynamics under the IBQ Program and public input regarding the need for additional flexibility, this rule proposes to modify the accountability provisions of the IBQ Program as a reasonable means to provide some additional flexibility for individual vessel owners, while achieving a balance among the IBQ Program objectives.

The pelagic longline fishery is a diverse fishing fleet, with a variety of vessel sizes and types of operations distributed from the waters off Nova Scotia to the Gulf of Mexico, Caribbean, and South America. Timing of fishing trips are typically based on the availability of target species, weather, moon phase, markets, crew and bait availability, and other factors. Quarterly accountability may achieve a better balance between minimizing constraints on fishing for target species and ensuring accountability for incidental bluefin catch, due to the fact that it allows a vessel owner to determine the timing of lease transactions or level of quota debt they are comfortable maintaining over a longer period. Alleviation of the timing constraint associated with trip-level accountability would provide additional flexibility. A vessel owner may need flexibility to pay costs associated with fishing (fuel, bait, ice, labor, repairs, etc.), including the cost of leasing IBQ, on a timeline unique to their operation and finances. The opportunity to fish with a low IBQ balance or with quota debt may enable a vessel owner to continue to obtain revenue during the time period when they are looking for quota to lease and accommodate different types of fishing operations and financial obligations. Quarterly accountability would require vessel owners to resolve quota debt and obtain the minimum amount of IBQ prior to fishing for the first time in a subsequent calendar quarter.

Request for Comments

NMFS solicits comments on this proposed rule through [*insert date 30 calendar days after the date of publication in the FEDERAL REGISTER*]. See instructions in **ADDRESSES** section.

Public Hearing Conference Call

NMFS will hold a public hearing conference call and webinar on October 31, 2017, from 2 p.m. to 4 p.m. EDT, to allow for an additional opportunity for interested members of the public from all geographic areas to submit verbal comments on the proposed rule.

The public is reminded that NMFS expects participants at public hearings and on conference calls to conduct themselves appropriately. At the beginning of the conference call, a representative of NMFS will explain the ground rules (all comments are to be directed to the agency on the proposed action; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject matter. If attendees do not respect the ground rules, they will be asked to leave the conference call.

Classification

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

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

This action has been preliminarily determined to be categorically excluded from the requirement to prepare an environmental assessment in accordance with NOAA Administrative Order (NAO) 216-6A, subject to further consideration after public comment. This action may appropriately be categorically excluded from the requirement to prepare either an environmental assessment or environmental impact statement in accordance with CE A1 of the Companion Manual for NAO 216-6A for an action that is a technical correction or a change to a fishery management action or regulation, which does not result in a substantial change in any of the following: fishing location, timing, effort, authorized gear types, access to fishery resources or harvest levels. By somewhat altering the timing of the accounting for bluefin tuna by individual pelagic longline vessels, the changes in the proposed action could also be expected to alter some fishing timing, and this is the intent of the additional flexibility offered by the changes proposed in the action. We expect this to result in some minor alterations in fishing trip timing by individual vessel owners. Timing would not, however, be altered in a way that would constitute a substantial change. In practice, this action would give some individual vessels flexibility to alter the timing of some of their fishing trips within a three-month period. Given the size of the fleet and the number of fishing trips taken, such minor variations in individual fishing trips would not result in substantial changes to fishing timing overall. Moreover, the level of fishing remains capped by the U.S. bluefin tuna quota; the timing of the fishing is substantively managed by the various subquota categories, inseason actions (e.g., regarding retention limits) and seasons. Any minor modifications in individual vessel practice will not increase or decrease the quota nor the fishing mortality associated with that quota or have any other environmental effects. The

annual U.S. bluefin tuna quota and subquota allocations to the Longline category would not be affected by this action. A final determination will be made prior to publication of the final rule for this action.

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA, 5 U.S.C. 603 *et seq.*), and is included below. 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 in the **SUMMARY** section of the preamble.

The goal of the RFA is to analyze the economic burden of federal regulations on small entities. To that end, the RFA directs federal agencies to assess whether the proposed 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 proposed rule that accomplish the objectives of applicable statutes and minimizes any significant effects on small entities.

Description of the Reasons Why Action is Being Considered

In compliance with section 603(b)(1) of the RFA, the purpose of this proposed rulemaking is, consistent with the 2006 Consolidated HMS FMP objectives, the

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law, to require vessels in the pelagic longline fishery to account for bycatch of bluefin tuna using IBQ on a quarterly basis instead of before commencing any fishing trip while in quota debt or with less than the minimum required IBQ balance.

