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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 190214111-9513-01]

RIN 0648-BI51

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Pelagic Longline Fishery Management

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to adjust regulatory measures put in place to manage bluefin tuna bycatch in the pelagic longline fishery for Atlantic highly migratory species (HMS), specifically addressing the Northeastern United States Closed Area, the Cape Hatteras Gear Restricted Area, and the Spring Gulf of Mexico Gear Restricted Area as well as the weak hook requirement in the Gulf of Mexico. Several of the proposed measures would have an evaluation period component to determine whether the current area-based management measure remains necessary to reduce and/or maintain low numbers of bluefin tuna discards and interactions in the pelagic longline fishery. Other proposed measures would eliminate the Cape Hatteras Gear Restricted Area and would adjust the requirement to use weak hooks from a year-round requirement to a seasonal (January – June) requirement. The proposed measures would affect the HMS pelagic longline fishery in the Atlantic and Gulf of Mexico.

DATES: Written comments must be received by September 30, 2019. NMFS will hold four public hearings and two operator-assisted public hearings via conference call and webinar for

this proposed rule from July 2019 to August 2019. For specific dates and times see the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2018-0035, by any one 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-2018-0035, click the “Comment Now” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Craig Cockrell, NMFS/SF1, 1315 East-West Highway, National Marine Fisheries Service, SSMC3, Silver Spring, MD 20910.

Instructions: Please include the identifier NOAA-NMFS-2018-0035 when submitting comments. Comments sent by any other method, to any other address or individual, or received after the close of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

NMFS will hold four public hearings and two operator-assisted public hearings via conference call and webinar on this proposed rule and the associated draft environmental impact statement (DEIS), which was published on May 17, 2019 (84 FR 22492). NMFS will hold

public hearings in; Gloucester, MA; Houma, LA; Toms River, NJ; and Manteo, NC. For specific locations, see the **SUPPLEMENTARY INFORMATION** section of this document.

Supporting documents—including the DEIS, Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and amendments are available from the HMS Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or by contacting Craig Cockrell at (301) 427-8503 or Jennifer Cudney at (727) 824-5399.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell at (301) 427-8503, or Jennifer Cudney or Randy Blankinship at (727) 824-5399.

SUPPLEMENTARY INFORMATION:

Background

Atlantic highly migratory species (HMS) are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended, and the Atlantic Tunas Convention Act (ATCA). The Magnuson-Stevens Act, at 16 U.S.C. 1802(21), defines the term “highly migratory species” as “tuna species, marlin (*Tetrapturus* spp. and *Makaira* spp.), oceanic sharks, sailfishes (*Istiophorus* spp.), and swordfish (*Xiphias gladius*).” The 2006 Consolidated HMS FMP and its amendments are implemented by regulations at 50 CFR part 635. A summary of the background of this proposed rule is provided below. Additional information regarding bluefin tuna or pelagic longline fishery management can be found in the DEIS associated with this rulemaking, the 2006 Consolidated HMS FMP and its amendments, the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Reports, and online at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

A 1998 Recommendation by the International Commission for the Conservation of Atlantic Tunas (ICCAT) to establish a Rebuilding Program for Western Atlantic Bluefin Tuna (Rec. 98-07) required that all Contracting Parties, including the United States, minimize dead discards of bluefin tuna to the extent practicable and set a country-specific dead discard allowance. Given the status of bluefin tuna and recommendations from ICCAT at that time, NMFS investigated a range of different time/area options for locations with high bluefin tuna bycatch through the rulemaking process for the 1999 HMS FMP for Atlantic Tunas, Sharks, and Swordfish (64 FR 29090, May 28, 1999). In the final rule for that FMP, NMFS implemented the Northeastern United States Closed Area based, in part, on a redistribution analysis (disbursement analysis in the Final EIS) that showed that a closure during the month of June could reduce bluefin tuna discards by 55 percent in this area, without any substantial changes to target catch or other bycatch levels. This area, located off the coast of New Jersey, is now closed from June 1 through June 30 each year. Considerable effort has been occurring on the outer seaward edges of the closed area for the past 20 years.

From 2007-2010, NMFS conducted research on the use of weak hooks by pelagic longline vessels operating in the Gulf of Mexico to reduce bycatch of spawning bluefin tuna. A weak hook is a circle hook that meets NMFS' hook size and offset restrictions for the pelagic longline fishery but also is constructed of round wire stock that is a thinner gauge than the circle hooks otherwise used in the pelagic longline fishery and is no larger than 3.65 mm in diameter. Weak hooks straighten to release large fish, such as bluefin tuna, when they are caught, while retaining smaller fish, such as swordfish and other tunas. Research results showed that the use of weak hooks can significantly reduce the amount of bluefin tuna caught by pelagic longline vessels. Some reductions in the amount of target catch of yellowfin tuna and swordfish were

noted but were not statistically significant. In 2011, a large year class (2003) of bluefin tuna was approaching maturity and was expected to enter the Gulf of Mexico to spawn for the first time. Consistent with the advice of the ICCAT Standing Committee on Research and Statistics (SCRS) that ICCAT may wish to protect the strong 2003 year class until it reaches maturity and can contribute to spawning, and for other stated objectives, NMFS, in a final rule on Bluefin Tuna Bycatch Reduction in the Gulf of Mexico Pelagic Longline Fishery, implemented mandatory use of weak hooks on a year-round basis to reduce bycatch of bluefin tuna (76 FR 18653; April 5, 2011). Weak hooks have since been required for vessels fishing in the Gulf of Mexico, that have pelagic longline gear on board, and that have been issued, or are required to have been issued, a swordfish, shark, or Atlantic Tunas Longline category limited access permit (LAP) for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico.

In 2015, Amendment 7 to the 2006 Consolidated HMP FMP (79 FR 71510; December 2, 2014) implemented pelagic longline gear restrictions in areas that were identified as locations of high bluefin tuna concentrations and interactions with pelagic longline gear. The Spring Gulf of Mexico Gear Restricted Area was designated in two geographic areas in the central and eastern Gulf of Mexico and are closed to pelagic longline gear from April 1 through May 31 annually. The timing of this gear restricted area was intended to coincide with the peak of the spawning season for bluefin in the Gulf of Mexico. The time and location were also selected to provide a reduction in bluefin interactions based on past patterns of interactions with the pelagic longline fishery. Also in Amendment 7, the Cape Hatteras Gear Restricted Area was established off the coast of Cape Hatteras, North Carolina, and is in place from December 1 through April 30 annually. While the area encompassed by the Cape Hatteras Gear Restricted Area had a high level of bluefin interactions, the majority of those interactions were by only a few pelagic

longline vessels. Due to this dynamic, NMFS implemented performance measures to grant “qualified” fishery participants access to the Cape Hatteras Gear Restricted Area. Access is granted based on an annual assessment of pelagic longline vessels using performance-based metrics. Pelagic longline vessels are evaluated on their ratio of bluefin tuna interactions to designated species landings (swordfish; yellowfin tuna; bigeye, albacore, and skipjack tunas; shortfin mako, thresher, and porbeagle sharks; dolphin, and wahoo), compliance with the Pelagic Observer Program, and timely submission of logbooks. For the 2018-2019 effective period of the Cape Hatteras Gear Restricted Area, 83 out of 97 vessels evaluated were granted access to the area based on these metrics. The Spring Gulf of Mexico Gear Restricted Area (comprised of two areas) is closed to all vessels with pelagic longline gear, instead of being implemented with performance-based access, because the distribution of interactions was more widespread across both the areas and fishery participants.

Amendment 7 also shifted the focus of managing bluefin tuna bycatch in the HMS pelagic longline fishery from fleet-wide management measures to individual vessel accountability through the implementation of a bluefin tuna catch share program (i.e., the Individual Bluefin Quota, or IBQ Program). A recent Draft Three-Year Review of the IBQ Program drew preliminary conclusions that the Program has successfully reduced bluefin tuna interactions and dead discards in the pelagic longline fishery, improved timely catch reporting across the fleet, and addressed previous problems with Longline category quota overages, and that a healthy, functioning IBQ allocation leasing market exists to support the Program. The Draft Three-Year Review also found, however, that effort--as defined by the number of vessels, trips, sets, and hooks within the pelagic longline fishery--has continued to decrease.

