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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-BI08

Atlantic Highly Migratory Species; Amendment 13 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan

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

ACTION: Notice of intent (NOI) to prepare an environmental impact analysis; notice of availability of issues and options paper; request for comments.

SUMMARY: NMFS announces its intent to prepare an environmental impact analysis under the National Environmental Policy Act (NEPA), and the availability of the Issues and Options Paper for Amendment 13 to the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP)(Issues and Options Paper). This notice announces the start of a public process for determining the scope of significant issues related to the management of Atlantic bluefin tuna (bluefin), and addressing issues identified by considering modification of bluefin regulations. The catalysts for beginning this regulatory process are the release of the Draft Three-Year Review of the IBQ Program (Three-Year Review), recent changes in the bluefin fishery, and advice and input from the HMS Advisory Panel and the public.

The environmental impact analysis will include an assessment of the potential effects of alternative measures for management of bluefin under the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP). The subjects in the Issues and Options Paper include refining the Individual Bluefin Quota (IBQ) Program, reassessing allocation of the bluefin quota and subquota, including the potential elimination or phasing out of the Purse Seine category, and other regulatory provisions regarding directed fisheries and incidental pelagic longline fisheries. The scoping process and environmental impact analysis would determine whether existing management measures are the best means of achieving current management objectives and providing flexibility to adapt to variability in the future, consistent with the 2006 Consolidated HMS FMP, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Atlantic Tunas Convention Act (ATCA), and other relevant Federal laws. NMFS will use the scoping process and the draft environmental impact analysis to consider development of Amendment 13 to the 2006 Consolidated HMS FMP, if warranted.

NMFS is requesting comments on this NOI and the management options described in the Issues and Options Paper, and other potential regulatory provisions regarding the bluefin directed fisheries and incidental pelagic longline fishery that would meet the purpose and need for this action. NMFS will hold public scoping meetings and a webinar to gather comment on these measures and potential management options. The time and location details of the scoping meetings and webinar will be announced in a separate Federal Register notice. NMFS will also

present the Issues and Options Paper at the HMS Advisory Panel Meeting on May 22, 2019 (<https://www.fisheries.noaa.gov/event/may-2019-hms-advisory-panel-meeting>).

DATES: Written comments on this NOI and the scoping document must be received on or before July 31, 2019.

ADDRESSES: The presentation at the HMS Advisory Panel will be held at the Sheraton Silver Spring Hotel, 8777 Georgia Avenue, Silver Spring, MD, 20910. You may submit comments, identified by "NOAA-NMFS-2019-0042," by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and search for: NOAA-NMFS-2019-0042, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Tom Warren, Highly Migratory Species Management Division, NOAA Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: Comments sent by any other method, or to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The Issues and Options Paper is available by sending your request to Tom Warren at the mailing address specified above, or by calling the phone numbers indicated below. The Issues and Options Paper, the Three-Year Review, the 2006 Consolidated HMS FMP, and FMP amendments may also be downloaded from the HMS website at:

<https://www.fisheries.noaa.gov/action/amendment-13-2006-consolidated-hms-fishery-management-plan-bluefin-management-measures>.

FOR FURTHER INFORMATION CONTACT: Tom Warren at 978-281-9347, or Carrie Soltanoff at 301-427-8587, or online at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

SUPPLEMENTARY INFORMATION:

Background

Regulations implemented under the authority of ATCA (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) governing the harvest of Atlantic HMS, including bluefin, by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. The 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP) allocated the annual U.S. bluefin quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) to bluefin quota categories based on landings from 1983-1991. Landings were the only portion of catch (*i.e.*, “catch” includes both landings and dead discards) that were factored into the 1999 FMP percentage allocation analysis for the various bluefin fisheries at that time, as dead discards were accounted for under a separate ICCAT allocation. In 2006, NMFS finalized the 2006 Consolidated Atlantic HMS FMP, to

simplify management and better coordinate domestic conservation and management of Atlantic HMS. This consolidated HMS FMP carried forward many of the objectives and measures from the 1999 FMP (e.g., reduce dead discard and post-release mortality of Atlantic HMS in directed and non-directed fisheries; reduce bycatch and bycatch mortality). The bluefin quota category percentage allocations continued unchanged in the 2006 Consolidated HMS FMP.

Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7; 79 FR 71510, December 2, 2014) implemented several measures for the pelagic longline fishery including, but not limited to, gear restricted areas, the IBQ catch share program, and catch reporting of each pelagic longline set using vessel monitoring systems. Amendment 7 also implemented an annual adjustment of the Purse Seine category quota, using a formula based on the catch by purse seine fishery participants in the previous year. This allows NMFS to adjust the Purse Seine category quota either upwards or downwards based on recent fishing activity. Amendment 7 provided the opportunity for Purse Seine category participants to lease quota to (or from) pelagic longline vessels to ensure that the IBQ leasing market met the needs of the pelagic longline fishery to account for bluefin catch, and provided additional flexibility for the Purse Seine category participants.

