DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 635

[Docket No. 120328229–4949–02]

RIN 0648–BC09

Atlantic Highly Migratory Species; 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan; Amendment 7

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

ACTION: Final rule.

SUMMARY: This final rule implements Amendment 7 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) to ensure sustainable management of bluefin tuna consistent with the 2006 HMS FMP and address ongoing management challenges in the Atlantic bluefin tuna fisheries. This final rule also implements minor regulatory changes related to the management of Atlantic HMS. Amendment 7 management measures were developed by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). This final rule: Allocates U.S. bluefin tuna quota among domestic fishing categories; implements measures applicable to the pelagic longline fishery, including Individual Bluefin Quotas (IBQs), two new Gear Restricted Areas, closure of the pelagic longline fishery when annual bluefin tuna quota is reached, elimination of target catch requirements associated with retention of incidental bluefin tuna in the pelagic longline fishery, mandatory retention of legal-sized bluefin tuna caught as bycatch, expanded monitoring requirements, including electronic monitoring via cameras and bluefin tuna catch reporting via Vessel Monitoring System (VMS), and transiting provisions for pelagic and bottom longline vessels; requires VMS use and reporting by the Purse Seine category; changes the start date of the Purse Seine category from July 15 to a date within a range of June 1 to August 15, to be established by an annual action; requires use of the Automated Catch Reporting System by the General and Harpoon categories; provides additional flexibility for inseason adjustment of the General category quota and Harpoon category retention limits; and changes the allocation of the Angling category Trophy South subquota for the Gulf of Mexico. Finally, this rule implements several measures not directly related to bluefin tuna management, including a U.S. North Atlantic albacore tuna quota; modified rules regarding permit category changes; and minor changes in the HMS regulations for administrative or clarification purposes.

DATES: Effective January 1, 2015, except for § 635.9(b)(2)(ii), (e)(1), which are effective June 1, 2015; and § 635.15(b)(3), (b)(4)(ii), and (b)(5)(i), which are effective January 1, 2016.

ADDRESSES: Copies of Amendment 7 to the 2006 Consolidated HMS FMP, including the Final Environmental Impact Statement (FEIS), and other relevant documents are available from the HMS Management Division Web site at *http://www.nmfs.noaa.gov/sfa/hms/.*

FOR FURTHER INFORMATION CONTACT: Thomas Warren or Brad McHale at 978–281–9260.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic tuna fisheries are managed under the 2006 Consolidated HMS FMP and regulations at 50 CFR part 635, pursuant to the authority of the Magnuson-Stevens Act and ATCA. Under ATCA, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the 2006 Consolidated HMS FMP, which details the management measures for Atlantic HMS fisheries, including the incidental and directed Atlantic bluefin tuna fisheries.

Background

A brief summary of the background of this final action is provided below. A more detailed history of the development of these regulations, and the alternatives considered, are described in Amendment 7 to the 2006 Consolidated HMS FMP Final Environmental Impact Statement (Amendment 7 FEIS, August, 2014), which can be found online at the HMS Web site noted above.

NMFS published a proposed rule on August 21, 2013 (78 FR, 52032), which proposed the ''preferred alternatives'' analyzed in the Draft Amendment 7 Environmental Impact Statement and solicited public comments on the measures, which were designed to address the following objectives: (1) Prevent overfishing of and rebuild bluefin tuna stock, achieve on a continuing basis optimum yield, and minimize bluefin bycatch to the extent practicable by ensuring that domestic bluefin tuna fisheries continue to operate within the overall total allowable catch (TAC) set by ICCAT consistent with the existing rebuilding plan; (2) optimize the ability for all permit categories to harvest their full bluefin quota allocations, account for mortality associated with discarded bluefin in all categories, maintain flexibility of the regulations to account for the highly variable nature of the bluefin fisheries, and maintain fairness among permit/quota categories; (3) reduce dead discards of bluefin tuna and minimize reductions in target catch in both directed and incidental bluefin fisheries, to the extent practicable; (4) improve the scope and quality of catch data through enhanced reporting and monitoring to ensure that landings and dead discards do not exceed the quota and to improve accounting for all sources of fishing mortality; and (5) adjust other aspects of the 2006 Consolidated HMS FMP as necessary and appropriate, including northern albacore tuna quota implementation.

On August 22, 2013 (78 FR 52123), NMFS published a notice in the **Federal Register** informing the public of the date and locations of public hearings on Amendment 7. From August 2013 to January 2014, NMFS conducted 11 public hearings, and consulted with the New England Fishery Management Council, the Gulf of Mexico Management Council, and the South Atlantic Fishery Management Council. The hearings were held in diverse locations in Atlantic and Gulf of Mexico coastal states. On August 30, 2013, the Environmental Protection Agency published a Notice of Availability of the draft environmental impact statement (DEIS) (78 FR 53754; August 30, 2013).

The August 21, 2013, Amendment 7 proposed rule set the end of the public comment period as October 23, 2013, but given the length and complexity of the rule, and to provide additional time for consideration of public comments in light of the November meeting of ICCAT, the end of the comment period was extended to December 10, 2013 (78 FR 57340; September 18, 2013). Subsequently, due to the government shutdown in October 2013, and NMFS' inability to respond to constituents

during that time frame and based on requests for an extension due to the complexity of the measures covered in the DEIS, NMFS again extended the end of the public comment period until January 10, 2014, to provide additional opportunity for informed comment (78 FR 75327; December 11, 2013). On December 26, 2013, NMFS published a **Federal Register** notice announcing a public hearing conference call and webinar to provide additional opportunity for the public from all geographic areas to comment (78 FR 78322).

The comments received on Draft Amendment 7 and its proposed rule, and responses to those comments, are summarized below in the section labeled ''Response to Comments.''

The bluefin tuna fishery is managed principally through a quota. Currently, NMFS implements and codifies the ICCAT-recommended U.S. quota through rulemaking, annually or bi-annually depending on the length of the relevant ICCAT recommendation. Also through rulemaking (the ''quota specifications process'') NMFS annually adjusts the U.S. baseline bluefin quota to account for any underharvest or overharvest of the adjusted U.S. quota from the prior year; specifies subquotas that result from application of the 2006 Consolidated HMS FMP allocations; and adjusts subquotas as appropriate following consideration of domestic management needs. NMFS must account not only for landings but for bluefin tuna discarded dead. NMFS estimates and accounts for dead discards in the pelagic longline fishery, which cannot target bluefin tuna but catches them while targeting swordfish and other tunas.

National Standard 1 requires that ''conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.'' The Magnuson-Stevens Act defines ''optimum yield'' as the amount of fish that, among other things, provides for rebuilding to a level consistent with producing the maximum sustainable yield from the fishery. In ATCA, Congress also directed NMFS to manage the bluefin fishery to ensure that NMFS provides U.S. fishing vessels ''with a reasonable opportunity to harvest such allocation, quota, or at such fishing mortality level. . . .'' This rule builds upon an extensive regulatory framework for management of the domestic bluefin fishery pursuant to the 20-year rebuilding program adopted in the 1999 FMP and continued under the 2006 Consolidated HMS FMP. As described below, the final rule measures were designed to allow fishery participants to fully harvest, but not exceed, the U.S. bluefin quota by refining the existing management tools. NMFS is implementing a detailed, multi-level approach to resolving challenges in administering and carrying out the current quota system, which, if left unaddressed, may otherwise result in overharvests of the U.S. quota in the future. These final rule measures directly support the goals of reducing overfishing, rebuilding the western bluefin stock, and achieving optimum yield by ensuring that the fishery continues to be managed within the ICCAT-approved TAC, and consistent with National Standard 1's requirements.

Northern Albacore Tuna

Amendment 7 also includes measures for management of north Atlantic albacore (or ''northern albacore'') tuna. Since 1998, ICCAT has adopted recommendations regarding the northern albacore tuna fishery. A multi-year management measure for northern albacore tuna was first adopted in 2003, setting the TAC at 34,500 mt. ICCAT's Standing Committee on Research and Statistics (SCRS) assessed the northern albacore tuna stock in 2009 and concluded that the stock continues to be overfished with overfishing occurring, recommending a level of catch of no more than 28,000 mt to meet ICCAT management objectives by 2020. In response, in 2009 ICCAT established a North Atlantic albacore tuna rebuilding program via Recommendation 09–05, setting a 28,000mt TAC and including several provisions to limit catches by individual ICCAT parties (for major and minor harvesters) and reduce the amount of unharvested quota that could be carried forward from one year to the next, from 50 percent to 25 percent of a party's initial catch quota. The 2009 recommendation expired in 2011.

In 2011, ICCAT Recommendation 11–04 again set a TAC of 28,000 mt for 2012 and for 2013 and contained specific recommendations regarding the North Atlantic albacore tuna rebuilding program, including an annual TAC for 2012 and 2013 allocated among the European Union, Chinese Taipei, the United States, and Venezuela. The U.S. quota for 2012 and 2013 is 527 mt. The recommendation limits Japanese northern albacore tuna catches to 4 percent in weight of its total Atlantic bigeye tuna longline catch, and limits the catches of other ICCAT parties to 200 mt. The recommendation also specifies that quota adjustments for a given year's underharvest or overharvest may be made for either 2 or 3 years from the subject year (*i.e.,* adjustments based on 2013 catches would be made in either 2015 or 2016). Pursuant to ATCA and the Magnuson-Stevens Act, in this final rule NMFS implements the ICCAT-recommended U.S. quota and establishes provisions to adjust the base quota for over or underharvests via annual quota specifications.

Implemented Measures

The rule finalizes most of the management measures that were contained in the proposed rule for Amendment 7 as they were proposed, with several exceptions. This section provides a summary of the final management measures being implemented by Amendment 7 and notes certain changes from the proposed rule to this final rule that may be of particular interest to the regulated community. These include changes to the basis for annual purse seine quota availability, changes to two Gear Restricted Areas (GRAs), changes to the range of years used in the performance metrics and BFT quota allocations formula, changes to VMS requirements, and changed to effective dates. Measures that are different from the proposed rule, or measures that were proposed but not implemented, are described in detail in the section titled, ''Changes from the Proposed Rule.''

1. Quota Reallocation

Codified Quota Reallocation

The Longline category's percentage of the baseline U.S. bluefin tuna quota remains at 8.1 percent, but each year the Longline category quota will be increased by a net amount of 62.5 mt based on deductions from the other quota categories, to more fully and predictably account for Longline category incidental bluefin catch, including both dead discards and landings. This measure does not modify the previously-codified category quota allocation percentages. Rather, NMFS will calculate the bluefin quota for each of the quota categories through the following process: First, 68 mt will be subtracted from the baseline annual U.S. BFT quota for reallocation to the Longline category quota. All quota categories will be reduced consistent with the allocation percentages codified at 50 CFR 635.27. Second, the remaining quota will be divided among the categories according to those allocation percentages. Third, the 68 mt derived in Step One from all categories, including the Longline category, will be added to the Longline category quota. The net

amount of quota increase for the Longline category will be 62.5 mt.

Thus, 32.0 mt will be deducted from the General category (*i.e.,* 47.1 percent of 68 mt), 2.7 mt from the Harpoon category (3.9 percent), 12.6 mt from the Purse Seine category (18.6 percent), 5.5 mt from the Longline category (8.1 percent), 13.4 mt from the Angling category (19.7 percent), and 1.7 mt from the Reserve category (2.5 percent). This equals 68 mt, which will be added to the Longline category, resulting in a net increase to the Longline category of 62.5 mt (68 mt minus the Longline category's contribution of 5.5 mt). If, for example, the baseline annual U.S. quota is 923.7 mt in a given year, then 403.0 mt would be allocated to the General category (*i.e.,* 47.1 percent of 855.7 mt), 33.4 mt to the Harpoon category (3.9 percent), 159.1 mt to the Purse Seine category (18.6 percent), 137.3 mt for the Longline category (8.1 percent plus the 62.5 mt), 168.6 mt for the Angling category (19.7 percent), and 21.4 mt for the Reserve category (2.5 percent)

This measure provides additional quota to the Longline category to facilitate the ability to account for both landings and dead discards within the Longline category quota, consistent with the historical separate dead discard allocation, yet limits the amount of reallocation to the Longline category if the total U.S. quota increases. For more information on the historical dead discard allocation and the associated rationale for the 68 mt augmentation of the Longline category, see the Codified Reallocation section (2.1.2) of the FEIS.

Annual Quota Reallocation

NMFS will annually adjust the Purse Seine quota, using a formula based on the weights of reported landings and estimated weights of dead discards (calculated from reported lengths) by purse seine fishery participants in the previous year. Twenty-five percent of each Purse Seine category participant's base quota will be available as a minimum to each Purse Seine fishery participant annually. Beyond that amount, quota will be available to such participants based on the fishery participant's catch in the previous year. Any quota not allocated to the Purse Seine category participants will be allocated to the Reserve category for possible redistribution consistent with specified regulatory criteria to other quota categories, and to support other objectives of the 2006 Consolidated HMS FMP. By moving portions of the unused Purse Seine quota to the Reserve category annually, this measure will give NMFS more flexibility in administering the quota system.

Based on public comment, this measure was modified from the proposed rule so that the annual formula for quota availability is based on the previous year's individual purse seine participant's catch, rather than based on the catch of the Purse Seine category as a whole. This modification ties quota allocation more closely to the individual participants catch and creates incentive for fishery participants to remain active in the fishery. Without this modification, individual allocations would be tied to the catch of the other vessels in the fishery, which could have unfair results if catch were to vary greatly among the vessels. For example, in a year where overall category catch were low, an individual purse seine participant could have a relatively low amount of quota available for use, even if that participant landed a substantial portion of its allocation during the previous year.

Annually, NMFS will make a determination regarding the quota available for each purse seine participant for the year, based on the bluefin catch by such participants in the previous year. Purse Seine participants will have available for use either 100 percent, 75 percent, 50 percent, or 25 percent of their base quota, according the following allocation criteria: If the individual catch is between 0 and 20 percent of the individual base quota in year one, the Purse Seine fishery participant will have available for use 25 percent of their base quota in year two, and 75 percent of their quota will be available to the Reserve Category for that year. If the individual catch is greater than 20 percent and up to 45 percent of their individual base quota in year one, the Purse Seine fishery participant will be allocated 50 percent of their quota in year two, and 50 percent of their quota will be available to the Reserve Category for that year. If the individual catch is greater than 45 percent and up to 70 percent of their base quota in year one, the Purse Seine fishery participant will have available for use 75 percent of their individual base quota in year two, and 25 percent of their quota will be available to the Reserve Category for that year. If the individual catch is greater than 70 percent of their base quota in year one, the Purse Seine fishery participant will have available for use 100 percent of their baseline quota in year two, and no quota will be available to the Reserve Category for that year. These thresholds (>20 percent, >45 percent, >70 percent) will apply following the same pattern in years beyond year two, with each year's quota reflecting the previous year's catch. In summary, if Purse Seine fishery participants catch a large portion of their individual allocated base quota in one year, they have available for use a large portion of their base quota in the next year. If a Purse Seine fishery participant's catch is low in one year, a larger portion of their Purse Seine base quota becomes available for other management purposes. The Purse Seine quota available would not be ''locked-in'' at a low level because the criteria are structured to enable increased utilization of available quota. For example, if the catch in year one is between 0 and 20 percent of their individual year one baseline Purse Seine quota, the Purse Seine fishery participant would have available for use 25 percent of their individual baseline quota in year two. If, in year two, the individual catch is greater than 20 percent of their individual baseline quota, but still within their individual annual allocation (*i.e.,* catch is between 20 percent and 25percent), the Purse Seine fishery participant would have available for use 50% of their individual baseline quota in year three. The Purse Seine participants catch levels and allocation levels have been staggered to allow for an increase in allocation in the following year, without causing the Purse Seine fishery participant to exceed the current year's allocation to do so.

This measure balances the need to provide the Purse Seine category participants a reasonable amount of fishing opportunity in a predictable manner, while making use of quota that may otherwise be unused. As described under ''Modifications to the Reserve Category,'' quota that is available to the Reserve Category may be utilized in a variety of ways to meet multiple objectives. NMFS will annually calculate the Purse Seine catch for that year and publish a notice in the **Federal Register** regarding the amount of quota that would be allocated to the Purse Seine fishery participants, as well as the corresponding amount allocated to the Reserve category and any disposition of the quota from the Reserve category for the subsequent year made at that time. After the initial adjustment, NMFS may make additional modifications to the Purse Seine quota inseason in accordance with the criteria for inseason adjustments specified at § 635.27(a), or make subsequent use of quota from the Reserve category.

Modifications to the Reserve Category

This measure gives NMFS management flexibility by augmenting the amount of quota in the Reserve category under certain circumstances

and adds new criteria to the list of determination criteria NMFS considers in redistributing quota to or from the Reserve category, to be responsive to the current conditions in the fisheries and facilitate adaptation to future changes in the fisheries. The potential sources of quota for the Reserve category on top of its baseline allocation of 2.5 percent are: (1) Available underharvest of the U.S. quota that is allowed to be carried forward; and (2) unused Purse Seine quota, under the Annual Quota Reallocation measure described above. For example, under the Annual Quota Reallocation, NMFS will annually adjust the purse seine quota, using a formula based on the weights of reported landings and estimated weights of dead discards (calculated from reported lengths) by each Purse Seine fishery participants in the previous year. Any remaining amount of Purse Seine quota will then be reallocated to the Reserve category for that subsequent year. NMFS could utilize quota from the Reserve category inseason after considering defined criteria and objectives. NMFS adds five criteria to the existing nine criteria to consider when making inseason or annual quota adjustments. The five new criteria, added to § 635.27(a)(8)(1)–(9) are: (10) Optimize fishing opportunity; (11) account for dead discards; (12) facilitate quota accounting; (13) support other fishing monitoring programs through quota allocations and/or generation of revenue; and (14) support research through quota allocations andr generation of revenue.

These modifications to the Reserve category will increase management flexibility in administering the quota system in a way that takes into account fluctuations in the characteristics of the fishery.

2. Gear Restricted Areas

Modified Cape Hatteras Gear Restricted Area, With Conditional Access

This final rule establishes a GRA off Cape Hatteras, NC, and limits access to this area for vessels fishing with pelagic longline gear during the 5-month period from December through April. The shape of the GRA has been modified from the proposed rule to remove the southeastern corner of the defined geographic area. This change was to avoid unintended effects on fishing outside the closed area that would have occurred if the action were implemented as proposed because it did not account for the effect of the prevailing currents on how pelagic longline gear drifts in that area.

Under this management measure, NMFS annually will grant qualified vessels conditional access to this GRA to fish with pelagic longline gear. Access will be granted based on a formula consisting of the following metrics: Ratio of bluefin tuna interactions to designated species catch, compliance with the Pelagic Observer Program requirements, and compliance with HMS logbook reporting requirements. Vessels will not qualify to fish in the area with pelagic longline gear if they have not demonstrated their ability to avoid bluefin tuna and/or comply with reporting and monitoring (observer) requirements. Non-qualifying vessels will be allowed to use other gear types to fish for non-bluefin HMS species authorized for use by pelagic longline vessels, such as buoy gear, green-stick gear, or rod and reel, in the area during the months of the restriction (December through April), but they may not fish with pelagic longline gear in during those months. Although originally proposed in the Proposed Rule, the final rule does not allow non-qualifying vessels access to the GRA to fish under the General category regulations and target bluefin (discussed further in the Comments and Responses). The principal objective of conditional access to the GRA is to balance the objective of reducing dead discards with the objective of providing reasonable fishing opportunity. The second objective is to provide strong incentives to modify fishing behavior to avoid bluefin tuna and reduce dead discards, as well as improve compliance with the logbook reporting and observer requirements. This regulatory approach is based on the fact that, historically, relatively few vessels have consistently been responsible for the majority of the bluefin tuna dead discards within the Longline category. Conditioning access on compliance with reporting and monitoring requirements reflects the critical importance of fishery data to the successful management of the fisheries.

The initial evaluation of performance metrics will be based upon data from 2006 through 2012, and subsequent ''performance scores'' will be based upon the most recent complete three-consecutive-year period for which data are available. In a situation where an Atlantic Tunas Longline permit has been transferred from one vessel to another, or there has been an ownership change of a permitted vessel, the relevant vessel fishing history used for the calculation of the performance score regarding access to the Cape Hatteras GRA remains with the vessel. As further explained in the Response to Comments below (Comment 26), NMFS modified the relevant historical time period from the proposed rule (which was 2006–2011). Atlantic Tuna Longline permit holders will be notified annually of the status of their relevant vessel, and only aggregated information regarding the vessel status will be made public. Atlantic Tuna Longline permit holders will be able to appeal their relevant vessel performance scores to NMFS by submitting a written request to appeal, indicating the reason for the appeal and providing supporting documentation for the appeal (*e.g.,* copies of landings records and/or permit ownership, Pelagic Observer Program information, logbook data, etc.). NMFS will evaluate the appeal based upon the following criteria: (1) The accuracy of NMFS records regarding the relevant information; and (2) correct assignment of historical data to the vessel owner/permit holder. Such permit holders may also appeal on the basis of changes in vessel ownership or permit transfers. Appeals based on hardship factors will not be considered. See below for more information on appeals.

NMFS will have the authority to terminate access for all pelagic longline vessels or individual pelagic longline vessels to the GRA via inseason action to address issues including: (1) Failure to achieve or effectively balance the objective of reducing dead discards with the objective of providing fishing opportunity; (2) bycatch of bluefin tuna or other HMS species that may be inconsistent with the objectives or regulations or the 2006 Consolidated HMS FMP, or ICCAT recommendations; or (3) bycatch of marine mammals or protected species that is inconsistent with the Marine Mammal Protection Act (MMPA), Pelagic Longline Take Reduction Plan (PLTRP), or the 2004 Biological Opinion (BiOP).

The performance metric formula will enable qualified vessels to continue to fish in the Modified Cape Hatteras GRA, yet will substantially reduce bluefin tuna dead discards by precluding fishing in the GRA by those with a history of high bluefin tuna interaction in relation to other designated species catch. In order to characterize vessel performance in a manner that is fair, consistent, and feasible to administer, the performance metric formula is based on relatively simple, objective, and quantifiable information. For each of the three performance metrics, a vessel will be scored on a scale of 1 to 5, with 5 reflecting better performance. Vessels with a ratio of bluefin tuna interactions to designated species catch of 1 will not be allowed to fish in the Modified Cape Hatteras GRA using pelagic longline

gear. If a vessel's Pelagic Observer Program Compliance score is 2 or less, that vessel will not be allowed to access the area and fish with pelagic longline gear, unless the vessel's logbook compliance score is 4 or 5.

The performance metric formula will reflect bluefin tuna interactions as measured by the ratio of the number of bluefin tuna interactions (landings, dead discards, and live discards, in number of fish) to the weight of designated species landings (in pounds). These designated species will consist of the more common marketable catch harvested by pelagic longline vessels: Swordfish; yellowfin, bigeye, albacore, and skipjack tunas; dolphin; wahoo; and porbeagle, shortfin mako, and thresher sharks. The use of a ratio incorporating both designated species landings and bluefin tuna interactions provides a metric that is intended to eliminate bias resulting from the differences among vessels in size or fishing effort.

The Pelagic Observer Program metric reflects compliance with requirements regarding communications, and other aspects of observer deployment. The scoring system is designed to be neutral with respect to valid reasons that a vessel was selected by the observer program but did not take an observer, and designed to weigh trips that were not observed due to noncompliance with the communication requirements more heavily than those that were not observed due to noncompliance with the safety and accommodation requirements. The logbook reporting metric reflects compliance with the requirement that the vessel owner/operator must submit the logbook forms postmarked within 7 days of offloading the catch, and, if no fishing occurred during a month, must submit a no-fishing form postmarked no later than 7 days after the end of that month.

Spring Gulf of Mexico Pelagic Longline Gear Restricted Areas

This final rule establishes two GRAs in the Gulf of Mexico and limits access to these areas for vessels fishing with pelagic longline gear during the 2-month period from April through May to reduce dead discards and protect bluefin tuna on their spawning grounds, while maintaining fishing opportunities for pelagic longline vessels as appropriate. As described in the Response to Comments below (Comments 52 and 53), the size and location of the geographic area of the GRA has been modified from the proposed rule to take into account the best available information about the location of bluefin interactions (eastward trend), the high variability of bluefin tuna distribution, the economic importance of the fishery, and other factors.

Other gear types authorized for use by pelagic longline vessels such as buoy gear, green-stick gear, or rod and reel are allowed in these areas, provided the vessel abides by any rules/regulations that apply to those gear types

Transiting Closed Areas

This final rule allows vessels with an Atlantic Tunas Longline permit, Swordfish Incidental or Directed Limited Access permit, or a Shark Limited Access permit fishing with bottom or pelagic longline gear to transit areas that are closed or restricted to such gear, if they remove and stow the gangions, hooks, and buoys from the mainline and drum. No baited hooks are allowed. The specific closed and restricted areas to which this transiting provision applies include those established by this rule (Spring Gulf of Mexico GRAs and Modified Cape Hatteras GRA), as well as the following pelagic longline closed areas in effect: Northeastern U.S. Closure, Northeast Distant Restricted Fishing Area, Charleston Bump, East Florida Coast Closed Area, and DeSoto Canyon Closed Area. This measure will allow vessels to transit the following bottom longline closed areas in effect: Mid-Atlantic Shark, Snowy Grouper Wreck, Northern South Carolina, Edisto, Charleston Deep Artificial Reef, Georgia, North Florida, St Lucie Hump, East Hump, Madison-Swanson, Steamboat Lumps, and Edges 40 Fathom Contour.

This regulatory provision reduces travel costs by allowing more direct routes of travel, and addresses the safety-at-sea concern associated with the requirement to steam around restricted areas.

3. Quota Controls

NMFS Closure of the Pelagic Longline Fishery

Under measures adopted in the final rule, the pelagic longline fishery will close (*i.e.,* use of pelagic longline gear is prohibited) when the total Longline category quota is reached, projected to be reached or exceeded, or when there is high uncertainty regarding the estimated or documented levels of bluefin tuna catch. These closures will help prevent overharvest of the Longline category quota and prevent further discards of bluefin tuna. When NMFS projects that the quota will be reached, it will file a closure action with the Office of the Federal Register for publication. Vessels will be required to offload all bluefin tuna prior to the closure date/time. Criteria NMFS will consider include those listed under § 635.27(a)(8) as well as: Total estimated bluefin tuna catch (landings and dead discards) in relation to the quota; estimated amount by which the bluefin tuna quota might be exceeded; usefulness of data relevant to monitoring the quota; uncertainty in the documented or estimated dead discards or landings of bluefin tuna; amount of bluefin tuna landings or dead discards within a short time; effects of continued fishing on bluefin tuna rebuilding and overfishing; provision of reasonable opportunity for pelagic longline vessels to pursue the target species; variations in seasonal distribution, abundance or migration patterns of bluefin tuna; and other relevant factors. NMFS will use the best available data to calculate the most recent, complete, and available estimate of dead discards on a fishery-wide basis consistent with current regulations. Best available data may include, among other things, vessel-based reports, electronic monitoring data, and observer data, as appropriate.

Individual Bluefin Quotas (IBQs)

This final rule implements an IBQ management system, which is summarized and then described in further detail below.

Summary of the IBQ Program

NMFS is implementing an IBQ Program pursuant to section 303A of the MSA, which authorizes development of limited access privilege programs (LAPP). A LAPP creates permits, which are issued for a period of not more than 10 years, to harvest a quantity of fish expressed by a unit(s) representing a portion of the total allowable catch that may be received or held for exclusive use by a person. Section 303A(c), 16 U.S.C. 1853a, identifies the requirements for such a program (note that the referendum requirements of section 303A(c)(6)(D) are inapplicable to this program for the Atlantic HMS fisheries). This final rule implements IBQs for vessels permitted in the Atlantic Tunas Longline category (provided they also hold necessary limited access swordfish and shark permits). Specifically, the IBQ Program requires vessels fishing with pelagic longline gear to account for bluefin tuna landings and dead discards using IBQ allocation (obtained through shares or leases of allocation), and prohibits the use of pelagic longline gear when the vessel's IBQ allocation has been caught. An IBQ share is a percentage of the total available Longline quota. Thus, if the total available Longline quota is modified as a result of an ICCAT

recommendation and the Longline quota is changed as a result, the share (specific percentage) associated with an eligible permit would not change, but would result in a modified amount of IBQ allocation (mt or equivalent pounds).

The Northeast Distant Area (NED) is a distinctly managed geographic area due to the specification of a separate ICCAT quota relative to the rest of the pelagic longline fishery and is not managed under the full IBQ Program restrictions. However, there are provisions of the IBQ Program that will apply to vessels fishing with pelagic longline gear in the NED. For example, vessels will be required to have the minimum IBQ allocation to operate in the NED starting in 2016 and when NED bluefin quota has been exhausted, permitted vessels must abide by all the requirements of the IBQ Program.

The IBQ Program is a suite of management measures intended to work together. An IBQ share is the percentage of the Longline category quota that is associated with an eligible vessel, based upon the IBQ share formula and the relevant vessel history, and an IBQ allocation is the amount (mt) of bluefin tuna quota that is distributed to a permitted vessel, based upon the relevant IBQ share, and the annual Longline category quota. Eligible pelagic longline vessels will receive one of three IBQ share percentages (1.2%, 0.6%, or 0.37%), which must be used by individual vessels to account for all their bluefin tuna landings and dead discards. Shares and allocations are designated as either Gulf of Mexico (GOM) or Atlantic (ATL). Vessels are prohibited from using Atlantic allocation to account for bluefin tuna catch in the Gulf of Mexico, thereby limiting potential shifts in effort. Specifically, a vessel with bluefin catch in the Gulf of Mexico may not use Atlantic allocation to account for such catch. However, vessels may use Gulf of Mexico allocation to account for bluefin catch in both the Gulf of Mexico and Atlantic. Allocations may be leased annually by Atlantic Tunas Longline category permit holders or Purse Seine category participants, and a minimum amount of allocation is required for a pelagic longline vessel to depart on a trip in the Atlantic (0.125 mt) using pelagic longline gear. A higher minimum amount of quota (allocation) is required for a pelagic longline vessel to depart on a fishing trip in the Gulf of Mexico (0.25 mt). A pelagic longline vessel may not use Atlantic allocation to satisfy the minimum share requirement for a fishing trip in the Gulf of Mexico. If a vessel retains legal sized bluefin tuna in excess of its allocation (''quota debt''), it may land the fish, but must lease additional IBQ allocation from another vessel to account for the excess catch, and is not allowed to fish with pelagic longline gear until the quota debt is balanced in the system (is accounted for) and the minimum allocation required for a vessel to depart on a trip is acquired. A vessel's IBQ allocation cannot carry-over from one year to the next, but if a vessel is unable to satisfy its quota 'debt' in a particular fishing year, quota will be deducted from the vessel's allocation during the subsequent year.

Although temporary leasing of IBQ allocation can occur, no permanent sale of IBQ shares is allowed at this time, to reduce risks for permit holders during the initial stages of the IBQ Program, when the market for bluefin tuna quota shares is new and uncertain. Measures to allow permanent sale of bluefin tuna quota shares may be implemented in the future through separate proposed and final rulemaking. This will allow time for IBQ fishermen to familiarize themselves with the IBQ Program and market for bluefin tuna shares.

As described in more detail below, NMFS is implementing an internet-based system to track bluefin tuna catch (pelagic longline and purse seine), and the use and leases of IBQ allocation. VMS must be used by vessel operators to report bluefin tuna catches to increase the timeliness of dead discard data; and electronic monitoring (cameras and associated equipment) are required on pelagic longline vessels as one element of the monitoring program.

The IBQ Program will be evaluated after 3 years, and NMFS will implement a cost recovery program through separate rulemaking.

What vessels are eligible to receive initial bluefin tuna quota shares?

Vessels must meet two requirements to be eligible to receive IBQ shares: (1) Vessels must have a valid Atlantic Tunas Longline category permit; and (2) vessel must be deemed to be ''active''. Vessels that made at least one set using pelagic longline gear between 2006 and 2012 (based on pelagic longline logbook data) are defined as ''active'' This date range includes 2012, and therefore is one year longer than that proposed to ensure that recent participants in the fishery are defined as ''active.'' For the purpose of IBQ share eligibility, a ''valid Atlantic Tunas Longline category permit'' is one held as of the date the proposed rule was published, which was August 21, 2013.

Vessels with valid Atlantic Tunas Longline permits that do not meet the initial eligibility criteria may lease bluefin tuna IBQ allocation from IBQ allocation holders. Permits that are not associated with a vessel, such as a permit characterized as ''No Vessel ID,'' are not eligible for an initial IBQ share but would be eligible to receive IBQ allocation (through a lease) if and when the permit is reassociated with a vessel. Such a vessel would be required to lease IBQ allocation before fishing with pelagic longline gear. New entrants to the fishery must either obtain an Atlantic Tunas Longline permit with associated quota share, or if the valid permit did not have quota share, obtain bluefin tuna quota through lease/sale to fish.

How much bluefin tuna quota does each eligible vessel get?