While the IBQ Program has helped effectively manage the Longline category quota and avoid quota exceedances (which occurred prior to implementation of Amendment 7), effort within the pelagic longline fishery has decreased and quotas established for some target species (e.g., swordfish) are not being met. The Draft Three-Year Review noted that it is difficult to separate out the effects of the IBQ Program from other factors, including the effect of swordfish imports on the market for U.S. product, other regulations such as closed and gear restricted areas, as well as target species availability/price. Nevertheless, NMFS has received comments from pelagic longline fishery participants and other interested parties to examine whether fleet-wide measures such as gear requirements, area restrictions, or time/area closures remain necessary to effectively manage the Longline category quota by reducing bluefin tuna bycatch given the effectiveness of the IBQ Program. Commenters (including the public and HMS Advisory Panel members) specifically requested that NMFS evaluate ways to potentially reduce regulatory burden or remove regulations that may have been rendered redundant with implementation of the IBQ Program.

Proposed Measures

This action proposes changes to the Northeastern United States Closed Area, Cape Hatteras Gear Restricted Area, Gulf of Mexico Gear Restricted Area, and Gulf of Mexico Weak Hook requirements. For quota-managed stocks, including western Atlantic bluefin tuna and North Atlantic swordfish, the Proposed Rule measures would not affect or alter the science-based quotas for the stocks. Any action considered in the alternatives would manage stocks within these already-established allowable catch levels. For these stocks, NMFS previously implemented the quotas through rulemaking with the appropriate environmental analyses of the effects of quota implementation. While some increases in target catch in the pelagic longline

fishery may occur, any such increases would be within previously-analyzed quotas and would be consistent with other management measures that appropriately conserve the stocks. The extent and effect of any such changes were discussed and analyzed in the DEIS and considered in developing the Proposed Rule.

This proposed rule is designed to (1) continue to minimize, to the extent practicable, bycatch and bycatch mortality of bluefin tuna and other Atlantic HMS by pelagic longline gear consistent with the conservation and management objectives (e.g., prevent or end overfishing, rebuild overfished stocks, manage Atlantic HMS fisheries for continuing optimum yield) of the 2006 Consolidated Atlantic HMS FMP, its amendments, and all applicable laws; (2) simplify and streamline Atlantic HMS management, to the extent practicable, by reducing any redundancies in regulations established to reduce bluefin tuna interactions that apply to the pelagic longline fishery; and (3) optimize the ability for the pelagic longline fishery to harvest target species quotas (e.g., swordfish), to the extent practicable, while also considering fairness among permit/quota categories. In the associated DEIS, NMFS considered a reasonable range of alternatives to meet these objectives and is proposing to implement the Preferred Alternatives in this proposed rule. NMFS' detailed analysis of the alternatives is provided in the DEIS (see **ADDRESSES** for how to get a copy of the DEIS) and a summary is provided in the IRFA below. In developing this proposed rule, NMFS considered comments received at HMS Advisory Panel meetings, other conservation and management measures that have been implemented in HMS fisheries since 2006 that have affected relevant fisheries and bycatch issues, and public comments received during scoping on the Issues and Options paper for this rulemaking (83 FR 8969; March 2, 2018), including comments provided at the March 2018 HMS Advisory Panel meeting. In response to public comment on this proposed rule and the associated

DEIS, NMFS may make changes in the final rule by modifying the proposed measures or adopting different or additional measures in response to public comment.

Northeastern United States Closed Area

NMFS proposes implementing the preferred alternative analyzed in the DEIS to convert the “Northeastern United States Closed Area” to a “Northeastern United States Pelagic Longline Monitoring Area.” This area has been closed to pelagic longline fishing during the month of June since 1999. This alternative would have a three-year evaluation period (January 1, 2020 through December 31, 2022) for the Monitoring Area, which would be managed as follows:

- The Monitoring Area would initially remain open to pelagic longline fishing from June 1 to June 30.
- There would be an annual 150,519 pound IBQ allocation threshold for landings and dead discards of bluefin caught within the Monitoring Area.
- If the threshold is reached, or is projected to be reached, NMFS would file a closure notice for the Monitoring Area with the Office of the **Federal Register**.
- On and after the effective date of the notice, the Monitoring Area would be closed to pelagic longline fishing each year from June 1 through June 30, unless NMFS takes further action.
- If no closure notice is filed between January 1, 2020 and December 31, 2022, the Monitoring Area would remain open, unless and until NMFS decides to take additional action. The area would be closely monitored by NMFS under a process that would prohibit fishing if the fleet were to use IBQ allocation in exceedance of an established annual threshold to account for bluefin landings or dead discards caught within the boundaries of the Monitoring Area. The proposed 150,519 lb threshold is

based on the average annual amount of unused Atlantic IBQ allocation that was available for use by the pelagic longline fleet from June 1 through December 31 (from 2015 through 2018). Using unused allocation as the threshold helps to ensure that opening the area to fishing would not compromise adherence to the overall bluefin quota or the ability of fishery participants to obtain enough IBQ allocation to cover bluefin landings and dead discards for the rest of the year. It should be noted that the threshold does not mean that 150,519 lb of IBQ allocation can be used *only* in the Monitoring Area. IBQ allocation is still subject to the same regulations previously applicable. The threshold is for NMFS' monitoring and evaluation purposes for the Area only. After the 2020-2022 evaluation period, NMFS will evaluate data collected from the Monitoring Area and compile a report. Based on the findings of the report, NMFS may then decide to initiate a follow-up action to implement new, longer-term management measures for the area.

This management measure would further optimize the ability of the pelagic longline fleet to harvest target species, while providing a carefully controlled mechanism to allow fishermen back into an area that was previously closed. Due to a lack of data collected in the Northeastern United States Closed Area in June over the past 20 years, there is uncertainty about whether this spatially managed area is still appropriately located or if it remains needed to meet bluefin management objectives. The use of an evaluative process and a threshold, instead of simply opening the area to fishing without such a process, provides a precautionary mechanism to collect and review data, and determine whether the area is still needed. This management measure would give fishermen more flexibility in choosing where to fish to optimize target catch and to avoid bluefin tuna and increase flexibility to adapt to changing distributions and

concentrations of bluefin tuna and target catch species by providing more locations to distribute fishing activity. This management measure could simplify and streamline regulations if the evaluation process indicates that the closed area is no longer needed. The individual accountability aspects of the IBQ Program would still incentivize bluefin tuna avoidance. Preliminary analyses in the Draft Three-Year Review indicated that the IBQ Program has likely met or exceeded its objectives, and provides sufficient incentives to control bycatch on an individual vessel level. NMFS anticipates that it is an effective way to support the objectives of continuing to minimize bycatch and bycatch mortality of bluefin tuna. The evaluation process would also provide access to fishing grounds that may be closer to shore than locations currently fished during this time. Therefore, an anticipated short-term socioeconomic benefit of this alternative would be potential reductions in trip length and associated fuel cost.

Cape Hatteras Gear Restricted Area

Another proposed measure would remove the current gear restricted area off Cape Hatteras, North Carolina, as defined in 50 CFR 635.2, and associated regulatory provisions, restrictions, and prohibitions. This management measure is not anticipated to result in changes to overall fishing effort or fishing patterns, since the area is currently subject to performance-based access, and most of the vessels that recently (2015-2017) fished in this region have qualified for access to the gear restricted area. Individual vessels that have been denied access are often only denied temporarily before being granted access again, or they are vessels that have not been fishing in this area. Spatial patterns of interaction with target species have not changed greatly since implementation of the IBQ Program and this gear restricted area, which implies that overall fishing patterns will likely not change.