The most recent stock assessment for western Atlantic bluefin was conducted in 2017 by the Standing Committee on Research and Statistics (SCRS), the scientific body of ICCAT. At its November 2017 meeting, after considering the SCRS advice, ICCAT adopted a recommendation for an interim conservation and management plan for western Atlantic bluefin tuna for 2018 through 2020 (ICCAT Recommendation 17-06). Following the 2017 stock assessment, and after

applying domestic stock status determination criteria, NMFS concluded that the overfished status of the bluefin stock was unknown, and that the stock was not subject to overfishing. NMFS stated that changing from “overfished” to “unknown” status was appropriate, given the continued inability to resolve the two widely divergent stock recruitment scenarios approach taken under past SCRS stock assessments, and the SCRS' use of a different approach based on the fishing mortality rate in the 2017 assessment.

In Amendment 7, NMFS proposed and finalized a plan to formally evaluate the success and performance of the IBQ Program after three years of operation and to provide the HMS Advisory Panel with a publicly-available written document with its findings. The Draft Three-Year Review contains preliminary conclusions of the program's effectiveness in meeting the goals and objectives specified in Amendment 7, as well as evaluates the various components of this catch share program. The Three-Year Review was released on May 10, 2019, and included analyses of the IBQ Program since its inception. Amendment 7 anticipated that NMFS would consider regulatory changes to the IBQ Program after its formal review. The Draft Three-Year Review provides a large amount of data and is relevant for consideration of such changes.

The Draft Three-Year Review made a preliminary conclusion that the IBQ Program fully achieved many Amendment 7 objectives such as reducing bluefin dead discards, providing incentives to avoid bluefin, implementing individual accountability for bluefin catch, providing flexibility to obtain quota from other vessels, and minimizing constraints on fishing for target species. However, the review found that the IBQ Program only partially achieved the objective of maintaining profitability. The Three-Year Review also made the following preliminary

recommendations regarding the IBQ Program components (not to be confused with the objectives). Regarding share distributions and IBQ individual accountability rules, the Three-Year Review recommended considering a different method of share or quota distribution among participants. The current share distribution method reflects historical catch and participants in the fishery, but may not reflect current fishery participation, nor align with the need for quota. Regarding Accumulation Caps, the Draft Three-Year Review stated: “A more conservative cap on the amount of IBQ used or owned should be considered to reduce the risk of entities controlling a large percentage of IBQ.” The Issues and Options Paper for Amendment 13 includes options to address these issues.

Similar to the pelagic longline fishery, the directed bluefin fisheries have evolved over time, and the Issues and Options Paper includes several issues related to the directed bluefin fisheries. Since 1982, the Purse Seine category has been limited to participants who historically were financially dependent on the fishery. Although new entrants are prohibited, an owner of a vessel with an Atlantic Tunas permit in the Purse Seine category may transfer the permit to another purse seine vessel that he or she owns. In the purse seine fishery, since 2015, there have been no landings of bluefin by purse seine vessels. Only one purse seine vessel operated, made only a small number of sets over a couple of years, and accounted for only a small percentage of commercial bluefin landings between 2005 and 2015 (one, twelve, two, less than one, eight, six, and five percent of commercial bluefin landings in 2006, 2007, 2009, 2012, 2013, 2014, and 2015, respectively). While the purse seine fishery has been mostly inactive over the past decade-plus, handgear fisheries have remained very active, landing large amounts of bluefin in recent

years, and have renewed interest in the optimal and fair allocation of bluefin quota among seasons and geographic areas.

HMS Advisory Panel members and the public have suggested sun-setting or phasing out the purse seine fishery to optimize the utilization of bluefin quota and increase certainty in the bluefin fishery. Many permitted commercial and recreational vessels that may target bluefin, as well as the pelagic longline vessels that may not target bluefin, but that rely on bluefin quota to facilitate directed fishing operations for target species, would benefit from additional bluefin quota and increased certainty regarding quota availability. Prior to Amendment 7, the Purse Seine category was allocated 18.5 percent (over 150 mt) of the U.S. bluefin quota. Since 2015, when Amendment 7 implemented an annual redistribution of Purse Seine category quota (to the Reserve category) based on the previous year's catch by the purse seine fishery, the Purse Seine category quota has been adjusted downward. Amendment 7 also implemented the ability of the purse seine fishery participants to lease IBQ to or from the pelagic longline fishery. In 2018 and 2019, the Purse Seine category quota was adjusted downward from its baseline amount of 219.5 to 55 mt (representing four percent of the bluefin quota), and limited amounts of bluefin quota were leased to pelagic longline vessels within the IBQ Program. Although limited in scope, IBQ leases from Purse Seine participants to pelagic longline vessel owners were a meaningful initial component of the IBQ Program, contributing to a successful leasing market. Redistribution of Purse Seine category quota may provide more quota to active bluefin fisheries, which may address desire for more flexibility and concerns about premature fishery closures, as well as provide additional quota for allocation to the pelagic longline fishery.