A vessel's IBQ share of the Longline quota is based upon two elements: The amount of bluefin tuna caught between 2006 and 2012, and the amount of designated species landings (*i.e.,* swordfish; yellowfin, bigeye, albacore, and skipjack tunas; dolphin; wahoo; and porbeagle, shortfin mako, and thresher sharks). As discussed below in the ''Response to Comments'' (Comment 76), this date range includes 2012, and therefore is one year longer than that proposed to consider the most recent fishing activity of vessels, and to be inclusive regarding the important elements. More specifically, the two factors that are the basis of the allocation formula are: (1) Historical bluefin tuna catch (from vessel logbook data) expressed as ratio of the number of bluefin tuna interactions to 'designated species' landings; and (2) 'designated species' landings (from the NMFS dealer data (weigh-out slips) and logbook information). The use of these two factors in the quota share allocation formula is intended to acknowledge past bluefin tuna avoidance, ensure a fair initial allocation, and consider the diversity in vessel fishing patterns and harvest characteristics. Past fishing that resulted in fewer bluefin tuna interactions will result in larger IBQ shares of bluefin tuna. Landings of designated species are an indicator of both the level of fishing effort and activity as well as vessel success at targeting those species and minimizing bluefin bycatch interactions. This method incorporates the rate of historical bluefin tuna interactions but also includes the amount of designated species landings, recognizing that greater levels of fishing activity are likely to be correlated with a greater number of bluefin tuna interactions.

The specific IBQ allocation formula is as follows: Because the bluefin tuna interactions to designated species

landings ratio is very small, designated species landings were multiplied by 10,000 in order to derive a ratio that is more practical (*i.e.,* 0.95 instead of 0.000095). In order to combine the two metrics, scores were assigned to each metric (the bluefin tuna catch to designated species landings ratio and historical designated species landings) as described below. Active vessels were sorted into three categories, using total designated species landings from 2006 through 2011, based on percentiles of landings from lowest to highest (low, medium, and high, 0 to <33 percent; 33 to <66 percent and 66 to 100 percent, respectively). Similarly, the active vessels were sorted according to the ratio of bluefin interactions to HMS landings, from lowest to highest. For example, a vessel with a 2006–2011 weight of designated species landings of greater than or equal to 367,609 lb (the 66 to 100th percentile of landings) would be placed in the ''High'' category and assigned a score of 3 (the highest score). In contrast, a vessel with a total designated species landing of only 95,000 pounds for 2006 through 2011 would receive a designated species landings score of 1. A vessel with a bluefin to designated species landings ratio of less than 0.2884 (66 to 100th percentile of bluefin to designated species landings ratios), would place in the top category and receive a bluefin to designated species landings ratio score of 3. A low ratio indicates relatively few bluefin interactions and therefore receives a high score.

Finally, the two scores were combined to form the basis of the allocation. For each vessel, the score for designated species landings was added to the score for bluefin to designated species ratio. For example, if a vessel scored in the ''High'' category for both designated species landings and bluefin to designated species landings its combined score would be 6 (3 + 3). If a vessel scored High for bluefin ratio, but Low for designated landings, it would be scored a 4 (1 + 3) and it would be placed in the Medium rating score category. Vessels assigned to a particular category will be allocated the same percentage share.

Vessels are allocated shares of 1.2%, 0.6%, or 0.37% of the Longline category quota. For 2015 (unless the U.S. quota is modified by ICCAT in 2014), based on a revised baseline Longline category bluefin tuna quota of 137 mt (baseline plus 62.5 mt), vessels will be allocated 1.64 mt, 0.82 mt, or 0.51 mt of bluefin tuna, respectively. These specific allocations are larger than those proposed because the actual number of eligible vessels was less than the number of eligible vessels analyzed at the proposed rule stage. The number of eligible vessels determined by the proposed rule was higher because the proposed rule analysis included permits that were not associated with vessels at the time of the publication of the proposed rule (August 21, 2013), and did not reflect both eligibility criteria. Allocation among fewer eligible vessels increases the allocation amount per vessel. The rationale for this measure is to implement criteria that reflect participation in the fishery. By allocating only to ''active'' vessels, the measure will facilitate continued participation in the fishery by vessels that have made past investments in the fishery. Permitted vessels that do not meet the initial eligibility criteria necessary to receive bluefin quota share allocation will still be eligible to obtain quota through a lease of IBQ allocation. The criteria did not include 2013 or 2014 because the DEIS and FEIS, respectively, were being written, during those years, and there were limitations on the availability of finalized data. Availability of finalized logbook and dealer data during 2013 and 2014 was limited to 2011 and 2012 data, respectively.

As described below, under ''Appeal of Initial IBQ Shares,'' when NMFS determines that all requests for appeal have been resolved, NMFS may adjust all IBQ shares as necessary to accommodate permitted holders that have been deemed eligible or provided an increased IBQ share through the appeals process.

All bluefin tuna quota allocated to Atlantic Tunas Purse Seine participants is also designated as ''Atlantic,'' subject to the restriction that it may only be used in the Atlantic (by either a Purse Seine vessel or via a lease to a pelagic longline vessel).

If a vessel has fishing history in both the Gulf of Mexico and Atlantic, it may receive quota shares of both the Gulf of Mexico and Atlantic, depending upon the amount of quota share and the proportion of fishing history in the two areas. A relatively small percentage of sets in one area will not be reflected in the quota share. If a vessel would be allocated less than a minimum share amount for a particular area (*i.e.,* less than 0.125 mt for the Atlantic or less than 0.25 mt for the Gulf of Mexico), then no allocation will be designated for that area and all of the permit holder's share would be designated to the other area (Atlantic or Gulf of Mexico). For example, if a vessel is eligible for an allocation of 0.51 mt, and historically landed 10 percent of their catch in the Gulf of Mexico, the vessel would receive an allocation of 100 percent ''Atlantic'' quota (and none designated as ''Gulf of Mexico'') because 10 percent of 0.51 mt (.005 mt) is less than the minimum share required to fish in the Gulf of Mexico (0.25 mt). Owners of vessels with a valid Atlantic Tunas Longline category permit will be sent certified letters informing them of their IBQ share and resultant allocation. In determining initial quota share eligibility and calculating the initial quota share NMFS used data associated with a vessel's history. In the future, the IBQ share will be associated with the permit, not the vessel. For example, if a permitted vessel has IBQ shares, and the owner of the permitted vessel decides to sell the permit but keep the vessel, the seller of the permit (the vessel owner) would no longer have any quota share or privileges with respect to the IBQ Program because IBQ shares would be associated with the permit that was sold. In contrast, the buyer of the permit would receive IBQ shares and allocation associated with that permit once the permit is associated with a vessel.

Appeals of Initial IBQ Shares and GRA Access Determinations

This final rule implements a two-step appeals process for review of the Secretary's decisions regarding initial assignment of IBQ shares. This rule also adds an opportunity for HMS Management Division to initially review a request for a quota share adjustment or access to the Cape Hatteras GRA, in order to facilitate possible expedited resolution of such requests without a requestor needing to go through a full National Appeals Office process. Specifically, the final rule describes an initial review step by the HMS Management Division through which the appellant must first submit a written request to appeal their initial IBQ share or access the Cape Hatteras GRA prior to submitting any appeals to the National Appeals Office. It also adds administrative details about the process (*i.e.,* on acceptable supporting documentation, and the specific timing of the steps). This modification was made in response to public comment requesting clarification of the process. Although this final rule adds administrative details regarding the appeals process, the range of criteria that permit holders may base an appeal on did not change from the proposed to the final rule. Additional discussion of these changes is in the section of this preamble called ''Changes to the Proposed Rule.''

Upon publication of this final rule, NMFS will notify all permit holders by certified letter of their initial IBQ share

and resultant allocation and whether they have granted access to the Cape Hatteras GRA. If permit holders wish to appeal their IBQ share determination or GRA access determination, they must first submit a written request for adjustment of their initial IBQ share or GRA access determination to the HMS Management Division, indicating the reason for the requested change and providing supporting documentation as detailed below. All requests for adjustment to initial IBQ shares or GRA access determination must be submitted to the HMS Management Division within 90 days of publication of the final rule. HMS Management Division staff will evaluate all such requests and supporting documentation, then notify the appellant by letter signed by the HMS Management Division Chief of NMFS' decision to approve or deny the request. If the request is approved, then NMFS will appropriately adjust the appellant's initial IBQ share and resultant allocation and/or grant access to the Cape Hatteras GRA. If denied, the permit holder may appeal the decision to the NMFS National Appeals Office within 90 days of receipt of the notice of denial by submitting a written petition of appeal. Appeals will be governed by the regulations and policy of the National Appeals Office at 15 CFR part 906. National Appeals Office regulations detail the procedure for appealing the quota share decision (See § 906.3).

The decisions subject to a request for appeal are: (1) Initial eligibility for IBQ shares based on ownership of an active vessel (as defined by this rule under § 635.15) with a valid Atlantic Tunas Longline category permit combined with the shark and swordfish limited access permits required under the current permit regulations; (2) the accuracy of NMFS records regarding a vessel's amount of designated species landings and/or bluefin interactions; and (3) correct assignment of target species landings and bluefin interactions to the vessel owner/permit holder. As discussed under the IBQ measures above, the IBQ share formula is based upon historical data associated with a permitted vessel. Because vessels may have changed ownership, or permits may have been transferred during 2006 through 2012, the current owner of a permitted vessel may also appeal on the basis of historical changes in vessel ownership or permit transfers, if current owner believes that the data used in the analysis were not accurate because of such changes. NMFS will consider only written requests for appeals. When permit holders are informed of their initial IBQ shares and resultant allocations and/or access determination, they will be provided instructions regarding the process to appeal that decision. Landings eligibility criteria require evidence of documented legal landings during the timeframe from January 1, 2006, through December 31, 2012. Public comment on the DEIS and proposed rule reflected a need to clarify aspects of the appeals process. Thus, NMFS is clarifying in this final rule that, regarding what will be considered ''documented legal landings,'' NMFS will consider official NMFS logbook records or weighout slips for landings between January 1, 2006, through December 31, 2012, that were submitted to NMFS prior to March 2, 2013 (60 days after the cutoff date for eligible landings), and verifiable sales slips, receipts from registered dealers, state landings records, and permit records as accompanying documentation of an appeal. Landings data are required to be submitted within 7 days of landing under the applicable regulations. Recognizing that somewhat-late reporting could have occurred for a variety of reasons, however, NMFS is clarifying that it will consider ''documented'' landings for appeals purposes to be those reported within 60 days. NMFS will count only those designated species landings that were landed legally when the vessel owner had a valid permit. Appeals regarding bluefin interactions may be based on HMS logbook records as described, observer data, or other NMFS data. No other proof of catch history will be considered. NMFS permit records will be the sole basis for determining permit transfers . Photocopies of the written documents are acceptable in the original application or appeal; NMFS may request the originals at a later date. NMFS may refer any submitted materials that are of questionable authenticity to the NMFS Office of Enforcement for investigation. Appeals based on hardship factors will not be considered. Consistent with most limited effort and catch share programs, hardship is not a valid basis for appeal due to the multitude of potential definitions of hardship and the difficulty and complexity of administering such criteria in a fair manner.

When NMFS determines that all requests for IBQ share appeals have been resolved, NMFS may adjust all IBQ share percentages as appropriate to accommodate permitted holders that are deemed eligible or that are provided an increased IBQ share through the appeals process.

Mandatory Retention of Legal-Sized Bluefin Tuna

Pelagic longline vessels must retain all legal-sized commercial bluefin tuna that are dead at haul-back. Because these fish must be retained, regulatory discards and the waste of fish will be decreased, and it will be more likely that such fish are accurately accounted for and have a positive use (*e.g.,* marketed, used for scientific information, etc.). Bluefin tuna, of all size classes, that are live at haul-back should be carefully removed from the hooks and returned to the ocean to ensure survivability. Legal-sized commercial bluefin tuna that are alive at haul-back may be retained; however they will be accounted for under the IBQ allocation.

Fishing Under the IBQ Program

This section provides a brief example of how some of the Amendment 7 requirements applicable to a vessel fishing with pelagic longline gear will work together. Additional details regarding the VMS and electronic monitoring programs are provided below in sections of this preamble titled ''VMS'': and ''Electronic Monitoring.''

As discussed in the proposed rule, IBQ allocation leases would be executed by the eligible vessel owners, or their representatives, through the internet and a NMFS database. Owner-performed leases will provide the quickest execution of leases because any eligibility criteria will be verified automatically based on information loaded into that system, and will not involve the submission or review of a paper application, or any lag time associated with NMFS staff being directly involved in the lease approval process. The online IBQ System used to track and lease bluefin IBQ shares and resultant allocations will be operated out of NMFS's Southeast Regional Office (SERO). The administrative functions associated with this IBQ System (*e.g.,* registration and account setup, landing and dead discard tracking, and leases of allocation) are designed to be accomplished online; therefore, a participant must have an IBQ System account to participate. NMFS will provide instructions to IBQ participants about the required software, how to use the IBQ System to lease IBQ allocation and track IBQ use and balances, how to perform the necessary accounting actions that support administration of the program, and how to obtain assistance with using the system. An eligible permit holder must create an IBQ System account online, and log into the password protected IBQ

System to execute an IBQ allocation lease, to check the amount of IBQ in their account, or perform other functions, according to instructions provided by NMFS. Similarly, a dealer purchasing bluefin tuna caught from a vessel fishing with pelagic longline or Purse Seine gear must have an online dealer account, computer access, and internet access.

Before they may depart to fish with pelagic longline gear vessels must have the required minimum IBQ allocation and must have balanced any outstanding quota debt from previous trips, and comply with the VMS and electronic monitoring requirements. Vessels are required to haul gear and handle catch in accordance with the electronic monitoring program requirements (described below under electronic monitoring requirements), retain any legal sized dead bluefin, and report bluefin catch and information on sets through their VMS during the trip (described below under VMS Requirements). If a vessel retains legal-sized bluefin tuna in excess of its IBQ allocation, it may land and sell the fish, but the permit holder must acquire additional IBQ allocation to account for the excess catch, and is not allowed to fish with, or have onboard, pelagic longline gear until the quota debt has been resolved.

At the end of the trip, the permitted dealer purchasing the landings must enter all bluefin landing information from the trip. The vessel owner or operator, or their designee, must coordinate with the dealer to enter their dead discards, into the IBQ System. The landing transaction completed by the dealer must include the name and permit number of the vessel that landed the bluefin and any other information regarding the landings, as instructed by NMFS (such as the shareholder's account number, vessel account number, individual tag number, weights for landed bluefin tuna, and the number of dead discarded bluefin tuna by appropriate length bin). The permit holder, or designee, must validate the landings information and enter the dead discard information (such as numbers of fish by approximate size) before the transaction is processed. If, by the end of the fishing year a permit holder does not have adequate allocation (obtained either through leasing under paragraph (c)), or additional allocation under paragraph (f) to settle their vessel's quota debt, the vessel's allocation will be reduced in the amount equal to the quota debt, in the subsequent year, or years, until the quota debt is fully accounted for. A vessel may not fish if there is outstanding annual quota debt from a previous year. For those permit holders who own or operate multiple vessels with allocation, if, at the end of the year, one or more of the vessels has an outstanding quota debt, yet the other vessels still have allocation, the IBQ system will apply any remaining unused allocation associated with the other vessels to account for the quota debt of the other. This system functionality has been added since the proposed rule because unused allocation does not carry over from one year to the next, but quota debt does. This addition will ease the regulatory burden of resolving quota debt, and reduces the possibility that a permit holder of multiple vessels may inadvertently fail to manually resolve an existing quota debt with allocation associated with one of their other vessels at the end of the year and otherwise miss the opportunity to resolve the debt.

For example, if a permit holder owns two vessels, Vessel A and Vessel B and both have IBQ allocations but at the end of the year Vessel A has a quota debt of .20 mt, and Vessel B has remaining unused IBQ allocation of .10 mt, the IBQ System would automatically transfer .10 mt of Vessel B IBQ allocation to Vessel A to count toward resolving Vessel A's quota debt. Vessel A would still have a quota debt of .10 mt and, when annual IBQ allocation occurs at the start of the subsequent year, Vessel A's annual IBQ allocation would be reduced by .10 mt to account for the previous year's quota debt.

This final rule clarifies the relationship of accrued quota debt and Atlantic Tunas Longline category permit under the IBQ Program. If an Atlantic Tunas Longline category permit holder participated in the IBQ Program and has a quota debt that remains unresolved at the time of such permit's sale or transfer, then that quota debt remains associated with the permit. This is consistent with the IBQ share remaining linked to the eligible permit itself and further refines how IBQ shares, resultant allocation, and quota debt will be managed to ensure accountability under the IBQ Program, even if permits are sold or transferred.

To ensure that all IBQ Program activity can be accounted for on an annual basis, the IBQ System will prohibit any and all online transactions, such as catch transactions and IBQ allocation leases, between December 31 at 6 p.m. and January 1 at 2 p.m. (Eastern Time). IBQ System functions will resume after January 1 at 2 p.m. the following year. No IBQ System transactions will be allowed or available during this 20 hour time period to provide NMFS time to reconcile IBQ accounts, adjust IBQ allocation for the upcoming year, etc. If a vessel with the required minimal IBQ allocation departs on a trip prior to the end of a calendar year and returns to port after the start of the following year, any bluefin landings or dead discards will be counted against the new year's allocation.

In this final rule, NMFS will maintain the authority to ensure that the bluefin catch by pelagic longline vessels does not exceed the Longline quota. NMFS may, under certain circumstances, such as high uncertainty regarding the VMS reported dead discards, utilize the current methodology for generating and using estimates of pelagic longline dead discards. Prior to this final rule NMFS has used previous years' estimate as proxy for anticipated dead discards, and subtracted that estimate of dead discards ''off the top'' of the entire Longline quota. Although not anticipated, NMFS will maintain this ability until both methodologies can be compared in parallel to verify accuracy.

The Northeast Distant Area (NED) and the IBQ Program

Under current ICCAT recommendations, the NED is a distinctly managed geographic area managed under a separate quota. Because the NED is managed as a distinct area with a relatively small quota, and managing the NED under the IBQ system would add additional complexity to the IBQ system, the quota associated with the NED (25 mt) is not managed under the full IBQ Program restrictions. However, there are provisions of the IBQ Program that will apply to vessels fishing with pelagic longline gear in the NED. For example, vessels will be required to have the minimum IBQ allocation to operate in the NED starting in 2016 and when NED bluefin quota has been exhausted, permitted vessels must abide by all the requirements of the IBQ Program. Electronic monitoring systems, installed by June 1, 2015, will be required in order for vessels to fish with pelagic longline gear including in the NED, and data from the electronic monitoring system may be used to ensure that targeting fishing is not occurring. NMFS reminds the regulated community that the international separate allocation is only for bycatch in the NED and of the domestic prohibitions against targeting bluefin tuna using pelagic longline gear. NMFS will re-visit this issue if necessary if subsequent years' data indicate that additional controls are needed.

Quota Leasing

This measure allows Longline and Purse Seine category vessels to lease allocation to or from other vessels in these categories (provided they have active accounts in the IBQ system), so that allocations will become better aligned with catch (*i.e.,* vessels that catch bluefin tuna may be able to obtain quota from those that do not interact with bluefin tuna, or that have not used their full allocation of bluefin tuna). Allocation may be leased annually by Atlantic Tunas Longline category permit holders from other Atlantic Tunas Longline category permit holders or from Purse Seine category participants, regardless of whether they are eligible for their own quota share. Leasing of IBQ allocations is allowed among all Longline category vessels with valid limited access permits, regardless of whether they are eligible for their own quota share. If a vessel catches bluefin tuna using allocation that it has leased from another vessel, the fishing history associated with the catch of bluefin tuna will be associated with the vessel that catches the bluefin tuna (the lessee, not the lessor vessel). In other words, the lessee (vessel catching the fish) gets the 'credit' for the landings and dead discards, and not the lessor (the vessel that leased the allocation to the catching vessel). The future catch of bluefin tuna will not affect the quota shares, but will affect the calculation of the performance metric of each vessel. Sub-leasing of quota is allowed (*i.e.,* IBQ leased from vessel A to vessel B, then re-leased by vessel B to vessel C). For a particular calendar year, an individual lease transaction will be valid from the time of the lease until December 31.

The initial limit on the amount of allocation an individual Longline or Purse Seine category participant may lease annually will be the combined Longline and Purse Seine category allocations. This will provide flexibility for vessels to purchase quota in a manner that can accommodate various levels of unintended catch of bluefin tuna, and enable the development of an unrestricted quota market.

Annual Individual Bluefin Quota Allocation

Annual allocation of bluefin quota to eligible vessels with IBQ shares will occur January 1, based on the criteria described above (''What Vessels Are Eligible to Receive Initial Bluefin Tuna Quota Shares?'' and ''How Much Bluefin Tuna Quota Does Each Eligible Vessel Get?''). For vessels that are not eligible as of December 31 because they have begun—but not completed—the process of permit renewal or permit transfer, IBQ allocations will be made when the eligible permit holder completes the permit transaction(s). Subsequent to the annual allocation of quota, additional IBQ may be allocated to the vessels with bluefin quota share as a result of a U.S. baseline quota increase or transfer of quota from the Reserve category to the Longline category, pursuant to criteria for quota adjustments. Subsequent to the annual allocation of quota, quota may be deducted from vessels as a result of a decrease in the U.S. baseline quota, or to account for a quota debt (bluefin catch by a vessel that must be accounted for under the IBQ system, for which the vessel has insufficient quota).

With respect to the relationship between the Atlantic Tunas Longline permit and the IBQ share, upon implementation of Amendment 7, the IBQ share is associated with the Atlantic Tunas Longline permit, and is not severable. If, in the future, NMFS allows permanent sale of quota shares, NMFS would also consider whether or not the share is severable from the Atlantic Tunas Longline permit. Under this final rule, any quota debt associated with an Atlantic Tunas Longline permit will be associated with (and accompany) the permit upon sale/transfer of the permit. Quota debts will be also be associated with Atlantic Tunas Purse Seine category participants.

Elimination of Target Catch Requirement

This final rule eliminates the current target catch requirements for pelagic longline vessels (including those fishing in the NED), which restricts the number of incidentally caught bluefin tuna a pelagic longline vessel may retain in relation to the amount of target species retained and sold. In the context of the IBQ system being implemented by Amendment 7, the current target catch requirement is no longer be necessary.

Formal IBQ Program Evaluation

NMFS will formally evaluate the success and performance of the IBQ Program in achieving its objectives, after three years of operation and provide the HMS Advisory Panel with a publicly-available written document with its findings. The review will describe and analyze the changes that have taken place in the fishery since implementation of the IBQ Program. NMFS will utilize its standardized economic performance indicators, developed by its Office of Science and Technology, as part of its review. For example, the standardized economic performance indicators include catch (landings and dead discards), effort, revenues, and allocation leases and accumulation. Other indicators include the number of and distribution of bluefin tuna interactions. The review may also include analysis of data collection, monitoring, and reporting; enforcement; quota performance; quota distribution among permit holders; quota share and resultant allocation transferability; other elements of the IBQ Program; or aspects of the 2006 Consolidated HMS FMP relevant to the IBQ Program such as gear restricted areas or purse seine measures.

Cost Recovery

Section 303A(e) of the Magnuson-Stevens Act (16 U.S.C. 1853a(e)) requires that, in establishing a LAPP, a Council shall develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the LAPP; and provide for a program of fees paid by LAPP holders that will cover the costs of management, data collection and analysis, and enforcement activities. Such fees may not exceed 3 percent of the ex-vessel value of fish harvested under the LAPP. While section 303A(e) requires development of cost recovery in establishing a LAPP, NMFS plans to implement cost recovery after the IBQ Program evaluation (after 3 years). This step-wise approach is consistent with the purpose of section 303A(e) and appropriate given the nature of the LAPP being proposed. The purpose of section 303A(e) is to collect fees to cover management, data collection and analysis, and enforcement activities. However, the cost of administering a cost recovery program may be high relative to the amount of money recovered, because some active vessels have very high fishing activity whereas others have relatively low activity. NMFS also notes that the underlying objective of the IBQ is to reduce incidental catch of bluefin tuna, which will impact the amount and ex-vessel value of fish harvested. Immediate implementation of a cost recovery program, without obtaining further information about the operation of the fishery with IBQs, would be very difficult and would increase costs and uncertainty for fishing vessels during a time period when the fishery would be bearing other new costs and sources of uncertainty. For the above reasons, NMFS is not implementing cost recovery until after it conducts the program evaluation. After the IBQ Program is evaluated after 3 years,

NMFS will implement a cost recovery program through separate rulemaking.

4. Reporting Measures

Vessel Monitoring System (VMS) Requirements

This final rule implements VMS reporting requirements for vessels fishing with pelagic longline gear and issued an Atlantic Tunas Longline category permit. It also requires vessels fishing with purse seine gear and issued an Atlantic Tunas Purse Seine category permit to install VMS and report through VMS to support the inseason monitoring of the pelagic longline and purse seine fisheries, as proposed. Additional detail is provided in this final rule to explain application of the requirements to the Purse Seine category, in response to public comment asking for clarification and because of the need for additional administrative detail.

Purse Seine Vessels

Vessels with an Atlantic Tunas Purse Seine category permit must have an approved Enhanced Mobile Transmitting Unit (E–MTU) VMS unit installed by a qualified marine electrician to fish for Atlantic tunas with purse seine gear. Vessels must follow the procedures for installation and activation provided by NMFS and submit to NMFS the completed checklist and compliance certification statement. The VMS unit must submit automatic position reports every hour, 24 hours a day, unless a valid power down exemption has been granted by NMFS law enforcement. Owners of purse seine vessels may request a documented power down exemption from NMFS law enforcement if the vessel will not be fishing for an extended period of time. The request must describe the reason an exemption is being requested; the location of the vessel during the time an exemption is sought; the exact time period for which an exemption is needed; and sufficient information to determine that a power down exemption is appropriate. Prior to departing on a trip vessels that intend to fish for Atlantic tunas with purse seine gear must declare through E–MTU VMS their intent to fish with such gear and note their HMS target species), by submitting a ''Highly Migratory Species Trip Declaration Form'' ('hail out'). If a vessel operator is aware that transmission of automatic position reports has been interrupted, or is notified by NMFS that such reports are not being received, the vessel operatory must contact NMFS and follow the instructions given. After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must have a qualified marine electrician replace or repair the VMS unit prior to the vessel's next trip. Finally, as a condition of obtaining an HMS limited access permit, the vessel owners or operators must allow NMFS, the United States Coast Guard (USCG), or their designees access to the vessel's position data.

Vessels fishing for Atlantic tunas with purse seine gear must submit, through VMS, a ''Highly Migratory Species Bluefin Tuna Catch Report'' for each set. Specifically, such vessels must report the number of sets within 12 hours of the set; and report the length of all bluefin discarded dead or retained (by standardized size ranges) within 12 hours of completion of each the set (including reporting zero bluefin on a set). NMFS will provide vessel owners with instructions regarding the detailed methods of reporting such information using their VMS units. At least three hours prior to the end of a trip, the vessel operator must provide advanced notice of landing by submitted the ''Highly Migratory Species Pre-Landing Notification Form'' with information on the time and location of landing.

If a vessel operator decides not to fish for or retain HMS for two or more trips, the operator may choose to ''declare out'' of the fishery, according to instructions provided by NMFS, and not be subject to the HMS hail in/hail out requirements during trips for which they are declared out of the HMS fishery.

Vessels fishing with pelagic longline gear must report through VMS the number of hooks and sets within 12 hours of completion of each pelagic longline haul-backs and, for pelagic longline sets with bluefin tuna interactions, must report the length of all bluefin tuna retained or discarded dead (by standardized size ranges) within 12 hours of completion of the pelagic longline haul-back.

NMFS will make specific VMS reporting instructions available to the purse seine and pelagic longline fisheries to facilitate this reporting requirement.

Electronic Monitoring

The final rule adopts electronic monitoring requirements for all vessels issued an Atlantic Tunas Longline permit that fish with pelagic longline gear. This final rule requires all such vessels that are currently eligible to have a NMFS-approved contractor install a system and obtain certification of such installation. They must then properly maintain the video cameras and associated data recording and monitoring equipment, which will record all longline catch and relevant data regarding pelagic longline gear retrieval and deployment. NMFS will use the recorded data to verify the accuracy of counts and identification of bluefin tuna reported by the vessel owner/operator, as well as observers. Electronic monitoring will enable the collection of video images and fishing effort data that may be used in conjunction with other sources of information to estimate bluefin tuna dead discards, and may augment the ability of an observer to fulfill their duties by providing a record of catch during the time periods the observer may be unable to observe the catch directly.

In light of public comments expressing concern about ensuring the functionality of electronic monitoring systems and the costs of such systems, this final rule relieves certain purchase and installation requirements that were set out in the proposed rule. Rather than requiring currently eligible vessel owners to buy and install equipment and make decisions about equipment specifications and functionality, this final rule instead requires the currently eligible vessel owners to obtain certification from a NMFS-approved contractor stating that the contractor has properly installed and verified the functionality of the electronic monitoring system in accordance with more detailed equipment and system requirements provided in the final rule. As set out in the proposed rule, vessel owners would have been responsible for the costs of the equipment and for installation for the electronic monitoring systems. Since publication of the proposed rule and the FEIS, and in response to public comment and to ease the regulated community's burden associated with the new monitoring requirements, NMFS has identified funds to pay for the equipment and its installation for those currently eligible vessels (eligible for initial quota shares). For all vessels issued an Atlantic Tunas Longline permit that fish with pelagic longline gear, vessel owners (or their representatives) must coordinate with the NMFS-approved contractor to install and test electronic monitoring equipment, and the contractor will then provide certification that the equipment has been properly installed. Vessel owners will be required to make their vessel accessible to designated personnel on a specific date, or range of dates, to allow installation and testing of electronic monitoring equipment, and may be required to steam to a

designated port within their geographic region to enable such installation and training. This is consistent with the proposed rule's requirement that vessels be available for inspection, as it will not result in any additional absence from fishing time than was analyzed and proposed in the proposed rule or impose additional financial costs or regulatory burden.

To fish using pelagic longline gear, a vessel must have a valid certification form from the NMFS-approved contractor certifying that it has a fully functioning electronic monitoring system on board. Because the pelagic longline fleet is diverse with respect to vessel size, mechanical infrastructure, and operation, and the technology supporting electronic monitoring is changing and improving, NMFS is implementing detailed regulations that include some technical specifications regarding the necessary equipment that constitutes an electronic monitoring system to respond to public comment that more details are needed while still providing flexibility to allow vessels to install equipment that performs well in a cost effective manner. NMFS will utilize both third party experts and NMFS staff to provide vessel owners instructions regarding the specific required equipment and operational features of the system. As explained in more detail below, vessels must, in accordance with instructions provided by NMFS and/or NMFS-approved contractor, coordinate installation and maintain the following equipment, as components of an electronic monitoring system: Two to four video cameras, a recording device, video monitor, hydraulic pressure transducer, winch drum rotation sensor, system control box, GPS receiver, and related support equipment needed to achieve the objectives (*e.g.,* power supply, camera mounts, lighting). Slight modifications to the equipment listed above may be required to support the objectives of electronic monitoring, adapt to unique vessel characteristics, or achieve cost savings or efficiencies. Vessel owners/operators must coordinate installation and subsequently maintain and operate the system in accordance with instructions provide by NMFS, and allow inspection of the equipment by NMFS. The electronic monitoring system must include software to enable a test function so that the vessel operator may test the status of the system (*i.e.,* whether it is fully functional) prior to each trip, and record the outcome of the test. A vessel operator may not depart on a pelagic longline trip unless the pre-trip test indicates that the system is fully functioning. Upon successful installation and testing by the NMFS-approved contractor, the NMFS-approved contractor will provide vessel owners with a certificate that the equipment installed constitutes a ''fully functioning electronic monitoring system'' based on written instructions and requirements that NMFS provided the contractor. The vessel owner must make the certificate available upon request by NMFS OLE. The required cameras must be installed to provide a view of the area where the longline gear is retrieved and catch is removed from the hook (prior to placing in the hold or discarding boatside) and such system must be connected to the mechanical hauling device so that recording is initiated by gear retrieval. The specific equipment functionality requirements are as follows:

Video Cameras: Video data are produced by digital IP (Internet protocol) video cameras at a resolution of no less than 720p (1280×720). The individual vessel systems must include no less than two cameras: At least one camera to record close-up images of the deck at the haul back station for species identification/length estimation, and at least one camera to record activity along the side of the vessel at the water line of the haul back station to document animals that are caught and discarded but not brought aboard, as well as the disposition of that catch (released alive/dead). The frame rates of the footage will need to allow for easy of viewing. The cameras are not required to record audio.

GPS Receiver: A GPS receiver is required to produce output, which includes location coordinates, velocity, and heading data, and is directly logged continuously by the control box at a minimum rate of 10 seconds. The GPS receiver must be installed and remain in a location that receives a strong signal continuously.

Hydraulic & Drum Rotation Sensors: A hydraulic sensor is required to continuously monitor the hydraulic pressure, and a drum rotation sensor must continuously monitor drum rotations in order to provide the data necessary for the EM system to trigger the video camera to record. The combination of these two sensors provide a mechanism to ensure that specific periods of time are captured on video, such as when gear is being retrieved and catch is removed from the hooks.

EM Control Box & Monitor: The system must include a 'control box' to receive and store the raw data provided by the sensors and cameras. The control box must contain removable hard drives and storage system adequate to store data for the entire trip (*e.g.,* adequate to store the data associated with a trip lasting approximately 30 days). A wheelhouse monitor must provide a graphical user interface for harvesters to monitor the state and performance of the control box and should include information such as: Current date and time synced via GPS, GPS coordinates, current hydraulic pressure reading, presence of a data disk, percentage used of the data disk, and video recording status.