Removal of this gear restricted area would be consistent with the proposed rule objective to simplify and streamline Atlantic HMS management by reducing any redundancies in regulations established to reduce bluefin tuna interactions that apply to the pelagic longline fishery. Pelagic longline vessels must account for bluefin discards and landings under the IBQ Program, which incentivizes the avoidance of bluefin tuna. The stated objectives of this gear restricted area when it was implemented under Amendment 7 were to balance reducing dead discards with providing reasonable fishing opportunities, to provide strong incentives to avoid bluefin tuna, and to reduce dead discards by modifying fishing behavior. However, there is some question as to whether the gear restricted area serves as an incentive to avoid bluefin tuna. The purpose of the performance metrics was to incentivize adjustments in fishing behavior to reduce bluefin tuna mortality, and they are especially useful in addressing excessive mortality by a small number of participants that fish in a specified area. When the Cape Hatteras Gear Restricted Area was first implemented, NMFS found that 34 of the 136 vessels with sufficient history to participate in the IBQ Program fished within the boundaries of the gear restricted area between 2006 and 2012 during the months of December through April. Of these, fourteen vessels (approximately 39 percent) were not qualified for access to the area in winter 2014-2015. However, as the program matured, an increasingly smaller proportion of vessels that actually fished within the area were denied access. For example, only one vessel that did not qualify for access to the gear restricted area in 2018-2019 had recently deployed gear within its boundaries during the months of December through April in 2015, 2016, and 2017. Most of the other vessels that did not qualify for access did not make a set within the boundaries of the gear restricted area. Rather, they fished in other locations such as the South Atlantic Bight, Sargasso Sea, Gulf of Mexico, or in open areas of the Mid-Atlantic Bight during the effective months

(December-April). Some of the vessels not qualifying for access are also part of the pelagic longline distant water fleet that fish in the Northeast Distant Area (NED). Northeast Distant landings and dead discards are counted first against a 25 mt separate set-aside quota without application of the IBQ Program requirements. Thus, vessels in the NED have no incentive to avoid or release bluefin within that first 25 mt, as they are not counted against their IBQ allocation. These interactions are, however, incorporated into the performance metric calculations that grant or deny access to the Cape Hatteras Gear Restricted Area and thus can result in poor “bluefin avoidance” scores. Thus, it appears that most vessels that wish to fish in the Cape Hatteras Gear Restricted Area generally qualify to do so and generally are--or have become--skilled at managing their bycatch through the IBQ Program and in avoiding bluefin bycatch. This makes the gear restrictions in the area duplicative, since both were designed to achieve the same result and the IBQ Program alone is sufficient to achieve that result.

As shown in the DEIS associated with this proposed rule, there no longer appears to be a hotspot of bluefin tuna interactions in the Cape Hatteras Gear Restricted Area even though the majority of the fleet has been granted access to the area in recent years. There have been substantial reductions in the average annual number of interactions from historical periods (approximately 468 average interactions per year from 2006-2011) and years before Amendment 7 implementation (approximately 94 average interactions per year from 2012-2014), to recent time periods (approximately 31 average interactions per year from 2015-2017). This implies that sufficient incentives are in place through the IBQ Program to control any excessive bluefin tuna bycatch that might occur by vessels that are operating locally or regionally.

Spring Gulf of Mexico Gear Restricted Area

NMFS proposes implementing the preferred alternative analyzed in the DEIS to convert the “Spring Gulf of Mexico Gear Restricted Area” to a “Spring Gulf of Mexico Pelagic Longline Monitoring Area” (which will continue to be comprised of two areas) (“Monitoring Area”). This area has been closed to pelagic longline fishing during the months of April and May since 2015. This alternative would have a three-year evaluation period (January 1, 2010 through December 31, 2022) for the Monitoring Area, which would be managed as follows:

- The Monitoring Area would initially remain open to pelagic longline fishing from June 1 through June 30.
- There would be an annual 63,150 pound IBQ allocation threshold for landings and dead discards of bluefin caught within the Monitoring Area.
- If the threshold is reached, or is projected to be reached, NMFS would file a closure notice for the Monitoring Area with the Office of the **Federal Register**.
- On or after the effective date of the notice, the Monitoring Area would be closed to pelagic longline fishing each year from June 1 through June 30, unless NMFS takes further action.
- If no closure notice is filed between January 1, 2020 through December 31, 2022, the Monitoring Area would remain open, unless and until NMFS decides to take additional action regarding the area.

The threshold proposed would be 63,150 lb, which is equivalent to the amount of IBQ allocation that could be used by the portion of the fleet that was recently (2015 through 2017) active during these months in the Gulf of Mexico. The intent of this threshold design is to discourage a level of fishing that would compromise adherence to the quota needed to appropriately conserve and manage bluefin. The evaluation process is designed to enable

managers to evaluate whether the areas remain necessary to keep incidental catch within the allocated Longline quota overall. It should be noted that the threshold does not mean that 61,150 lb of IBQ allocation can be used *only* in the Monitoring Area. IBQ allocation is still subject to the same regulations previously applicable. The threshold is for NMFS' monitoring and evaluation purposes for the Area only. After the 2020-2022 evaluation period, NMFS will evaluate data collected from the Monitoring Area and compile a report. Based on the findings of the report, NMFS may then decide to initiate a follow-up action to implement new, longer-term management measures for the area.

This management measure would provide increased flexibility for fishermen to adapt to changing distributions and concentrations of bluefin tuna and target catch by providing more locations to distribute fishing activity. This alternative would also give fishermen the ability to make choices on where to fish to optimize target catch while minimizing bycatch. This management measure balances the proposed rule objective of continuing to minimize bycatch and bycatch mortality of bluefin tuna with the objective of optimizing the ability of the pelagic longline fleet to harvest target species quotas, because it provides a carefully controlled mechanism to allow fishermen back into areas that were previously closed. The use of an evaluative process and a threshold, instead of just opening the area to fishing without such a process, provides a precautionary mechanism to collect fishery-dependent data and determine whether the area is still needed to minimize bycatch and bycatch mortality of bluefin tuna and other Atlantic HMS. This management measure also alleviates short-term uncertainty due to lack of data collection from within the boundaries of this spatially managed area regarding whether the area still appropriately located or even needed to meet bluefin tuna management objectives. This management measure gives fishermen the flexibility to determine where in the

Gulf of Mexico they choose to fish to optimize target catch and to avoid bluefin tuna. Provided the threshold is not reached, this management measure may also provide access to fishing grounds that may be closer to shore for some boats than locations currently fished during this time. Therefore, an unquantified but anticipated short-term socioeconomic benefit of this management measure is a reduction in trip length and associated fuel cost. The individual accountability aspects of the IBQ Program would still be relied upon to incentivize bluefin tuna avoidance, meaning that there is still a proven means to achieve the objectives of continuing to minimize bycatch and bycatch mortality of bluefin tuna. The management measures in the proposed rule have the potential to simplify and streamline regulations in the Gulf of Mexico intended to reduce bluefin tuna bycatch if the evaluation process indicates that the gear restricted area is no longer needed.

Gulf of Mexico Weak Hooks

Under the proposed rule, NMFS would modify regulations that currently require the use of weak hooks year-round by vessels fishing in the Gulf of Mexico that have pelagic longline gear on board, and that have been issued, or are required to have been issued, a swordfish, shark, or Atlantic Tunas Longline category LAP for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico. This proposed rule would require such weak hook use only from January through June, when bluefin tuna are highest in abundance in the Gulf of Mexico. This timeframe includes the bluefin April through June spawning period. Fishermen may voluntarily choose to continue to use weak hooks when they are not required (i.e., July through December). In the second half of the year, catch-per-unit effort increases for other bycatch species, such as white marlin, that may be more vulnerable to capture on weak hooks. Southeast Fisheries

Science Center research comparing catch of numerous species on weak hooks and standard circle hooks completed between 2008 and 2012 (see Appendix 2 in the DEIS associated with this proposed rule) noted that the use of weak hooks results in a statistically significant, 46 percent decrease in the catch of bluefin tuna. However, a statistically significant increase in white marlin and roundscale spearfish catch (by 45.7 percent) was noted with the use of weak hooks. While bluefin tuna interactions and catch per unit effort are highest in the first half of the year, white marlin and roundscale spearfish interactions and catch per unit effort are highest in the second half of the year. Therefore, this alternative is expected to strike a balance between the objectives of continuing to minimize bluefin tuna bycatch mortality and continuing to minimize bycatch mortality of other Atlantic HMS (i.e., white marlin and roundscale spearfish). Southeast Fisheries Science Center research results indicate that use of weak hooks did not have a statistically significant effect on catch of many target species such as swordfish and yellowfin tuna. Despite the lack of statistical significance in the experiment, many fishermen believe that the use of weak hooks reduces catch of large target catch species. This measure may meet rule objectives by providing an unquantifiable increase in opportunity for the pelagic longline fishery to harvest target species in the second half of the year, since fishermen would have flexibility to adjust hook type to maximize the likelihood of catching target species. Use of weak hooks may also help fishermen reduce IBQ allocation needed to cover incidental bluefin tuna landings or dead discards in the first half of the year, since the live release of large bluefin tuna shortly after hooking means that fishermen would not have to account for those bluefin tuna with IBQ allocation, which is used only for landings and dead discards.