The Amendment 13 Issues and Options Paper will be used in 2019 for scoping, a public process during which NMFS will consider a range of issues and objectives, as well as possible options, for bluefin management. The options being presented in the Issues and Options Paper consider the preliminary results of the Draft Three-Year Review and respond to recent changes in the bluefin fishery and input from the public and HMS Advisory Panel. The options include refining the IBQ program, reassessing allocation of bluefin tuna quotas (including the potential elimination or phasing out of the Purse Seine category) and other regulatory provisions regarding bluefin directed fisheries and bycatch in the pelagic longline fishery, to determine if existing measures are the best means of achieving current management objectives for bluefin management. During scoping, public feedback will be accepted via written comments or at scoping meetings as described in separate Federal Register notices.

NMFS has several ongoing actions affecting HMS management that are, or soon will be, available for public comment. While each of these actions are separate, they are interrelated in some ways, and the comment periods may overlap. Depending on the outcomes, each action could have impacts on the other actions. As noted above, NMFS recently released the Draft Three-Year Review, which is expected to be finalized in September 2019 after consideration by the HMS Advisory Panel. The following details about these ongoing actions are provided for the regulated community's information and background.

NMFS is currently in the process of developing a Proposed Rule Modifying Pelagic Longline Bluefin Tuna Area-Based and Weak Hook Management Measures. To analyze the potential environmental effects of a range of alternatives, NMFS recently released a Draft

Environmental Impact Statement (DEIS). The DEIS evaluates whether current area-based and gear management measures remain necessary to reduce and/or maintain low numbers of bluefin tuna discards and interactions in the pelagic longline fishery, given more recent management measures, including the IBQ Program. The DEIS prefers alternatives that undertake a process to evaluate the need for the Northeastern United States Closed Area and the Gulf of Mexico Gear Restricted Area; removes the Cape Hatteras Gear Restricted Area; and adjusts the Gulf of Mexico weak hook effective period from year-round to seasonal (January - June). The comment period for the DEIS and for an anticipated Proposed Rule will be open through July 31, 2019. After consideration of public comment, NMFS expect to finalize the rule in the late fall of 2019. The proposed rule related to this DEIS is expected to be released shortly.

Recently, NMFS also released an Issues and Options Paper considering approaches to collect data and perform research in areas that are currently closed to certain gears or fishing activities for Atlantic HMS. Such research will help evaluate and support spatial fisheries management for Atlantic HMS. "Spatial management" refers to a suite of fisheries conservation and management measures that are based on geographic area. When some spatial management tools, such as closed areas, are deployed, the collection of fishery-dependent data is reduced or eliminated. This loss of data can compromise effective fisheries management. The Issues and Options Paper considers approaches to collect data and perform research in areas that may otherwise restrict commercial or recreational fishing, making the collection of fisheries-dependent data challenging or not possible. During scoping, public feedback will be accepted via written comments or at scoping meetings as described in separate Federal Register notices.

Finally, NMFS has also recently published an Issues and Options Paper for Amendment 14 that reviews annual catch limits and other target reference points for sharks. This action could result in a different process for establishing the annual catch limits for sharks, and therefore could affect all fishermen, commercial and recreational, that target or incidentally catch sharks. During scoping, public feedback will be accepted via written comments or scoping meetings as described a separate Federal Register notice.

Scoping Process

NMFS encourages all persons affected or otherwise interested in bluefin management measures to participate in the process to determine the scope and significance of issues to be analyzed in the draft environmental impact analysis and regulatory action for Amendment 13. All such persons are encouraged to submit written comments (see **ADDRESSES**), and are welcome to address the specific measures in the Issues and Options Paper. Comments may also be submitted at one of the scoping meetings or the public webinar to be identified in a future Federal Register notice.

NMFS intends to hold scoping meetings in the geographic areas that may be affected by these measures, including locations on the Atlantic and Gulf of Mexico coasts, and will consult with the regional fishery management councils in the Atlantic and Gulf of Mexico. NMFS expects to present the scoping document at the May 21 – 23, 2019 HMS Advisory Panel meeting (see **ADDRESSES**).

After scoping has been completed and public comment gathered and analyzed, NMFS will determine if it is necessary to proceed with preparation of a draft environmental impact

analysis and proposed rule for Amendment 13, which would include additional opportunities for public comment. The scope of the draft environmental impact analysis would consist of the range of actions, alternatives, and impacts to be considered. Alternatives may include, but are not limited to, the following: not amending the current regulations (*i.e.*, taking no action); developing a regulatory action that contains management measures such as those described in the Issues and Options Paper; or other reasonable courses of action. This scoping process also will identify, and eliminate from further detailed analysis, issues that may not meet the purpose and need of the action.

The process of developing a regulatory action is expected to take approximately two years.

Until the draft environmental impact analysis and proposed rule are finalized or until other regulations are put into place, the current regulations remain in effect.

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

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