Hydraulics: Prior to system installation, vessel operators must possess and install a fitting for the pressure side of the line of the drum hydraulic system. The fitting may be either ''T'' or inline, with a female ¼'' threaded National Pipe Thread (NPT) port to enable connection to the pressure transducer.

Power: Electronic monitoring systems are capable or being powered by both alternating current (AC) and direct current (DC) power. An EM system that is to be powered by a DC circuit must have free space on a 12-volt bus bar in the wheelhouse and a dedicated DC power switch. If the EM systems are to be powered by AC circuits, vessels must provide an Uninterrupted Power Supply (UPS) in the wheelhouse.

Camera Mounts: During installation of the EM system, cameras must be mounted so that the camera may be positioned to view the waterline outboard of the vessel rail. If determined during the vessel assessment that there is not suitable mounting structure onboard, vessels may be required to provide a mount that allows a camera to be positioned to view the waterline outboard of the vessel rail. Before each scheduled installation of an EM system, NMFS-approved contractors will discuss mounting alternatives with the vessel's owner or operator.

Lighting: Vessels must provide sufficient lighting for cameras to clearly illuminate individual fish on deck at the haul back station and along the vessel rail at the waterline, at all times. Lighting will be evaluated by NMFS-approved contractors during the vessel assessment/EM installation. After installation, if NMFS-approved contractors review video footage and determine that lighting is insufficient, the vessel owner must adjust the lighting to ensure it is sufficient before the EM system can be recertified.

Upon completion of a fishing trip, the vessel operator must mail the removable EM system hard drive containing all data to NMFS or the NMFS-approved contractor, within 48 hours of the

completion of the trip, according to instructions provided by NMFS. Prior to departing on a subsequent trip, the vessel owner or operator must install a replacement EM system hard drive to enable data and video recording. The vessel owner or operator is responsible for contacting NMFS, or NMFS-approved contractors, if they have not received a replacement hard drive(s). The vessel operator is responsible to ensure that all bluefin tuna are handled in a manner that enables the electronic monitoring system to record such fish, and must identify a crew person or employee responsible for ensuring that all handling, retention, and sorting of bluefin tuna occurs in accordance with the regulations. NMFS or the NMFS-approved contractor, with the vessel owner or operators'' input, will develop and provide a written Vessel Monitoring Plan, to document the standardized procedures relating to electronic monitoring and facilitate communication of such procedures to the vessel crew. The vessel owner or operator is responsible for ensuring that the EM system remains powered for the duration of each trip; that cameras are cleaned routinely to ensure unobstructed views, and the EM system components are not tampered with.

NMFS will communicate instructional information in writing, via permit holder letters, to the vessel owners during all phases of the program to provide direction and assistance to vessel owners, and facilitate the provision of technical assistance.

Electronic Catch Reporting

This final rule requires Atlantic Tunas General, Harpoon, and HMS Charter/Headboat categories to report the length of all bluefin tuna retained or dead discards through an online catch reporting system (either through a Web site designated by NMFS or calling a phone number) within 24 hours of the landings or end of each trip. Specifically, vessels must report the number of bluefin tuna retained, and the number of bluefin tuna discarded dead, according to instructions that will be provided by NMFS. NMFS also operates a similar automated landings reporting system (ALRS) for recreational bluefin tuna catch in the HMS Angling and Charter/Headboat category (when fishing recreationally). This discard information will enhance NMFS's ability to more fully and accurately account for all sources of fishing mortality, consistent with ICCAT recommendations.

5. General Category Flexibility for Quota Adjustment

This final rule allows NMFS to proactively transfer General category quota from one or more of the time-periods that follow the January time-period to the January or other preceding sub-quota time periods within a fishing year, either through annual specifications or through inseason action. In other words, under this rule, NMFS may transfer subquota from one time period to another time period, earlier in the same calendar year. As described in more detail under Response to Comments (Comment 98), NMFS may transfer quota from the December sub-quota time period to the January sub-quota time period to address the unique characteristics of the January sub-quota period. For example, for an upcoming year (*i.e.,* prior to January), NMFS may transfer quota from the December to the January sub-quota period. NMFS may also conduct lower priority transfers of sub-quota between time periods, for example, subquota could be transferred from the October 1 through November 30 time period to the September time period.

This final rule adds a new objective called ''quota adjustment'' to the current list of criteria and relevant factors NMFS considers when making inseason or annual quota adjustments.

6. Harpoon Category NMFS Authority To Adjust Retention Limits

To optimize fishing opportunity for the Harpoon category participants within the available quota, NMFS may increase or decrease the daily retention limit of large medium bluefin tuna (greater than 73″ CFL and less than 81″ CFL) within a range from two to four fish. Any adjustment will be based upon the regulatory determination criteria under § 635.27(a)(8) (as revised by this final rule) that apply to inseason bluefin tuna adjustments including: The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; effects of the adjustment on bluefin tuna rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of bluefin tuna; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and review of dealer reports, daily landing trends, and the availability of the bluefin tuna on the fishing grounds, as well as any other relevant factors.

The default Harpoon category daily retention limit of large medium bluefin tuna will be two fish per vessel (the large medium bluefin tuna daily retention limit that applied prior to the 2011 regulatory change). The retention limit of giant bluefin tuna will remain unlimited. The objective of this measure is to optimize fishing opportunity for the Harpoon category participants within the available quota. This management measure enhances NMFS's ability to more precisely manage the landing rate of large medium bluefin tuna by the Harpoon category, thereby optimizing opportunities while preventing landings from exceeding the subquota.

7. Angling Category Trophy Subquota Distribution

This final rule allocates one third of the Angling category trophy subquota specifically to account for those bluefin tuna caught incidentally while pursuing other species in Gulf of Mexico. The trophy subquota would be divided as follows: 33 percent to each of the northern area, the southern area outside the Gulf of Mexico, and the Gulf of Mexico. Based upon the recent average trophy fish weight, this would allow up to 8 trophy bluefin tuna to be landed annually in each of the three respective areas. To distinguish bluefin tuna incidentally caught in the Gulf of Mexico from those caught in the Atlantic, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at § 600.105(c), which is essentially west of 83° 00′ West longitude but also includes the waters off southwestern Florida and north of the Florida Keys.

The objective of this measure is to reduce discards for recreational vessels in the Atlantic and Gulf of Mexico, and account for incidentally caught bluefin tuna by converting a small number of potential dead discards in the Gulf of Mexico to potential landings. A separate subquota allocation for the Gulf of Mexico increases the likelihood that there will be trophy quota available to account for any potential incidental catch of bluefin tuna in that area, while still providing incentives not to target bluefin tuna.

8. Purse Seine Category Fishing Year Start Date

NMFS considered two alternatives at the proposed rule stage. The No Action Alternative would have maintained the current practice: The purse seine fishery starts on the default start date of July 15 each year unless NMFS takes action to delay the season start date to as late as August 15. A second alternative, which

was preferred in the proposed rule and in the FEIS, would change the default start date to June 1 (instead of July 15), unless NMFS takes action to delay the start date to as late as August 15. In the final rule, after considering public comments after the FEIS was published, HMS is choosing a third option that removes the default start date altogether. Instead, NMFS will establish the purse season start date annually, within a range from June 1 to August 15, based on the already-existing criteria in the regulations, which are unchanged in the final rule text. Although the third option was not directly analyzed as an alternative in the FEIS, the range of dates for possible opening (June 1–August 15) remains within the range analyzed in the FEIS (June 1–August 15 between the two alternatives), and the regulated community was aware that this range was being considered and that NMFS intended to retain maximum flexibility under any option to adjust the date as necessary to be responsive to the public and the fishery under the regulatory provisions. By relieving the default date, the new approach will allow additional public input to the start-date-setting process annually, is responsive to public comment (particularly from the harpoon category fishermen), and substantively does not result in effects different from those already analyzed. The only change from the current practice is that the fishery can start earlier now (June 1 instead of July 15), and the only change from the proposed rule is that there will be no default date.

9. Rules Regarding Permit Category Changes

This final rule allows a vessel owner to modify the category of an Atlantic Tunas or HMS permit issued for up to 45 days from date of issuance, provided the vessel has not landed bluefin tuna as verified via landings data. The previous restriction (10 calendar days) was intended to preclude vessels from fishing in more than one category during a year and to discourage speculative use of fishing permits. However, based on feedback NMFS has received over a number of years from vessel owners affected by the 10 day restriction, NMFS has concluded that limiting the time period during which a vessel may change permit categories to 10 calendar days is overly restrictive, and does not allow the flexibility to resolve the problems of a permit issued by mistake. The 45 day restriction achieves a better balance of allowing flexibility for vessel owners, while still preventing fishing in more than one permit category during a fishing year.

10. Northern Albacore Tuna Quota

This measure implements the U.S. annual quota of northern albacore tuna recommended by ICCAT and establishes provisions for the accounting of overharvest and underharvest of the quota via annual specifications. Specifically, the codified U.S. northern albacore tuna quota will be adjusted as appropriate for prior year catch (up or down), including delayed adjustment (that would skip a year) or adjustments over several years. Consistent with the ICCAT recommendation, carry-forward of unused quota from one year to the next will be limited to 25 percent of the initial quota. NMFS will adjust and implement the following via regulatory framework adjustments: Actions to implement ICCAT recommendations, as appropriate; allocating and refining domestic allocation of the U.S. quota; establishing retention limits; implementing effort restrictions, etc. Although an FMP amendment is not needed, framework adjustments still go through extensive public and analytical review and must be consistent with the MSA and other applicable law.

11. Adjustment of Management Measures

This final rule adds to the list of management measures that NMFS may modify or establish in accordance with the framework procedures of the 2006 Consolidated HMS FMP as amended, and provides examples of Amendment 7 measures that are within the scope of management measures currently listed in the regulations. With exceptions as noted under ''Changes from Proposed Rule,'' these measures were contained within the proposed rule. The Amendment 7 measures not previously contained in the 2006 Consolidated HMS FMP are as follows: The quota shares or allocations for bluefin tuna; electronic monitoring requirements; and administration of the IBQ Program (including requirements pertaining to leasing of IBQ allocations, regional or minimum quota share requirements, quota share caps (individual or by category), permanent sale of shares, NED IBQ rules, etc.). The Amendment 7 measures that are within the scope of measures currently in the regulations are Performance metrics (within the scope of ''time/area restrictions'' in current regulations) and Angling category trophy south/north/Gulf of Mexico percentages (within the scope of ''allocations among user groups'' in current regulations).

12. Minor Regulatory Changes

Amendment 7 is implementing minor regulatory changes (such as minor corrections and clarifications; the removal or modification of obsolete cross-references; and minor changes to definitions and prohibitions) to improve the administration and enforcement of HMS regulations. Several of these items have been identified by constituents over the past few years or were raised during scoping hearings. The corrections, clarifications, changes in definitions, and modifications to remove obsolete cross-references are consistent with the intent of previously analyzed and approved management measures. Under § 635.5(c)(1), the relevant internet address will be updated. Under § 635.20(a), the method of determining length of Atlantic tunas will apply regardless of permit type. Regulations at § 635.21(c)(5)(iii)(B), will refer to a ''gear restricted area,'' instead of a ''closed'' area. Under § 635.27(a)(7)(i), the reference to ''Fishery-independent research'' is changed to ''research.'' Under § 635.27(a)(1)(iii), the descriptor ''coastwide'' when referring to the General category fishery, is deleted. Under § 635.71(b)(13), the prohibition is corrected to clarify that the relevant amount of bluefin tuna is the ''applicable limit'' instead of ''a'' bluefin tuna. These changes were not analyzed because they do not make substantive changes to the regulations.

This final rule notifies the public that the collection-of-information requirements contained in §§ 635.5, 635.9, 635.14, 635.15, and 635.69 have been approved by OMB and are effective. In addition this final rule will update the table on NOAA information collections approved by OMB that appears under 15 CFR part 902.

Response to Comments

NMFS received over 188,000 written comments from fishermen, states, environmental groups, academia and scientists, and other interested parties. Comments included submissions of large numbers of identical or similar comments by organizations (or facilitated by organizations), as well as oral statements made at public hearings. All written comments can be found at *http://www.regulations.gov/*. The comments received resulted in changes, as described below, and in the section of this final rule called ''Changes from Proposed Rule''. Significant comments are summarized below by major topic together with NMFS' responses. There are 29 major issues:

1. General Support for Proposed Measures (Comment 1),
2. General Concerns (Comments 2–7),
3. Codified Reallocation (Comments 8–13),
4. Annual Reallocation (Comments 14–17),
5. Modification to Reserve Category (Comments 18–19),
6. General Comments About Gear Restricted Areas (Comments 20–42),
7. Cape Hatteras Gear Restricted Area (Comments 43–49),
8. Gulf of Mexico Gear Restricted Area (Comments 50–62),
9. Pelagic Longline Vessels Fishing Under General Category Rules (Comment 63),
10. Pelagic Longline Limited Conditional Access to Closed Areas (Comment 64),
11. Pelagic and Bottom Longline Transiting Closed Areas (Comment 65),
12. Gear-Based Measures (Comments 66–67),
13. General Comments About Individual Bluefin Quotas (Comments 68–75),
14. IBQ Eligibility (Comments 76–85),
15. IBQ Leasing (Comments 86–88),
16. Measures Associated with the IBQ Program (Comments 89–90),
17. Closure of the Pelagic Longline Fishery (Comment 91),
18. VMS Requirements (Comment 92),
19. Electronic Monitoring Requirements (Comment 93),
20. Automated Catch Reporting (Comment 94),
21. Expand the Scope of the Large Pelagics Survey (Comment 95),
22. Deployment of Observers (Comment 96),
23. General Category Subquota Management (Comments 97–98),
24. Harpoon Category Retention Limit (Comment 99),
25. Angling Category Trophy Sub-Quota (Comments 100–101),
26. Purse Seine Start Date (Comments 102–103),
27. Permit Category Changes (Comment 104),
28. North Atlantic Albacore Tuna Quota (Comment 105), and
29. Other Concerns (Comments 106–107).

1. General Support for Proposed Measures

Comment 1: NMFS received a wide range of comments expressing general support for the proposed conservation and management measures. Commenters stated that the proposed measures are a step in the correct direction for the future management of bluefin tuna, many noting support for Amendment 7 due to the inclusion of ''strong'' management measures, and others supporting the measures generally but urging NMFS to adopt stronger management measures than those proposed. Commenters' support was based upon their concerns about the current status of the bluefin stock and the desire to ensure long-term sustainability of bluefin for future generations of people. Some commenters urged NMFS to implement the preferred alternatives to ''Save the Bluefin,'' based on their perception that bluefin tuna are at imminent risk of going extinct. Commenters expressed concerns about the impacts of pelagic longline gear on bluefin tuna, noting the waste associated with discarding bluefin, especially in the Gulf of Mexico (GOM), and supported changes to the management of the pelagic longline fishery to reduce dead discards of bluefin tuna, as well as other highly migratory species, marine mammals, sea turtles, and other species. Commenters noted that many coastal communities depend upon healthy stocks of fish to contribute to their economic well-being and to that of individuals supported by commercial and recreational fisheries.

Response: The need for management action and the specific objectives of Amendment 7 are described in detail in Chapter 1 of the FEIS, and the proposed rule. This final rule implements a suite of management measures that will achieve the Amendment 7 objectives in a balanced manner. Amendment 7 enhances long-term sustainability of bluefin tuna through reduced dead discards; improved monitoring; increased flexibility in the quota system to both account for dead discards and optimize allocation of quota among the diverse bluefin fisheries; and increased accountability in the pelagic longline fishery.

Based upon the advice of ICCAT's Standing Committee on Research and Statistics, continued management with catch levels that comport with ICCAT recommendations should support further stock growth of the Western Atlantic stock of bluefin and is consistent with the ICCAT rebuilding plan given the current state of the science regarding the stock status. The MSA requires consideration of both the biological and economic impacts of conservation and management measures, and NMFS has determined that Amendment 7 measures will achieve a balance that will support the broader objectives of both stock rebuilding and continued viability of the commercial and recreational fisheries that depend upon bluefin tuna.

The GOM has an important function in the ecology of the Western Atlantic stock of bluefin. The responses to comments 50 through 62 address measures specific to the GOM. NMFS acknowledges that pelagic longline gear affects other species in addition to bluefin tuna and therefore, Amendment 7 measures may indirectly affect other species. As described in the FEIS analyses, the cumulative impacts on other species are likely to be neutral or positive.

2. General Concerns

Comment 2: Many commenters, particularly those with small businesses involved in the pelagic longline fishery expressed concern regarding the potential for negative economic impacts of Amendment 7 on jobs, families, and communities, and noted the importance of pelagic longline-caught fish in supplying high quality seafood to the nation. These commenters were concerned about the potential for the Amendment 7 measures to put people out of business, and ''destroy the pelagic longline fishery.'' Commenters stated that vessels that are currently only marginally economically viable would be at particular risk of going out of business, but were also concerned about any secondary impacts on related businesses such seafood dealers, gear manufacturers, etc. They urged NMFS to use a balanced regulatory approach to address the Amendment 7 objectives, and stated that Amendment 7 measures would increase uncertainty in the pelagic longline fishery.

Response: The seafood supplied to the Nation by the pelagic longline fleet is valuable as both a source of food, and for the generation of income supporting local jobs, communities, and the broader economy. NMFS designed management measures to minimize economic impacts by relying on the combined effects of multiple management tools and incorporating flexibility into the system. Amendment 7 measures will affect all permit/quota categories and reflect the balance of addressing the issues confronting the bluefin tuna stock and management of the fishery while maintaining the viability of the pelagic longline and other fisheries dependent upon bluefin tuna. For example, reductions in dead discards will be achieved through the use of multiple measures, including gear restricted areas, the IBQ system, and IBQ allocation measures. This final rule will modify the quota system to increase management flexibility to allocate quota among categories and maximize opportunities to catch available quota, account for dead discards, and respond to changing conditions in the fishery. As the pelagic longline fleet is adjusting to

the suite of new measures, NMFS will have the flexibility to allocate a limited amount of additional quota to the pelagic longline vessels if necessary to prevent a fishery closure, and still, as a result of the gear restricted areas, and IBQ system, reduce the net amount of bluefin catch from the levels recently caught. The Amendment 7 management measures work together to reduce dead discards and otherwise reduce bycatch to the extent practicable, increase accountability, enhance reporting and monitoring, and optimize quota allocation, in a predictable but flexible manner. The potential economic impacts of the measures affecting the pelagic longline fleet are analyzed in Chapters 5 and 7, of the FEIS, and the economic rationale is summarized in the Final Regulatory Flexibility Analysis. Public comments that address specific measures are addressed below in the responses to more specific comments.

Comment 3: Commenters stated that when determining whether the pelagic longline fleet should be subject to additional restrictions, NMFS should consider the current and past regulatory environment and other factors as context. Commenters stated the pelagic longline fishery is already heavily regulated to minimize its environmental impacts, especially in the GOM (*e.g.,* closures, weak hook requirement, observer deployment, bait requirements), and that progress is being made. Furthermore, increases in fuel costs strain fishers' ability to make a living, and events such as the 2010 oil spill in the GOM continue to be relevant. Commenters noted that bluefin tuna is managed at the international level and believe that the United States manages its citizens in a more effective and responsible way than other countries, and that NMFS should not further regulate bluefin tuna and increase the management disparity between the United States and other countries.

Response: The context in which vessels operate, including current regulations and other factors was a relevant factor NMFS considered in determining whether new regulations were needed. NMFS took into consideration many factors in selecting preferred measures which address the diverse objectives of Amendment 7 in a balanced manner. Chapter 6 of the FEIS contains a cumulative impacts analysis which is broad in scope and takes into consideration past, present, and reasonably foreseeable factors. In addition, Chapter 2 in the FEIS contains a description of measures and the rationale for the preferred measures. The Final Regulatory Flexibility Analysis includes a description of the steps taken to minimize the economic impacts on small entities, and the reasons for the preferred measures.

The United States manages its exclusive economic zone in accordance with applicable U.S. laws and in response to the unique characteristics of its fisheries, and therefore the U.S. regulations regarding bluefin tuna are different from the rules affecting citizens of other countries, which operate under different laws and circumstances. Where U.S. regulations are more restrictive than those abroad, NMFS believes that the corresponding ecological and socio-economic benefits that result from such restrictions are also likely to be greater than those abroad.

Comment 4: Commenters stated that the Amendment 7 DEIS contained too much information, was too complex, and was difficult to understand. Others were concerned that the DEIS was developed too quickly, leaving out too many details such as those associated with implementation of measures.

Response: The proposed rule clearly described the proposed management measures, and NMFS facilitated communication with the public via the internet and its Web site. The amount and complexity of information in the DEIS and the FEIS reflect primarily the scope of the objectives of Amendment 7 and the number of alternatives analyzed. The complexity of the DEIS and FEIS also is due to the diversity of the bluefin tuna fisheries, and the number of applicable laws and processes (both national and international). The DEIS and FEIS contain an Executive Summary which provides a condensed version of the relevant information including tables of important information. NMFS conducted public hearings (including a language interpreter for one hearing) that were designed to inform the public of the proposed measures in a readily understandable format, as well as provide opportunities for the public to comment and ask questions.

Significant time and opportunity for public comment have gone into what has been a very thorough rulemaking process for this Amendment. The formal development of Amendment 7 began with the publication of the Notice of Intent (April 23, 2012; 78 FR 24161), which announced NMFS' intent to hold public scoping meetings to determine the scope and significance of issues to be analyzed in a DEIS and a potential amendment to the 2006 Consolidated HMS FMP. However, the informal development began several years previously. On June 1, 2009, NMFS published an Advanced Notice of Proposed Rulemaking (ANPR; 74 FR 26174) requesting specific comments on regulatory changes that would potentially increase opportunities for U.S. bluefin tuna and swordfish fisheries to fully harvest the U.S. quotas recommended by ICCAT while balancing continuing efforts to end BFT overfishing by 2010 and rebuild the stock by 2019 as set out in the 2006 Consolidated HMS FMP, consistent with the ICCAT rebuilding plan. The ANPR was in response to various public suggestions about bluefin tuna management during the previous two years, precipitated by declines in the total volume of bluefin tuna landings, which were well below the available U.S. quota, and a reduction in the overall allowable western Atlantic bluefin TAC recommended by ICCAT. In the ANPR, NMFS also requested public comment regarding the potential implementation of catch shares, LAPPs, and individual bycatch caps (IBCs) in highly migratory species fisheries. In response, NMFS received a wide range of suggestions for changes to the management of the U.S. bluefin tuna fisheries.

While the DEIS and proposed regulations contained sufficient detail for the public to understand the measures and their potential impacts, including implementation, the FEIS and this final rule provide additional details to clarify certain aspects of implementation. These are not new measures but clarification of measures within the scope of the impacts analyzed by the DEIS. The regulatory process of proposed and final rulemaking allows for such flexibility to respond to public comments and implement regulations that address the regulatory objectives. The changes made from the proposed rule are summarized in the section of this final rule called ''Changes from Proposed Rule''. The comment period was extended to allow maximum public participation in this process.

Comment 5: Some commenters asked why the focus of Amendment 7 is the pelagic longline fishery, perceived the Amendment as an ''unfair attack'' on this fishery, and asked why no additional restrictions were proposed for the General, Harpoon, or Angling categories. Other commenters did not want one user group in the fishery to bear the regulatory burden, but believed that all should sacrifice for the good of the fishery as a whole.

Response: The focus of Amendment 7 is the list of stated objectives, including reducing and accounting for dead

discards, optimizing quota allocations, and enhancing reporting and monitoring. Although many of the measures being implemented will apply to vessels fishing with pelagic longline gear, all user groups will be subject to new regulations as appropriate and necessary, to contribute to the sustainability of the bluefin fisheries. Amendment 7 fundamentally alters the pelagic longline bluefin tuna management structure in order to decrease dead discards and increase accountability, yet it also implements new restrictions for vessels fishing under the other permit categories. Although the components of the regulated bluefin fisheries are very different and therefore have been subject to different restrictions in the past, NMFS developed the Amendment 7 management measures based upon a common set of objectives.

Comment 6: NMFS should exempt pelagic longline fishery participants that have never interacted with bluefin tuna from the programs proposed in Amendment 7.

Response: Amendment 7 enhances long-term sustainability of bluefin tuna through reduced dead discards, improved monitoring, increased flexibility in the quota system to both account for dead discards and optimize allocation of quota among the diverse bluefin fisheries, and increased accountability in the pelagic longline fishery. NMFS acknowledges that some pelagic longline vessels may not encounter bluefin tuna as a function of where and how those individuals fish. However, the effective implementation of the management measures requires consistent treatment and participation of all of the participating vessels. NMFS cannot exclude individual HMS pelagic longline fishermen from the provisions of Amendment 7 given the mobility of the pelagic longline fleet and uncertainty about bluefin interactions by individual vessels in the future. Through this Amendment 7 final rule, NMFS is redesigning many operational aspects of the entire pelagic longline fleet. Exclusion of a small pool of individuals would create an inequitable management environment across the fleet. The measures implemented by this final rule do, however, include specific provisions that are based on the data that indicate that some participants have few or no interactions with bluefin. For example, under the IBQ program, eligible permitted vessels will receive a percentage share of the overall pelagic longline bluefin quota. The amount of quota share, either ''high'', ''medium'', or ''low'' will depend in part upon the vessel's historical rate of bluefin interactions. Vessels with a relatively low rate of bluefin interactions will qualify for a higher share of the total bluefin quota than vessels with a higher rate of interactions, and have access to the Cape Hatteras Pelagic Longline Gear Restricted Area.

Comment 7: Several commenters stated that the solution to the challenge of how to account for all catch (landings and dead discards) in the context of a limited quota is to increase the amount of quota allocated to the United States through ICCAT (instead of the measures proposed under Amendment 7).

Response: Although a larger U.S. quota would facilitate easier quota accounting (*i.e.,* ensure that the total bluefin landings and dead discards do not exceed the total bluefin quota), a larger quota, without concurrent changes to the 2006 Consolidated HMS FMP is a short-term solution and would not achieve the broader objectives of Amendment 7 or the 2006 Consolidated HMS FMP. For example, a larger quota would not reduce the relative amount of dead discards of bluefin by the pelagic longline fishery, increase accountability for the pelagic longline fishery, optimize and provide additional flexibility to the quota system, or enhance reporting and monitoring. Furthermore, the United States does not independently set the quota at ICCAT and any quota established must be based on the best available scientific information ICCAT members (including U.S. delegates) vote to recommend an appropriate bluefin quota, based on the recommendation of the ICCAT scientists (which include U.S. scientists).

3. Codified Reallocation

Comment 8: Many commenters did not support reallocation of additional quota to the Longline category as a means to achieve the Amendment 7 objectives. They stated that shifting quota would not reduce interactions with bluefin or dead discards and that providing additional quota would undercut the benefits of a ''catch cap'' (*i.e.,* setting a strict maximum/cap on the amount of bluefin that could be caught, including dead discards and landings), would discourage the use of alternative gears, and would reward a ''destructive fishery'' by moving quota from quota categories that fish with more selective gear to the Longline category, which fishes with less selective gear and has more bycatch.

Many commenters supported the codified reallocation for the reasons NMFS stated in the proposed rule, as well as other reasons including the statement that the Longline category may have a smaller 'carbon footprint' than the other quota categories; the other categories are frequently under-harvested; the Longline category provides the U.S consumer access to important food sources; the General category exports much of the bluefin tuna it catches; and all user groups should bear the regulatory burden.

Response: Amendment 7 implements systematic management and operational changes to reduce bluefin bycatch and maintain the pelagic longline directed fishery and the other bluefin tuna fisheries. The combined measures of this final rule, which include modified quota allocations, gear restricted areas, and individual bluefin quotas, will reduce bluefin catch and provide incentives to utilize alternative, more selective gear types. To achieve the Amendment 7 objectives of reducing dead discards while minimizing associated reductions in target catch, NMFS will allocate bluefin quota to the Longline category in amounts that exceed its current allocation of 8.1 percent, but will reduce levels of incidental bluefin catch by the Longline category. NMFS anticipates that the catch of bluefin by pelagic longline gear will be reduced by between 17 and 42 percent, depending upon the amount of quota allocated and leased, and fishery conditions. Some flexibility in the amount of quota allocated to the Longline and other quota categories is needed to accommodate the highly variable bluefin fisheries, as well as to mitigate some of the uncertainty and negative impacts associated with a brief transitional period in the pelagic longline fishery as it adjusts to the preferred Amendment measures.

As explained in the FEIS, there are several reasons why additional quota should be provided to the Longline category, as one element of a more comprehensive strategy to resolve the challenge of accounting for bluefin catch and reducing dead discards. The pelagic longline fishery interacts with bluefin tuna when it targets swordfish, yellowfin tuna, bigeye tuna, and other species, because the occurrence of those species overlap as a result of their similar biology and ecology. The Longline category is required to account for dead discards and landings, yet the historical basis for the relative size of the Longline category's quota allocation (8.1 percent) was only landings, and did not consider the amount of quota that could be necessary to account for dead discards in addition to those landings within the total allowable catch.

Based on the best available information, an allocation of 8.1 percent has been inadequate to account for both

landings and dead discards since ICCAT adopted a requirement to account for dead discards within the existing quota. In recent years, NMFS has accounted for pelagic longline bluefin dead discards by relying in part upon under harvest of quota by other quota categories. The merits of allocating additional quota to the Longline category must be considered in the context of all of the other management measures being implemented by Amendment 7. Because the Amendment 7 measures implemented by this final rule will provide quota accountability on an individual vessel and category-wide basis for the Longline category, the amount of quota allocated to the category is of critical importance. Specifically, when the quota allocated to an individual vessel has been caught, the use of pelagic longline gear by that vessel will be prohibited. If the category-wide quota has been caught NMFS may prohibit all vessels in the fleet from fishing with pelagic longline gear. Based on current information regarding the range of bluefin tuna interactions that can be expected, continuing to limit the Longline category to a quota of 8.1 percent of the available quota would result in a shut-down in the fishery relatively early in the year. Notwithstanding the other measures being implemented by this final rule, which will result in reductions in dead discards by vessels fishing with pelagic longline gear, a quota allocation of 8.1 percent quota would result in a severely diminished or eliminated fishery, contrary to the objective of optimizing fishing opportunities.

Comment 9: Commenters suggested that the amount of bluefin quota allocated to the Longline category should be reduced, or set at zero.

Response: As discussed in the response to Comment 8 there are several reasons why the Longline category quota should be increased. Moreover, reducing the Longline category quota would not be consistent with the Amendment 7 objectives and would result in severe economic impacts that can be avoided through the use of other management tools. NMFS designed the quota allocation measures to minimize the economic impacts on the non-longline categories. The amount of quota being deducted from each of the categories (for allocation to the Pelagic Longline category under the ''Codified Reallocation Alternative'') is proportional to the size of each category's quota and is relatively small (approximately 7 percent). Secondly, the amount of quota that will be deducted from the categories is fixed, therefore, if the U.S. bluefin quota increases as a result of stock growth, the amount deducted from the various categories will not increase, but the total quota allocated to each category would increase. Furthermore, the other quota allocation measures implemented by this final rule (''Annual Reallocation'' and ''Modifications to Reserve Category'') provide mechanisms to reallocate quota back to these categories, if quota is available. The ''Annual Reallocation Alternative'' guarantees a minimum amount of quota to the participants in the Purse Seine fishery, and enables increases in quota allocations over time with increasing levels of bluefin catch. Providing an amount of bluefin quota to the pelagic longline fishery that both reduces dead discards, yet also accounts for a reasonable amount of incidental catch that can be anticipated (based on historical catch rates and the effect of Amendment 7 gear restricted areas) will enable the continued generation of revenue associated with the pelagic longline fishery's target catch.

Comment 10: One commenter stated that providing 68 mt of ''additional quota'' to the Longline category is not appropriate, and that the amount should be larger, because the discard estimation methodology that the amount was based on is no longer in use. Another commenter stated that the amount of additional quota should be smaller than 68 mt because the size of the U.S. quota has been reduced since the time the 68 mt set-aside was established.

Response: Although the codified reallocation measure is intended to facilitate accounting for dead discards by the Longline category, the specific amount (68 mt) is not intended to serve as an estimate of current dead discards or establish a proportion of discards to landings. NMFS prefers 68 mt as the amount of quota to be contributed from all categories, resulting in augmenting the Longline category by 62.5 mt, because the amount of additional quota achieves an appropriate balance of costs and benefits in the fishery and because of its historical relevance as a set-aside for dead discards, the inclusion of which was a critical factor in first establishing the formula under which all categories received their current allocations. No adjustment to those allocations was made when ICCAT first eliminated the dead discard allowance, and such an adjustment clearly is warranted given the resulting management challenges in accounting for both landings and dead discards within the available quota. Furthermore, providing a fixed amount of additional quota to the Longline category effectively limits the amount of reallocation into the future. In contrast, altering the base allocation percentages associated with each quota category would have had the potential effect of increasing the amount reallocation to the longline category if the total U.S. quota increases. Although increasing the amount of quota reallocated to the Pelagic Longline category in association with increases in total quota would facilitate accounting for incidental catch of bluefin and achieve one of the objectives of this Amendment, it would not effectively limit bycatch and reduce dead discards, which are also key objectives of Amendment 7.