Request for Comments

NMFS is requesting comments on the alternatives and analyses described in this proposed rule and IRFA. These comments will be considered in conjunction with comments received on the DEIS associated with this proposed rule, which was published May 17, 2019, to facilitate review and comment by the HMS Advisory Panel at its Spring 2019 meeting. NMFS is also requesting specific comments on appropriate thresholds for the evaluation process in the Gulf of Mexico Pelagic Longline Monitoring Area and the Northeastern United States Pelagic Longline Monitoring Area. Comments may be submitted via <http://www.regulations.gov> or mail. Comments may also be submitted at a public hearing (see Public Hearings and Special Accommodations below). We solicit comments on this proposed rule by September 30, 2019 (see **DATES** and **ADDRESSES**). Comments on this proposed rule may be submitted via <http://www.regulations.gov> or mail and comments may also be submitted at a public hearing.

Public Hearings

During the comment period, NMFS will hold four public hearings and two operator-assisted public hearings via conference call and webinar for this proposed rule. The hearing locations will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Craig Cockrell at 301-427-8503 or Jennifer Cudney at 727-824-5399, at least 7 days prior to the meeting.

Table 1. Dates, times, and locations of upcoming public hearings and conference call.

Venue	Date/time	Street Address / Webinar Information
Public Hearing	July 16, 2019 5:00 – 7:00 p.m.	National Marine Fisheries Service Greater Atlantic Regional Fisheries Office Hearing Room A 55 Great Republic Dr Gloucester, MA 01930
Conference call / Webinar	July 19, 2019 2:00 – 4:00 pm.	To participate in the conference call: Phone: 888-989-7692 Passcode: 2664906

		To participate in the webinar, RSVP at: https://noaanmfs-events2.webex.com/noaanmfs-events2/onstage/g.php?MTID=e8963997f0720f8ca85ee2fb56b726f19 A confirmation email with webinar log-in information will be sent after RSVP is registered.
Public Hearing	July 24, 2019 5:00 – 8:00 p.m.	Terrebonne Parish Library (Main Branch) 151 Library Drive Houma, LA 70360 Vietnamese translation will be provided.
Public Hearing	July 30, 2019 5:00 – 7:00 p.m.	Ocean County Library, Toms River Branch 101 Washington Street Toms River, NJ 08753
Conference call / Webinar	July 31, 2019 10:00 a.m. – 12:00 p.m.	To participate in the conference call: Phone: 888-946-2707 Passcode: 3542964 To participate in the webinar, RSVP at: https://noaanmfs-events2.webex.com/noaanmfs-events2/onstage/g.php?MTID=ed3603a85564cf407b17a8f31bd261c26 A confirmation email with webinar log-in information will be sent after RSVP is registered.
Public Hearing	August 13, 2019 5:00 – 7:00 p.m.	Dare County Administration Building Commissioners Meeting Room 954 Marshall Collins Drive Manteo, NC 27954

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the hearing room; 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). At the beginning of the conference call, the moderator will explain how the conference call will be conducted and how and when attendees can provide comments. 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(s). Attendees

are expected to respect the ground rules, and, if they do not, they may be asked to leave the hearing or may not be allowed to speak during the conference call.

Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of 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 proposed rule is expected to be an Executive Order 13771 deregulatory action.

NMFS prepared a DEIS for this proposed rule that discusses the impacts on the environment that would result from this rule (84 FR 22492; May 17, 2019). Copies of the DEIS are available from NMFS (see **ADDRESSES**).

Regulatory Flexibility Act

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Section 603(b)(1) requires Agencies to describe the reasons why the action is being considered. Consistent with the provisions of the Magnuson-Stevens Act and ATCA, NMFS proposes to determine whether current regulations are still necessary to achieve management objectives for the pelagic longline fishery, or if conservation and management measures can be streamlined to eliminate regulations that are redundant in effect. For weak hooks, NMFS proposes

changes to regulations that currently require the use of weak hooks year-round by vessels with shark, swordfish, and Atlantic tunas longline category limited access permits with pelagic longline gear onboard in the Gulf of Mexico. Specifically, the rule would require such weak hook use only when bluefin tuna are highest in abundance in the Gulf of Mexico from January through June, which includes their spawning period. Fishermen may voluntarily choose to continue to use weak hooks when they are not required (i.e., July through December).

Section 603(b)(2) of the RFA requires Agencies to state the objective of, and legal basis for the proposed action. (See Chapter 1 of the DEIS associated with this rulemaking for a full description of the objectives of this action.) Consistent with the provisions of the Magnuson-Stevens Act and ATCA, NMFS proposes to adjust measures put in place to manage bluefin tuna bycatch in the pelagic longline fishery, namely the Northeastern United States Closed Area, the Cape Hatteras Gear Restricted Area, and the Spring Gulf of Mexico Gear Restricted Area, as well as the weak hook requirement in the Gulf of Mexico. The objectives of this rulemaking are to: (1) Continue to minimize, to the extent practicable, bycatch and bycatch mortality of bluefin tuna and other Atlantic HMS by pelagic longline gear consistent with the conservation and management objectives (e.g., prevent or end overfishing, rebuild overfished stocks, manage Atlantic HMS fisheries for continuing optimum yield) of the 2006 Consolidated Atlantic HMS FMP, its amendments, and all applicable laws; (2) simplify and streamline Atlantic HMS management, to the extent practicable, by reducing any redundancies in regulations established to reduce bluefin tuna interactions that apply to the pelagic longline fishery; and (3) optimize the ability for the pelagic longline fishery to harvest target species quotas (e.g., swordfish), to the extent practicable, while also considering fairness among permit/quota categories. This evaluation is necessary given the IBQ Program's shift in management focus towards individual

vessel accountability for bluefin tuna bycatch in the pelagic longline fishery; the continued underharvest of quotas in the associated target fisheries, particularly the swordfish quota; comments from the public and the HMS Advisory Panel members indicating that certain regulations may be redundant in effect; and requests from the public and HMS Advisory Panel members to reduce regulatory burden and remove duplicative regulations.

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 the SBA regulations for an agency to develop its own industry-specific size standards after consultation with 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**, 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 permit holders to be small entities because they had average annual receipts of less than \$11 million for commercial fishing. The Small Business Administration (SBA) has established size standards for all other major industry sectors in the U.S., including the scenic and sightseeing transportation (water) sector (NAICS code 487210, for-hire), which

includes charter/party boat entities. The SBA has defined a small charter/party boat entity as one with average annual receipts (revenue) of less than \$7.5 million.

Regarding those entities that would be directly affected by the preferred alternatives, the average annual revenue per active pelagic longline vessel is 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 2016 was less than \$1.9 million, well below the NMFS small business size standard for commercial fishing businesses of \$11 million. Other non-longline HMS commercial fishing vessels typically generally earn less revenue than pelagic longline vessels. Therefore, NMFS considers all Atlantic HMS commercial permit holders to be small entities (*i.e.*, they are engaged in the business of fish harvesting, are independently owned or operated, are not dominant in their field of operation, and have combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide). The preferred commercial alternatives would apply to the 280 Atlantic tunas Longline category permit holders, 221 directed shark permit holders, and 269 incidental shark permit holders. Of these 280 Atlantic tunas Longline category permit holders, 85 pelagic longline vessels were actively fishing in 2016 based on logbook records.

NMFS has determined that the proposed measures would not likely directly affect any small organizations or small government jurisdictions defined under RFA, nor would there be disproportionate economic impacts between large and small entities. More information regarding the description of the fisheries affected can be found in Chapter 3.0 of the DEIS.

Section 603(b)(4) of the RFA requires Agencies to describe any new reporting, record-keeping and other compliance requirements. The action does not contain any new collection of information, reporting, or record-keeping requirements.

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 fishery management measures. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. This proposed action has been determined not to duplicate, overlap, or conflict with any Federal rules.

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, second, 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 did incorporate performance standards when developing several of the area-based alternatives. As described below, NMFS analyzed several different alternatives in developing this proposed rulemaking, and provides rationales for identifying and proposing the preferred alternatives to achieve the desired objectives. The alternatives considered and analyzed are described below.

Northeastern United States Closed Area

Alternative A1, the No Action alternative, would maintain the current regulations regarding the Northeastern United States Closed Area. Average annual revenue for bluefin tuna and target species combined between 2015-2017 in a “reference area” (area surrounding the Northeastern United States Closed Area selected to help describe the ecological and socioeconomic impacts) was \$42,942. Since 14 vessels operated in the reference area in June between 2015 and 2017, the average annual revenue per vessel during this time period was \$3,067. This alternative would maintain the recent landings levels and corresponding revenues, resulting in neutral direct economic impacts to these small entities.