Current regulations require permitted Atlantic Tunas Longline vessels to possess a minimum amount of IBQ to depart on a fishing trip with pelagic longline gear and account for bluefin tuna catch (fish retained or discarded dead) using IBQ (0.25 mt for a trip in the Gulf of Mexico and 0.125 mt for a trip in the Atlantic). At the end of a trip on which bluefin tuna are caught, a vessel's IBQ balance is reduced by the amount caught. If the trip catch exceeds the vessel's available quota, the vessel will incur quota debt (i.e., exceeding its available IBQ balance). In this case, the regulations currently require the vessel to obtain additional IBQ through leasing to resolve that quota debt and to acquire the minimum IBQ amount before departing on a subsequent trip using pelagic longline gear. Thus, a pelagic longline vessel owner who takes consecutive trips must account for bluefin tuna catch in almost real time, effectively creating a system of "trip-level accountability" for those vessels.

This action would modify these rules to require vessels to resolve quota debt on a quarterly basis (i.e., they must balance the debt and obtain the minimum amount required to depart on a fishing trip before going on a trip in the next quarter). Vessels would be allowed to fish with a low IBQ balance or with quota debt during a calendar quarter. Vessels would still be required to report bluefin tuna catch at the end of each trip (and account for it with IBQ), but this regulatory change would provide the flexibility to fish even if the vessel has less than the minimum amount of IBQ, including quota debt, until

the first fishing trip in each calendar quarter. For example, under the new measure, if a vessel has a low balance or quota debt in January 2018, the vessel would be allowed to fish without first resolving that low balance or quota debt through March 31, 2018. In order to depart on a pelagic longline fishing trip in the following quarter, starting April 1, 2018, that vessel would need to lease additional IBQ resolve the quota debt and acquire the minimum amount of IBQ required to fish.

The rule would provide flexibility for two important operational business decisions made by vessel owners: decisions regarding quota balance and quota debt (subject to full accounting quarterly) and decisions regarding the timing and price at which they lease additional quota. Importantly, this regulatory change would maintain vessel accountability for bluefin tuna catch and the associated incentives for vessel operators to minimize catch of bluefin tuna. By changing the timing of the accountability, however, the proposed rule would provide some additional flexibility in vessel operations and thus provide vessel owners more of a reasonable opportunity to catch available quota for target species (i.e., swordfish and yellowfin tuna).

Statement of the Objectives of, and Legal Basis for, the Proposed Rule

In compliance with section 603(b)(2) of the RFA, the objective of this proposed rulemaking is to provide additional flexibility regarding the timing of accounting for bluefin tuna in the IBQ Program in a manner that maintains accountability for bluefin tuna and a strong incentive for pelagic longline vessels to avoid interactions with bluefin tuna, while minimizing constraints on fishing for target species and, to the greatest extent possible, the socioeconomic impacts on affected fisheries.

The legal basis for this proposed rule stems from the dual authority of the Magnuson-Stevens Act and the Atlantic Tunas Convention Act (ATCA). Under the Magnuson-Stevens Act, NMFS must, consistent with ten National Standards, manage fisheries to maintain optimum yield (OY) by rebuilding overfished fisheries and preventing overfishing. Under ATCA, NMFS is authorized to promulgate regulations as may be necessary and appropriate to carry out binding recommendations of ICCAT. Additionally, any management measures must be consistent with other domestic laws including the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Coastal Zone Management Act (CZMA).

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

Section 603(b)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with the SBA Office of 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 (FR), which NMFS did on December 29, 2015 (80 FR 81194, December 29, 2015).

In this final rule effective on July 1, 2016, NMFS established a small business size standard of \$11 million 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 2016) 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 that produced an estimated \$31.8 million in 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. Therefore, NMFS considers all Atlantic Tunas Longline permit holders to be small entities.

NMFS has determined that this proposed rule would 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. NMFS has determined that this action would 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 Proposed Rule, Including an Estimate of the Classes of Small Entities Which Would Be Subject to the Requirements of the Report or Record

Section 603(b)(4) of the RFA requires agencies to describe any new reporting, record-keeping and other compliance requirements. This proposed rule does not contain any new collection of information, reporting, or record-keeping requirements but only modifies existing requirements.

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

Under section 603(b)(5) of the RFA, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed action. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, ATCA, High Seas Fishing Compliance Act, MMPA, ESA, NEPA, Paperwork Reduction Act, and CZMA. This proposed action has been determined not to duplicate, overlap, or conflict with any of these statutes or Federal rules.