Comment 11: Commentors suggested that NMFS should, instead of the ''Codified Reallocation'' of quota from all quota categories, reallocate quota from only the Purse Seine category; impose greater restrictions on the pelagic longline fishery to reduce their discards; or implement more restrictive gear restricted areas in the Gulf of Mexico and off Cape Hatteras in order to further reduce incidental bluefin tuna catch.

Response: NMFS prefers that all quota categories contribute to addressing the challenge of accounting for dead discards, which, as explained in the response to Comment 8 is a problem which has multiple root causes, and is integrally related to the operation and management of the fishery as a whole. This Amendment 7 final rule addresses the issue of the recurring under-harvest associated with the Purse Seine fishery through the ''Annual Reallocation'' measure, which provides a predictable method to optimize the use of Purse Seine quota that might otherwise remain unharvested. This final rule implements new conservation and management measures applicable only to the Longline category, which will limit bycatch, reduce dead discards, increase incentives to avoid bluefin, and increase accountability. NMFS disagrees that greater restrictions on the Longline category—instead of reallocating a limited amount of quota— would achieve the Amendment 7 objectives in a manner that minimizes economic impacts to the extent practicable. As explained in the response to Comment 9 above, NMFS designed the quota allocation measures to minimize the economic impacts on the non-longline categories. The alternatives take into consideration the relative size of each category quota (in the case of the ''Codified Reallocation Alternative''), or the level of activity of vessels (''Annual Reallocation Alternative''), and are designed to consider changing levels of

quota or landings, respectively, in ways that reduce economic impacts.

Comment 12: Many commenters strongly opposed reallocating quota to the Longline category because of concerns about the economic impacts on a particular geographic region (*e.g.,* New England or mid-Atlantic), or quota category (*e.g.,* the General category or the Angling category). Some commenters urged NMFS to respect the historical allocation percentages, and noted that reallocation would have the effect of pitting the different categories against each other. Some commenters suggested that NMFS consider other regulatory and economic circumstances facing vessels that may be impacted by a reduced quota.

For example, Congressional representatives from Massachusetts, and the New England Fishery Management Council (Council) stated that the proposed reallocation would disadvantage the New England Fishery, the traditional Massachusetts fleet, and shore-side infrastructure, and would allow fleets from other regions to use a disproportionate amount of quota. They were concerned about the commercial fleet that is experiencing economic damage due to the decline in key stocks in the groundfish fishery. The Council suggested that NMFS assess the port-specific impacts of reallocation. A commenter was concerned that recreational vessels in the mid-Atlantic region would be disproportionately affected by quota reallocation because the quota may not last until the time the bluefin are off the mid-Atlantic coast.

Response: A reduction in quota may impact the revenue associated with a particular quota category or geographic region, or result in secondary economic impacts on a community. The FEIS analysis estimates that reallocation of quota to the Longline category could reduce revenue for individual vessels with a General category permit by $850 and result in total reduction in maximum revenue of $542,000 for all General category vessels. Although thirty percent of the General category permits are associated with the State of Massachusetts (1,150 permits as of October 2013), the total number of active vessels is substantially lower. Of the total number of General category permits issued throughout the Atlantic coast (3,783), the average number of General category vessels landing at least one bluefin between 2006 and 2012 was 474 vessels (total). Thus, the number of active vessels in Massachusetts can be presumed to be substantial fewer than 1,150.

When considering the social and economic impacts of actions, different communities and regions may be impacted to different degrees due to their unique regulatory and economic circumstances. The FEIS contains an analysis of the community impacts from the 2010 Deepwater Horizon/BP Oil Spill, and a 2013 analysis that presents social indicators of vulnerability and resistance for 25 communities selected for having a greater than average number of HMS permits associated with them. Those communities with relatively higher dependence upon commercial fishing included Dulac, LA; Grand Isle, LA; Venice, LA; Gloucester, MA; New Bedford, MA; Beaufort, NC; Wanchese, NC; Barnegat, NJ; Cape May, NJ; and Montauk, NY. The analyses are principally at a fishery-wide, or permit category level. The bluefin tuna fisheries (and other HMS fisheries) are widely distributed and highly variable due to the diversity of participants (location, gear types, commercial, recreational), and because bluefin tuna are highly migratory over thousands of miles, with an annual distribution that is highly variable. The specific ports and communities that provide the goods and services to support the fishery may vary as well, as vessels travel over large distances to pursue their target species. Due to this variability, it is difficult to predict potential revenue and secondary impacts of preferred management measures by port or by state. Vessels fishing in any geographic area in the Atlantic or Gulf of Mexico are likely to have only limited access to bluefin tuna, unless they travel long distances within the bluefin's migratory range.

It is important to note that the actual economic impacts of reallocation of quota depend upon the total amount of quota allocated to (and harvested from) each of the quota categories, as a result of the combined effect of all of the measures that affect quota. For example, in addition to the amount of quota available as a result of the percentage allocations, and deductions for the 68 mt Annual Reallocation, there may be quota available for redistribution to various quota categories. Specifically, pursuant to the preferred ''Annual Reallocation'' measure, as described in Chapter 2 of the FEIS, if the Purse Seine category has not caught 70 percent of its quota during the previous year, quota may be moved to the Reserve category and subsequently reallocated across multiple user groups. Furthermore, in recent years, many categories have not fully harvested their amount of quota available to them. Thus, the actual impacts of reallocation may be minor or may be mitigated by future reallocation when available.

Reallocation of quota may result in frustration or negative attitudes among fishery participants of different quota categories, due to the changes to an historically accepted quota allocation system, or perceptions of unfairness. However, the modifications to the quota system are warranted for the reasons described in the response to comments 8 through 13 and fair due to the fact that all quota categories are affected in proportion to their quota percentage.

As explained in the response to Comment # 9 above, NMFS designed the quota allocation measures to minimize the economic impacts on the non-longline categories. The management measures take into consideration the relative size of each category quota (in the case of the ''Codified Reallocation Alternative'', or the level of activity of vessels (''Annual Reallocation Alternative''), and are designed to consider changing levels of quota or landings, respectively, in ways that reduce negative economic impacts.

Comment 13: Many recreational anglers wanted to insulate the Angling category from any potential effect of quota reallocation to the Longline category, citing the economic impacts and high value of the recreational bluefin fishery to the economy, as well as the economic investments of the participants and the current regulatory burden such vessels face. Vessel owners with General category commercial permits expressed concern about the potential impacts to the General category. Commenters requested additional quantitative analyses comparing the different quota categories, including primary and secondary impacts.

Response: As stated above in the response to the previous comment, a reduction in quota may impact the revenue associated with a particular quota category or result in secondary economic impacts on a community. The objective of the allocation measures is not to reallocate quota based on economic optimization, but to: account for bluefin dead discards within the Longline category; reduce uncertainty in annual quota allocation and accounting; optimize fishing opportunity by increasing flexibility in the current bluefin quota allocation system; and ensure that the various quota categories are regulated fairly relative to one another.

The reallocation measures of this final rule will minimize adverse economic impacts to the extent practicable because the relative amount of quota reallocated is small and proportional to the size of the category quota, and the overall quota system will be more

flexible and predictable and able to offset some or all of the negative economic impacts. This approach was developed consistent with our obligation under National Standard 6 (Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches) and National Standard 8 (Conservation and management measures shall, consistent with the conservation requirements of this chapter (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.)

Although the FEIS includes estimates of the value of bluefin tuna quota by quota category for comparative purposes, the codified reallocation measure was not based on a specific economic analysis, but the achievement of the stated objectives.

An elaborate quantitative analysis that compares the economic value of the Angling, Longline, and General category fisheries was not conducted in the FEIS due to the different characteristics of the Angling, Longline and General category fisheries, the variable amount of data associated with these fisheries, and the large number of factors and assumptions that contribute to estimating the value of a fishery. For example, under the IBQ system implemented by Amendment 7, bluefin tuna quota may be a limiting factor for a pelagic longline vessel, and therefore the lack of adequate bluefin quota, by even a small amount, could result in a vessel being prohibited from fishing with pelagic longline gear. In that circumstance, the value of the bluefin quota to the vessel owner may be very high, and related to the value of the target catch (*e.g.,* swordfish or yellowfin tuna). On the other hand, the value of a bluefin tuna to a recreational angler or to the recreational fishery at-large may include the value of the recreational experience to the angler, as well as the associated goods and service supporting the fishing trip. The FEIS indicates that the Angling category would potentially face unquantified reductions in economic and social activity associated with the 7.36 percent reduction in available quota.

In contrast, for a vessel fishing commercially in the General category, a high quality bluefin tuna sold to Japan may be extremely valuable and other catch is far less important.

4. Annual Reallocation

Comment 14: Some commenters supported the annual reallocation measure as proposed, based on the underlying concept of tying the Purse Seine category annual allocation to the level of fishing activity by Purse Seine vessels (*i.e.,* ''use or lose''), and the strategy of making unused quota available for use by other quota categories.

Response: The Amendment 7 annual reallocation measure represents an improvement to the quota system by implementing a predictable means to utilize quota that may otherwise remain unused. Because the reallocation of quota from the Purse Seine category to the Reserve will occur prior to the beginning of the calendar year and prior to the start of the Purse Seine fishery, there will be increased predictability in the quota system. In contrast, in the past, there was uncertainty that resulted from the fact that the amount of unharvested quota associated with the Purse Seine category which would be available for quota accounting was unknown until the end of the calendar year. Because of that timing problem, the ability for other users to catch any unharvested quota was markedly diminished.

Comment 15: Commenters suggested various modifications to the proposed annual reallocation measure. One commenter suggested that the concept be applied to the individual vessel instead of at the scale of the whole Purse Seine category in order to prevent the situation where an individual vessel may be disadvantaged. One commenter suggested that only 25 percent of the Purse Seine quota should be available for reallocation, instead of 75 percent. A commenter suggested that more than one year of catch should be the basis of the allocation, instead of a single year. One commenter suggested that the annual reallocation alternative be combined with an alternative that was not proposed, which would have allocated 40 percent of the Purse Seine category to the Longline category.

Response: In response to the comment that the annual reallocation measure should be implemented at the level of the individual vessel in order to prevent a situation where a vessel fishes its full allocation but, due to inactivity by other vessels, is only allocated a portion of its base allocation for the subsequent year, NMFS modified the preferred alternative, and is implementing the measure at a vessel level (as described in detail in the preamble above, and the FEIS). Under the measure implemented by this final rule, annual reallocation will be based on the previous year's individual purse seine participants catch rather than category-wide catch. This management measure will tie quota allocation more closely to individual Purse Seine participants catch and create incentive for fishery participants to remain active in the fishery. Thus, the individual allocation could either increase or decrease. Without this modification to the alternative (from that proposed), individual allocations would be tied to the catch of the other participants in the fishery, which could have unfair results if catch were to vary greatly among the vessels. For example, in a year where overall category landings were low, an individual purse seine participant could be allocated a relatively low amount of quota, even if they landed a substantial portion of their allocation the previous year. As such, the alternative would not tie the allocation to individual catch and thus would not encourage full use of the category quota, which would be inconsistent with the intent of this alternative.

Regarding the comment that only 25 percent of the Purse Seine allocation be available for reallocation (instead of 75 percent), if only a relatively small percentage of the quota were available for reallocation (and a relatively large percentage of the quota guaranteed for the Purse Seine allocation), there would be the possibility that Purse Seine participants remain inactive, yet only a relatively small percentage of the quota is transferred to the Reserve category. Such a scenario, which increases the likelihood that the Purse Seine quota as a whole may not be utilized by any category, would be inefficient and would not optimize the quota system. Making up to 75 percent of the quota available to the Reserve category will maximize the amount of quota that may be reallocated, and will provide a reasonable minimum amount for the Purse Seine participants. The measure implemented by this final rule guarantees vessels 25 percent of their base allocation, but makes up to 75 percent available for reallocation to the Reserve category, while not precluding Purse Seine participants from increasing their catches over time (multiple years).

Regarding the comment that more than one year of catch should be used as the basis of the Purse Seine allocation, a time scale of two years would reduce the relative importance of a single year's catch in determining subsequent quota allocations, but may also decrease the availability of quota. The method of annual reallocation being

implemented (*i.e.,* based on one year) will provide a better balance between providing a fair allocation to the Purse Seine category and providing a predictable system for utilizing quota among all categories that may otherwise be unused, and is consistent with the annual time scale applicable to quota related management measures (*i.e.,* the relevant time scale for most aspects of the quota system is annual).

Regarding the comment that the annual reallocation alternative should be combined with an annual allocation of 40 percent of the Purse Seine category to the Longline category, NMFS determined that the annual reallocation measure better meets the objectives of reducing uncertainty in annual quota allocation and accounting; optimizing fishing opportunity by increasing flexibility in the current bluefin quota allocation system; and ensuring that the various quota categories are regulated fairly in relative to one another. Under the annual reallocation measure implemented by this final rule, the amount of quota allocated to Purse Seine participants and the Reserve category is responsive to the level of activity of Purse Seine participants, but will not reduce the size of the Purse Seine category percentage (18.6 percent), which is the foundation upon which the allocations to Purse Seine participants are based. In contrast, combining this measure with an annual allocation of 40 percent of the Purse Seine category to the Longline category would substantially reduce the size of the Purse Seine allocation regardless of the level of activity by Purse Seine vessels. Such a reduction is not consistent with the objective of the measure. The objective of the management measure is not to reduce the size of the Purse Seine allocation, but to make Purse Seine quota available for use by other categories in a predictable manner (reflecting a Purse Seine vessel's previous year level of activity), as well as allow levels of fishing activity of Purse Seine vessels to increase within the scope of the category's allocation.

Comment 16: One commenter supported annual reallocation, but stated that the implementation of the annual reallocation measure should be linked to a Purse Seine fishery start date of June 1, as well as elimination of the provision limiting the relative amount of 73 to 81 inch bluefin Purse Seine vessels may retain. One commenter did not support annual reallocation due to the different retention rules applicable to the Longline and Purse Seine categories. One commenter did not support annual reallocation because of the perception that the Purse Seine category has not had the same fishing opportunities as the other categories due to low availability of giant (greater than 81 inch) bluefin, and the restriction on retention of large medium bluefin.

Response: NMFS agrees that the Annual Reallocation alternative should be evaluated in the context of other regulations applicable to the Purse Seine category and Longline category. Modification of the start date of the Purse Seine category to June 1 is one of the measures being implemented by this Amendment 7 final rule. NMFS considered but did not further analyze an alternative that would modify or relieve the tolerance limit for large-medium fish in the purse seine category. Such an alternative was not further considered for reasons explained in Chapter 2 of the FEIS, including because recent data was not available about fishery operations that reflected to what extent the purse seine fishery experienced regulatory dead discards as a result of the tolerance limit. In furtherance of gathering such data and in the interest of examining bycatch in the fishery, on August 1, 2014, NMFS issued an exempted fishing permit that will exempt a Purse Seine vessel from the annual incidental purse seine retention limit on the harvest of large medium Atlantic bluefin tuna, in order to investigate and gather such data. NMFS could consider changes to the Purse Seine category size restrictions in a future rulemaking after further data-gathering and consideration. The Annual Reallocation measure will not result in a negative ecological impact due to the different size restrictions applicable to the Purse Seine category and the Longline category as explained in Chapter 4 of the FEIS (the potential change in the amount of bluefin caught of different size categories is relatively small compared with the overall stock size).

Comment 17: Commenters did not support annual reallocation for a variety of reasons. One stated that the Purse Seine category should not have a fluctuating quota; one was concerned that the Longline category will take the entire Purse Seine quota in the future, and one was concerned that reallocation to the Longline category would increase discards.

Response: NMFS acknowledges that the Purse Seine quota may fluctuate under the annual reallocation measure, and that a fluctuating quota may have some negative implications for the Purse Seine fishery, such as challenges to long-term business planning, and fluctuating levels of revenue from the Purse Seine fishery. However, in the context of the fishery as a whole, the benefits of the annual reallocation measure are expected to outweigh the negative aspects, and the amount of quota fluctuation may be reduced by a consistent level of Purse Seine catches. Under the annual reallocation measure implemented by this final rule, Purse Seine participants will have similar fishing opportunities as the other commercial categories that direct on bluefin tuna, but if substantial portions of the quota remain unused, there will be a fair system to relocate quota in a predictable and efficient way. The annual reallocation system will also be responsive to any future increased levels of catch by Purse Seine participants. If a Purse Seine participant is allocated the minimum amount of quota (25 percent of its base quota), with increasing catch over time, the individual participant could be allocated 100 percent of their base quota three years after being allocated the minimum amount. For example if during the first year of fishing the participant caught 22 percent of their baseline quota, for year two they would be allocated 50 percent. During year two if the participant caught 46 percent of their baseline quota, for year three they would be allocated 75 percent of its baseline quota. If during year three they caught 71 percent of their baseline quota for year four they would be allocated 100 percent of its baseline quota.

Under the annual reallocation measure, quota will be reallocated to the Reserve category, and potentially then to any or all quota categories. Transfers of quota from the Reserve category may include transfers to the Longline category, but NMFS will consider and balance the needs of the fishery as a whole. Quota could also be allocated to the other fishery categories as appropriate, considering the relevant factors in that year. Specifically, NMFS will base such decisions on the criteria described under the ''Modifications to the Reserve Category'' measure, as well as other applicable regulations and laws (*e.g.,* the MSA National Standards (NS) such as the NS 9 requirement to minimize bycatch and bycatch mortality to the extent practicable).

5. Modification to Reserve Category

Comment 18: Several commenters supported the modifications to the Reserve category regulations, which would increase the amount of quota that may be put into the Reserve category and increase the potential uses of Reserve category quota. One commenter stated that NMFS should be authorized to allocate from the Reserve category at any time. A commenter suggested

splitting the Reserve category into quota derived from under-harvest, and quota transferred from the Purse Seine category, to increase transparency. One commenter suggested redistribution of unused Reserve quota to active Longline category vessels during the last quarter of the year. A commenter stated that NMFS should make up to 50 percent of the Reserve quota available to the Longline category during the first three years of the IBQ Program.

Response: The management measure regarding the Reserve category implemented by this final rule will provide additional management flexibility in the quota system and enable consideration of various quota strategies such as those suggested by the commenters. Although NMFS has the authority to allocate bluefin quota from the Reserve category at any time, the regulations implemented by Amendment 7 will enable NMFS to add underharvest from the previous year and any reallocated quota from the Purse Seine category to the Reserve category base allocation of 2.5 percent. Secondly, Amendment 7 adds new criteria to broaden and clarify the potential uses of the Reserve quota. It is not possible to evaluate the merits of the commenters' specific quota suggestions without any context. There are many potential uses of Reserve quota, including transfer to the Longline category in order to facilitate the transition to IBQs, or transfer to the General, Harpoon, Purse Seine, Angling, or Trap categories if warranted in order to increase fishing opportunity (while still preventing catch from exceeding the overall U.S. quota, and abiding by the other ICCAT restrictions). In order to facilitate transparency and full understanding of the quota system, NMFS will communicate clearly about how quota transfers are distributed among all quota categories, including descriptions of specific amount of quota derived from various sources.

Comment 19: A commenter did not support the addition of new criteria to the existing criteria regarding in-season transfer of quota among categories because the criteria are long-standing and provide adequate flexibility. Commenters did not want to allow the Reserve category to be ''padded'' to cover Longline category dead discards, and did not want most of the Reserve quota to go to the Longline category.

Response: The addition of the new criteria under Amendment 7 will not change the overall scope of NMFS authority to transfer quota among categories, but includes specific criteria that have the effect of clarifying potential uses of quota. NMFS agrees that an excessive amount of quota from the Reserve category should not be used to account for Longline category dead discards and has structured the alternatives to give management flexibility to move available quota to other categories as warranted. As stated in the response to Comment 8, under the Amendment 7 management measures, NMFS will allocate quota to the Longline category in amounts that exceed its current allocation of 8.1 percent of the current annual quota, but will not allow historic levels of bluefin catch by the Longline category catch. In evaluating the amount of quota to reallocate to any category (including the Longline category), NMFS will consider the regulatory criteria for quota transfer, which include broad biological and economic considerations (*e.g.,* ''effects of the adjustment on accomplishing the objectives of the fishery management plan''). For example, with respect to transfers of quota to the Longline category, some important considerations may include the amount of dead discards by pelagic longline gear relative to the size of the Longline category quota, the overall trend in the amount of dead discards and landings in the Longline category, the effectiveness of gear restricted areas, the status of the bluefin stock, trends in relevant data reporting, the amount of uncertainty regarding dead discard information, the level of accountability for bluefin dead discards by vessels in other quota categories, and the economic benefits of quota transfers. For transfers to other categories, important considerations may include effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on bluefin rebuilding and overfishing; and effects of the adjustment on accomplishing the objectives of the FMP.

6. General Comments About Gear Restricted Areas

Comment 20: NMFS should avoid closures to the pelagic longline fishery. Any closure would disrupt markets.

Response: NMFS acknowledges that GRAs designed to reduce bluefin tuna interactions and regulatory discards and to thus decrease bycatch have costs associated with them, and may have disruptive effects on local markets. NMFS designed the gear restricted areas (*i.e.,* their timing and configuration) after considering the amount of reduced fishing opportunity as well as the amount of reduced bluefin interactions, in order to minimize potential disruptions in markets. NMFS designed the Cape Hatteras GRA to provide access opportunities to fishermen that have a proven ability to avoid bluefin, and are compliant with the observer and logbook requirements. As described in the Response to Comments # 46 and 47, NMFS specifically modified the Cape Hatteras Gear Restricted Area that was preferred in the DEIS, to reduce disruption to ongoing fishing in an adjacent area and therefore reduce potential economic impacts of the alternative. Evaluation of all alternatives considered both economic and ecological considerations (*i.e.,* the potential reductions in revenue associated with estimated reductions in bluefin interactions).

Comment 21: NMFS should not implement GRAs. NMFS received comments indicating that, due to a variety of reasons, commercial fishermen may be limited to certain fishing locations by the size and configuration of their vessels, insurance requirements, or safety concerns, and that some participants in the fishing fleet have nowhere else to fish (except in the location of the GRA) and they would be ''shut out'' of the fishery.

Response: The underlying concept of the Cape Hatteras GRA minimizes economic impacts by providing conditional access to the area, based on performance criteria. The majority of the pelagic longline fleet will be allowed to fish in the area upon implementation of this Amendment 7 final rule, and in the future if conditions for access continue to be met. In estimating ecological and socio-economic impacts of the Cape Hatteras GRA (called the ''Modified'' Cape Hatteras GRA in the FEIS), NMFS determined that 14 vessels (of 135 vessels) would not have access to this GRA. Of these 14 vessels, four vessels made over 75 percent of their sets in the Cape Hatteras GRA. Based upon the location of their historical catch, and to ensure that NMFS did not underestimate the potential economic impacts, the analysis assumes that these vessels would not redistribute effort outside of the GRA. Although these four vessels could redirect from fishing grounds off Oregon Inlet, NC to fishing grounds between Cape Fear and Cape Hatteras, such a change in fishing grounds may involve substantial costs (fuel, longer trips, possible transfer and dockage in a new port, etc.). However, NMFS modified the Cape Hatteras GRA

in a way that NMFS believes will achieve the reduction in bluefin discards, but will also allow fishermen to continue to deploy gear in regions south and west of the GRA and thereby reduce adverse impacts. With respect to the potential negative impacts of the Spring Gulf of Mexico GRA, approximately 61 vessels that fish in the Gulf of Mexico would be affected. Given the consistent pattern of historical catch of large numbers of bluefin tuna in certain times and locations by pelagic longline gear, NMFS determined that a GRA area in both the Gulf of Mexico and the Atlantic are necessary in order to achieve reductions in bluefin tuna dead discards, and that the potential economic impacts are unavoidable in order to achieve the necessary reductions. The potential negative socio-economic impacts were minimized by using an iterative process to design the gear restricted areas. The Spring Gulf of Mexico Pelagic Longline GRAs were designed in order to achieve a balance between a reduction in bluefin dead discards, protection of the Gulf of Mexico spawning stock, and continued operation of the pelagic longline fleet in the Gulf of Mexico. The specific boundaries of the area were determined by an iterative process that included consideration of public comment and input, by selecting areas of historical pelagic longline interactions with bluefin, and comparing both the anticipated reduction in bluefin interactions, and the estimated reduction in revenue, of different configurations. In addition, the time period was selected due to its occurrence during the peak bluefin spawning period in the Gulf of Mexico.

The magnitude of the potential economic impacts result from the specific location and duration of the GRA. The size of the Spring Gulf of Mexico Pelagic Longline GRA is based upon the historical location and number of bluefin interactions, as well as the recent persistent trend in fishing effort shifting to the east of this area, and the known variability in the fishery in general. A smaller geographic area would be unlikely to achieve meaningful reductions in bluefin tuna interactions. The duration of the GRA encompasses the months with the highest number of interactions during the spawning period. An alternate, or shorter time period would coincide with neither the highest number of bluefin interactions, nor the bluefin spawning period peak.

Comment 22: NMFS should evaluate the preferred alternatives for the Cape Hatteras GRA in light of the difficulties in implementing the Pelagic Longline Take Reduction Plan (a plan designed to reduce the incidental interactions of pelagic longline gear with marine mammals in order to reduce serious injury and mortality of long-finned and short-finned pilot whales and Risso's dolphins in the Atlantic).

Response: Several comments received suggested options similar to those currently employed under the Pelagic Longline Take Reduction Plan (described below). One comment noted the importance of developing a communication protocol similar to what is encouraged by the Pelagic Longline Take Reduction Plan for marine mammals. NMFS also encourages captains to communicate the location of bluefin to each other to aid fleet-wide avoidance practices. However, NMFS believes that this approach is best employed on a voluntary basis, as is done for marine mammals, given potential confidentiality concerns.

Mandatory aspects of the Pelagic Longline Take Reduction Plan include a requirement to post the marine mammal safe handling and release placard in the wheelhouse and on the working deck, a restriction of mainline length to no more than 20 nmi when fishing within the Mid-Atlantic Bight, and special observer and research participation requirements for vessels operating in the Cape Hatteras Special Research Area (CHSRA). Unlike the requirements for operating in the CHSRA, Amendment 7 does not require fishermen fishing in the Cape Hatteras GRA to notify the agency between 48 to 96 hours prior to making a trip in order to arrange for observer coverage or research participation, in part because notifications of intent to fish are a standard requirement through VMS. Additionally, Amendment 7 does not require fishermen to retain or post any new placards, nor does it change the requirements regarding mainline length restrictions. It is important to note that the provisions of Amendment 7 *do not* replace the provisions of CHSRA or the Pelagic Longline Take Reduction Plan; pelagic longline fishermen are still expected to fully comply with the requirements outlined in the Pelagic Longline Take Reduction Plan while fishing with pelagic longline gear in any part of the CHSRA that may overlap with the Cape Hatteras GRA.

Comment 23: A commenter stated that NOAA and ICCAT do not have sufficient scientific information to be able to predict where and when the distribution of bluefin may overlap with the pelagic longline fleet target species, and thus fishermen are also highly unlikely to be able to predictably avoid BFT while targeting other HMS species (swordfish, bigeye and yellowfin) except for certain times of year and in limited locations. Any rigid management framework that cannot adapt management to real-time distributions and availability of targeted and non-targeted HMS species will be unlikely to optimize yield, support economic viability, and eliminate discards.

Response: Bluefin tuna distribution is highly variable; however, the scientific literature as well as the data in the FEIS (Chapters 3 and 4) support the conclusion that there is sufficient consistency in the patterns of distribution to make GRAs an effective management tool on a long-term basis. If warranted by changes in the characteristics of the fishery (e.g, long-term shifts in the distribution of bluefin tuna and target species), NMFS can re-evaluate whether GRAs continue to be an effective management tool that appropriately balances the associated costs and benefits.

Comment 24: NMFS received suggestions to consider dynamic time-area closures because the distribution of bluefin is highly variable.

Response: In the Predraft of Amendment 7, NMFS considered a real-time monitoring system that would periodically close ''hot spots'' of bluefin interactions with the pelagic longline fleet. However, the Agency chose to not further analyze this alternative in the DEIS and the FEIS because a reporting and monitoring system to support this measure does not currently exist. Furthermore, the development and administration of such a system would be highly complex, and would require substantial resources to be able to fully monitor the entire region across which the pelagic longline fleet fishes, publish a rule quickly enough to respond to changing oceanic conditions, and provide adequate notice to the pelagic longline fleet. Instead of the dynamic measures supported by the commenter, which would respond to short-term aggregations of bluefin, the measures implemented by this final rule rely on a different strategy of reducing bluefin bycatch, based upon the long-term, consistent special and temporal patterns of bluefin distribution.

Comment 25: NMFS received comments asserting that the Agency lacks sufficient data to make a reliable determination regarding true interaction rates of any given vessel. Some commenters felt that NMFS should prohibit fishing in areas of concern until more reliable data collection methods are in place, whereas others felt that NMFS should not prohibit fishing until more reliable data collection methods are in place. Several commenters cited

weaknesses in logbook data and asserted that logbook data are not sufficient to verify vessel behavior, count interactions, or monitor bycatch.

Response: As indicated in the Response to Comment # 82 NMFS recognizes that some vessel operators may have under-reported in their logbooks the amount of bluefin tuna they have caught. NMFS conducted an analysis that compared logbook data to observer data to get an indication of how vessel-reported logbook data compares with observer data, because observer data can serve as a useful validation tool. Compared to the observer data, the logbook data showed both over-reporting and under-reporting of bluefin tuna, with the average amount of under-reporting of bluefin discards of 28 percent at the aggregate level for all vessels. Individual vessel data varied substantially from being more than 90 percent accurate with observer data for that trip to more than 75 percent inaccurate compared to observer data for that trip. These data indicate a wide range in reporting accuracy at a vessel level. Specific information on this analysis is in the Appendix of the FEIS. Notwithstanding potential under-reporting by some vessels, logbook data are the most complete source of available data regarding vessel level interactions with bluefin tuna because 100 percent of pelagic longline vessels are required to submit logbook reports for every set.

NMFS also analyzed observer data in order to verify the spatial and temporal patterns of bluefin interactions that were noted in the logbook data (Chapter 3 of FEIS). Although the observer data could not be compared directly to the logbook data because it is collected with lower frequency and at a different scale, the observer data indicated similar patterns of bluefin interactions as the logbook data. The logbook data represents the best available source of fine-scale information on bluefin interactions at this time. This final rule also implements enhanced monitoring and reporting requirements that will improve information on bluefin interactions in the pelagic longline fishery (*i.e.,* VMS and electronic monitoring).

Comment 26: NMFS received multiple comments regarding access to the GRAs based on performance. Comments 26–42 relate to specific performance criteria. A commenter stated that NMFS should include 2012 data in the IBQ Allocation calculations and GRA area access calculations.

Response: NMFS agrees that 2012 data should be included in these data calculations in order to reflect the characteristics of the fishery in the recent past. The 2012 data set represents the most recent calendar year for which complete data was available at the time the FIES analysis was begun. Therefore, in the FEIS NMFS included sets made in 2012 in the pool of data used to calculate the bluefin-to-designated target species ratios for allocation and GRA access analyses. NMFS also included 2012 data from the Pelagic Observer Program and the Logbook program to calculate the Observer and Logbook Compliance scores. NMFS also adjusted the historical qualification period from 2006 to 2011, to 2006 to 2012, in order to better reflect the variability in the fishery and account for recent trends.

Comment 27: Commenters expressed concern about access to the GRAs based on performance criteria based on logbook data, validity of which the commenter stated was questionable, given the possible incentives to misreport bluefin interactions through the logbook.

Response: As explained in Response to Comments 25 and 82 NMFS acknowledges that there are issues with logbook data accuracy; however, it offers the most comprehensive data on the fishery and provides a means to analyze individual vessel behavior. HMS logbook data represents a census of the fishery.

Comment 28: One commenter stated that there was no regulation that vessels must avoid bluefin tuna in the past, and vessels should not be singled out now for catching more bluefin by chance.

Response: Directed fishing on bluefin tuna with pelagic gear is not permitted. Any interactions with pelagic longline are incidental to other directed fishing and regulations have been designed to discourage any such interactions and to minimize bycatch to the extent practicable. NMFS has managed the pelagic longline fishery as an incidental category for bluefin for many years and has implemented a number of regulations to limit the bluefin that can be retained and to discourage interactions with bluefin (*e.g.,* limiting the number of bluefin that can be landed based on the weight of target species, implementing a time-area closure for bluefin in June in the northeast, requiring weak hooks in the Gulf of Mexico). The pelagic longline category as a whole has traditionally been allocated 8.1 percent of the total U.S. quota to cover incidental catch during directed fishing operations for other species, but those catches (including dead discards) have been significantly over that subquota in recent years.

Through analysis of logbook data between 2006 and 2012, NMFS noted that a small number of vessels were responsible for the majority of reported bluefin interactions. In this and previous rulemakings, members of the pelagic longline fleet have repeatedly asked for increased individual accountability in the fishery. Amendment 7 is implementing management measures that will address this situation, and will hold individuals accountable for their bluefin interactions.

Comment 29: NMFS should not penalize small vessels because of their inability of provide adequate space for observers.