Alternative A2 would modify the current Northeastern United States Closed Area to remove portions of the closure (i.e., those areas west of 70° W longitude) that current analyses indicate: 1) did not historically have high numbers of bluefin discards reported in the HMS logbook during the timeframe of data (1996-1997) originally analyzed for implementation of the closure in 1999, and 2) were adjacent to areas that recently (2015-2017) did not have bluefin interactions. As mentioned above regarding Alternative A1, in the reference area, total average annual revenue for the 14 vessels for bluefin tuna and target species in June of 2015 through 2017 was \$42,942 (\$3,067 per vessel). The predicted total average annual revenue under

Alternative A2 would be \$35,394 (\$2,528 per vessel). Under Alternative A2, revenue from most species is predicted to decrease during the month of June, particularly for bluefin tuna, because anticipated catch rates for some species in the area being considered for opening under this alternative were lower than those in the reference area. Revenue from bigeye tuna, on the other hand, could increase slightly. Some of the analyses in the DEIS predicted that, if fishing effort moved directly and proportionately from the now-open areas to the newly-opened areas, catch rates could be lower for most species, and revenue would also be lower. This analysis rests, however, on the presumption of direct movement of the same levels of effort from one area to the other. It does not account for a critical element of fishing behavior that is determinative of how and where effort changes would actually occur under this rule: namely, fishermen selection of productive fishing grounds. In practical application, we expect that fishermen would make decisions about productive fishing grounds and move their effort responsively and accordingly, thus offsetting any impact that the change in area could otherwise produce. Fishermen will make decisions about productive fishing grounds in any given year depending on fish availability and will likely decide not to fish in the area being considered for opening if they discover it could lower their fishing revenue. Thus, fishing revenue impacts for this alternative are expected to be neutral.

Alternative A3 considered converting the Northeastern United States Closed Area to the “Northeastern United States Gear Restricted Area”, and allowing performance-based vessel access therein using the access criteria currently used for the Cape Hatteras Gear Restricted Area (currently codified at §§ 635.21(c)(3) and 635.14). Vessels would be evaluated against criteria (i.e., performance metrics) evaluating a vessel’s ability to avoid bluefin tuna, comply with Pelagic Observer Program requirements, and comply with HMS logbook submission

requirements using the three most recent years of available data associated with a vessel. If no data are available, then NMFS would not be able to make a determination about vessel access, and such vessels would be excluded from gear restricted area access until NMFS has collected sufficient data for assessment (consistent with current procedures for the Cape Hatteras Gear Restricted Area). Those vessels that meet the criteria for performance metrics would be allowed to fish in the closed area. This measure would be evaluated after at least three years of data have been collected to determine whether it effectively achieves the management objectives of this rulemaking.

As mentioned above, in the reference area, total average annual revenue for the 14 vessels for bluefin tuna and target species in June of 2015 through 2017 was \$42,942 (\$3,067 per vessel). The predicted range of total average annual revenue under Alternative A3 would be \$20,185 to \$35,352 and the average annual revenue per vessel during this time period under this alternative would be \$1,442 to \$2,525. Revenue from some species is predicted to decrease during the month of June, particularly for bluefin tuna and dolphin, because anticipated catch rates for some species in the Northeastern United States Gear Restricted Area were lower than those in the reference area. Revenue from yellowfin tuna, on the other hand, could increase substantially. Some of the analyses in the DEIS predicted that, if fishing effort moved directly and proportionately from the now-open areas to the newly-opened areas, catch rates could be lower for most species, and revenue would also be lower. This analysis rests, however, on the presumption of direct movement of the same levels of effort from one area to the other. It does not account for a critical element of fishing behavior that is determinative of how and where effort changes would actually occur under this rule: namely, fishermen selection of productive fishing grounds. In practical application, we expect that fishermen would make decisions about

productive fishing grounds and move their effort responsively and accordingly, thus offsetting any impact that the change in area could otherwise produce. Fishermen will make decisions about productive fishing grounds in any given year depending on fish availability and will likely decide not to fish in the Northeastern United States Closed Area if they qualify for access and discover it could lower their fishing revenue. Thus, fishing revenue impacts for this alternative are expected to be neutral.

Implementing performance-based access would provide increased flexibility for fishermen to adapt to changing distributions and concentrations of bluefin tuna and target catch. This alternative will also give fishermen the ability to make choices on where to fish to optimize target catch while minimizing bycatch.

An unquantified short-term economic benefit of this alternative is a reduction in trip length and associated fuel cost. The Northeastern United States Gear Restricted Area would open areas for qualified pelagic longline vessels that are closer to shore than where most of the effort is currently occurring during the month of June in the adjacent open areas. The closure is approximately 320 miles wide from west to east, so allowing fishing in the area could reduce some trips by hundreds of miles. Less fuel consumption would lower the trip cost and increase the trip profit, which may influence fishermen's decisions on fishing in the Monitoring Area. In addition, shorter trip lengths could also reduce the opportunity costs for crew and captains on the vessel by reducing the number of days they are away at sea fishing.

In the short-term, overall economic impacts are expected to range between minor positive to neutral based on the increased flexibility in fishing areas, potentially shorter trips and associated lower fuel costs, and thus potentially increased profits from fishing.

Alternative A4, the preferred alternative, would convert the “Northeastern United States Closed Area” to a “Northeastern United States Pelagic Longline Monitoring Area.” This area has been closed to pelagic longline fishing during the month of June since 1999. This alternative would have a three-year evaluation period (January 1, 2020 through December 31, 2022) for the Monitoring Area, which would be managed as follows:

- The Monitoring Area would initially remain open to pelagic longline fishing from June 1 to June 30.
- There would be an annual 150,519 pound IBQ allocation threshold for landings and dead discards of bluefin caught within the Monitoring Area.
- If the threshold is reached, or is projected to be reached, NMFS would file a closure notice for the Monitoring Area with the Office of the **Federal Register**.
- On and after the effective date of the notice, the Monitoring Area would be closed to pelagic longline fishing each year from June 1 through June 30, unless NMFS takes further action.
- If no closure notice is filed between January 1, 2020 and December 31, 2022, the Monitoring Area would remain open, unless and until NMFS decides to take additional action regarding the area.

The proposed 150,519 lb threshold is based on the average annual amount of unused Atlantic IBQ allocation that is available for use by the pelagic longline fleet from June 1 through December 31. Using unused allocation as the threshold helps to ensure that opening the area to fishing would not compromise adherence to the overall bluefin quota or the ability of fishery participants to obtain enough IBQ allocation to cover bluefin landings and dead discards for the rest of the year. It should be noted that the threshold does not mean that 150,519 lb of IBQ

allocation can be used *only* in the Monitoring Area. IBQ allocation is still subject to the same regulations previously applicable. The threshold is for NMFS' monitoring and evaluation purposes for the Area only. After the 2020-2022 evaluation period, NMFS will evaluate data collected from the Monitoring Area. NMFS may then decide to initiate a follow-up action to implement new, longer-term management measures for the area.

This Monitoring Area will provide increased flexibility for fishermen to adapt to changing distributions and concentrations of bluefin tuna and target catch. This alternative will also give fishermen the ability to make choices about where to fish to optimize target catch while minimizing bycatch. An unquantified benefit of this alternative could be a reduction in trip length and associated fuel cost. The alternative would open areas for pelagic longline fishing that are closer to shore than where most of the effort is currently occurring during the month of June in the adjacent open areas. In the long-term, overall economic impacts are expected to range between minor positive to neutral based on the increased flexibility in fishing areas, potentially shorter trips and associated lower fuel costs, and thus potentially increased profits from fishing.

Following the evaluation period, NMFS would conduct an evaluation of data collected from the Monitoring Area. As discussed in Chapters 2 and 4 of the DEIS, the status of the Monitoring Area following the three-year evaluation period is dependent on whether the threshold has been reached in any of those three years.

The short-term economic impacts would be very similar to those of Alternative A3. Long-term economic impacts would depend on the result of the three-year evaluation period for this Monitoring Area. If NMFS were to decide to take action so that these areas remain open after three years, long-term impacts would be expected to be the same as short-term impacts.