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 significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. The analysis shall discuss significant alternatives such as:

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.

These categories of alternatives are described at 5 U.S.C. 603 (c)(1)-(4)). NMFS examined each of these categories of alternatives. Regarding the first and fourth categories, NMFS cannot establish differing compliance or reporting requirements for small entities or exempt small entities from coverage of the rule or parts of it because all of the businesses impacted by this rule are considered small entities and thus the requirements are already designed for small entities. NMFS examined alternatives that fall under the second category, which requires agencies to consider whether they can clarify, consolidate, or simplify compliance and reporting requirements under the proposed rule for small entities. The quarterly and annual accountability alternatives in the proposed rule would reduce the burden of complying with the existing trip level accountability requirement and thus would fall into this category of alternatives by simplifying 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. Thus, NMFS has considered the significant alternatives to the proposed rule and focused on simplifying compliance and reporting requirements associated with IBQ accountability in order to minimize any significant economic impact of the proposed rule on small entities.

NMFS analyzed several different alternatives in this proposed rulemaking, 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 preferred alternative, would adjust the Atlantic HMS regulations to require the pelagic longline fishery to account for bycatch of bluefin tuna using IBQ on a quarterly basis instead of before embarking on a trip after incurring quota debt. The third alternative would adjust the Atlantic HMS regulations to require the pelagic longline fishery to account for bycatch of bluefin tuna using IBQ on an annual basis instead of before embarking on a trip after incurring quota debt. The economic impacts of these three alternatives are detailed below. Under all three alternatives, a vessel’s IBQ balance would be reduced to account for bluefin tuna discarded dead or retained immediately after the catch is reported in the IBQ system. The difference among the alternatives is the timing of when quota debt or a low balance of IBQ precludes fishing and must be resolved prior to departing on a subsequent trip using pelagic longline gear (trip level, quarterly, or annually).

Under the “no action” alternative, NMFS would maintain the current regulations regarding accounting for bluefin tuna catch and prerequisites for departing on a fishing trip with pelagic longline gear on board. Current regulations require permitted Atlantic Tunas Longline vessel owners (or vessel operators, where applicable) to possess a minimum amount of IBQ to depart on a fishing trip with pelagic longline gear and account for bluefin tuna caught (retained or discarded dead) using IBQ at the end of the trip. Therefore, at the end of a trip on which bluefin tuna are caught, a vessel owner’s

balance of IBQ would be reduced, possibly below the minimum amount needed for a subsequent trip, or the vessel owner may incur quota debt by exceeding their IBQ balance. In either of these cases, the vessel owner must obtain additional IBQ through leasing in order to satisfy the minimum requirement (and resolve any quota debt they may have) prior to departing on another trip using pelagic longline gear. The net effect of these rules is that a pelagic longline vessel owner that takes multiple sequential trips must account for bluefin tuna in real-time, which NMFS refers to as “trip-level accountability.”

This approach was implemented by Amendment 7, but effectiveness was delayed until January 1, 2016, in contrast to most of the other Amendment 7 measures that were effective on January 1, 2015. During 2016, there were 1,025 pelagic longline trips by 85 vessels, which deployed 6,885 sets and 5,217,547 hooks. During 2016, there were 81 IBQ lease transactions with a total of 141,183 lb IBQ leased and an average price of \$ 2.52 per pound (weighted average). There were a total of 17 vessels that incurred quota debt at some time during the year, with a total amount of 40,237 lb of debt incurred and resolved. Mean revenue per trip during 2016 based on logbook, dealer, and weigh out data was \$ 24,707.

During 2016, pelagic longline vessel owners successfully accounted for bluefin tuna catch using the IBQ Program and leasing quota among themselves (and from Purse Seine fishery participants) as needed in order to fully account for bluefin tuna catch using IBQ. However, since implementation, pelagic longline fishery participants have consistently requested some additional flexibility due to the costs associated with leasing IBQ, which can affect profitability of target species catch, as well as the concern that

vessel owners appear to be unwilling to lease IBQ at certain times, uncertainties regarding the availability of IBQ to lease, and the impacts of other constraints associated with Amendment 7, including additional gear restricted areas and VMS and electronic monitoring requirements. The ability of vessel owners to account for bluefin tuna using allocated quota or IBQ leased at an affordable price is key to the success of the IBQ Program. A trend that may in part reflect the uncertainties and constraints associated with trip-level accountability is the lower amount of fishing effort in 2016 compared to 2015 (despite the active IBQ leasing market in 2016). For example, the number of trips, active vessels, longline sets and hooks fished were all lower in 2016 than they were in 2015. The No Action alternative would not, however, provide the timing flexibility benefits that could facilitate better operational and economic decisions and options for individual vessel owners who need to lease IBQ, and NMFS therefore does not prefer the no action alternative.