Response: NMFS designed the scoring system for the Pelagic Observer Program Performance metric being implemented by this final rule such that valid reasons for not carrying an observer will not be penalized. Observer coverage is integral to the management of the fishery as it contributes important, objective data in support of the management of protected species and provides important information on the pelagic longline fishery utilized in the management of bluefin and other HMS species. Due to the importance of having enough observed trips to meet the observer coverage targets required by national and international obligations, NMFS also evaluated vessels on the number of trips observed. The agency utilizes observer data to develop estimates of protected resources interactions and estimates of discards of other species including bluefin. These data are essential for stock assessments and are critical in meeting international management obligations. Under ATCA and as a contracting party of ICCAT, the United States is required to take part in the collection of biological, catch, and effort statistics for research and management purposes.

Comment 30: NMFS received comments on the data used to calculate scores for performance metrics and IBQ allocations. NMFS received comments indicating that dolphinfish and wahoo from the HMS logbook needed to be included in the performance metric scoring. Several commenters requested the Agency include landings of designated target species (primarily dolphinfish and wahoo) reported in the coastal fisheries logbook in calculations used to assess IBQ and performance. Other commenters suggested that NMFS should use all pelagic longline logbooks in determining the Bluefin Avoidance Score.

Response: Dolphinfish and wahoo reported in the HMS logbook were used to develop scores for performance

metrics. However, landings of these species reported in the Coastal Fisheries Logbook were not used in the performance metrics for several reasons. (1) The Coastal Fisheries Logbook would not contain landings of the primary target species of the HMS pelagic longline fishery (swordfish and BAYS tunas), and would not provide for the reporting of bluefin tuna interactions. Therefore, the actual ratio of landings of designated target species to bluefin interactions cannot be accurately calculated for sets reported in the Coastal Fisheries Logbook. (2) Fishermen in the southeast Atlantic that report in the Coastal Fisheries Logbook could have an advantage over fishermen in the Gulf of Mexico or New England that do not have the same type of reporting requirements and the same mechanism to report retention of dolphinfish. (3) The HMS logbook and the Coastal Fisheries Logbook require different types of data to be reported which creates a mismatch in how the data can be combined and collectively analyzed, which in turn could result in inconsistencies between the two data sets. (4) Specific geographic data (*i.e.,* latitude and longitude for each set) that would were reported in the HMS logbook and used to identify and evaluate the ecological and economic effects of gear restricted areas are unavailable through the Coastal Fisheries Logbook. Rather, fishermen report location where the majority of all catches of each species were made through reference to a 1° latitude × 1° longitude grid cell. If NMFS were to incorporate data at the finest scale available (1° latitude × 1° longitude), NMFS would have to disregard the overwhelming number of requests for management (and visualization/depiction of data) at a finer scale. (5) The Coastal Fisheries Logbook requires landings *per trip* to be reported by weight whereas the HMS Logbook requires all interactions *per set* to be reported by number. Also, fishermen reporting in the Coastal Fisheries Logbook may report gutted or whole weight. (6) A percentage (20%) of fishermen reporting through the Coastal Fisheries Logbook are selected to report discarded fish through a Supplemental Discard and Gear Trip Report form at the trip level, whereas all fishermen reporting in the HMS Logbook must provide this information for every set, which also creates a mismatch in how data can be combined and collectively analyzed. For these reasons NMFS used dolphinfish and wahoo catch data from the HMS logbooks to develop scores for performance metrics, but did not use the landings data reported in the Coastal Fisheries Logbook.

Comment 31: NMFS should not base performance metrics on the Northeast Distant (NED) Area.

Response: NMFS incorporated all data reported through the HMS logbook in the calculation of performance metrics, regardless of where vessels fished. Exclusion of the sets made in the NED area could result in certain vessels that had a lot of fishing effort in this region receiving a competitive advantage or a disadvantage in terms of performance metric scores. Further, vessels that fish in the NED are not exempt from observer (if selected) or logbook reporting requirements.

Comment 32: NMFS should consider that, by allowing access based on the performance of a vessel, the new owner of a vessel may be evaluated based on prior poor vessel performance under a different owner.

Response: As explained below, NMFS determined that the relevant historical activity should be that associated with the vessel (and not the permit), and therefore, the preferred IBQ Program would evaluate vessels based on all activity attributed to that vessel through the qualification time period (2006–2012). In general, the use of historical data as part of an individual quota share (or a performance criteria) can be complex due to historical transfers of the limited access permit from one vessel to another or changes in vessel ownership. The quota share formula implemented by Amendment 7 is based upon historical data associated with a permitted vessel. NMFS determined that the historical 'platform' upon which to base the quota share should be the vessel history instead of the permit history for the following reasons: (1) Vessel history reflects current and historical participation in the fishery; (2) the regulations regarding the transfer of Atlantic Tunas Longline category permits do not address fishing history (*i.e.,* do not specify whether when an Atlantic Tunas Longline category permit is transferred from one vessel to another, whether the fishing history also transfers); and (3) the structure of the databases in which the logbook data resides uses the vessel as a key organizing feature, and therefore the compilation of data associated with a particular vessel is simpler and less prone to error (*i.e.,* it is more complex to compile data based on an individual permit history). However, once the initial allocations are established, bluefin quota shares will be associated with the permit for future vessel transactions. For example, if a permitted vessel has quota shares, and the owner of the permitted vessel decides to sell the permit but keep the vessel, the seller of the permit will no longer have any privileges with respect to the IBQ Program (they would only have fishing both without a permit). In contrast, the buyer of the permit would have the eligibility for the IBQ associated with that permit (although the permit buyer would need to put that permit on a vessel in order to receive quota allocation).

Comment 33: One commenter asked whether the public will know the identity of vessels excluded from the GRA.

Response: NMFS does not intend to publicly release the identity of vessels without access to the GRA.

Comment 34: NMFS received several suggestions concerning changes to the logbook performance metric, logbook reporting requirements, and requests for faster logbook submission methods. Some commenters felt that NMFS should not include a logbook performance metric. Commenters noted that logbook reports are usually late because it takes time to collect the required economic information, and sometimes fishermen are out for extended periods of time. Dealers sometime take 2 or more weeks to get a return done, which results in delays in submitting data to the Logbook Program. For offshore/distant water fishermen, it sometimes takes more than a week for the receipt of information from dealers, especially if the catch is offloaded in Canada. The commenters felt that if NMFS wants to retain this performance metric, the agency should require that dealer tally sheets be submitted separately from the logbooks. NMFS received suggestions to transition the logbook performance metric from the date of opening the letter to the date of receipt by the Agency to allow for contingencies such as a government shutdown (or other factors that may delay Agency officials from opening letters). A commenter felt that NMFS should establish a tolerance for the mailing of logbook reports from different parts of the country to Miami, FL, because fishermen in Florida have an advantage over fishermen based in more distant locations (*e.g.,* Maine) due to the length of time it takes to deliver mail. NMFS was asked to establish a process whereby fishermen can submit logbooks by fax or online to minimize delays due to the distance a letter has to travel.

Response: Current regulations require fishermen to submit logbooks within 7 days of offloading. Logbook reports must include weighout slips showing the dealer to whom fish were

transferred, the date of transferal, and the carcass weight of fish for which individual weights are recorded. Timely logbook reporting is a critical component of quota monitoring, particularly for species like HMS that have small annual or seasonal quotas. Many pelagic longline fishermen are able to comply with the requirement to submit logbooks within seven days. There are members of the fleet, however, that take months to a full year to submit logbook reports. These late reports, either late due to logistics or non-compliance, make quota management of HMS very difficult, especially if quotas are small. Amendment 7 will require catch reporting via VMS units to ensure timely report of bluefin catches. NMFS may pursue faster mechanisms to report logbooks in the future, such electronic logbooks.

Comment 35: NMFS should have solicited feedback on performance criteria from the industry. The commenter felt that NMFS developed the performance criteria in a ''black box'' and did not provide ample notification that the agency would be evaluating individuals on these metrics.

Response: Significant time and opportunity for public comment have gone into what has been a very thorough rulemaking process for this Amendment. NMFS repeatedly solicited public feedback and Advisory Panel input on the alternatives in Amendment 7, including the development of the performance criteria. NMFS has discussed the management of bluefin discards with the public and with the Advisory Panel since a 2009 Advanced Notice of Proposed Rulemaking. NMFS indicated in both the Predraft and the DEIS that a small number of individuals were responsible for the majority of bluefin interactions. NMFS received numerous public comments in Amendment 5 to the Consolidated HMS FMP indicating that the pelagic longline fleet desired individual accountability measures, instead of holding the entire fleet responsible for high interactions of a few vessels with dusky sharks. NMFS developed the performance criteria as a means to evaluate fishermen and hold them individually accountable for reduction of bluefin discards and compliance with the reporting and monitoring regulations. These performance criteria offer an alternative to fleet-wide time/area closures. Furthermore, the multiple criteria offer individuals who have moderate levels of bluefin interactions to still access GRAs provided that they comply with the reporting and monitoring requirements.

Reporting and observer requirements have been in place for several years, and NMFS regularly communicates with constituents concerning the rules pertaining to these programs. NMFS notifies individuals selected for reporting annually with letters that detail reporting requirements. Furthermore, NMFS produces outreach materials, compliance guides, and a Web site that clearly state reporting requirements. With respect to the observer program, NMFS also clearly notifies individuals of vessel selection for observer coverage. The Pelagic Observer Program regularly communicates with the points of contact (captains and vessel owners) regarding the organization and scheduling of observed trips. Commercial fishermen are therefore provided ample notification of the regulations concerning observer and logbook reporting.

Comment 36: NMFS should not deny access to individuals who are good bluefin avoiders. The intent of the rule is to reduce bluefin discards, not to penalize fishermen for being out of compliance with observer or reporting requirements. NMFS Office of Law Enforcement should be solely responsible for penalizing fishermen that are out of compliance.

Response: NMFS regulations that require fishermen to submit logbooks or to carry observers are designed to collect information that NMFS uses to manage HMS fisheries. When fishermen do not comply with such regulations, they jeopardize NMFS' ability to develop sound management strategies, conduct stock assessments with the best scientific information available, estimate bycatch interactions and bluefin discards, and comply with international treaty requirements. As such, under the Amendment 7 regulations, NMFS will consider a fisherman's compliance with current logbook and observer requirements when evaluating whether or not NMFS will grant that fisherman access to the Cape Hatteras GRA—an area where interactions with bluefin tuna are likely. NMFS wants to ensure that fishermen allowed access to the Cape Hatteras GRA will abide by all relevant regulations to facilitate monitoring of fishing activities in these areas.

Comment 37: NMFS should consider vessels that have no history or are new to the fishery as qualified to access the closed areas (''innocent until proven guilty''). Vessels should have a ''clean slate'' at the start of each year and access to the GRA. If they interact with too many BFT, then they should be closed out.

Response: The GRAs are selected as locations with relatively high numbers of historical bluefin interactions. The Bluefin Avoidance Score was designed to evaluate a vessel's ability to avoid bluefin tuna, relative to its landings. New entrants to the fishery will have performance metrics associated with the permit that the entrant purchased. All vessels will have a new performance score at the start of each year, based upon the three most recent years of available data, and therefore performance scores may improve over time.

Comment 38: Some commenters were concerned about the incentives that a conditional access program may provide.

Response: The concept of providing conditional access to a GRA (*i.e.,* the Modified Cape Hatteras Pelagic Longline GRA) is based on the historical data, which indicate that a relatively small number of vessels are responsible for a large portion of the bluefin tuna interactions. Because conditional access will be based upon the rate of bluefin tuna interactions (as well as reporting metrics), the program rules provide incentives to all pelagic longline vessels with respect to bluefin tuna interactions. Specifically, vessels with historically high bluefin tuna interactions that are not allowed access will have an incentive to reduce their rate of bluefin interactions if they desire to fish in the GRA. Conversely, vessels with a relatively low rate of bluefin interactions that are allowed to fish in the GRA will have an incentive to continue to avoid bluefin in order to maintain a low rate of bluefin interactions. In contrast, if all vessels were precluded from the Modified Cape Hatteras GRA, regardless of the amount of a vessel's interactions with bluefin, there would be no incentives with respect to the catch of bluefin tuna (and the scale of potential economic impacts would be disproportionate to the estimated amount of reduction in bluefin tuna interactions). No access to the Gulf of Mexico GRAs was proposed because the interactions with bluefin in the Gulf of Mexico are more evenly distributed among all of the vessels fishing there (and not concentrated among a few vessels as in the area off Cape Hatteras).

Comment 39: NMFS should not count bluefin interactions from sets made while participating in NMFS programs (*e.g.,* shark research fishery) towards the calculation of bluefin to designated target species ratios because fishermen fish differently on those trips.

Response: NMFS did not exclude such trips because of the relatively few

vessels that might be affected; participation in research programs could have affected vessels in either a positive or negative manner. In most instances, minor differences in the amounts of catch of either target species or bluefin would not likely affect a vessel's allocation due to the three tiered allocation system (*i.e.,* a range of catch values is designated to each of the three tiers), and the performance metric scoring system (based on a range of values). Fishermen that believe they have been disadvantaged through participation in research may appeal access and IBQ decisions through the two-stage appeal process.

Comment 40: NMFS should calculate performance metrics only on the most recent data available. NMFS needs to revisit criteria for inclusion—some vessels have hardly fished over the last few years.

Response: NMFS agrees that the inclusion of newer data is important. In the Predraft and the DEIS, NMFS analyzed and developed alternatives based on pelagic longline data from 2006 to 2011. NMFS included an additional year of logbook data (2012) in the FEIS analyses for each time-area alternative. In the FEIS, the 2006–2012 time period was chosen because the last significant bluefin fishery management action was the 2006 Consolidated HMS FMP, and therefore fishing behavior from prior to 2006 would have been based on previous management measures and may not be representative of the current fishery. The 2006 to 2012 time period is long enough to minimize the influence of one-time events such as natural or man-made disasters. NMFS intentionally designed the GRAs to be flexible and allow fishing vessels that have been affected by short-term events to participate in the pelagic longline fishery.

The Agency will distribute letters indicating the final performance metrics and what members of the fishery could expect by the start of the fishing year. Initial performance metrics will be calculated on the entire historical time period considered for determining IBQ allocations. However, in subsequent years, the performance metrics will be calculated on the previous three years of available data.

Comment 41: NMFS should not base access on history. High bluefin interactions in one year do not necessarily mean that there will be high bluefin interactions the following year.

Response: As noted in the response to Comment # 44 NMFS acknowledges that past performance may not be a perfect indicator of future performance. However, one of the objectives of the use of Performance Metrics is to provide incentives for future fishing behavior that will result in reduced rates of interactions between pelagic longline gear and bluefin. Although there is variability in fish distribution and activity from one year to the next, there are certain vessels that consistently report high interactions with bluefin tuna through logbooks. As explained in Response to Comment # 38 conditional access based on past performance provides continuing incentives to avoid bluefin tuna and to comply with relevant reporting and monitoring requirements.

Comment 42: NMFS should evaluate vessels on the number of interactions with protected resources (*e.g.,* pilot whales) as part of the criteria for accessing the Cape Hatteras GRA.

Response: Although Amendment 7 management measures are consistent with the relevant laws and regulations regarding protected species, the objectives upon which it is based did not include any specific objective regarding protected species, and did not include any specific management measures regarding protected species. Therefore the commenter's suggestion to incorporate criteria relating to protected resources is outside of the scope of the Amendment 7. The impacts of the Amendment 7 measures on protected species are analyzed in this FEIS.

7. Cape Hatteras Gear Restricted Area

Comment 43: NMFS received a large number of comments supporting the five-month Cape Hatteras Pelagic Longline GRA as proposed (DEIS preferred Alternative). NMFS also received comments suggesting modifications to the scope and duration of the area, and commented on whether or not conditional access to the area is appropriate.

Response: The Cape Hatteras area has consistently been a location where a high number of bluefin interactions with the pelagic longline fleet have occurred, and was initially identified in the Predraft to Amendment 7 as a geographic area where a GRA may be warranted. Responses to the specific suggestions regarding the Cape Hatteras GRA are below (see responses to comments 43–49. As described in comments 46 and 47, NMFS modified the preferred alternative in the FEIS (the ''Modified Cape Hatteras Pelagic Longline GRA'').

Comment 44: Some commenters supported the proposed GRA because access would be granted to some vessels, while other commenters stated that NMFS should implement GRAs without conditional access. Commenters noted that the Agency would be penalizing fishermen for bluefin interactions (specifically, discards) when there was not previously a regulation that required bluefin avoidance. Some commenters felt that the implementation of performance metrics is too severe a management measure, and fishermen that might be excluded from fishing in the Cape Hatteras GRA noted that the proposed measures would have severe economic implications for their businesses. Some commenters only supported the Cape Hatteras GRA if pelagic longline vessels are allowed to fish under General category rules in the area.

Response: Analysis of logbook data from 2006 through 2012 indicated that a relatively low number of vessels were responsible for the majority of bluefin interactions in the Atlantic. NMFS developed the concept of conditional access to the GRA in light of this pattern, in order to incentivize individual fishermen to avoid bluefin tuna, and to reduce economic impacts to the extent practicable.

A system of conditional access will hold fishermen individually accountable for their interactions, as opposed to holding the entire fleet responsible for high interactions by a small number of fishermen. Because conditional access will be based upon the rate of bluefin tuna interactions (as well as reporting metrics), the program rules will provide incentives to all pelagic longline vessels with respect to bluefin tuna interactions. Specifically, vessels with historically high bluefin tuna interactions that are not allowed access will have an incentive to reduce their rate of bluefin interactions if they desire to fish in the GRA. Conversely, vessels with a relatively low rate of bluefin interactions that are allowed to fish in the GRA will have an incentive to continue to avoid bluefin in order to maintain a low rate of bluefin interactions. In contrast, if all vessels were precluded from the Modified Cape Hatteras GRA, regardless of the amount of a vessel's interactions with bluefin, there would be no incentives with respect to the catch of bluefin tuna (and the scale of potential economic impacts would be disproportionate to the estimated amount of reduction in bluefin tuna interactions). No access to the Gulf of Mexico GRAs was proposed or implemented because the interactions with bluefin in the Gulf of Mexico are more evenly distributed among all of the vessels fishing there (and not concentrated among a few vessels as in the area off Cape Hatteras).

Regarding the comment that it is unfair to use past interactions with

bluefin as part of the allocation formula because in the past it was lawful to interact with bluefin tuna: Pelagic longline regulations were designed to limit or reduce retention of bluefin tuna (*e.g.,* target catch requirements, weak hook requirements). Therefore, it is appropriate that the IBQ Program implemented by this final rule provide some benefit in the form of IBQ allocation for vessels that may have fished in a manner that reduced interactions with, or avoided bluefin tuna, consistent with the regulations.

NMFS acknowledges that past performance may not be a perfect indicator of future performance. One of the objectives of the Cape Hatteras Pelagic Longline GRA measure implemented by this final rule is to provide incentives for future fishing behavior that will result in reduced rates of interactions between pelagic longline gear and bluefin. As explained in response to comment # 63 NMFS proposed, but is not implementing a measure that would have allowed pelagic longline vessels to fish under the General category rules.

NMFS acknowledges that some vessels could experience economic hardship due to not having access to the Cape Hatteras GRA. However the data indicate that there will also be substantial reductions in the number of bluefin tuna interactions associated with the changes in fishing behavior (*i.e.,* 34 percent reduction in bluefin discarded, and 6 percent reduction in bluefin kept, fishery-wide) as a result of this action. The performance metric system is designed to incentivize fishermen to avoid bluefin tuna and to comply with observer and reporting requirements. Based on the FEIS analysis, 14 vessels of 135 would not have access to the Cape Hatteras GRA being implemented. NMFS determined that, after redistribution of effort, there was not a sizable difference in the number of bluefin kept and discarded between implementation of the Cape Hatteras GRA without access for any vessels (−389 fish per year), and implementation of the original Cape Hatteras GRA with Access Based on Performance (−401 fish per year). The total economic losses as a result of implementing the proposed Cape Hatteras GRA for all vessels, the proposed Cape Hatteras GRA with Access Based on Performance, and the Modified Cape Hatteras GRA with Access Based on Performance being implemented, after redistribution of effort are −$893,562; −$301,651; and −$210,956, respectively. NMFS therefore is not implementing the GRA without access because the measure would result in a comparable reduction in bluefin interactions, but at nearly quadruple the cost in estimated economic losses for the pelagic longline fleet. The additional incentives that the performance metrics regarding compliance with logbook and observer requirements were also determined to be important to support the Amendment 7 objective regarding enhanced reporting and monitoring.

Comment 45: Commenters suggested that NMFS should modify the proposed Cape Hatteras GRA to include the areas north and east, as well as southwest of the proposed Cape Hatteras GRA, to address possible redistribution of fishing effort and other areas of moderate to high bluefin interactions. A commenter requested consideration of a specific extension of the proposed GRA northward to cover a region with moderate bluefin interaction in order to prevent increased fishing effort in the area as a result of redistribution by fishermen whose performance scores are not high enough to fish in the Cape Hatteras GRA. The commenter stated that the area could further act as a buffer to protect migrating bluefin tuna that aggregate there. NMFS also received a comment suggesting a GRA along the continental shelf between the Delmarva Peninsula and Georges Banks for the time periods of June through July, and November through December to complement the preferred alternatives.

Response: NMFS analyzed the impact of the suggested GRA to the north of the proposed Cape Hatteras GRA (assuming redistribution of fishing effort). The suggested extension to the north would result in a reduction of only 3 bluefin tuna, after redistribution of effort. Reductions in other species would be minor. While the suggested GRA would be small in both time and space, it is not anticipated to contribute much to the goal of reducing bluefin discards. For these reasons, NMFS considered but did not further analyze or otherwise include this suggested modification as an alternative in the FEIS.

NMFS also analyzed a GRA along the continental shelf between the Delmarva Peninsula and Georges Banks for the time periods of June through July and November through December and determined that the reduction in effort with redistribution would result in notable reduction in bluefin interactions (−48 fish/year kept; −310 fish/year discarded). However, the reductions in target catch would be substantial (bigeye tuna kept (−977 fish/year); yellowfin tuna kept (−1,206 fish/year); and the numbers of swordfish kept (−1,118/year)). That configuration, combined with the Cape Hatteras GRA, would close the majority of the continental shelf to fishermen that do not meet performance objectives. These suggested modifications did not achieve as much reduction in bluefin interactions compared with the reduction in target catch. Therefore, NMFS but did not include the suggested GRAs as an alternatives in the FEIS.

Comment 46: The North Carolina Department of Environment and Natural Resources and pelagic longline fishermen commented that NMFS should omit the southeast corner of the proposed GRA (preferred alternative in the DEIS) due to the prevailing direction of currents in this area, and the fact that gear set south or southwest of the Cape Hatteras GRA would drift into the GRA.

Response: NMFS analyzed additional spatial and temporal configurations of the Cape Hatteras GRA and determined that little conservation benefit could be expected from limiting access to this area and that the associated economic costs were not warranted. NMFS agrees that the prevailing currents would have effectively closed productive fishing grounds southwest of the GRA in federal waters off the coast of central and southern North Carolina. As a result of these analyses, and considerations, NMFS modified the measure from the configuration which was proposed to a gear restricted area during the same months (December through April), but with a slightly different configuration.

Comment 47: NMFS should consider the potential negative economic impact on fishermen in the area who do not have access to other fishing grounds.

Response: The design of the Cape Hatteras GRA being implemented by this final rule was the result of an iterative process. NMFS analyzed multiple time periods and geographic areas in order to take into consideration both the potential reduction in the number of bluefin interactions and the potential reductions in target catch. The analysis considered relevant fisheries data, and also oceanographic trends. In the DEIS, due to current patterns in the Cape Hatteras area, the zone affected by the proposed Cape Hatteras GRA was analyzed beyond itsexplicit boundaries. Analysis of a buffer region was needed because vessels to the south and west of the GRA would be prevented from fishing in these areas because their gear would drift into the GRA (having the effect of creating a larger affected geographic area that the boundary of the GRA). The DEIS analysis of impacts not only considered the reduced fishing effort within the GRA, but also the reduced fishing effort in a buffer region to the south and west of the area. NMFS included sets made in this buffer region

into the redistribution analyses. Based on public comment and additional analyses, NMFS decided to implement the Modified Cape Hatteras GRA, which will minimize the adverse impacts on fishing opportunities while still achieving comparable reductions of bluefin discards and almost identical conservation and management benefits as the original proposal.

Comment 48: NMFS should implement a GRA and have various requirements including mandatory observer coverage, electronic monitoring, or the use of weak hooks in order to fish the area. Several commenters suggested that NMFS implement the GRA and only allow access with 100 percent observer coverage.

Response: Observer coverage is an important tool in monitoring the pelagic longline fishery. Vessels with access to the Cape Hatteras GRA will be subject to the same level of observer coverage as the rest of the pelagic longline fleet. Electronic monitoring is an important aspect of the new IBQ Program, which includes the GRAs. Under Amendment 7 regulations, any vessel fishing with pelagic longline gear will be required to have an operational electronic monitoring system onboard. NMFS did not consider an alternative that would implement new weak hook requirements for the Atlantic, because we do not presently have data indicating that such measures would be effective in meeting the objectives of Amendment 7, given size differentials between fish in the Gulf of Mexico and the Atlantic and the current state of research on the subject.

Comment 49: NMFS should establish communication protocols designed to help fishermen minimize interactions for the regions of concern instead of implementing GRAs. One commenter suggested the establishment of communication protocols, similar to those designed for the Pelagic Longline Take Reduction Plan, be required within the boundaries of the Cape Hatteras GRA.

Response: Communication protocols can be valuable and could assist pelagic longline vessels to avoid bluefin tuna. Captains are already required to follow a communication protocol for pilot whales in this area. NMFS believes such a system would work best for bluefin avoidance if it were voluntary, and had the full support of those involved. However, in the interest of avoiding bluefin and minimizing the risk of shutting down the pelagic longline fishery, NMFS strongly encourages vessel captains to communicate the location of bluefin tuna with each other.

8. Gulf of Mexico Gear Restricted Area

Comment 50: A large number of commenters expressed general support for a GRA in the Gulf of Mexico, while others stated that NMFS should not implement a GOM GRA, due to the severe economic impact it would have on the fishery.

Response: Implementation of a GRA in the Gulf of Mexico supports the achievement of the Amendment 7 objectives. A GRA will, in conjunction with the other management measures implemented by this final rule, result in the reduction of dead discards of bluefin tuna by the pelagic longline fishery. Although implementation of a GRA will have a negative economic impact on the pelagic longline fishery, the preferred alternative will have less of an impact than some of the other alternatives considered and analyzed. As described in more detail in the responses to comments below, NMFS analyzed a range of alternatives, and took into account the importance of fishery resources to fishing communities by analyzing economic and social data. Because GRAs may result in the reduction and/or redistribution of fishing effort by pelagic longline gear, the preferred alternative represents a balance between anticipated reductions in dead discards of bluefin, and potential negative economic impacts on the pelagic longline fishery. Furthermore, the preferred alternative will support the broader objectives of both stock rebuilding as well as the continued viability of the commercial and recreational fisheries that depend upon bluefin tuna.

Comment 51: Some commenters supported the Amendment 7 alternative that would prohibit the use of pelagic longline gear throughout the Exclusive Economic Zone (EEZ), year-round, in order to protect spawning bluefin, and aggregations of bluefin. Some commenters noted the potential for a gulf-wide closure to reduce injuries and deaths of protected species such as sea turtles.

Response: NMFS analyzed the biological and socio-economic impacts of this Alternative, and although prohibition of pelagic longline gear would eliminate interactions between pelagic longline gear and bluefin in the Gulf of Mexico, such a prohibition would not minimize the reductions in target catch (*e.g.,* yellowfin tuna, swordfish) in the pelagic longline fishery or the and negative economic impacts on the fishery, both goals consistent with Amendment objectives. The prohibition of pelagic longline gear in the Gulf of Mexico EEZ (year round) would be expected to only result in a 14 percent decrease in the numbers of bluefin tuna discarded, yet would reduce revenue from pelagic longline gear by approximately $7.63 million per year, and affect up to 75 vessels.

NMFS also analyzed the possible effects of the GRA alternatives on multiple species, including sea turtles. The FEIS contains the results of the analyses that evaluated the GRA alternatives using redistribution analyses to ensure that the GRAs would not substantially increase interactions with sea turtles if fishermen were to redistribute their effort into open waters of the Atlantic Ocean. These analyses showed that there would be no net change in the average number of annual interactions with leatherback or loggerhead sea turtles for the Modified Cape Hatteras GRA, and a reduction of 1 interaction for these turtles for the Modified Spring Gulf of Mexico GRA. NMFS expects Amendment 7 measures implemented will have a neutral or minor beneficial impact on protected species as a result of potential impacts on fishing effort, especially fishing effort associated with pelagic longline gear.

The fisheries managed under the 2006 Consolidated Atlantic HMS FMP and its amendments have undergone formal and/or informal Section 7 consultation and collectively address the ongoing Atlantic HMS fisheries. On August 15, 2013, NMFS determined that the proposed measures in Amendment 7 to the 2006 Consolidated HMS FMP would not require reinitiation of formal consultation. The environmental effects of the preferred alternatives in this FEIS are substantially the same as those analyzed in the DEIS, although some different alternatives are now preferred and two of the alternatives have been slightly modified. No additional or substantively different effects on listed species are expected as a result of these changes. For detailed information on reinitiation of formal Section 7 consultation on HMS fisheries, see the Classification section.

Comment 52: Some commenters supported the Gulf of Mexico EEZ GRA, which would prohibit the use of pelagic longline gear from March through May, while others supported expanding the duration of the Gulf of Mexico EEZ GRA to include all the months during which bluefin tuna may be present in the Gulf of Mexico, or suggested specific ranges of months (*e.g.,* December through June, March through May, March through August). A large number of commenters felt that a GRA that encompassed the entire Gulf of Mexico EEZ would better account for variability in bluefin distribution and areas of spawning

activity and changing fishing patterns within the fleet. Many commenters believed that a larger GRA should be implemented instead of any changes to quota allocations, or felt that the implementation of such a GRA would eliminate the need for IBQs.

Response: In selecting the preferred alternative, NMFS analyzed the time and areas in which the highest number of bluefin interactions have occurred, in order to achieve meaningful reductions in bluefin catch by pelagic longline gear, but also to minimize the reductions in target catch. A Gulf of Mexico EEZ GRA encompassing the entire Gulf of Mexico EEZ for the suggested range of months was not justified. First, there exists an historical pattern of relatively high number of interactions occurring in particular locations and months. Additionally, a GRA encompassing the whole of the Gulf of Mexico EEZ would have included locations where there have been relatively few interactions. Similarly, inclusion of locations with relatively few historical interactions in the GRA would still preclude fishing with pelagic longline gear in such locations, increasing the likelihood of additional lost revenue, with relatively little reduction in bluefin interactions.

Inclusion of months during which there have been relatively few interactions would preclude fishing opportunity, with relatively little reduction in bluefin interactions. In Chapter 3 of the FEIS, Table 3.29 presents a breakdown of all bluefin tuna interactions reported in the HMS Logbook, by month, in the Gulf of Mexico EEZ. Although bluefin tuna were noted year round in the Gulf of Mexico, the data indicated distinct spatial and temporal patterns. For example, between 2006 and 2012, there were 13, 3, 13, 16, and 13 total bluefin tuna interactions reported in July, August, September, October, and November, respectively. In comparison, the months that some comments suggested for a GRA (March through May) had 266, 498, and 496 total bluefin interactions in March, April, and May, respectively. NMFS does not believe that a GRA is warranted at this time during the late summer or early fall based on the reported numbers of bluefin tuna that occurred in this area. There is variability in bluefin distribution, and fishing patterns may change over time. Due to this variability, any specific GRA that does not cover the whole EEZ year-round may be less effective, or more effective, at reducing dead discards than the historical data would indicate. Notwithstanding this variability, a specific GRA designed using historic information, and encompassing only a portion of the Gulf of Mexico for specific months is likely to reduce dead discards over a multi-year time scale. In other words over time there are consistent patterns in bluefin distribution that may not be exhibited to the same extent each year. Therefore, a GRA is not likely to achieve the same level of effectiveness each year, but over time is expected to achieve reductions in dead discards similar to that indicated by NMFS' analysis.

In analyzing the Gulf of Mexico closure alternatives in the FEIS, NMFS also considered the need to gather scientific data from the Gulf of Mexico longline fishery data for the development of effective conservation and management measures. A larger GRA for the Gulf of Mexico EEZ would severely reduce the collection of important data from the pelagic longline fishery and would increase uncertainty in the western Atlantic bluefin stock assessment. Gulf of Mexico pelagic longline data are critical to the development of catch per unit effort (CPUE) information, which is used as the index of abundance for spawning bluefin tuna, an important element of the stock assessment for western Atlantic bluefin tuna. Such uncertainty would make it more difficult to assess the status of stocks, to set the appropriate optimum yield and define overfishing levels, and to ensure that optimum yield is attained and overfishing levels are not exceeded.