Alternative A5 would eliminate all current restrictions associated with the Northeastern United States Closed Area. Since this alternative would allow access to all vessels in the month of June by removing regulations related to the Northeastern United States Closed Area, the socioeconomic impacts would be the same as presented in the preferred alternative, Alternative A4. In the long-term, overall economic impacts are expected to range between minor positive to neutral based on the increased flexibility in fishing areas, potentially shorter trips and associated lower fuel costs, and thus potentially increased profits from fishing.

Cape Hatteras Gear Restricted Area

Alternative B1, the No Action alternative, would maintain the current boundaries and restrictions associated with the Cape Hatteras Gear Restricted Area. Access to the area would be based on an evaluation of performance metrics. Since implementation of the program, the majority of the pelagic longline fleet has been granted access to the gear restricted area. However, the number of permit holders with data available for analysis has declined, coincident with an increase in the number of permits in “NOVESID” status (i.e., permits are renewed but not associated with a vessel). In the first year of the program, 136 vessels (~48 percent of the 281 pelagic longline permits) were determined to have sufficient data for the analysis, while 145 permits were either in NOVESID status, were inactive during the initial analysis period, or were in an invalid status. Approximately 75 percent of active vessels were granted access to the gear restricted area. During the 2018-2019 effective period, 97 vessels (~34.5 percent) had data available for analysis. Approximately 85 percent of active vessels were granted access to the gear restricted area in the 2018-2019 effective period. Only one vessel denied access to the gear restricted area in 2018 due to bluefin tuna avoidance issues had previously fished within the gear restricted area in recent years (data not shown in DEIS to protect data confidentiality).

Since implementation of the IBQ Program in 2015, revenue in the Cape Hatteras Gear Restricted Area for highly valued target species has increased. This is to be expected as fishermen adjusted business practices to the gear restricted area and IBQ Program, and became more familiar with leasing markets. During the gear restricted area's December through April effective period, from 2015 through 2017, sets made within this gear restricted area contributed approximately 8.9 percent of the revenue generated for swordfish, 24.5 percent of the revenue from bigeye tuna, and 15 percent of the revenue from bluefin tuna.

Retaining this gear restricted area is likely to have neutral economic impacts fleet-wide, as the majority of vessels qualified for access, and those not qualified for access to the gear restricted area did not make sets within this area either prior to implementation or after implementation when access was granted. Retaining the gear restricted area may have temporary, minor adverse economic impacts to individual vessels that either recently made sets in the gear restricted area or may be denied access in the future.

Alternative B2 would remove the current gear restricted area off Cape Hatteras, North Carolina, as currently defined in § 635.2 and all associated regulatory provisions, restrictions, and prohibitions. Removing the gear restricted area is likely to have neutral to minor and beneficial economic impacts, depending on the scale of consideration. Fleet-wide effects on fishing revenue for this time period are anticipated to be neutral as the majority of the fleet had access to the area and continued to fish in it following implementation of Amendment 7 management measures. Vessels recently denied access (for the 2018-2019 effective period) to the gear restricted area fished in a variety of locations between 2015 and 2017. Many of these vessels did not make sets within this area either prior to implementation or after implementation when access was granted. Revenue for these vessels may therefore be based on factors other

than access to the gear restricted area. Removing the gear restricted area may have temporary, localized and minor beneficial economic impacts to a small number of individual vessels. Removing this restriction would remove functionally redundant layers of regulation and year-to-year uncertainty associated with access decisions. It may also provide a small number of fishermen with more options regarding fishing locations. The gear restricted area is situated in a location where wintertime fishing activities are largely dependent on weather and wind direction. Cape Hatteras and adjacent Diamond Shoals shelter fishing grounds to the south and west from northerly and westerly winds, and to the north from southerly and westerly winds. Removing the closures could enable greater flexibility for fishermen to safely conduct fishing activities in short, favorable wintertime weather windows.

Gulf of Mexico Gear Restricted Areas

Alternative C1, the No Action alternative, would maintain the current regulations regarding the Spring Gulf of Mexico Gear Restricted Area (comprised of two areas). NMFS would maintain current restrictions which prohibit fishing to all vessels with pelagic longline gear onboard from April 1 through May 31 each year (vessels may transit the area if gear is properly stowed). Outside of the gear restricted area, average annual revenue for bluefin tuna and target species from April-May in 2015 through 2017 was \$627,842. There were 46 pelagic longline vessels active in the Gulf of Mexico during that time period, thus each vessel generated an average of \$13,649 annually between April-May. This alternative would maintain the recent landings levels and resulting revenues, resulting in neutral direct economic impacts.

Alternative C2 would apply performance-based access to the Spring Gulf of Mexico Gear Restricted Area. Vessels would be evaluated against criteria (i.e., performance metrics) evaluating their ability to avoid bluefin tuna, comply with Pelagic Observer Program

requirements, and comply with HMS logbook submission requirements using the three most recent years of available data associated with a vessel. If no data are available, then NMFS would not be able to make a determination about vessel access, and such vessels would be excluded from gear restricted area access until NMFS has collected sufficient data for assessment (consistent with current operational Amendment 7 implementation procedures). Those vessels that meet the criteria for performance metrics would be allowed to fish in the closed area. This measure would be evaluated after at least three years of data have been collected to determine whether it effectively achieves the management objectives of this rulemaking. In the analyses of gear restricted area access for 2015 through 2019, up to 3 pelagic longline vessels associated with Gulf of Mexico IBQ shares have been excluded from the Cape Hatteras Gear Restricted Area in any given year, out of a total of 52 vessels associated with Gulf of Mexico IBQ shares. Those same vessels would also be excluded from the Spring Gulf of Mexico Gear Restricted Area under this alternative. Therefore, given these past access determinations, at least 94 percent of vessels with Gulf of Mexico IBQ allocation would be expected to have access to the Spring Gulf of Mexico Gear Restricted Area under this alternative. As noted under Alternative C1, average annual revenue per vessel for bluefin tuna and target species in April-May of 2015 through 2017 was \$13,649. The predicted range of average annual revenue per vessel under this alternative would be \$10,909 to \$13,628. Revenue from some species is predicted to decrease during these two months, particularly for swordfish, because anticipated catch rates for some species in the Gulf of Mexico Gear Restricted Area with performance access were lower than those in the open portions of the Gulf of Mexico. Revenue from bigeye tuna, on the other hand, is predicted to remain the same or increase. Some of the analyses in the DEIS predicted that, if fishing effort moved directly and proportionately from the

now-open areas to the newly-opened areas, catch rates could be lower for most species, and revenue would also be lower. This analysis rests, however, on the presumption of direct movement of the same levels of effort from one area to the other. It does not account for a critical element of fishing behavior that is determinative of how and where effort changes would actually occur under this rule: namely, fishermen selection of productive fishing grounds. In practical application, we expect that fishermen would make decisions about productive fishing grounds and move their effort responsively and accordingly, thus offsetting any impact that the change in area could otherwise produce. Fishermen will make decisions about productive fishing grounds in any given year depending on fish availability. Access to the gear restricted areas will provide increased flexibility for fishermen to adapt to changing distributions and concentrations of bluefin tuna and target catch. This alternative will also give fishermen the ability to make choices on where to fish to optimize target catch while minimizing bycatch. Thus, fishing revenue impacts for this alternative are expected to be neutral.

Long-term impacts on these species would depend on future trends in performance-based access to the Spring Gulf of Mexico Gear Restricted Area. If the number of vessels allowed access to these areas remains consistent over time, long-term impacts would be expected to be the same as short-term impacts. As described above, this analysis assumes that all vessels with Gulf of Mexico IBQ shares would have access to the gear restricted areas. There could be a slight decrease in revenues within the gear restricted areas from the values described here, with a corresponding increase in revenues in the open area, due to vessels excluded from the areas, but the predicted ranges of catch still represent the best estimate for these areas.

Alternative C3, the preferred alternative, would convert the “Spring Gulf of Mexico Gear Restricted Area” to a “Spring Gulf of Mexico Pelagic Longline Monitoring Area” (which will

continue to be comprised of two areas) (“Monitoring Area”). This area has been closed to pelagic longline fishing during the months of April and May since 2015. This alternative would have a three-year evaluation period (January 1, 2010 through December 31, 2022) for the Monitoring Area, which would be managed as follows:

- The Monitoring Area would initially remain open to pelagic longline fishing from June 1 through June 30.
- There would be an annual 63,150 pound IBQ allocation threshold for landings and dead discards of bluefin caught within the Monitoring Area.
- If the threshold is reached, or is projected to be reached, NMFS would file a closure notice for the Monitoring Area with the Office of the **Federal Register**.
- On or after the effective date of the notice, the Monitoring Area would be closed to pelagic longline fishing each year from June 1 through June 30, unless NMFS takes further action.
- If no closure notice is filed between January 1, 2020 through December 31, 2022, the Monitoring Area would remain open, unless and until NMFS decides to take additional action regarding the area.