Under the second alternative (preferred), NMFS would adjust the Atlantic HMS regulations to require the pelagic longline fishery to account for bycatch of bluefin tuna using IBQ on a quarterly basis instead of before commencing any fishing trip while in quota debt or with less than the minimum required IBQ balance. The preferred alternative would provide flexibility for two important operational business decisions made by vessel owners. First, decisions regarding quota balance and quota debt (subject to full accounting quarterly); and second, decisions regarding the timing and price at which they lease additional quota. It is likely that the vessels would take advantage of increased operational flexibility as a result of removal of the constraints associated with the trip-level accountability. Specifically, operational flexibility associated with the

preferred alternative may enable vessels to fish at more optimal times and avoid delay in the timing of a trip due to a low IBQ balance and issues related to availability of quota to lease; lease IBQ at a lower price by providing the flexibility for a vessel owner to ‘shop around’; reduce uncertainty in the IBQ market such that vessels are willing to plan and undertake fishing trips they previously may not have; and improve their cash flow by allowing fishing while in quota debt (i.e., accrual of revenue with which to lease additional IBQ). In 2016, each additional trip earned vessels on average \$24,707 in revenue.

NMFS used the available data on the IBQ lease markets to estimate the potential reduction in transaction costs (mainly labor costs) associated with moving from trip-level accountability to quarterly accountability. There were 33 vessels that leased quota in 2016 and they were involved in 81 transactions. On average, that is almost 2.5 transactions per vessel that entered the IBQ lease market. Under the quarterly accountability requirement of Alternative 2, these vessels might be able to reduce their number of lease transactions to one lease per quarter, which would reduce business costs and have economic and operational benefits. Based on data from 2016 and the first-half of 2017, quarterly accountability could lead to 51 fewer lease transactions if vessel owners reduced their number of lease transaction to one per quarter under this alternative. Each lease transaction costs vessel owners additional labor time to search for available IBQ, contact potential lessors, negotiate prices, and complete the transactions. NMFS estimates that could involve approximately four hours per transaction. Using the Bureau of Labor Statistics mean hourly wage rate for first-line supervisors of farming, fishing and forestry workers of \$23 per hour in 2016

(<https://www.bls.gov/oes/current/oes451011.htm>), NMFS estimates the value of the time involved in these additional 51 leases to be approximately worth \$4,692 (51 transactions X 4 hours X \$23/hr). Since this amount is based on six quarters, the annual estimated savings in the time associated with these leases is approximately \$3,128 per year (\$4,692 / 1.5 years). Given that 33 vessels were involved in leasing in 2016, the per vessel savings per year would be approximately \$95 per vessel.

Although it is not possible to precisely quantify the economic impacts of the preferred alternative, the no action alternative with trip-level accountability (i.e., the regulations implemented in 2016) and the third alternative with annual accountability (i.e., the regulations implemented in 2015) may be informative about the likely impacts of the proposed alternatives. The amount of flexibility to account for bluefin tuna catch afforded by the proposed alternative is likely somewhere in between the two other alternatives: trip-level accountability (no action alternative) and annual accountability (third alternative).

Under the third alternative, there would be no minimum amount of IBQ required to fish and vessels would only be required to account for their catch at the end of the year. The third alternative is the same as the IBQ accounting regulations that were in effect during 2015. During 2015, there were 1,124 pelagic longline trips, by 104 vessels, which deployed 7,769 sets and 5,549,451 hooks. During 2015, there were 49 IBQ lease transactions from 24 distinct vessels with a total of 126,407 lb IBQ leased, and an average price of \$3.46 per pound (weighted average). There were a total of 16 vessels that incurred quota debt, with a total amount of 42,746 lb. The mean revenue per trip during 2015 based on dealer data was \$17,603 (not including bluefin tuna or dolphin

revenue). Although it is possible to glean some insights from data from 2015 as the basis for evaluating potential economic impacts of the third alternative, the fishing behavior of the pelagic longline fleet during 2015, the first year of Amendment 7 regulations, was likely heavily influenced by the newness of the regulations and the relatively high amount of uncertainty in 2015.