NMFS conducted a ''power analysis'' to determine the number of pelagic longline sets that would be required to maintain the current level of precision for the CPUE and found that approximately 60 percent of the recent number of pelagic longline sets in the Gulf of Mexico would be required. Although NMFS could transition from using this fishery dependent data to another data source (*i.e.,* fishery independent data), it would require several years before a new fishery independent data source could be used for stock assessment purposes and an abrupt cessation of the current CPUE data would mean a break in the time series and increase uncertainty in stock assessment results. NMFS will continue to explore alternative methods for the collection of independent data. In contrast to a GRA applicable to the full EEZ, a GRA in the Gulf of Mexico with a smaller area and short duration will still be effective in reducing bycatch to the extent practicable and protecting spawning-sized bluefin while permitting allowable fishing and the collection of data needed for index of abundance. The size and duration of the GOM GRA being implemented by this final rule, will not preclude the collection of the necessary data in support of the stock assessments, and will reduce bycatch during the spawning season, as well as augment the IBQ Program in ensuring that catch does not exceed the quota.

With respect to the relationship between the size of a GRA and other Amendment 7 alternatives (*i.e.,* IBQs and quota allocation), the use of multiple management tools will reduce negative economic impacts on the pelagic longline fishery, as well as achieve the diverse Amendment 7 objectives in a balanced manner.

Comment 53: Several commenters expressed support for the Small Gulf of Mexico GRA in the DEIS, which was proposed, but is not being implemented. A number of comments indicated the Small Gulf of Mexico GRA was the minimum acceptable size for a GRA in the Gulf of Mexico, while other commenters did not support the proposed Small Gulf of Mexico GRA, feeling that NMFS ought to do more to protect bluefin in the Gulf of Mexico. A large number of commenters requested that the agency re-evaluate the GRA and identify other alternatives. One commenter felt the DEIS lacked compelling justification for choosing an alternative that does not protect all spawners and increases fishing pressure in critical areas of the Gulf of Mexico. Other commenters felt that the boundaries encompassed by the Small Gulf of Mexico GRA did not reflect the best scientific knowledge available. Specific suggestions included modification of the duration (change, shorten, lengthen, or include specific months) to cover peak spawning periods or provide a buffer due to variability in the timing and area of bluefin spawning activity and longline fishing patterns from year to year. Some commenters believed the months of the GRA should cover the full bluefin spawning period. Other commenters suggested that the GRA be extended to the east or north to encompassed additional known spawning areas, or extended south to cover areas where large numbers of interactions have occurred.

Response: As stated in the response to comments 50, 51, and 52, NMFS analyzed a range of GRA alternatives that encompass a range of biological and socio-economic impacts, and would achieve various amounts of reductions in bluefin interactions and result in different reductions in revenue. As explained above in the response to comments 51 and 52, a complete Gulf of Mexico EEZ closure for a full year or portion of the year is not warranted

because a smaller GRA is sufficient to achieve the Amendment 7 objectives and to minimize bycatch and bycatch mortality to the extent practicable. Based on public comment, NMFS analyzed the impacts of additional areas and times in the Gulf of Mexico, not analyzed in the DEIS, and included 2012 data. As a result of these additional analysis, and careful consideration of both the biological and socio-economic impacts, NMFS is implementing the Spring Modified Gulf of Mexico Pelagic Longline GRAs.

The Spring Modified Gulf of Mexico Pelagic Longline GRAs include most of the geographic area of the GRA that was originally proposed, but are larger, extending further to the east, and are slightly reduced in size on the western and northern borders. Additionally, the Spring Modified Gulf of Mexico Pelagic Longline GRAs include a second area that is adjacent to the southern border of the Desoto Canyon Closed Area's northwestern 'block.'

The Spring Modified Gulf of Mexico Pelagic Longline GRAs encompass additional areas of historic bluefin interaction in the eastern-central Gulf of Mexico, and address a recent shift in pelagic longline fishing activity eastward. Between 2009 and 2012, there was a 10 to 20 percent shift from the Mid-Gulf Louisiana region to the eastern Gulf of Mexico region. The area defined by the Spring Modified Gulf of Mexico Pelagic Longline GRAs includes a larger portion of the spawning areas documented in the peer-reviewed literature at this time, but does not include all of the known bluefin spawning areas in the GOM for reasons previously explained. The Spring Modified Gulf of Mexico Pelagic Longline GRAs will occur during the months of April and May, the same time period as proposed for the original Small Gulf of Mexico GRA.

NMFS previously regulated large portions of the eastern Gulf of Mexico through implementation of the DeSoto Canyon closed area, Madison-Swanson and Steamboat Lumps Sites, and the Edges closure. The pelagic longline fleet fishes the continental shelf along the west coast of Florida between the southern DeSoto Canyon box and the Florida Keys. However, bluefin interactions in this area are relatively few compared to the areas evaluated in the FEIS.

Comment 54: One commenter noted that the size of the fishable area in the Gulf of Mexico is already small, given the constraints on the locations where they can fish, including existing pelagic longline closed areas, as well as the areas that must be avoided for other reasons (*e.g.,* activity range of seismographic vessels, which can operate for up to six months, and oils rigs).

Response: NMFS acknowledges that the Spring Modified Gulf of Mexico Pelagic Longline GRAs being implemented by this final rule will further reduce the amount of fishable areas in the Gulf of Mexico available for the use of pelagic longline gear, and that vessels choosing to fish in the Gulf of Mexico with pelagic longline gear will need to work around other industrial users of Gulf of Mexico resources. NMFS selected the boundaries of the Spring Modified Gulf of Mexico GRAs with careful consideration of the associated benefits and costs. NMFS optimized the size of the GRAs being implemented to achieve a meaningful reduction in dead discards, and still leave fishing grounds open for the pelagic longline fleet. The Cumulative Impacts Analysis in the FEIS (Chapter 6) considers the impacts of the preferred alternatives in the broader context of other historical and current activities.

Comment 55: NMFS should consider the impact on the yellowfin tuna and swordfish fisheries, which are active in the Gulf of Mexico and in the areas covered by the GRAs. Specifically, the commenter questioned whether the Gulf of Mexico pelagic longline fleet would be able to remain active.

Response: NMFS carefully considered the impact of the Spring Modified Gulf of Mexico GRAs on yellowfin and swordfish fisheries, both of which are robust and healthy fisheries in the Gulf of Mexico. The Spring Modified Gulf of Mexico GRAs achieve a balance between conservation objectives and providing continuing opportunity for the swordfish and yellowfin tuna fisheries. The primary conservation objective of the GRAs is to reduce bluefin interactions, and reduce bycatch and bycatch mortality to the extent practicable. NMFS compared among the alternatives the amount of 'savings' of bluefin tuna and the reduction in target catch as part of its analysis of the GRAs. Under the Spring Modified Gulf of Mexico GRA being implemented, the annual reductions in revenue associated with the reduced catches of swordfish and yellowfin tuna are estimated at $41,504 and $207,110, respectively. The annual reduction in total revenue is estimated at $1,793,922. An example of how the data was compared and alternatives evaluated follows: Comparing the Spring Modified Gulf of Mexico GRA with the alternative that would restrict the full EEZ for the months of March through May, the reduction in the weight of bluefin catch would be a little more than twice as much under the EEZ GRA (44.2 mt versus 19.2 mt under the Spring Modified Gulf of Mexico GRA), but the reduction in total revenue associated with the EEZ GRA would be more than six times larger than the reduction in total revenue associated with the Spring Modified Gulf of Mexico GRA ($1,793,922 versus $281,614 under the Preferred). In other words, compared to the Spring Modified Gulf of Mexico GRA, the amount of additional costs that would be associated with the EEZ GRA would be disproportionately greater than the additional conservation benefits associated with the EEZ GRA. The Amendment 7 measures are not designed to target a particular amount of reduction in dead discards, but rather to reduce dead discards in a meaningful way, provide strong incentives to avoid and reduce bycatch, and take into account the potential impacts on the pelagic longline fishery. The combined effect of the Modified Spring Gulf of Mexico Pelagic Longline GRA and the Modified Cape Hatteras Pelagic Longline GRA will reduce the number of bluefin discarded by 40 percent, and the number of bluefin kept by 10 percent (fishery-wide).

Comment 56: One commenter asked why NMFS did not propose conditional access to the Gulf of Mexico GRAs, based on performance metrics, in contrast to the Cape Hatteras GRA, for which access was proposed. The commenter suggested that performance metrics should be applied to all GRAs.

Response: NMFS did not propose and is not implementing conditional access to the Gulf of Mexico GRAs (based on performance metrics) in part because they would not be as effective in reducing discards of bluefin tuna in the GOM as they would be in the Atlantic. The fact that a relatively small number of vessels are responsible for the majority of bluefin interactions in the Atlantic makes access to the Modified Cape Hatteras GRA based on performance metrics effective, in order to reduce dead discards, provide incentives for modifying fishing behavior, and acknowledge past performance. In contrast, the pattern of interactions with bluefin tuna in the GOM is different from that in the Atlantic, with the interactions more evenly distributed among all vessels (*i.e.,* more vessels responsible for the interactions). NMFS evaluated the Spring Modified Gulf of Mexico GRA using performance metrics, and applying them, only three vessels out of the 61 that fished in the Spring Modified Gulf of Mexico GRAs would not have had access to the GRAs.

Therefore, the savings from implementing the performance metrics would be very small, and the resulting ecological impacts would have been similar to not implementing a GRA at all.

Comment 57: Some commenters felt that NMFS should delineate a GRA using the same boundaries as the bluefin Habitat Area of Particular Concern (HAPC).

Response: NMFS determined that the reductions in bluefin tuna interactions resulting from a Gulf of Mexico GRA that encompasses the boundaries of the bluefin HAPC would be very similar to the savings incurred from a GRA drawn encompassing the boundaries of the Gulf of Mexico EEZ. NMFS therefore did not further evaluate a GRA that was designed to encompass the boundaries of the HAPC or develop an alternative around this proposed boundary.

Comment 58: A commenter indicated that he could support a Gulf of Mexico GRA alternative if the pelagic longline fleet is provided flexibility through some of the alternatives proposed such as access to current closed areas, and ability to fish under General Category rules.

Response: As described under the Response to Comments #63, and #64, access to certain closed areas, and the ability to fish under General Category rules in certain closed area were proposed but are not being finalized in this final rule. The measures implemented by Amendment 7 provide flexibility and balance the Amendment 7 objectives to reduce dead discards, yet also provide fishing opportunity.

Comment 59: The Gulf of Mexico Fishery Management Council commented that NMFS should consider potential impacts on vessels using bottom longline gear. They were concerned about the synergistic effects of the pelagic longline and bottom longline regulations on vessels.

Response: The Modified Spring Gulf of Mexico GRAs are designed for the pelagic longline fishery only. Vessels that exclusively use bottom longline gear would not be affected by the GRAs. Vessels that use both bottom longline gear and pelagic longline gear during the year would be impacted, and would likely modify their fishing behavior or business plan. Bottom longline gear is currently subject to regulations including time and area restrictions, and is not likely to capture bluefin tuna due its deployment near the bottom of the ocean.

Comment 60: NMFS should compensate vessels for the time period the Gulf of Mexico GRAs are in place.

Response: NMFS' authority to assist fishers in this way requires a determination of a commercial fishery failure due to a fishery resource disaster under section 312(a) of the MSA or section 308(b) of the Interjurisdictional Fisheries Act, followed by an appropriation from Congress. Neither of these have occurred.

Comment 61: NMFS should not distinguish between bluefin tuna in the Gulf of Mexico and Atlantic as they are from the same breeding stock.

Response: For the purposes of Amendment 7, NMFS differentiates between bluefin tuna in the Gulf of Mexico and bluefin tuna in the Atlantic for the implementation of certain management measures for a number of reasons. As noted above, the distribution of interactions across vessels is different between the Gulf of Mexico and the Atlantic. Gulf of Mexico bluefin tuna that interact with pelagic longline gear are often heavier and older than tuna that interact with pelagic longline gear in the Atlantic, and are found in spawning condition during certain months of the year. The pattern of discarding in the Gulf of Mexico is also very different from the discard pattern documented in the Atlantic (*i.e.,* larger fish discarded in the Gulf of Mexico). NMFS does not make such a distinction between Gulf of Mexico and Atlantic bluefin in the assessment of the bluefin stock. Although Gulf of Mexico bluefin often migrate up the east coast to feeding grounds in the northwest Atlantic Ocean, data suggest that some proportion of fish in the Atlantic are individuals from the eastern Atlantic and Mediterranean stock, whereas bluefin in the Gulf of Mexico are predominantly from the western Atlantic stock.

Comment 62: NMFS should examine observer data in addition to logbook data to estimate bluefin tuna savings; the estimate of savings in 2010 and 2011 is low because fishing effort was low in those years.

Response: NMFS acknowledges that estimates of savings might be low in 2010 and 2011 as a result of depressed effort due to the effects of the Deepwater Horizon oil spill. However, estimated savings are presented as an average from a 7-year period. Interannual variability is therefore incorporated into the estimation of ecological impacts of different GRA alternatives. NMFS developed GRA alternatives from HMS Logbook data because every fisherman must submit logbooks detailing activity and interactions with all fish kept, discarded alive, and discarded dead. While extremely useful in estimating dead discards, the observer program is not a complete census survey of the fishery, and the extent of observer coverage is not necessarily useful in assessing ecological or economic effects of GRAs. Furthermore, there is a percentage of vessels that have not been observed and NMFS determined that some of these vessels contributed sizable numbers of bluefin interactions in the Cape Hatteras GRA. NMFS, therefore, decided to base the estimation of impacts on HMS logbook data.

9. Pelagic Longline Vessels Fishing Under General Category Rules

Comment 63: Some commenters supported the proposed measure to allow vessels fishing with pelagic longline gear that are not authorized conditional access to the Cape Hatteras GRA, to fish under General category rules. Vessel owners wanted to have this type of fishing opportunity as mitigation for the lost opportunity of fishing with pelagic longline gear in the Cape Hatteras GRA, from December through April. Some commenters did not support the proposed opportunity for such vessels to fish under the General category rules for various reasons. Some asserted that the activity would be a ''dangerous precedent,'' because limited access vessels would be allowed to fish under the rules applicable to an open access category, but General category vessels would not be allowed to fish as a pelagic longline vessel. Others were concerned about the expansion of a targeted bluefin fishery in the Cape Hatteras GRA, an area that already has large numbers of interactions with bluefin. A commenter found it ironic that vessels not allowed to fish with pelagic longline gear in the Cape Hatteras GRA (proposed in order to reduce bluefin interactions with pelagic longline gear) due to their low performance criteria score would be provided an opportunity to target bluefin tuna. Some noted concern about the potential impacts on the rate of harvest of the General category quota, which is limited, and the indirect impacts on General category vessels. Others noted that the replacement of pelagic longline gear with handgear (targeting bluefin) is not economically viable due to the size of the pelagic longline vessels and the associated trip expenses. A commenter stated that the proposed measure would facilitate trans-shipment of bluefin from Longline category to General category vessels. A commenter suggested that all pelagic longline vessels should be able to fish under the General category rules, and not only those affected by the GRA.

Response: Based upon public comment and further consideration,

NMFS is not implementing the management measure that would have allowed vessels fishing with pelagic longline gear that are not authorized conditional access to the Cape Hatteras GRA to fish under General category rules. While this measure would have provided additional fishing opportunities to pelagic longline vessels without access to the Cape Hatteras GRA, the differences in fishing costs and productivity between pelagic longline gear and handgear are great enough that handgear fishing for bluefin tuna would not be economically viable for a pelagic longline vessel. Given the unlikely -economic benefits as well as public perceptions of unfairness, the potential benefits of allowing vessels to fish under the General category rules do not outweigh the potential costs and risks associated with this activity.

10. Pelagic Longline Limited Conditional Access to Closed Areas

Comment 64: NMFS received a large number of comments that did not support the proposed limited conditional access to closed areas for vessels using pelagic longline gear, for a variety of reasons. Commenters, including the Florida Fish and Wildlife Conservation Commission, were foremost concerned about potential negative biological impacts on swordfish, billfish, and other species, as well as the indirect negative socio-economic impacts on the recreational fishing community if there were negative biological impacts. Specifically, commenters cited the benefits of the DeSoto Canyon and East Florida Coast closed areas contributing to the rebuilding of the swordfish stock, and the stabilization of the blue and white marlin stocks. Commenters stated that the biological analysis of the alternative was inadequate, and one commenter was concerned about the impacts on dusky sharks. Some commenters supported access, noting the importance of such access as a means to provide flexibility to pelagic longline vessels in the context of the IBQ Program restrictions, while others suggested modifications to the alternative such as allowing the use of electronic monitoring instead of human observers.

Response: Based upon public comment and further consideration of potential administrative costs, NMFS is not implementing this management measure. The potential benefits of allowing pelagic longline vessels limited conditional access to the closed areas would not outweigh the potential costs and risks associated with this activity. The objectives of the proposed measure were to maintain the relevant conservation aspects of the closure, balance the objectives of the closures, provide commercial data from within the closures, and provide additional fishing opportunities for permitted longline vessels (mitigating the potential negative economic impacts of Amendment 7). The East Florida Coast, Charleston Bump, and DeSoto Canyon Closed Area were implemented as part of a bycatch reduction strategy, based on three objectives: (1) Maximize the reduction in incidental catch of billfish and of swordfish less than 33 lb dressed weight; (2) minimize the reduction in the target catch of larger swordfish and other marketable species; and (3) ensure that the incidental catch of other species (*e.g.,* bluefin, marine mammals, and turtles) either remains unchanged or is reduced. Upon implementation, NMFS recognized that all three objectives might not be met to the maximum extent and that conflicting outcomes would require some balancing of the objectives. There are data that supports the assertion that the closed areas have contributed to the achievement of their objectives, in concert with other management measures. NMFS provides an annual review of the potential effectiveness of the current suite of management measures, including closed areas, at reducing bycatch in its annual SAFE report for HMS. Although this review does not isolate and quantify the effectiveness of closed areas as a separate management tool, the estimated reductions in discards of swordfish, blue marlin, white marlin, sailfish, and spearfish, as a result of all management measures, have remained consistently high (-50 to -70 percent), suggesting that the current suite of international and domestic management measures have played a significant role in allowing the United States to reduce its bycatch interactions. Given the likely benefits of the closed areas, the difficulty in determining the precise magnitude of the benefits of the closed areas in the context of other management measures, as well as the difficulty predicting the potential impacts that access to closed areas would have, NMFS believes that there is uncertainty whether in fact the first objective of the alternative (maintain relevant conservation aspects of the closure) would be met. The access to closed areas alternative did not include defined bycatch limits, but would have relied upon the assumption that low levels of fishing effort is sufficient to prevent excessive bycatch. Furthermore, there would be administrative costs associated with the access program. Therefore, the benefits associated with providing additional fishing opportunities (by providing access) would not outweigh the costs in terms of the risk of undermining the conservation benefits of the closed areas. With respect to providing commercial data from within the closures, as stated previously, NMFS may obtain data from within the closures through the use of exempted fishing permits.

11. Pelagic and Bottom Longline Transiting Closed Areas

Comment 65: The North Carolina Department of Environment and Natural Resources supported the preferred alternative (Alternative E8) to allow transiting of closed areas by vessels possessing bottom or pelagic longline gear.

Response: Allowing HMS vessels that possess bottom or pelagic longline gear on board to transit closed areas provided they remove and stow the gangions, hooks (unbaited), and buoys from the mainline and drum would reduce potential economic costs associated with indirect routes of travel (more time at sea and more fuel, etc.) as well as reduce potential safety-at-sea issues.

12. Gear-Based Measures

Comment 66: Authorizing buoy gear to be used by Swordfish Incidental permit holders to catch swordfish (Alternative B2b) and authorizing the harvest of bigeye, albacore, yellowfin and skipjack tunas ('BAYS') with buoy gear by Swordfish Directed and Incidental permit holders (Alternative B2c) would reduce dead discards in a direct manner and should be supported.

Response: Buoy gear used in and near the Florida Straits has been shown to be efficient at catching swordfish with a relatively low bycatch rate. However, due to a lack of data, it is unknown what the catch and bycatch of buoy gear would be when used to target swordfish at night in other areas of the Atlantic, Gulf of Mexico, U.S. Caribbean, and high seas or to target BAYS tunas in these areas during daylight hours. This lack of information makes assessing an expansion in the use of buoy gear for swordfish or tunas difficult, especially considering the potential to interact with adult bluefin tuna in the Gulf of Mexico, other HMS such as billfishes, or protected species in areas such as off the Outer Banks of North Carolina (as an example). NMFS is not implementing alternatives B2b or B2c because of the lack of available information needed to assess the ecological impacts of expanded buoy gear use when used to

target swordfish or BAYS tunas. NMFS will continue to assess additional information as it becomes available and may re-evaluate buoy gear fishery regulations in the future.

Comment 67: Pelagic longline fishermen should use more selective fishing gears such as greenstick gear and buoy gear and part of the *Deepwater Horizon* oil spill restoration funds should be used to help pelagic longline fishermen in the Gulf of Mexico make this transition. No financial hardship for fishing gear transition conducted as part of oil spill restoration efforts should fall upon affected fishers.

Response: This final rule does not implement a management measure that would require vessels to transition from pelagic longline to greenstick gear or buoy gear. However, under specific fishing permits, greenstick gear is currently authorized to fish for Atlantic tunas and buoy gear is authorized to fish for swordfish. Fishermen may utilize any legal fishing gear as authorized under the valid permits that are on their vessel when used in accordance with applicable regulations. Fishermen may change fishing gears in accordance with applicable regulations. ''Prohibition of the Use of Pelagic Longline Gear in the HMS Fishery'' is an alternative in the FEIS characterized as ''Considered but Not Analyzed Further'', because it would not provide a balanced approach to achieving the Amendment 7 objectives or be consistent with the provisions of the MSA. Amendment 7 management measures provide incentives for vessels to transition from pelagic longline gear to greenstick or buoy gear, but do not mandate such a transition.

The Oil Pollution Act of 1990 authorizes certain federal agencies, states, and Native American tribes, collectively known as the Natural Resource Trustees (trustees), to evaluate the impacts of oil spills on natural resources and recreation, and to plan restoration projects to fully offset those impacts. In the case of the *Deepwater Horizon* oil spill, NOAA is one of the nine trustees responsible for jointly conducting this process, which is known as a Natural Resource Damage Assessment (NRDA). Throughout the Deepwater Horizon oil spill NRDA process, the trustees have conducted multiple public comment periods and dozens of public meetings throughout the Gulf Coast states intended to gather input on the public's preferred approaches to natural resource restoration. The most recent public comment period related to the Deepwater Horizon oil spill restoration planning concluded on February 19, 2014. Throughout the NRDA process, the trustees have invited comments on broad types of restoration projects, as well as specific projects. In addition to accepting verbal comments at public meetings, the trustees have accepted comments and ideas by U.S. Mail, email to *nrda.projects@noaa.gov,* and via the Internet via *www.gulfspillrestoration.noaa.gov.* As part of their ongoing commitment to maximum transparency, the NRDA trustees have posted input gathered during these public comment periods online at *http://www.gulfspillrestoration.noaa.gov/restoration/give-us-your-ideas/view-submitted-projects/.* The NRDA trustees also continue to accept project ideas from the public by mail and via *http://www.gulfspillrestoration.noaa.gov/restoration/give-us-your-ideas/suggest-a-restoration-project/.* During the NRDA process, the trustees have received suggestions that restoration project funds help pelagic longline fishermen transition to greenstick and buoy gear.

13. General Comments About Individual Bluefin Quotas

Comment 68: Commenters supported implementation of the IBQ system in order to hold vessels accountable and provide incentives to reduce discards. Commenters noted that NMFS should provide some flexibility in the IBQ system, particularly in the short-term, to ensure that vessels, and especially small vessels, are able to adapt to the new restrictions and the overall program is successful. Commenters urged NMFS to continue to support the pelagic longline swordfish fishery, which is important for multiple reasons.

Response: Implementation of the IBQ system will increase the responsibility and accountability of individual vessels, and the pelagic longline fishery as a whole, for the catch of bluefin tuna. As explained in detail in the responses to more specific comments below, the IBQ system implemented by this final rule is designed to provide a reasonable and effective means of reducing dead discards, increasing accountability, and maintaining a viable pelagic longline fishery. The management measures are intended to provide flexibility at the level of the individual vessel, and in the quota system as a whole, so that the fishery can operate under the challenges of a substantially new regulatory structure. Furthermore, the fishery must be able to adapt on a continuing basis to the variability of highly migratory species, and changing ecological conditions.

Individual pelagic longline vessels have the flexibility to change their fishing practices through modification of fishing behavior (including time, location and methods of fishing, and the use of non-longline gear); increasing communication within the fishery to facilitate bluefin avoidance; and leasing of individual bluefin quota. Under Amendment 7, NMFS may also provide additional flexibility by allocating additional quota to the Longline category, as described in the response to Comments 18 and 19.

Comment 69: Some commenters stated that NMFS should consider some of the broad questions such as what will happen when the bluefin stock grows, which may lead to more dead discards; what about unintended consequences of the IBQ system such as creating a directed fishery; and what will happen to a vessel if they have an atypically large BFT catch event (also known as a ''disaster set'')?

Response: As the bluefin stock size continues to grow, the total number of interactions between the pelagic longline fleet and bluefin tuna may increase. However, the relative amount of dead discards by pelagic longline vessels (*e.g.,* percentage of total catch) may be a better way to evaluate a trend in the amount of dead discards rather than the absolute number. A second important metric of success of the IBQ Program will be whether the catch of bluefin by the Longline category exceeds the Longline category quota. Amendment 7 management measures are expected to reduce the percentage of bluefin catch that is comprised of discards (which from 2006 to 2012, ranged from 61 to 75 percent of the Longline bluefin catch), and prevent the catch of bluefin by pelagic longline vessels from exceeding the Longline category quota.

The IBQ Program will not create a directed fishery for bluefin by the pelagic longline fleet. Although pelagic longline vessels will be allocated bluefin quota and be able to derive revenue from the sale of legal-sized bluefin tuna, the quota share of bluefin tuna for each vessel is a relatively small percentage of the Longline category quota. Based on the size of recent Longline category quotas, individual vessels will be allocated the equivalent of between 2 and 13 bluefin tuna per year (depending upon the specific quota share percentage and whether the bluefin is a Gulf of Mexico or Atlantic bluefin). Due to the relatively small bluefin quota allocation per vessel, the requirement to utilize quota to account for both dead discards and landings, the requirement to have a minimum amount of quota to depart on a fishing trip using pelagic longline gear, and the cost

associated with leasing additional quota, there will be strong economic disincentives to target bluefin.

If a vessel catches an atypically large number of bluefin tuna (*i.e.,* a ''disaster set''), Amendment 7 measures will allow the vessel to retain and sell all legal-sized bluefin, but prohibit the vessel from departing on a subsequent trip using pelagic longline gear until all the bluefin has been accounted for by leasing additional quota from another permitted vessel owner with quota allocation. This restriction will create a strong economic incentive to avoid bluefin tuna in order to not exceed individual bluefin quota. Furthermore, if the vessel in such circumstances holds quota share and at the end of the year would otherwise be eligible to receive quota share for the subsequent fishing year, the quota debt would be settled by deducting quota from the subsequent year's quota allocation. The quota debt would persist from one year to the next until settled.

Under Amendment 7 measures, NMFS may also consider transferring quota from the Reserve category to the Longline category, to make quota available for the fishery as a whole. With the exception of quota in support of research (*e.g.,* an Exempted Fishing Permit), NMFS may allocate additional quota to the Longline category as a whole via a disbursement of quota to eligible vessels via the IBQ Program for the purpose of accounting for bluefin catch. Under Amendment 7, NMFS' review of the IBQ Program after 3 years of operation will include anevaluation of the question of whether the IBQ system adequately addresses large catch events.

Comment 70: Some commenters had concerns about the legality of the IBQ Program and argued that NMFS should consider the legality of ''diminishing a vessel's opportunity to catch its quota.'' Commenters stated that NMFS should not give a public resource to individuals for their financial benefit, and that the pelagic longline fishery should not profit from bluefin, but proceeds should be used for other programs and research.

Response: Allocation of fishery resources to individual entities under a catch share program is legal under the Magnuson-Stevens Act. The IBQ Program includes an allocated privilege of catching a specified portion of the total annual bluefin quota in the form of quota shares. IBQ shares are not property, but are a privilege to an amount of fish in a given year that can be renewed or revoked. Although pelagic longline vessel owners/operators may derive revenue from the sale of bluefin, bluefin is not expected to become a large proportion of their total revenue due to the low amount of bluefin quota and the other elements of the IBQ Program. Measures throughout the Amendment were specifically implemented to ensure that the pelagic longline BFT catch remains an incidental fishery, not a directed fishery. Although the management measures do not require a portion of the revenue from the sale of bluefin by Longline category vessels to fund research, NMFS may utilize bluefin quota from the Reserve category in support of relevant research.

Comment 71: A commenter stated that, in the Gulf of Mexico, NMFS should limit catch using gear restrictions and the use of alternative gears instead of IBQs. Some commenters noted that NMFS should separate Gulf of Mexico quota from Atlantic quota.

Response: A discussion of alternative gears is provided in the response to Comments 66 and 67. Alternative gears alone are unlikely to provide the same benefits of the IBQ Program, which will limit total catch and provide accountability at the level of individual vessels. The IBQ management measures include a provision that designates quota share as either Gulf of Mexico or Atlantic, and prohibits the use of Atlantic quota in the Gulf of Mexico to prevent potential increases in the relative amount of bluefin caught in the Gulf of Mexico.

Comment 72: Several commenters had concerns or made suggestions regarding some of the specific aspects of the design of the IBQ Program that are not among the principal design elements. These comments were as follows: NMFS should implement strict enforcement and fines associated with the IBQ system; the annual distribution of quota should take place in time for the January 1 start of the fishing year; NMFS should not allow quota to carryforward from year to year; NMFS should not allow vessels to land and sell bluefin without sufficient quota; money from the sale of bluefin should be put in escrow until quota is purchased to account for all catch, and; NMFS should not implement the IBQ system because it is too complex.

Response: Enforcement is an important aspect of ensuring the effectiveness of any regulatory program. New management tools such as the preferred electronic monitoring will augment NMFS' ability to effectively enforce the regulations.

On an annual basis, IBQ allocation will be distributed to eligible permit holders in time for vessels to begin fishing on January 1. Adjustments to the IBQ allocations may occur, but are not limited to changes in ICCAT recommendations, inseason actions, or NMFS' annual adjustment authority.

Under this final rule, if an eligible permit holder has been awarded IBQ allocation and does not fully utilize that IBQ allocation (*i.e.,* account for bluefin caught, or leases the IBQ allocation to another eligible participant) during the year, and has a balance of quota at the end of the year, the quota would not carry forward into the subsequent year as IBQ in association with a particular permit. However, based on the unused IBQ allocation associated with individual vessels, NMFS would calculate the total amount of unused IBQ allocation for the Longline category as a whole, and carry that quota forward (or a portion of that quota) as allowed under ICCAT into the subsequent fishing year. U.S. bluefin quota that is allowed to be carried forward from one year to the next will be placed in the Reserve category and may be reallocated to any/all domestic quota categories.

Under Amendment 7, pelagic longline vessel operators will be able to land and sell any legal-sized retained bluefin, in order to maintain full accountability, retain flexibility to accommodate variable bluefin catches, and to provide incentives to retain rather than discard fish. Although a vessel operator may land and sell bluefin in excess of their quota, they may not depart on a subsequent trip using pelagic longline gear until the fish have been fully accounted for with quota allocation. The revenue derived from the sale of the bluefin will facilitate the ability of a vessel owner to lease additional quota. If, at the end of the year, they have not paid the 'quota debt' with additional quota (obtained through leasing), the balance of quota owed will be 'paid' for from the subsequent year's allocation or the vessel will be prohibited from fishing with pelagic longline gear. The vessel owner is fully accountable.

In contrast, a system in which a vessel operator must place the revenue from the sale of a bluefin in escrow until they account for the fish with quota (as suggested by a commenter) is a more complex system that would provide a stronger incentive to discard bluefin, impose additional administrative burdens, and would not provide the flexibility a vessel operator may need. If while still at sea the vessel operator catches more bluefin than they have quota,, there would be more incentive to discard the fish because the vessel owner would face the uncertainty of whether they would be able to lease quota (and at what price) and the operator would be uncertain whether or not any revenue could be derived from

the sale of the bluefin. If the revenue were to be placed in escrow, the vessel operator may have insufficient revenue to lease additional quota allocation, and therefore the system itself would be an impediment to the operation of a leasing market. Additionally, there would be questions associated with an escrow requirement such as: If the vessel operator is unable to lease additional quota, and forfeited the revenue, would the vessel still be responsible for accounting for the bluefin, (*i.e.,* would the 'quota debt' remain with the vessel into the following year), even though the vessel owner never obtained any revenue from the fish?

Although the IBQ Program will result in a more complex management system than currently exists, NMFS has minimized complexity in the design of the preferred management measures (including the IBQ Program), and has noted examples in the Response to Comments. While this is first catch share program for Atlantic HMS fisheries, the elements and approach of the Amendment 7 IBQ Program are similar to that of the many successful catch share programs currently in operation in the United States. NMFS will educate the public regarding the program, and provide the public with ongoing access to the information to facilitate the smooth operation of the preferred IBQ Program and enhance transparency.

Comment 73: Commenters noted that NMFS did not provide adequate details in the proposed rule regarding the relationship of the Northeast Distant Area (NED) to the IBQ Program and suggested that the current bluefin possession limit be maintained in the NED, but when the limit is reached, the vessel should fish under their IBQ.