The threshold proposed would be 63,150 lb threshold is equivalent to the amount of IBQ allocation that could be used by the portion of the fleet that was recently (2015 through 2017) active during these months in the Gulf of Mexico. The intent of this threshold design is to discourage a level of fishing that would compromise adherence to the quota needed to appropriately conserve and manage bluefin. The evaluation process is designed to enable managers to evaluate whether the areas remain necessary to keep incidental catch within the allocated Longline quota overall. It should be noted that the threshold does not mean that 61,150

lb of IBQ allocation can be used *only* in the Monitoring area. IBQ allocation is still subject to the same regulations previously applicable. The threshold is for NMFS' monitoring and evaluation purposes for the Area only.

After the 2020-2022 evaluation period, NMFS will evaluate data collected from the Monitoring Area., NMFS may then decide to initiate a follow-up action to implement new, longer-term management measures for the area. As discussed in Chapters 2 and 4, the status of the Monitoring Area following the three-year evaluation period is dependent on whether the threshold has been reached.

As noted under Alternative C1, average annual revenue per vessel for bluefin tuna and target species in April-May of 2015 through 2017 was \$13,649. The predicted range of average annual revenue per vessel under this alternative would be \$10,909 to \$13,628. Revenue from some species is predicted to decrease during these two months, particularly for swordfish, because anticipated catch rates for some species in the Spring Gulf of Mexico Pelagic Longline Monitoring Area were lower than those in the open portions of the Gulf of Mexico. Revenue from bigeye tuna, on the other hand, is predicted to remain the same or increase. Some of the analyses in the DEIS predicted that, if fishing effort moved directly and proportionately from the now-open areas to the newly-opened areas, catch rates could be lower for most species, and revenue would also be lower. This analysis rests, however, on the presumption of direct movement of the same levels of effort from one area to the other. It does not account for a critical element of fishing behavior that is determinative of how and where effort changes would actually occur under this rule: namely, fishermen selection of productive fishing grounds. In practical application, we expect that fishermen would make decisions about productive fishing grounds and move their effort responsively and accordingly, thus offsetting any impact that the

change in area could otherwise produce. Fishermen will make decisions about productive fishing grounds in any given year depending on fish availability and will likely decide not to fish in the Spring Gulf of Mexico Pelagic Longline Monitoring Area if they discover it could lower their fishing revenue. The Monitoring Area will provide increased flexibility for fishermen to adapt to changing distributions and concentrations of bluefin tuna and target catch. This alternative will also give fishermen the ability to make choices on where to fish to optimize target catch while minimizing bycatch. Thus, fishing revenue impacts for this alternative are expected to be neutral.

Long-term economic impacts would depend on the result of the three-year evaluation period for this Monitoring Area. If NMFS decides to take action to keep these areas open after three years, long-term impacts would be expected to be the same as short-term impacts.

Alternative C4 would remove the Spring Gulf of Mexico Gear Restricted Area. Since this alternative would allow access to all vessels by removing regulations related to the Spring Gulf of Mexico Gear Restricted Area, the short-term socioeconomic impacts would be the same as presented in the preferred Alternative C3. As noted under Alternative C1, average annual revenue per vessel for bluefin tuna and target species in April-May of 2015 through 2017 was \$13,649. The predicted range of average annual revenue per vessel under this alternative would be \$10,909 to \$13,628. Revenue from some species is predicted to decrease during these two months, particularly for swordfish, because anticipated catch rates for some species in the Spring Gulf of Mexico Gear Restricted Area were lower than those in the open portions of the Gulf of Mexico. Revenue from bigeye tuna, on the other hand, is predicted to remain the same or increase. Overall economic impacts for this alternative are expected to be neutral in the short-term, despite the predicted decrease in overall revenue. Fishermen will make decisions about

where to fish in any given year depending on fish availability. This alternative will also give fishermen the ability to make choices on where to fish to optimize target catch while minimizing bycatch. Long-term economic impacts would be expected to be the same as short-term impacts.

Weak Hooks

Under Alternative D1, NMFS would maintain the current regulations at 50 CFR 635.21(c)(5)(iii)(B)(2)(i) requiring vessels fishing in the Gulf of Mexico, that have pelagic longline gear on board, and that have been issued, or are required to have been issued, a swordfish, shark, or Atlantic Tunas Longline category LAP for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, to use weak hooks year-round when operating in the Gulf of Mexico. Because this alternative does not change current regulations, economic impacts on small entities would be neutral. However, this alternative would not address the higher bycatch of other species, such as white marlin that occurs in the second half of the year on weak hooks, nor would it address comments NMFS has received from pelagic longline fishermen expressing concern about their perception that swordfish catches have been reduced with weak hooks. Under this alternative, fishermen would not have any additional flexibility to choose a stronger circle hook (that also meets other existing requirements for hook size and type) that they feel may work better for their fishing operations. Weak hook research conducted by NMFS from 2008-2012 indicated that there was no significant difference in the catch rates of any targeted species when compared to previously allowed stronger circle hooks, even though the catch rates of legally sized swordfish did in fact decrease with weak hooks.

Alternative D2, the preferred alternative, would modify the regulations described under Alternative D1 to only require use weak hooks from January through June. This time period is when bluefin tuna are highest in abundance and it includes the April through June bluefin tuna

spawning season. Fishermen may voluntarily choose to continue to use weak hooks when they are not required. This alternative would likely result in short- and long-term minor beneficial economic impacts since it would give fishermen more flexibility in choosing how to fish. During the months without the weak hook requirement, fishermen could choose whether to use the gear based on their knowledge of bluefin tuna presence and distribution. Furthermore, weak hooks can help fishermen manage their IBQ allocation by reducing the number of captured bluefin tuna that would be counted against their IBQ allocation. NMFS prefers this alternative at this time because it increases fishermen's flexibility and helps fishermen manage their IBQ allocation by reducing the number of captured bluefin tuna that would be counted against their IBQ allocation. There may be potential economic benefits for recreational fishermen that fish for white marlin or roundscale spearfish as a result of the anticipated decrease in commercial bycatch rates and associated fishing mortality and potential improvements to stock health and status.

Under Alternative D3, NMFS would remove the weak hook regulations described under Alternative D1. NMFS would continue to encourage voluntary use of weak hooks in the Gulf of Mexico as a conservation strategy for bluefin tuna. This alternative would likely result in short- and long-term neutral economic impacts since it would give fishermen more flexibility in choosing how to fish. In the absence of a weak hook requirement, fishermen could choose whether to use the gear based on their knowledge of bluefin tuna presence and distribution. Weak hooks may have, in some cases, assisted fishermen in reducing use of IBQ allocation because large bluefin were able to free themselves from gear before coming to the boat, and therefore never needed to be counted against a vessel's IBQ allocation. Some fishermen may still find their use beneficial in conserving their IBQ allocation, and would still have the option

to deploy weak hooks under this alternative. For example, pelagic longline fishermen that plan to fish in areas with high rates of bluefin tuna interactions may wish to deploy weak hooks to reduce interactions and conserve their IBQ allocation. There could be some risk that not requiring weak hooks from January through June could result in an increased risk for high bluefin tuna interactions for pelagic longline vessels that fish during those months but decide not to use weak hooks, and therefore, those vessels could face a higher risk in depleting their IBQ quota for the year. Under Alternative D3, NMFS would encourage the voluntary use of weak hooks and leave the decision up to individual fishermen based on their experience and on-the-water knowledge. Any potentially risky fishing practices leading to elevated interactions with Gulf of Mexico bluefin tuna would still be dis-incentivized under the IBQ Program. There may be potential economic benefits for recreational fishermen that fish for white marlin or roundscale spearfish as a result of the anticipated decrease in commercial bycatch rates and associated fishing mortality and potential improvements to stock health and status.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Gear Restricted Areas, Performance metrics, Individual Bluefin Quota, Penalties, Fishing gear, Closed Areas.

Dated: July 3, 2019.