There were approximately 2.0 lease transactions per vessel in 2015 versus 2.5 leases per vessel in 2016. Assuming the 33 vessels that leased in 2016 only leased 2 times per year under annual accountability, the number of leases would be reduced from 81 to 66, a reduction of 15 transactions. This reduction in 15 transactions taking approximately 4 hours of an owner's time would be worth \$1,380 in labor costs per year ($15 \times 4 \text{ hours} \times \$23/\text{hr}$). Given the 33 vessels that leased in 2016, the per vessel cost savings would be approximately \$42 per vessel per year. Alternatively, if vessel owners could reduce the number of leases to one per year, the number of lease transactions could be reduced down to 33 transactions based on 2016 lease activity. This would result in 48 fewer transactions, and would result in a savings of up to \$4,416 per year for the whole fleet or \$134 per vessel that leased. However, based on the 2015 IBQ lease data under annual accountability that year, it is unlikely that the number of lease transactions would be reduced by this much. It is likely that there would be more leasing activity associated with this alternative than occurred during 2015, since 2015 was the initial implementation of the IBQ Program and participants were just learning how the IBQ lease market worked and which IBQ Program participants were interested in leasing IBQ, as well as a lower average price per pound for leased IBQ.

There is uncertainty as to the full impact of moving from trip-level accountability to annual accountability. Annual accountability might cause vessel owners to wait until December to try to lease quota. Quota available for lease in December might become scarcer and this holiday period might cause fewer IBQ shareholders to participate in the market. This increased scarcity of IBQ available for lease and the tight end of the year timeframe might result in spikes in the price for IBQ, thus driving up costs and potentially leaving some vessel owners unable to resolve their quota debt at the last minute as the year ends. NMFS prefers to incrementally move to quarterly accountability under Alternative 2 to avoid some of the risks associated with Alternative 3.

List of Subjects in 50 CFR Part 635

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

Dated: October 19, 2017.

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 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 § 635.15, revise paragraphs (b)(3), (b)(4)(i) and (ii), (b)(5)(i) and (ii), and (b)(8)(i), to read as follows:

§ 635.15 Individual bluefin tuna quotas.

* * * * *

(b) * * *

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

(i) First fishing trip in a calendar year quarter. Before departing on the first fishing trip in a calendar year quarter, a vessel with an eligible Atlantic Tunas Longline category permit that fishes with or has pelagic longline gear onboard must have the minimum IBQ allocation for either the Gulf of Mexico or Atlantic, depending on fishing location. The minimum IBQ 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 IBQ 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 it 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 minimum IBQ allocation, but only within that same calendar year quarter.

(4) *Accounting for bluefin tuna caught.* (i) With the exception of vessels fishing in the NED, in compliance with the requirements of paragraph (b)(8) of this section, all bluefin tuna catch (dead discards and landings) must be deducted from the vessel's IBQ allocation at the end of each pelagic longline trip.

(ii) If the amount of bluefin tuna catch 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 (b)(3) 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 (b)(5) 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 (c) of this section.

* * * * *

(5) * * *

(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 and applies allocation for the appropriate region (see paragraph (c) of this section) to settle the quota debt such that the vessel has the minimum quota allocation required to fish (see paragraph (b)(3) of this section) as a

result of additional allocation (see paragraph (f) 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 minimum quota allocation required to fish.

(ii) *Annual level quota debt.* If, by the end of the fishing year, a permit holder does not have adequate allocation to settle its vessel's quota debt through leasing or additional allocation (see paragraphs (c) and (f) 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.

* * * * *

(8) * * *

(i) *When NED bluefin quota is available.* Permitted vessels fishing with pelagic longline gear may fish in the NED, and any bluefin catch will count toward the ICCAT-allocated separate NED quota until the NED quota has been filled. Permitted vessels fishing in the NED must still fish in accordance with the minimum IBQ allocation requirements, specified under paragraph (b)(3) of this section to depart on a trip using pelagic longline gear.

* * * * *

3. In § 635.71, revise paragraphs (b)(48) and (b)(56) to read as follows:

§ 635.71 Prohibitions.

* * * * *

(b) * * *

(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 as specified in § 635.15(b)(4).

* * * * *

(56) Fish with or have pelagic longline gear on board if any quota debt associated with the permit from a preceding calendar year quarter has not been settled as specified at § 635.15(b)(5)(i).

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