Response: Under current ICCAT recommendations, the NED is a distinctly managed geographic area managed under a separate quota than the rest of the fishery. Therefore, the quota associated with the NED (25 mt) will not be part of the Amendment 7 quota allocation measures, or managed under the IBQ Program. However, there are provisions of the IBQ Program that will apply to vessels fishing with pelagic longline gear in the NED. For example, vessels will be required to have the minimum IBQ allocation to operate in the NED starting in 2016 and, when NED bluefin quota has been exhausted, permitted vessels must abide by all the requirements of the IBQ Program. Electronic monitoring systems, installed by June 1, 2015, will be required to fish with pelagic longline gear including in the NED, and data from the electronic monitoring system may be used to ensure that targeting fishing is not occurring. NMFs reminds the regulated community that the international separate allocation is only for bycatch in the NED, and there are domestic prohibitions against targeting bluefin tuna using pelagic longline gear. NMFS will re-visit this issue if necessary if subsequent years' data indicate that additional controls are needed.

Comment 74: Several commenters made suggestions that the IBQ Program be split apart from the other major elements of Amendment 7 and implemented sequentially through separate regulatory actions (amendments). One commenter requested that the first amendment focus on the Longline category management measures (individual bluefin quotas and gear restricted areas), and that any quota reallocation among quota categories or enhanced reporting for non-Longline categories only be considered after additional information is obtained from the pelagic longline fishery operating under the IBQ system. The North Carolina Department of Natural Resources suggested that the GRAs and allocation measures should be implemented first, followed by the IBQs, and the Mid-Atlantic Fishery Management Council suggested that the IBQs should follow in a separate action (with additional analyses and alternatives).

Response: This final rule implements a wide range of regulatory measures through a single action, because comprehensive modifications to many aspects of the bluefin tuna fisheries are needed, and the management measures are highly inter-related. Amendment 7 utilizes a holistic approach to address the complex problems effectively, and minimizes potential negative economic impacts. For example, to first focus on management of the Longline category in isolation and delay consideration of other measures such as reallocation and enhanced reporting for non-Longline category vessels would ignore the current differences in reporting requirements among quota categories, continue a high level of uncertainty in the quota system, and would fail to minimize adverse economic impacts for the Longline category.

Accountability for bluefin catch by the Longline category is a high priority, and the IBQ Program provides such accountability. It ensures that the fishery operates within the allowable quota established by ICCAT consistent with the rebuilding program, and minimizes bycatch to the extent practicable, in a manner that will have less adverse economic impacts than the other alternatives analyzed (Regional or Group Quota Controls). NMFS considered and analyzed multiple alternatives for all elements of the IBQ Program in the DEIS and FEIS, and will fully evaluate the IBQ Program after three years of operation.

Comment 75: The Louisiana Department of Natural Resources (Louisiana DNR) commented that Amendment 7 will have large negative socio-economic impacts on the Gulf of Mexico pelagic longline fishery. Louisiana DNR asserts the greatest negative impact will occur in Louisiana, with minimal benefits to the bluefin stock, and attributed the economic impacts mostly to the IBQ Program, which it feels is inconsistent with the Louisiana Coastal Resources Program. Louisiana DNR noted that the potential benefits to the stock of bluefin tuna are minimal compared to the potentially large socio-economic impact to the targeted fisheries, and NMFS' consistency determination lacks sufficient data and information.

Response: NMFS has concluded that Amendment 7 is fully consistent with the enforceable policies of the management program, though the State of Louisiana objects. The FEIS analysis demonstrates that NMFS utilized many of the factors cited by Louisiana DNR as lacking in NMFS' evaluation. NMFS also explored the availability of alternative methods of achieving the Amendment 7 objectives, and considered the economic impacts, as well as the long term benefits of the measures. The alternative methods to reduce dead discards of no action or group or regional quotas would have more adverse impacts and be less effective in achieving Amendment 7 objectives to reduce dead discards and maximize fishing opportunity. The design of the IBQ management measures and other aspects of Amendment 7 minimize the significant adverse economic impacts, disruption of social patterns, and adverse cumulative impacts, to the extent practicable, relative to other methods analyzed while also meeting Amendment 7 objectives. For detailed information on NMFS' response, see the Classification section.

14. IBQ Eligibility

Comment 76: Commenters suggested modifications to the proposed method of defining which vessels are eligible to receive quota share (*i.e.,* ''active'' vessels, defined as those vessels that made at least one set using pelagic longline gear between 2006 and 2011, based on logbook data). Some stated that the criteria is too restrictive, and that

the criteria should instead be any vessel with a valid permit, while others believed the criteria is too lenient and results in an excessive number of vessels eligible to receive quota share. Some commenters suggested specific alternative criteria such as 50 sets within the previous 3 years.

Response: The definition of a set of vessels that are eligible to receive bluefin quota share is a very important aspect of the design of the IBQ Program because the definition sets the boundary of which entities are eligible for the privilege of being granted quota shares, and the number of eligible entities has a large influence on the amount of quota share each entity will receive. Regarding the comment that the criteria should be any vessel with a valid permit, the bluefin quota allocation method implemented by Amendment 7 is intended to limit the catch of, and provide accountability and incentives for pelagic longline vessels that are fishing and interacting with, bluefin tuna, and therefore only vessels that are likely to go fishing should be eligible for quota share. Additionally, if vessels that have a Longline category permit that do not typically fish were eligible to receive quota share, they could utilize the quota solely for economic gain by leasing the quota or influencing the leasing market. Further, the set of eligible vessels would be substantially larger (and each eligible vessel would receive substantially smaller proportion of the Longline category quota), and result in such small IBQ allocations that the IBQ Program would not function well. Relatively small quota shares make it likely that most vessels will have insufficient IBQ allocation and be dependent upon leased quota to account for bluefin caught.

Regarding the comment that the definition of ''active,'' which did not include 2012 data, was too restrictive, the initial allocation implemented by this final rule reflects a definition of active that based upon the years 2006 through 2012, instead of through 2011.

Regarding the comment that the proposed definition of ''active'' is too lenient, the objectives of the preferred IBQ Program do not support further restricting the scope of eligible vessel to an arbitrary number of sets, and excluding vessels with a low level of fishing activity. Even vessels with low levels of fishing activity may need bluefin quota shares to account for bluefin catch. Instead, the objectives of the IBQ Program will be achieved using more flexible management tools, including incentives for vessels for avoid bluefin tuna and to fish with alternative gears.

Because the intent of the program is to specify a pool of eligible vessels that excludes inactive vessels, the IBQ Program utilizes the secondary criteria that the vessel must have had a valid permit as of August 21, 2013. Therefore, a vessel is required to meet the definition of ''active,'' and also to have been issued a valid Longline category permit as of August 21, 2013 (the date of publication of the Amendment 7 proposed rule). This second criterion addresses the situation in which a vessel met the criteria of having made at least one pelagic longline set during the years from 2006 through 2012, but, subsequent to the time of the qualifying set(s), became inactive, as evidenced by a lapsed (non-renewed) Longline category permit (which must be renewed on an annual basis), or as evidenced by a vessel that has been removed from association with a particular vessel.

Comment 77: Commenters were concerned about the ability of new entrants to become active in the fishery, and some suggested that NMFS use an annual system to define eligible vessels, such as a minimum number of sets during the previous year. A commenter noted that businesses which supply new equipment to outfit pelagic longline vessels would be negatively impacted if new entrants are not able to enter the fishery.

Response: The ability for people who are currently not involved in the pelagic longline fishery to become participants in the fishery (new entrants) is an important consideration, which is a required consideration under Section 303A(c)(5)(C) of the MSA. The Amendment 7 IBQ Program will add a single additional prerequisite for participation in the pelagic longline fishery to the previously existing two prerequisites and associated monitoring and compliance requirements (*e.g.,* VMS). Prior to this Amendment, the two principal elements for participation in the fishery were a vessel and limited access permit. The IBQ Program implements a requirement for a vessel to have the minimum amount of bluefin quota allocation in order to fish with pelagic longline gear, as well as electronic monitoring requirements associated with the IBQ Program.

The Amendment 7 IBQ Program provides adequate opportunities for new entrants to the fishery, because there are multiple means by which a new entrant may satisfy the quota requirement. A person interested in participating in the fishery may purchase a permitted vessel with IBQ shares, and therefore be allocated quota annually (due to the IBQ share associated with the permit), or a person may purchase a permitted vessel without IBQ shares, but lease quota allocation from another permitted vessel. Under the IBQ Program, as in the past, participation in the pelagic longline fishery by new entrants will require substantial capital investment and potential new entrants will face costs which are similar to historical participants. However, the structure of the IBQ Program does not create any unreasonable barriers to new entry.

NMFS considered the merits of setting aside a specified amount of quota for new entrants, but found several negative aspects of such a provision. For example, providing quota to new entrants would essentially create a second quota allocation system, which would complicate the overall preferred IBQ Program by creating a separate class of vessels with different allocations. A quota set aside for new entrants would result in less quota available for other participants in the fishery, and rather than the market controlling the quota, there would be many policy decision to be made (*e.g.,* would the amount of set aside vary according to the number of new entrants, or be a fixed amount annually? Would the quota be divided equally among new entrants, be allocated in the minimum share amounts, or allocated based on fishing history). NMFS believes in simplifying the IBQ Program upon implementation where possible, in order to minimize regulatory burden and complexity. A system of rules regarding quota set aside would add additional complications to the IBQ Program. Therefore, NMFS determined that given the lack of information with which to base such restrictions, and the uncertainty whether there would be a pressing need for such restrictions, that additional restrictions or a quota set aside are not warranted. During the three year review of the IBQ Program NMFS will consider information from the fishery after implementation of the IBQ Program, and evaluate whether the IBQ Program provides adequate opportunities to new entrants. See FEIS at pages 70–71 for additional analyses.

As suggested by commenters, NMFS considered the concept of making an annual determination of which vessels are eligible to receive quota allocations based on a set of criteria (such as a certain number of longline sets during the previous year). NMFS found that there are negative aspects of such an annual system. If the vessels allocated quota shares vary on an annual basis, the IBQ Program would be more complex and difficult to administer; there would be greater uncertainty annually in the fishery; there would be

incentives to fish on an annual basis (due to criteria to fish in order to receive quota); and any value associated with a permit that would be derived from the associated IBQ share may be minimized if the IBQ share is only valid for a year. Although such a system could limit the number of years a vessel without quota share (*i.e.,* a new entrant) must lease quota, the negative aspects of this approach would be substantial. For example, in order to have an IBQ system that includes strong accountability, any quota 'debt' accrued must persist from one fishing year to the next. It would be difficult to implement persistent accountability if the vessels eligible for quota change on an annual basis.

Comment 78: A commenter suggested that NMFS should address latent permits by eliminating the ability to reactivate such permits.

Response: Neither Amendment 7 overall, nor the IBQ Program objectives include the reduction of latent effort. The likelihood of a meaningful increase in fishing effort is low because the number of vessels fishing has been fairly constant, and as stated in the response to comment number 77, although there are avenues for new entrants to the fishery, participation in the pelagic longline fishery by new entrants would require substantial capital investment. Although the number of Atlantic Tunas Longline category permits has averaged approximately 239 vessels (2006—2012), under Amendment 7 as finalized, only 135 vessels are eligible for initial bluefin quota shares. Furthermore, the risk associated with an increase in fishing effort (for either bluefin or the target stock of swordfish) is low, given the fact that Amendment 7 implements strict bluefin catch limits, one of the principal target stocks (swordfish) is rebuilt and another target stock (yellowfin tuna) is not overfished and overfishing is not occurring, and there has been unharvested swordfish quota on a regular basis.

Comment 79: A commenter suggested that NMFS use criteria such as dependence upon commercial fishing for determining which vessels are eligible to receive quota shares.

Response: NMFS generally considered dependence upon commercial fishing in establishing its approach for initial allocations. The amount of target species caught is a factor in the allocation formula. However, NMFS cannot at this time quantify fishery dependence in a uniform manner due to many issues relating to data availability and confidentiality. NMFS believes that the final rule, which takes into consideration best available information on current and historical harvests, participation, and other factors as well as public comment, ensures fair and equitable initial allocations.

Comment 80: Commenters stated that NMFS should associate IBQ with a permit and not a vessel.

Response: As explained in the FEIS, the use of historical data to evaluate whether a vessel meets certain criteria as part of the implementation of a limited access or catch share program (or a performance criteria) can be complex due to historical transfers of a limited access permit from one vessel to another, or changes in vessel owners. Over time, a single permit may be issued to multiple vessels, or a single vessel may have multiple owners. The IBQ Program as finalized uses the historical 'platform' upon which to base the quota share as the vessel history instead of the permit history for the following reasons: (1) Vessel history reflects current and historical participation in the fishery; (2) the regulations regarding the transfer of Atlantic Tunas Longline category permits do not address fishing history (*i.e.,* do not specify, when an Atlantic Tunas Longline category permit is transferred from one vessel to another, whether the fishing history also transfers; and (3) the structure of the databases in which the logbook data reside uses the vessel as a key organizing feature, and therefore the compilation of data associated with a particular vessel is simpler and less prone to error (it is more complex to compile data based on an individual permit history).

Although, as noted above, the basis for the quota shares is the fishing history associated with a vessel, the IBQ Program associates the share with a permit. In other words, for the purpose of vessel, permit, and quota transactions, quota shares under the IBQ Program will be associated with the Atlantic Tunas Longline category permit, even though the initial eligibility for the quota share was determined on the basis of a particular vessel history.

Comment 81: Many pelagic longline vessel owners expressed strong concerns that the amount of bluefin quota allocated to individual vessels would be inadequate to continue to fish, and that despite efforts to avoid bluefin, vessels would sooner or later encounter bluefin. The proposed allocations would make continuing fishing operations extremely difficult, because they would be forced to stop fishing, and therefore revenue would be cut off, but expenses would continue. Vessel owners stated that they would not be able to remain in business under such circumstances, and some estimated that a large vessel would need about 20 bluefin to account for the number of bluefin they catch, rather than the 2 to 13 fish they believe would be allocated under the IBQ system. Some highlighted the difference between the proposed IBQ allocations and the number of bluefin tuna that may be retained by a vessel with a General category commercial permit (up to 5 bluefin a trip), as justification for having larger individual quota allocations.

Response: Under the Amendment 7 IBQ Program, some vessels may not have enough quota share to continue to account for the same amount of bluefin they caught in the past. The FEIS analysis indicates that at a quota level of 137 mt, approximately 25 percent of vessels would need to lease additional bluefin quota in order to land their historical average amount of target species (if they do not change their behavior to reduce their historical rate of bluefin interactions). If no leasing of IBQ allocation were to occur, there could be a reduction in target species landings with an associated reduction in revenue of approximately $7,574,590 total, or $56,108 per vessel (135 vessels).

The precise impacts of the IBQ Program are difficult to predict due to the variability of bluefin distribution as well as the potential range of fishing behaviors (and business strategies) of vessels in response to the new regulations. In order to reduce the likelihood of interactions, vessel operators may have to pursue new strategies including communication with other pelagic longline operators regarding the known locations of bluefin, modifications to fishing time, location, and technique, as well as use of alternative gears. In conjunction with these strategies, leasing additional quota may be necessary. The IBQ eligibility criteria include the requirement that the relevant vessel have a permit as of August 21, 2013, which limits the number of eligible vessels, and therefore slightly increases the amount of quota share per vessel. Due to the difficulty of predicting the precise impacts of the IBQ Program, NMFS may, as the fishery adjusts to the new system, need to consider providing additional quota to the Longline category as a whole in order to increase the amount of quota available to eligible vessels via the IBQ Program, thereby balancing the need to have an operational fishery with the need to reduce bluefin bycatch in the fishery. The Amendment 7 IBQ Program includes a three-year formal review of the IBQ system, at which time NMFS will consider whether any structural changes to the program are necessary.

The pelagic longline fishery is an incidental bluefin fishery unlike the directed General category handgear fishery, and retention limits and other management measures are different. This final rule implements a regulatory system that would mitigate the effects of the different restrictions among the different permit categories.

Comment 82: Some commenters did not want the bluefin quota share formula to include a criterion that relies upon logbook data on bluefin catch, due to the concern that such data may be inaccurate. The quota share formula that was proposed includes a metric that results in a higher score (and contributing in the formula to a higher allocation) for vessels that had fewer interactions with bluefin (relative to the ''designated species,'' *i.e.,* target catch). The commenters' specific concern was that if some vessels under-reported the amount of bluefin they caught in their logbook, such vessels may receive a higher score (and larger allocation) than vessels that had accurately reported higher numbers of bluefin catch. In other words, accurate reporters would be penalized relative to inaccurate reporters. Commenters noted that it is unfair to emphasize past bluefin catch in the quota allocation formula because in the past interactions with bluefin tuna were legal. Another commenter noted that past performance may not be a predictor of future performance.

Response: NMFS recognizes that some vessel operators may have under-reported the amount of bluefin tuna caught in their logbooks. NMFS conducted an analysis that compared logbook data to observer data to get an indication of how vessel reported logbook data compares with observer data, because observer data can serve as a useful validation tool. Compared to the observer data, the logbook data showed both over-reporting and under-reporting of bluefin tuna, with the average amount of under-reporting of bluefin discards of 28 percent at the aggregate level for all vessels. Individual vessel data varied substantially from being more than 90 percent accurate with observer data for that trip to more than 75 percent inaccurate compared to observer data for that trip. These data indicate a wide range in reporting accuracy at a vessel level. For additional information, see the Appendix in the FEIS (section 11.5).

Notwithstanding potential under-reporting by some vessels, logbook data are the most complete source of available data regarding vessel level interactions with bluefin tuna because 100 percent of pelagic longline vessels are required to submit logbook reports for every set. It is important to note that the relative number of bluefin interactions is only one component of the IBQ allocation formula, which also considers the amount of target catch, resulting in a higher score (and contributing to more allocation) for vessels with larger amounts of target catch (''designated species catch''). Amendment 7 includes a requirement for pelagic longline vessels to have operational electronic monitoring systems, which will enhance the accuracy of vessel-reported information.

Regarding the comment that it is unfair to use past interactions with bluefin as part of the allocation formula because in the past it was lawful to interact with bluefin tuna, pelagic longline regulations were designed to limit or reduce retention of bluefin tuna (*e.g.,* target catch requirements, weak hook requirements). Therefore, it is appropriate that the IBQ Program accrue some benefit in the form of IBQ allocation for vessels who may have fished in a manner that reduced interactions with, or avoided bluefin tuna, consistent with the regulations.

NMFS acknowledges that past performance may not be an indicator of future performance. One of the objectives of the bluefin IBQ Program is to provide incentives for future fishing behavior that will result in reduced rates of interactions between pelagic longline gear and bluefin. The principal incentive of the IBQ Program results from the fact that vessels are required to account for all bluefin tuna dead discards and landings (with IBQ allocation), and the prohibition of the use of pelagic longline gear if a vessel does not have any (or sufficient) IBQ allocation. The future fishing behaviors may include avoiding or minimizing setting pelagic longline gear in areas or during time periods where there are known interactions with bluefin tuna; increasing communication with other vessels fishing with pelagic longline gear; incorporating the use of alternative gears into a vessel's fishing strategy and business plan; 'test sets' to determine whether bluefin are present in an area; and pelagic longline gear modifications. In determining how to allocate bluefin quota, NMFS considered historical catches of both target species and bluefin tuna to consider both past performance and potential future needs.

Comment 83: Some commenters urged NMFS to allocate equal shares of bluefin quota to all eligible vessels, for multiple reasons. Equal shares would avoid the use of historical logbook data; would reduce potential negative feelings among permit holders with different amounts of allocation; and would provide higher quota allocations for some vessels than under the proposed method. Additionally, a commenter noted that it may not be necessary to consider the amount of target catch in the quota share formula (and provide more quota to vessels catching more target catch) because larger fishing operations are better equipped financially to adapt to new regulations. Another commenter supported basing the allocation on target species landings and fishing effort, because higher effort is likely to result in more bluefin catch.

Response: NMFS carefully considered allocating quota shares on an equal basis, but decided to implement the method as proposed, which incorporates two metrics of equal weight: Designated species landings and the ratio of bluefin to designated species landings. While an equal share formula has some positive attributes, the overall merits of the method being implemented are greater. It is important to take into consideration the diversity of the pelagic longline fleet, maximize the potential for the success of the IBQ Program, and provide incentives for vessels to avoid bluefin tuna.

NMFS analyzed the pelagic longline logbook data on target catch and bluefin interactions, and for most vessels, there is positive correlation between the amount of target catch, and the number of bluefin tuna interactions. In other words, for most vessels, the more swordfish, yellowfin tuna, or other target species a vessel catches, the more bluefin tuna it interacts with. However, a few vessels (those responsible for the largest number of interactions) interact with large numbers of bluefin, out of proportion with the amount of their target catch. Considering this historic pattern, basing one of the allocation formula elements on the amount of designated species landings would increase the likelihood that vessels would be allocated quota in relation to the amount of quota they may need to account for their catch of bluefin.

The second of the two elements (the ratio of bluefin interactions to designated species landings) is useful because it takes into consideration the fact that relatively few vessels (*i.e.,* about fifteen percent of the vessels) are responsible for about 80 percent of the interactions with bluefin tuna. Because this element of the allocation formula results in a lower allocation for vessels with a higher rate of historic interactions, it provides a strong incentive for such vessels to make changes in their fishing practices to reduce their number of bluefin interactions. Vessels with historically high catches of target species and a low

rate of interactions with bluefin receive a larger quota share than vessels with either higher rates of bluefin interactions or lower amounts of target species.

Comment 84: Some commenters were concerned that either hurricanes, the 2010 oil spill in the Gulf of Mexico, or specific regulations (such as a closed area) may have lowered the amount of catch a vessel had (during the 2006 through 2012 time period on which the IBQ share is based), and the resultant influence on the vessel's bluefin quota share.

Response: There are many factors that may determine the amount of a particular vessel's catch, including regulatory and environmental factors and factors unique to the vessel. As noted in the response to comment # 40 the Amendment 7 quota share formula is based upon a seven-year time period (2006 through 2012), which is long enough to reduce the influence of one-time events or short term environmental or regulatory conditions. Additionally, the quota share formula implemented by this final rule includes an additional year of data (2012), a longer duration than originally proposed.

Comment 85: Commenters suggested other methods for allocating quota shares such as auctioning the quota, and basing quota shares in relation to the number of hooks, or the number of longline sets in the previous year.

Response: NMFS considered an auction system, but decided that it would not result in distribution of limited access privilege shares in a way that met IBQ program objectives. Among other things, NMS wants to facilitate continued participation in the fishery by vessels that have made past investments in the fishery. An auction may not reflect recent or historical participation in the fishery and could increase uncertainty in fishery participation.

15. IBQ Leasing

Comment 86: Some commenters supported the provision that would allow pelagic longline vessels to lease quota allocation to and from one another, but prohibit permanent sale of quota shares. A commenter said that NMFS should only allow leasing to active vessels with intent to fish, and a commenter suggested that NMFS should ensure that a fully functioning quota trading infrastructure is in place before implementing the IBQ system.

Response: Quota leasing is an essential component of the IBQ Program because the amount of quota share a vessel has many not be aligned with the amount of quota they need, based on bluefin catch. Quota leasing provides the flexibility vessels may need to account for bluefin if they have insufficient quota, or obtain additional revenue if they are able to avoid bluefin and have quota they do not need. Only vessels that meet the eligibility criteria will be allocated quota shares; however, any vessel with a valid Atlantic Tunas Longline category permit may lease quota. Allowing quota to be leased to any permitted vessel enables vessels that are not allocated quota to become active in the fishery (*i.e.,* new entrants), but would not provide a lasting opportunity because leased quota would expire at the end of a year (and may not be carried over to the following year by an individual vessel). No sale of quota shares (in contrast to leasing of quota allocation) is allowed upon the implementation of Amendment 7. These quota restrictions provide a balanced approach to the types of transactions allowed, in order to provide flexibility to account for bluefin caught and enable participation of new entrants, but limit the potential for permanent shifts in ownership of quota shares and speculative activity by entities not active in the fishery. NMFS will conduct a full review of the IBQ Program after three years of operation, and may at that time consider allowing the permanent sale of quota shares or other modifications to the leasing program as warranted.

NMFS acknowledges that a functioning infrastructure is required to support a quota leasing system, and is implementing the system necessary to enable the leasing of IBQ shares and accounting of bluefin quota shares and allocations.

Comment 87: Commenters expressed concern about whether vessel owners would be willing to lease quota to other vessels, given the low amounts of quota allocated to vessels, and concern that the cost of leasing would be affordable, especially for owners of small vessels. Other commenters did not support leasing because access to additional quota could enable vessels to target bluefin.

Response: The analysis of the preferred IBQ Program in the FEIS indicates that at a quota of 137 mt, 25 percent of vessels would need to lease additional quota in order to land their historical average amount of designated species (if they do not change their behavior to reduce their historical rate of bluefin interactions). Therefore, a majority of vessels may have quota in excess of what is needed to account for their bluefin catch, and may have incentive to lease quota to other vessels. Notwithstanding the analysis, there is uncertainty regarding both the amount and price of quota that may be leased. A well-functioning leasing market, which enables quota to be leased by those who need it will be a key factor in whether the preferred IBQ Program functions as intended.

Comment 88: Some commenters did not support allowing pelagic longline vessels to lease quota from Purse Seine vessels. A commenter was concerned that the leasing program may disadvantage the Purse Seine vessels, and a commenter was concerned that Purse Seine businesses could consolidate or control quota. A commenter suggested that NMFS should set aside quota and lease it to pelagic longline vessels rather than allowing Purse Seine vessels to lease, and a commenter thought that the Purse Seine category should be allowed to lease to all other permit categories.

Response: Leasing quota must be confined to permit categories that are limited access due to the different characteristics of limited access and open access fisheries, and the complexities of a leasing program. Therefore, Amendment 7 limits quota leasing to the Longline and Purse Seine permit categories. The provision for Longline category vessels to lease quota from Purse Seine category participants provides an additional opportunity for pelagic longline vessels to lease quota that may not otherwise be present, and will increase the chances that there will be a well-functioning leasing market. As previously stated, a well-functioning leasing market, which enables quota to be leased by those who need it at an affordable price, will be a key factor in whether the preferred IBQ Program functions as intended.

With regard to the concern over Purse Seine control of quota, as noted in the Response to Comment 87, NMFS anticipates that only 25 percent of vessels would need to lease additional quota, and this final rule allows such leasing from either the Longline or Purse Seine category. Further, the Annual Reallocation measure implemented by this final rule will have the effect of reducing the amount of quota that is available to the Purse Seine category if such participants do not catch the majority of their quota during the previous year. The net effect of the Annual Reallocation measure on the IBQ leasing program should be to reduce the amount of quota available for leasing to the Longline category, or leaving less quota available to the Purse Seine category with which to consolidate or otherwise influence the leasing market (by holding rather than leasing quota). However, the IBQ leasing measure will not disadvantage Purse

Seine participants due to its interaction with the Annual Reallocation measure. The amount of quota allocated to the Purse Seine category participants will depend upon the level of bluefin landings and dead discards during the previous year, but will not take into consideration whether or not unused Purse Seine quota (that is not used to account for catch) is leased.

Regarding the comment that NMFS should be directly involved in the quota leasing market, NMFS did not analyze an alternative that would give a central role in the leasing market to NMFS. Although NMFS could indirectly influence the quota leasing market through quota adjustments, direct involvement in the quota leasing system would create many administrative concerns and is not preferred at this time. For example, if NMFS were a broker of IBQ leases, the leasing market would be more complicated, might function more slowly, and would add additional burden and costs to NMFS' support and oversight of the IBQ system.

16. Measures Associated With the IBQ Program

Comment 89: Commenters supported elimination of the target catch requirements and mandatory retention of legal-sized bluefin that are dead at haul-back. Some commenters suggested that NMFS require retention of all dead bluefin regardless of size in order to address the problem of undersized juvenile bluefin discards.

Response: Under Amendment 7 measures the target catch requirement (a strict bluefin retention limit based on the amount of target catch retained) will no longer be needed to restrict bluefin retention because catch will be limited by the IBQ Program restrictions. Dead discards are an important consideration with respect to the evaluation of minimum size restrictions, but are not the only consideration. The current bluefin size restriction for pelagic longline vessels reflects ICCAT recommendations, as well as consideration of other factors, including dead discards. In general, size restrictions have been instituted to protect the overall health and breeding viability of the species, as well as to distribute fishing opportunities among both recreational and commercial fishermen, year-round.

Retention of all bluefin, regardless of size, would conflict with ICCAT recommendations in effect. The current ICCAT recommendation prohibits the harvest of Western bluefin measuring less than 115 cm (the equivalent of 27 inches). It also limits the amount of BFT measuring 27 to less than 47 inches, to 10 percent of the total U.S. quota.

Reduction in minimum size to 47 or 59 inches for commercial categories was an alternative that was considered, but not further analyzed in the FEIS. As new information from the fishery becomes available in the future, or if new scientific information or ICCAT recommendations warrant, NMFS may consider modifications to the bluefin size restrictions in the future.

Comment 90: A commenter stated that NMFS should not require retention of bluefin in the Gulf of Mexico because the bluefin are too big to bring on board.

Response: Most vessels that fish with pelagic longline gear target large pelagic species and are capable of boarding very large fish. Approximately 82 percent of the vessels participating in the pelagic longline fishery are greater than 40 feet in length overall and either can already handle large fish, or should be able to modify their equipment to be able to handle large fish.

17. Closure of the Pelagic Longline Fishery

Comment 91: Comments on NMFS' authority to close the pelagic longline fishery ranged from those who support closing the fishery in conjunction with a Longline category quota allocation of 8.1 percent, to those who said that the fishery should be closed only if there is unusually high catch of bluefin (and not when the quota is reached). Commenters noted the potential impacts of closures early in the year on the pelagic longline fishery, supporting business, consumers of the fish products, and future ICCAT recommendations.

Response: A closure of the pelagic longline fishery may have adverse direct and secondary economic impacts, the severity of which would depend upon how early in the year the closure occurred. Under the IBQ Program implemented by this final rule, in which individual vessels may not fish with pelagic longline gear unless they have quota, it is not likely that NMFS will be required to close the fishery as a whole. However, individual vessels will be prohibited from fishing if they have not accounted for their catch or do not have the required minimum amount of quota allocation to depart on a pelagic longline trip.

If, based on the best available data, NMFS estimates that the total amount of dead discards and landings are projected to reach, have reached, or exceed the Longline category quota, NMFS may prohibit fishing with pelagic longline gear. Similarly, if there is high uncertainty regarding the estimated or documented levels of bluefin catch, NMFS may close the fishery to prevent overharvest of the Longline category quota, or prevent further discarding of bluefin.

As described in many of the responses to comments, NMFS designed Amendment 7 management measures not only to reduce dead discards and ensure accountability, but also to provide flexibility for pelagic longline vessels fishing under the IBQ Program restrictions, and flexibility in the quota system as a whole, to balance the needs of the pelagic longline fishery with the needs of the other quota categories.

18. VMS Requirements

Comment 92: NMFS received comments on proposed VMS requirements for the Purse Seine and Longline categories (preferred Alternative D1b), expressing both support and opposition. Several commenters were concerned about the functionality of certain VMS models, particularly those used in the mid-Atlantic.

Response: NMFS recently published a proposed rule regarding type-approval of VMS units to ensure vendors and associated mobile communications providers are meeting fishing industry needs (79 FR 53386; September 9, 2014). Specifically, the rule proposed NMFS procedures for EMTU/MTU and MCS type approval, type-approval renewal, and revocation; revision of latency standards; and methods to ensure compliance with type approval standards. By codifying requirements and processes, NMFS will be better able to ensure vendor compliance with the VMS type-approval requirements.

19. Electronic Monitoring Requirements

Comment 93: NMFS received comments that supported electronic monitoring (*i.e.,* video camera and gear sensors), while other comments either expressed concern or opposed it. Comments supporting electronic monitoring indicated that it is not cost prohibitive, that it would allow NMFS to ground-truth other data, and that it supports accountability and enforcement. Those opposed to electronic monitoring said that it is cost prohibitive, an invasion of privacy, and is redundant with existing information. Some comments expressed concern about the functionality of a system, considering the issues experienced with some VMS functionality, and the ability to identify the difference between bigeye and bluefin tuna using video cameras. Implementation using a pilot scale was suggested, which would allow time to set up a functioning

infrastructure. Expansion of electronic monitoring to other categories with dead discards was also suggested.