Alan D. Risenhoover,

Acting 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.*

§ 635.2 [Amended]

2. Amend § 635.2 as follows:

a. Remove the definition for “Cape Hatteras gear restricted area”;

b. In the definition for “Northeastern United States closed area” remove the words “Northeastern United States closed area” and add in their place “Northeastern United States Pelagic Longline Monitoring Area”; and

c. In the definition for “Spring Gulf of Mexico gear restricted area” remove the words “Spring Gulf of Mexico gear restricted area” and add in their place “Spring Gulf of Mexico Pelagic Longline Monitoring Area.”

§ 635.14 [Removed and reserved]

3. Remove and reserve § 635.14.

4. In § 635.15, revise paragraph (c)(3)(ii) to read as follows:

§ 635.15 Individual bluefin tuna quotas.

* * * * *

(c) * * *

(3) * * *

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

* * * * *

5. In § 635.21:

- a. Revise paragraph (b)(2);
- b. Revise paragraph (c)(1)(i);
- c. Revise the introductory text of paragraph (c)(2) and paragraphs (c)(2)(i) through (iii);
- d. Remove paragraphs (c)(2)(iv) through (vi) and redesignate paragraph (c)(2)(vii) as paragraph (c)(2)(iv);
- e. Revise paragraphs (c)(3) and (c)(5)(iii)(B); and
- f. Add paragraph (c)(5)(iii)(C).

The additions and revisions read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(b) * * *

(2) Transiting and gear stowage: If a vessel issued or required to be issued a LAP under this part has pelagic or bottom longline gear onboard and is in a closed or gear restricted area as designated in paragraph (c)(2) of this section or a monitoring area designated in paragraph (c)(3) of this section that has been closed, it is a rebuttable presumption that any fish on board such a vessel were taken with pelagic or bottom longline gear in the area except where such possession is aboard a vessel transiting such an area with all fishing gear stowed appropriately. Longline gear is stowed appropriately if all gangions and hooks are disconnected from the mainline and are stowed on or below deck, hooks are not baited, and all buoys and weights are disconnected from the mainline and drum (buoys may remain on deck).

* * * * *

(c) * * *

(1) * * *

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

* * * * *

(2) If pelagic longline gear is on board a vessel issued or required to be issued a LAP under this part, persons aboard that vessel may not fish or deploy any type of fishing gear:

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

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

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

* * * * *

(3) From January 1, 2020 to December 31, 2022, a vessel issued or required to be issued a LAP under this part may fish with pelagic longline gear in the Northeastern United States Pelagic Longline Monitoring Area during the month of June or in the Spring Gulf of Mexico Pelagic Longline Monitoring Area during the months of April and May until the annual IBQ allocation threshold for the monitoring area has been reached or is projected to be reached. The annual IBQ allocation threshold is 150,519 lb for the Northeastern United States Pelagic Longline Monitoring Area, and 63,150 lb for the Spring Gulf of Mexico Pelagic Longline

Monitoring Area. When the relevant threshold is reached, or is projected to be reached, NMFS will file for publication with the Office of the **Federal Register** a closure for that monitoring area, which will be effective no fewer than five days from date of filing. From the effective date and time of the closure, vessels issued or required to be issued a LAP under this part and that have pelagic longline gear onboard are prohibited from deploying pelagic longline gear within the boundaries of the relevant monitoring area during the months specified for that area above. After December 31, 2022: if no closure of a particular monitoring area has been implemented under the provisions of this paragraph, vessels with pelagic longline gear onboard may continue to deploy pelagic longline gear in that area; if a closure has been issued for a particular monitoring area under the provisions of this paragraph, vessels with pelagic longline gear onboard will continue to be prohibited from deploying pelagic longline gear in that area.

* * * * *

(5) * * *

(iii) * * *

(B) *Bait.* Vessels fishing outside of the Northeast Distant gear restricted area, as defined at § 635.2, that have pelagic longline gear on board, and that have been issued or required to be issued a LAP under this part, are limited, at all times, to possessing on board and/or using only whole finfish and/or squid bait except that if green-stick gear is also onboard, artificial bait may be possessed, but may be used only with green-stick gear.

(C) *Hook size and type.* Vessels fishing outside of the Northeast Distant gear restricted area, as defined at § 635.2, that have pelagic longline gear on board, and that have been issued or are required to be issued a LAP under this part are limited, at all times, to possessing on board and/or using only 16/0 or larger non-offset circle hooks or 18/0 or larger circle hooks with an

offset not to exceed 10°. These hooks must meet the criteria listed in paragraphs (c)(5)(iii)(C)(1) through (3) of this section. A limited exception for the possession and use of J hooks when green stick gear is onboard is described in paragraph (c)(5)(iii)(C)(4).

(1) For the 18/0 or larger circle hooks with an offset not to exceed 10°, the outer diameter of an 18/0 circle hook at its widest point must be no smaller than 2.16 inches (55 mm), when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). The distance between the hook point and the shank (*i.e.*, the gap) on an 18/0 circle hook must be no larger than 1.13 inches (28.8 mm). The allowable offset is measured from the barbed end of the hook, and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side. The only allowable offset circle hooks are those that are offset by the hook manufacturer.

(2) For the 16/0 or larger non-offset circle hooks, the outer diameter of a 16/0 circle hook at its widest point must be no smaller than 1.74 inches (44.3 mm), when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). The distance between the hook point and the shank (*i.e.*, the gap) on a 16/0 circle hook must be no larger than 1.01 inches (25.8 mm).

(3) Between the months of January through June of any given calendar year in the Gulf of Mexico, all circle hooks must also be constructed of corrodible round wire stock that is no larger than 3.65 mm in diameter. For the purposes of this section, the Gulf of Mexico includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(4) If green-stick gear, as defined at § 635.2, is also onboard, a vessel that has pelagic longline gear onboard, may possess up to 20 J-hooks. J-hooks may be used only with green-stick gear, and no more than 10 hooks may be used at one time with each green-stick gear. J-hooks

used with green-stick gear may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook.

* * * * *

6. For § 635.21, in the table below, for each section indicated in the left column, remove the text indicated in the middle column from wherever it appears in the section, and add the text indicated in the right column:

Section	Remove	Add
§ 635.21(c)(2)(iv)(D)	(c)(2)(vii)	(c)(2)(iv)
§ 635.21(c)(2)(iv)(E)	(c)(2)(vii)	(c)(2)(iv)
§ 635.21(c)(2)(iv)(F)	(c)(2)(vii)	(c)(2)(iv)
§ 635.21(c)(2)(iv)(G)	(c)(2)(vii)	(c)(2)(iv)
§ 635.21(c)(5)(ii)(C)(I)	(c)(2)(vii)	(c)(2)(iv)

7. In § 635.71, revise paragraphs (a)(31), (a)(54), (a)(57) and (58), and (b)(36) through(40) to read as follows:

§ 635.71 Prohibitions.

* * * * *

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

* * * * *

(54) Possess, use, or deploy, in the Gulf of Mexico, with pelagic longline gear on board, any circle hook that is constructed of round wire stock that is larger than 3.65 mm in diameter

during the months of January through June of any calendar year as specified in § 635.21(c)(5)(iii).

* * * * *

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

(58) Deploy or fish with any fishing gear from a vessel with a pelagic longline gear on board in a monitoring area that has been closed as specified at § 635.21(c)(3).

* * * * *

(b) * * *

(36) Possess J-hooks onboard a vessel that has pelagic longline gear onboard, and that has been issued or required to be issued a LAP under this part, except when green-stick gear is onboard, as specified at § 635.21(c)(2)(v)(A) and (c)(5)(iii)(C).

(37) Use or deploy J-hooks with pelagic longline gear from a vessel that has been issued, or required to be issued a LAP under this part, as specified in § 635.21(c)(5)(iii)(C).

(38) As specified in § 635.21(c)(5)(iii)(C), possess more than 20 J-hooks onboard a vessel that has been issued or required to be issued a LAP under this part, when possessing onboard both pelagic longline gear and green-stick gear as defined in § 635.2.

(39) Use or deploy more than 10 hooks at one time on any individual green-stick gear, as specified in § 635.21(j), (c)(2)(v)(A), or (c)(5)(iii)(C).

(40) Possess, use, or deploy J-hooks smaller than 1.5 inch (38.1 mm), when measured in a straight line over the longest distance from the eye to any part of the hook, when fishing with or possessing green-stick gear onboard a vessel that has been issued or required to be issued a LAP under this part, as specified at § 635.21(c)(5)(iii)(C) or (c)(2)(v)(A).

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