Response: Amendment 7 establishes requirements to monitor dead discards for all commercial user categories to better achieve the ICCAT requirement to account for sources of bluefin tuna fishing mortality and to better monitor the fishery for bluefin accounting purposes domestically. This final rule implements a requirement for Purse Seine category vessels to report dead discards via VMS, and for hand gear fisheries (General, Harpoon, and Charter/headboat categories) to report using an automated catch reporting system via the internet or phone. As described above, for all vessels issued an Atlantic Tunas Longline permit that fish with pelagic longline gear, vessel owners (or their representatives) must coordinate with the NMFS-approved contractor to install and test electronic monitoring equipment, and the contractor will then provide certification that the equipment has been properly installed. Longline category vessels are required maintain an electronic monitoring system (including video recording and data sensors) that will record all catch and relevant data regarding pelagic longline gear deployment and retrieval. The purpose of video monitoring for the Longline category is to provide a cost effective and reliable source of information to verify the accuracy of bluefin tuna interactions reported via VMS and logbooks. In many instances, the FEIS analysis found discrepancies between logbook data and observer data (considered to be highly accurate) reported for the same trip. The Amendment 7 electronic monitoring requirement supports accurate catch data and bluefin tuna IBQ management measures, by providing a means to verify the accuracy of the counts and identification of bluefin reported by the vessel operator. In light of public comments expressing concern about ensuring the functionality of electronic monitoring systems and the costs of such systems, this final rule relieves certain purchase and installation requirements that were set out in the proposed rule. Rather than requiring vessel owners to buy and install equipment and make decisions about equipment specifications and functionality, this final rule instead requires the vessel owners to obtain certification from a NMFS-approved contractor stating that the contractor has properly installed and verified the functionality of the electronic monitoring system in accordance with more detailed equipment and system requirements provided in the final rule. As set out in the proposed rule, vessel owners would have been responsible for the costs of the equipment and for installation for the electronic monitoring systems, which are estimated to be approximately $19,175 for purchase and installation per vessel as well as variable costs of approximately $225 per trip for data retrieval, fishing activity interpretation, and catch data interpretation. These costs are lower than the cost of increased observer coverage. The Southeast Fisheries Science Center estimates that observer deployment costs approximately $1,075 per sea day, which equates to approximately $9,675 per average nine-day pelagic longline trip.

Video monitoring is currently used in several fisheries, and NMFS has funded over 30 pilot projects to further research the use and effectiveness of electronic monitoring, including research on the accuracy of finfish identification. These studies provide evidence that properly deployed and maintained video monitoring camera systems can provide effective data for accurately identifying large pelagic species. NMFS acknowledges that identification of closely related species such as bluefin and bigeye tuna can be challenging, particularly with smaller fish. The size of tunas that are caught on pelagic longline vessels tend to be larger due to the size of the hooks used in commercial fisheries. To ensure accurate identification of all species, the NMFS-approved contractor will place cameras to ensure a clear view of the gear hauling location. NMFS white papers on electronic monitoring are available at the following Web address: *http://www.nmfs.noaa.gov/sfa/reg_svcs/Councils/ccc_2013/K_NMFS_EM_WhitePapers.pdf.* NMFS will take into account the time required for owners to outfit their vessels with newly required equipment when establishing the timetable for requirement vessels to have fully operational electronic monitoring systems.

20. Automated Catch Reporting

Comment 94: Several commenters supported electronic catch reporting for the General, Harpoon, and Charter/headboat categories, and one commenter suggested that electronic catch reporting be required for all categories. Two commenters questioned the effectiveness of this reporting methodology. One suggested that a catch card system be used, and another requested additional technical information on the reporting methodology including the data to be collected and techniques for verification.

Response: Amendment 7 implements mandatory dead discard reporting for General, Harpoon, and Charter/Headboat category vessels. The reporting system will be an extension of the web-based landings reporting system, which must currently be used by fishermen in the Angling category to submit mandatory bluefin tuna landings reports. Although catch card systems have been shown to provide a more accurate accounting for landings in some geographic areas (*i.e.,* Maryland and North Carolina), they are more costly to employ and are difficult to implement in regions with a large number of private docks. Further, catch cards may not be as effective in accounting for discarded fish that are not landed. The data fields NMFS will collect through a required form include information such as, the trip start and end date, trip departure and end time, port and state of departure and landing, fishing technique, bait type, hook type, approximate time hooked, approximate fight time, species, fish size, vessel name, registration number, permit holder's name, Atlantic HMS permit number, type of trip, and tournament name (if applicable).

21. Expand the Scope of the Large Pelagics Survey

Comment 95: One commenter opposed taking no action on the Large Pelagics Survey (preferred Alternative D6a), stating that a change is needed from the status quo.

Response: NMFS analyzed expanding the Large Pelagics Survey temporally to include the months of May, November, and December, and geographically to include the states south of Virginia, as a means to collect more data about the recreational bluefin tuna fishery, and further refine recreational bluefin tuna landings estimates. Although the expansion of the survey would likely provide some landings estimates in time periods and geographic regions that are currently not covered by the survey, the likelihood of the survey intercepting activity in what is considered to be a ''rare event'' fishery at the edges of its geographic and temporal range is low, and the resultant catch estimates would likely be imprecise. NMFS estimated the economic cost of these data is approximately $165,000 per year. Thus, the benefits of the data may not outweigh the cost. The NMFS Office of Science and Technology may consider future studies to enhance recreational bluefin tuna landings estimates under the Marine Recreational Information

Program (*https://www.st.nmfs.noaa.gov/recreational-fisheries/index*).

22. Deployment of Observers

Comment 96: Several commenters supported the expansion of observer coverage for the Longline category, suggesting increases in coverage up to 100%. Another commenter suggested implementing industry-funded observer coverage. A commenter thought that NMFS should use observer data to monitor Longline category catch limits. Another commenter was concerned that observers might not be available to cover pelagic longline vessel trips into closed areas.

Response: This Amendment 7 final rule makes no changes to current observer coverage requirements for commercial Atlantic tunas vessels. Catch data collected by observers is considered to be highly accurate and current levels of observer coverage are adequate to produce statistically sound estimates of bluefin catches, but the high cost of observer coverage can be prohibitive (see response to comment 93). Thus, NMFS is not implementing a requirement for industry to fund observers or requiring an increase in observer coverage at this time or exploring further the possibility of industry-funded observers. Under Amendment 7 measures, NMFS is requiring Longline category vessels to use electronic monitoring systems (*i.e.,* video cameras and gear sensors) that will provide data to corroborate logbook reports and serve as a source of high quality data for use in monitoring Longline category catch. Amendment 7 does not include a measure that will allow access to previously closed areas, or require observer coverage for access to the Cape Hatteras GRA at this time.

23. General Category Subquota Management

Comment 97: NMFS received a variety of comments on the proposed measure to allow transfer of General category quota from one or more the time periods that follow the January time-period to the January or other preceding sub-quota time periods. The comments included that NMFS should allow more flexibility in the General category; NMFS should provide more quota to the January subquota period; NMFS should provide half the subquota to the first half of the year and half the subquota to the second half of the year; NMFS should give a share of the subquota to North Carolina to fish from January to June, as the current 5.5 percent of quota in January to June is caught in less than 14 days. The North Carolina Department of Environment and Natural Resources commented that NMFS should shift subquota for December to the January subquota period.

Response: Under the quota regulations, the General category quota is divided into subquotas for each time period versus specific geographic areas. Under the measures implemented by this final rule, NMFS can transfer quota from one subquota period to another, earlier in the calendar year. For example, subquota could be transferred from the December subquota to the January subquota for that same calendar year. Although NMFS could transfer quota from one subquota period to any other subquota period, based on public comment NMFS will prioritize transfer from the winter fishery that occurs in December to the winter fishery that occurs in January within a fishing year (*e.g.,* prioritize transfer of quota from December in Year A to January of Year A).

Comment 98: NMFS received a comment that NMFS should consider the fact that transfers will have the effect of moving quota from the traditional Northeast fishery to the mid-Atlantic and South; Alternative E1c will negatively impact Northeast fishermen. One commenter stated that NMFS should take no action on General category subquotas (Alternative E1a). Another commenter stated that NMFS should establish 12 equal monthly subquotas (Alternative E1b).

Response: NMFS acknowledges the concerns that quota distribution may impact historical geographic distribution and considered these factors in selecting which alternative to finalize. Note that current regulations do not preclude General category and HMS Charter/Headboat category vessels from traveling from one area to another. In fact, many vessels travel from the northeast and mid-Atlantic states to participate in the winter fishery that occurs largely off North Carolina. NMFS will continue to consider the regulatory determination criteria regarding inseason quota transfers in an attempt to balance reasonable opportunity to harvest quota with other considerations, including variations in bluefin distribution and availability, among others. The measure implemented by Amendment 7 will provide additional fishing opportunities within the General category quota while acknowledging the traditional fishery. Prioritizing transfer from one winter fishery subquota to another will minimize negative impacts of transferring quota that is traditionally used by Northeast fishermen in the summer and fall months. Division of the quota equally by month was not preferred because the potential negative social and economic impacts outweigh the positive impacts. The negative aspects of this alternative include the potential for gear conflicts and derby fishing, as well as the potential for the historical geographic distribution of the fishery to be dramatically altered. Although this alternative would provide some stability to the fishery by establishing a known amount of quota that would be available at the first of each month, if catch rates are high in the early portion of the month, these quotas could be harvested rapidly and may lead to derby style fisheries on the first of each month. Additionally, if catch rates are high and subquotas are reached quickly, NMFS may need to institute multiple closures notices throughout the year.

24. Harpoon Category Retention Limit

Comment 99: NMFS received a comment supporting increased flexibility for the Harpoon category.

Response: In 2011, NMFS increased the incidental retention limit of large medium bluefin after considering requests from Harpoon category participants to eliminate certain regulations perceived as unnecessarily restrictive (76 FR 74003, November 30, 2011). Since then, NMFS has received requests from Harpoon category participants to instead manage the large medium size class retention limit over a range, similar to how NMFS manages the daily General category retention limit, for increased flexibility in setting the limit based on consideration of applicable factors (*i.e.,* the regulatory determination criteria applicable to retention limit adjustments). Under the Amendment 7 measure implemented by this final rule, NMFS will have the ability to increase or decrease the daily retention limit of large medium bluefin within a range of two to four fish, based on the former and current daily retention limits. This measure enhances NMFS' ability to more precisely manage the landing rate of large medium bluefin by the Harpoon category, thereby optimizing opportunities while preventing landings from exceeding the subquota.

25. Angling Category Trophy Sub-Quota

Comment 100: NMFS received comments on allocating a portion of the trophy south subquota to the Gulf of Mexico (preferred Alternative E3b), including that NMFS should not reduce the trophy south subquota; the reduction would negatively affect charter captains in the mid-Atlantic and South Atlantic areas; and that the change in allocation would increase

landings of spawning bluefin in the Gulf of Mexico. Other commenters stated that NMFS should change the division of subquota, but not split the subquota equally between the southern area and the Gulf of Mexico; and that NMFS should allocate 10% or 17% of the trophy south subquota to the Gulf of Mexico. The Mid-Atlantic Fishery Management Council commented that NMFS should take no action on this issue (Alternative E3a) and that Alternative E3b would lead to an unreasonably small recreational bluefin trophy quota for the northern region.

Response: Under the Amendment 7 measure implemented by this final rule, the trophy subquota will be divided to provide 33% each to the northern area, the southern area outside the Gulf of Mexico, and the Gulf of Mexico. The objective of this measure is to provide a reasonable fishing opportunity for recreational vessels in the Atlantic and Gulf of Mexico, reduce discards, and account for incidentally caught bluefin. A separate subquota allocation for the Gulf of Mexico will improve the equity of the trophy-sized fish allocation by increasing the likelihood that there will be trophy quota available to account for incidental catch of bluefin in that area (while still providing incentives not to target bluefin). An equal 33% division among the three areas provides the most equitable trophy subquota allocation. This measure will not affect the amount of Trophy subquota available to the northern area.

Comment 101: One commenter stated that NMFS should eliminate the trophy category because it is not possible to monitor the catch.

Response: Currently, NMFS monitors trophy bluefin along with all other sizes of recreationally-caught bluefin through the Large Pelagics Survey, the Automated Catch Reporting System, and state catch card programs (for landings in Maryland and North Carolina). NMFS considers the combined methods of monitoring trophy bluefin catch to be adequate such that closure of the trophy bluefin fishery is not warranted at this time.

26. Purse Seine Category Start Date

Comment 102: NMFS received comments on changing the start date of the Purse Seine category to June 1 (preferred Alternative E4b), including that NMFS should change the Purse Seine category start date to June 1 as fish have tended to be available on the fishing grounds earlier than July 15 in recent years; NMFS should give the Purse Seine category the same start date as other commercial categories; and NMFS should give the Purse Seine category a start date of June 15 if there is a need to compromise with other categories. Subsequent to the date the FEIS was published NMFS received many comments expressing concerns regarding the proposed June 1 start date. Specifically, commenters feared that the June 1 start date would flood the June and early July market for bluefin, depress the price, and cause a severe social and economic impact to small boat handgear fishermen. Other concerns were the increased potential for gear conflicts, and a concern that fish behavior would change and the fish may be dispersed by relatively early Purse Seine fishing activity .

Response: We had proposed changing the default start date of the Purse Seine category fishery from July 15 to June 1, with the ability to delay the season start date from June 1 to no later than August 15, to help optimize fishing opportunity for Purse Seine category vessels, given the other measures affecting the Purse Seine category implemented by this Amendment 7 final rule. Based on public comments, however, in the final rule NMFS is removing the default start date of the Purse Seine fishery, and instead will establish by action (via **Federal Register** notice) the start date of the fishery, during a range from June 1 through July 15.

Comment 103: One commenter stated that NMFS should not change the start date because the average value of bluefin is lower in June.

Response: NMFS has received comments over recent years from commercial bluefin fishery participants and dealers that fish quality tends to be lower earlier in the year, with lower associated price per pound. However, providing purse seine operators the ability to start fishing on June 1 provides additional flexibility for deciding when to make sets. These decisions are based largely on the availability of bluefin and the size composition of schools. To the extent that this flexibility could allow the harvest of the Purse Seine category quota while minimizing dead discards, the management measure meets the Amendment 7 objectives.

27. Permit Category Changes

Comment 104: One commenter did not support modifying the rules regarding permit category changes (preferred Alternative E5b), stating that the 10-day restriction is sufficient and changing the restriction would give people the chance to abuse the rules and fish in multiple categories.

Response: Based on feedback NMFS has received over a number of years from vessel owners affected by the 10-day restriction, NMFS believes that limiting the time period during which a vessel may change permit categories to 10 calendar days is overly restrictive, and may not allow the flexibility to resolve the problems of a permit issued by mistake. This measure, which will allow permit category changes within 45 days of permit issuance, provided the vessel has not fished (as verified via landings data), will achieve a better balance of allowing flexibility for vessel owners, while still preventing fishing in more than one permit category during a fishing year.

28. North Atlantic Albacore Tuna Quota

Comment 105: NMFS received a comment on implementing a U.S. North Atlantic albacore tuna quota (preferred Alternative E6b), stating that NMFS should be cautious with carrying forward multiple years of underharvest given the status of the northern albacore stock.

Response: NMFS acknowledges the concern about carrying forward large amounts of unused quota (often referred to as ''stockpiling''). The ICCAT Contracting Parties have discussed that issue in recent years, particularly regarding the potentially large adjusted quotas for the major harvesters of northern albacore (specifically the European Union, with 77 percent of the northern albacore quota). The current ICCAT northern albacore recommendation (Recommendation 13–05; Supplemental Recommendation by ICCAT Concerning the North Atlantic Albacore Rebuilding Program) allows for 25% of a country's quota to be carried forward, if unused, and to be used within the two years following the subject year of catch. Because the U.S. quota represents less than 2 percent of the northern albacore TAC, and the most the adjusted quota could be under the current recommendation is 658.75 mt (125% of the 527-mt quota), there is little risk of stock harm. Regarding stock status, based on the 2013 northern albacore stock assessment and the domestic thresholds for minimum stock size (*i.e.,* the MSST) and maximum fishing mortality (*i.e.,* the MFMT), the stock is not overfished (*i.e.,* rebuilding), with overfishing not occurring. Carry-forward of unused quota would be limited to 25 percent of the initial quota, consistent with the current ICCAT recommendation.

29. Other Concerns

Comment 106: Commenters expressed concerns and made suggestions about a variety of topics related to the management of bluefin tuna or

associated HMS fisheries, but not specific to one of the proposed management measures or alternatives analyzed. The underlying science was a concern, and commenters suggested that NMFS should reevaluate the methods and timing of stock assessments; should revise the method of dead discard estimates; should increase overall research; and should increase communication between scientists and managers. Other commenters questioned why some permit categories are open access and some are limited access; suggested that NMFS open the Florida East Closure or the DeSoto Canyon Closure; should modify the weak hook regulations; suggested that NMFS ban longlines; NMFS only cares about the commercial interests; the management of bluefin is unfair because the U.S. regulations are more restrictive than in other countries; and, observers should be required in all commercial categories. Commenters stated that greenstick gear and rod and reel cannot replace pelagic longline in regard to the amount of fish landed by the gears; expressed concern that pelagic longline vessels in the Gulf of Mexico are generally too large to effectively fish with greenstick gear; concern was expressed that tuna landed with greenstick gear are low in quality, bring a lower price than longline-caught tuna; and that greenstick-caught tuna are not as acceptable in domestic or international markets. Commenters stated that other fishing practices should be used to reduce discards of fish including the use of shorter longlines, thinner monofilament on mainlines or gangions, increased floatation on mainlines, using mackerel for bait, and/or reducing soak time. A commentor stated that dehooking devices should be used to promote post-release survival of organisms.

Response: Although the comments are directly or indirectly related to the management of bluefin tuna, Amendment 7 considered (*i.e.,* analyzed and proposed) a discrete range of management measures. In adopting any final measures, NMFS is restricted in scope to management measures closely related to those proposed, and within the range of impacts analyzed in the DEIS. Therefore, many of the management measures or ideas suggested by the public, regardless of potential merits, were not included in the FEIS (for analysis and consideration), but would have to be considered in the context of a future management action. In addition to the formal regulatory process of proposed and final rulemaking, NMFS considers issues, discusses management ideas, and obtains public input in the context of the HMS Advisory Panel, which typically convenes twice a year at meetings that are open to the public. Possession and use of dehooking devices are currently required onboard pelagic longline vessels.

Comment 107: Commenters requested that NMFS modify the Purse Seine landings tolerance regulations that restrict the amount of large medium bluefin tuna relative to the amount of giant bluefin that can be landed. Specifically, they recommended that the tolerance be increased or eliminated in order to reduce dead discards. The current tolerance is no more than 15 percent of the total amount of giant bluefin (81 inches or greater) per year, by weight. However, as the total number of future trips, and catch, is unknown, the vessel owner/operators have been self-imposing this regulation on a trip level basis to ensure compliance at the end of the year.

Response: Although there has been past interest in altering this limit, the issue was raised in the comments on the 2006 Consolidated HMS FMP—this alternative was not considered further in the DEIS because there was very little data available to determine whether such as change might be warranted and the impacts of such a change given recent low catch/landings from the Purse Seine category. Data are now available on dead discards by size relative to retained catch for the Purse Seine category from the 2013 fishing year. NMFS believes that additional analysis about the potential benefits of altering the limit, both by reducing dead discards and improving the Purse Seine category's opportunity to harvest its quota, is warranted and beneficial to the stock and the fishery. Additional data are needed to conduct such analyses and to make fishery management decisions. NMFS may take future action in a subsequent rulemaking, if warranted, but such changes are not supportable at this time in this Amendment.

Changes From the Proposed Rule (78 FR 52032; August 21, 2013)

This section explains the changes in the regulatory text from the proposed rule to the final rule. Some changes were made in response to public comment, others clarify text for the final rule, and others provide more detail or specifications about the administration of the measures as proposed. The changes from the proposed rule text in the final rule are as follows:

IBQ Shares and Allocation Administration of the IBQ Program

Program Requirements and Scope (635.15): The IBQ allocation shares in the proposed rule were based on eligibility criteria and a quota share formula based on the time period from 2006 through 2011. The final rule includes an additional year of data (2012) that became available after publication of the proposed rule. NMFS stated in the DEIS that analyses would be updated where 2012 data became available for the FEIS, and public comment on the DEIS also reflected the need to update these analyses. The range of seven years provides a reasonable representation of historical fishing activity, including recent years. Seven years is long enough to prevent short-term circumstances from disproportionately impacting a vessel, but recent enough to reflect current fishery participation. By including 2012 data, nine more vessels meet the criteria to be deemed ''active'' for the purposes of IBQ eligibility.

The final rule also clarifies that there are two aspects to how the pool of eligible vessels is determined: A vessel must meet the definition of ''active,'' and also must have been issued a valid Atlantic Tunas Longline category permit as of August 21, 2013 (the date of the proposed rule). ''Active'' vessels are those vessels that made at least one set using pelagic longline gear from 2006 through 2012 based on pelagic longline logbook data. At the DEIS stage, this criterion was based on logbook data for 2006–2011. Logbook data for 2012 data became available after publication of the DEIS, however. NMFS stated in the DEIS that analyses would be updated where 2012 data became available for the FEIS, and public comment on the DEIS also reflected the need to update these analyses. Thus, the final action uses 2006 to 2012 data. In addition to being ''active,'' vessels must have a valid Atlantic Tunas Longline category permit. NMFS clarifies here that, for purposes of IBQ share eligibility, a ''valid Atlantic Tunas Longline category permit'' is one held as of the date the proposed rule was published, which was August 21, 2013.

In response to public comment that NMFS should provide additional administrative details about the appeals process, the final rule includes an initial administrative step regarding the appeals of initial quota shares, and specifies the documentation that may be used to appeal. In the proposed rule appeals were to be made directly to the NMFS National Appeal Office. The final rule includes a provision that vessel

owners may first submit a written request for review of initial IBQ shares to the HMS Management Division within 90 days of publication of this final rule. The written request to adjust their initial quota share, must indicate the reason for the requested change and provide supporting documentation (see below). HMS Management Division staff will evaluate all requests and accompanying documentation, then notify the requestor by letter signed by the HMS Division Chief, of NMFS' decision to approve or deny the request for adjustment. If the request is approved, NMFS will issue the appropriate adjustment to the initial quota share and resultant allocation by letter, identifying any alteration to the quota share percentage and associated allocation. If the HMS Management Division denies the request, the permit holder may appeal that decision within 90 days of receipt of the notice of denial by submitting a written petition of appeal to the NMFS National Appeals Office in accordance with regulations at 15 CFR part 906. This final rule specifies what will be considered ''documented legal landings'' in support of an appeal of a quota share determination because public comment indicated that additional guidance on this issue was necessary. Specifically, for the purposes of appeals, NMFS considers ''documented legal landings,'' to be official NMFS logbook records or weighout slips for landings between January 1, 2006, through December 31, 2012, that were submitted to NMFS prior to March 2, 2013 (60 days after the cutoff date for eligible landings), and verifiable sales slips, receipts from registered dealers, state landings records, and permit records. Landings data are required to be submitted within 7 days of landing under the applicable regulations. Recognizing that somewhat-late reporting could have occurred for a variety of reasons, however, NMFS is clarifying that it will consider ''documented'' landings for appeals purposes to be those reported within 60 days to include those that were slightly late.

This final rule includes a provision that when NMFS determines that all requests for IBQ share adjustments and appeals have been resolved, NMFS may adjust all IBQ share percentages to accommodate permitted holders that have been deemed eligible or provided an increased IBQ quota share through the appeals process. NMFS will notify IBQ participants in writing with any resulting changes in their IBQ quota shares stemming from approved appeals.

This rule provides additional details about and clarifies requirements regarding the IBQ System used to track IBQ shares and resultant allocation, usage and balances of IBQ allocation, and conduct leasing of IBQ allocation. The proposed rule stated that NMFS would implement an Internet based system to track leases of IBQ allocation, but did not specifically note that the IBQ system would also be used to track IBQ shares, or provide details regarding the associated requirements for IBQ Program participants to create an account. Therefore, the following administrative details are being added:

Eligible Atlantic Tunas Longline category permit holders must have an IBQ System accounts in order to be issued IBQ shares and resultant allocation or lease IBQ. NMFS will set up these accounts for initial IBQ System accounts for eligible IBQ participants. Similarly, a permitted dealer purchasing bluefin tuna caught from a vessel fishing with pelagic longline gear must also have an IBQ System account and access the system online to provide landings data at the end of pelagic longline trips where bluefin were purchased or received (*i.e.,* data on the amount of bluefin landings and dead discards). NMFS will also set up accounts for those dealers who have historically purchased bluefin from pelagic longline vessels.

This final rule provides additional details for two aspects of IBQ accounting as follows: If an Atlantic Tunas Longline category permit holder participating in the IBQ Program has a quota debt that remains unresolved at the time of such permits sale or transfer, then that quota debt remains associated with that permit. This is consistent with the IBQ share remaining linked to the eligible permit itself and further refines how IBQ shares, resultant allocation, and quota debt will be managed to ensure accountability under the IBQ Program, even if permits are sold or transferred. Secondly, for those permit holders who own or operate multiple vessels with IBQ allocation, if, at the end of the year, one or more of the vessels has an outstanding quota debt, yet the other vessels still have IBQ allocation, the IBQ system will apply any remaining unused regional IBQ allocation associated with the other vessels to account for the quota debt of the other. This functionality has been added since the proposed rule because unused IBQ allocation does not carry over from one year to the next, but quota debt does. This functionality facilitates the resolution of quota debt, and reduces the possibility that a permit holder of multiple vessels may inadvertently fail to manually resolve an existing quota debt with IBQ allocation associated with one of their other vessels at the end of the year.

To ensure that all IBQ Program activity can be accounted for on an annual basis, the IBQ System will prohibit any and all online transactions, such as catch transactions and IBQ allocation leases, between December 31 at 6 p.m. and January 1 at 2 p.m. (Eastern Time). IBQ System functions will resume after January 1 at 2 p.m. the following year. No IBQ System transactions will be allowed or available during this 20 hour time period to provide NMFS time to reconcile IBQ accounts, adjust IBQ allocation for the upcoming year, etc. If a vessel with the required minimal IBQ allocation departs on a trip prior to the end of a calendar year and returns to port after the start of the following year, any bluefin landings or dead discards will be counted against the new year's allocation.

This final rule provides additional administrative detail and guidance about aspects of the annual process IBQ allocation. Annual IBQ allocations to eligible permit holders will occur January 1. For those permit holders awarded IBQ shares but are not eligible to receive the resultant IBQ allocation as of December 31 because they have begun—but not completed—the process of permit renewal or permit transfer, IBQ allocations will be made when the transaction regarding permit renewal and/or transfer has been completed. Subsequent to the annual IBQ allocation, additional IBQ allocation may be made available to eligible permit holders as a result of a U.S. quota increase or potential in-season quota transfer from the Reserve category, pursuant to determination criteria associated with quota adjustments. Subsequent to the annual IBQ allocation, IBQ allocation may be reduced as a result of a decrease in the U.S. bluefin quota, or to account for accrued quota debt.

Gulf of Mexico Gear Restricted Area

This final rule modifies the definition of the Gulf of Mexico GRA at § 635.2 from the definition in the proposed rule. NMFS proposed a Gulf of Mexico GRA for the months of April and May, during which time vessels would be prohibited from fishing with pelagic longline gear in the defined area. Based on public comment, NMFS re-analyzed additional spatial and temporal configurations of GRAs in the Gulf of Mexico, and instead is implementing a GRA during the same months (April and May), but of a different configuration than proposed. However, the GRA remains within the

range of areas considered and analyzed in the FEIS and the range of alternatives. The total area of the Spring Gulf of Mexico GRAs being implemented is larger than that of the proposed Small Gulf of Mexico GRA. This final rule implements a GRA comprised of two separate areas: An area based on that proposed, but extended to the east, and reduced in size on the western and northern borders, and a second area that is adjacent to the southern border of the Desoto Canyon Closed Area's northwestern 'block.' A larger geographic area in the Gulf of Mexico that includes areas to the east of what was proposed is required to effectively reduce bluefin interactions, given the location of historic interactions between bluefin and pelagic longline gear, and the high variability of bluefin distribution in the Gulf of Mexico.

Cape Hatteras Gear Restricted Area

Under § 635.2, the definition of the Cape Hatteras GRA was modified. NMFS proposed a Cape Hatteras GRA for the months of December through April during which time vessels would be prohibited from fishing with pelagic longline gear in the defined area, with the exception of vessels granted access based upon performance criteria. Based on public comment, NMFS re-analyzed spatial and temporal configurations of the Cape Hatteras GRA, and instead is implementing a modified GRA during the same months (December through April), but of a slightly different configuration than proposed. The total area of the Modified Cape Hatteras GRA being implemented is smaller than that of the proposed Cape Hatteras GRA, due to the modification of the southeastern region of the GRA. Specifically, the southeastern corner as proposed was a ninety degree angle, but this final rule connects the southwestern corner to a more northerly point on the eastern boundary of the Cape Hatteras GRA, eliminating a triangular shaped area from the southeast region of the GRA. The shape of the Modified Cape Hatteras GRA as implemented will minimize the likelihood that pelagic longline gear set south of the GRA will drift into the GRA (based upon the prevailing direction of currents).

Allow Pelagic Longline Vessels To Fish Under General Category Rules

Under § 635.21, paragraph (c)(3) was modified, however this measure is not being implemented by this final rule. In the proposed rule, NMFS proposed allowing pelagic longline vessels that are not allowed to fish in the Cape Hatteras GRA (based on the performance criteria) to instead fish for bluefin tuna under General category rule (in the time period and area associated with the GRA). Based upon public comment and further consideration, this alternative is not being implemented as part of the Amendment 7 final rule due to concerns about ecological impacts, and uncertain economic benefits. Other commenters were concerned about the expansion of a targeted bluefin fishery in the Cape Hatteras GRA, an area that already has large numbers of interactions with bluefin. Some noted concern about the potential impacts on the rate of harvest of the General category quota, which is limited, and the indirect impacts on General category vessels. Others noted that the replacement of pelagic longline gear with handgear (targeting bluefin) is not economically viable due to the size of the pelagic longline vessels and the associated trip expenses. Based on these public comments, NMFS determined that the potential benefits of allowing pelagic longline vessels, which are part of a limited access fishery, to fish under the open-access General category rules do not outweigh the potential costs and risks associated with this activity at this time.

Limited Conditional Access to Pelagic Longline Closed Areas

Section § 635.21 and paragraph § 635.23(f)(2) were modified because this measure that would have provided vessels fishing with pelagic longline gear some access to the existing pelagic longline closed areas was not implemented. This measure was included in the proposed rule but based upon additional information, public comment, and further consideration of potential administrative costs, NMFS is not implementing this measure in the final rule. NMFS may obtain data from within the closures through the use of exempted fishing permits. As explained further in Response to Comment # 65, the potential benefits of allowing pelagic longline vessels limited conditional access to closed areas would not outweigh the potential costs and risks associated with this activity. The objectives of this alternative were to maintain the relevant conservation aspects of the closure, balance the objectives of the closures, provide commercial data from within the closures, and provide additional fishing opportunities for permitted longline vessels (mitigating the potential negative economic impacts of Amendment 7).

Vessel Monitoring System

Paragraphs § 635.69(a) and § 635.69(e)(4) were modified from the proposed rule. The proposed rule included measures requiring the use of VMS units for Purse Seine vessels, as well as reporting requirements for the Purse Seine and Longline category vessels, but did not provide all the relevant details. The scope of the measures in this final rule are within the scope of the measures proposed. This final rule clarifies the scope of the VMS requirements applicable to Purse Seine category vessels by explaining that vessels fishing with purse seine gear are subject to the same requirements as pelagic longline vessels, including hardware and communications specifications, installation checklists, power down exemptions, hail in and hail out requirements, declaration out of the HMS fishery, interruption in position reports, repair and replacement requirements, NMFS access to data, etc. Secondly, the specific bluefin tuna reporting requirements in this final rule differ from the proposed rule. The proposed rule stated that vessels fishing with either pelagic longline gear or purse seine gear would be required to submit bluefin catch reports for each day on which gear is set, and that no report would be required for sets where there is no catch of bluefin. In contrast, this final rule requires submission of a bluefin tuna catch report for each pelagic longline or purse seine set, providing information on the date the haul was completed, the number of hooks (for pelagic longline gear) and the number and size range of bluefin caught (including reporting a catch of zero bluefin).

Electronic Monitoring

The final rule provides details about the specific requirements of the electronic monitoring program that were not in the proposed rule. Section 635.9 was modified from the proposed rule. This final rule provides further clarification of the electronic monitoring program. In addition to those requirements in the proposed rule, this final rule implements the following requirements: The permit holder must make the pelagic longline vessel accessible to NMFS or a NMFS-approved contractor to allow for the installation and testing of the electronic monitoring system, which will include training for the captain and crew, and may be required to steam to a designated port for these activities. The NMFS-approved contractor will provide the vessel owner a certificate that the installed equipment is a fully functioning electronic monitoring system. The final rule contains more detailed info on video cameras; GPS receiver; hydraulic drum rotation

sensors; control box and monitor; and includes some requirements related to hydraulics, power, camera mounts and lighting. This final rule notes the requirement for a written Vessel Monitoring Plan, to be developed by the NMFS-approved contractor with the vessel owner; and includes a pre-trip electronic monitoring system test requirement.

Annual Reallocation

Paragraph 635.27(a)(4) was modified from the proposed rule, based on public comment. In this final rule, the allocations for a particular year will be based on the previous year's individual purse seine participant catch rather than category-wide catch. This modified measure will tie quota allocation more closely to individual participant catch and create an incentive for fishery participants to remain active in the fishery. Without this modification to the alternative, individual allocations would be tied to the catch of the other participants in the fishery, which could have unfair results if catch were to vary greatly among the participants. Specifically, pursuant to this final rule, each Purse Seine fishery participant will initially be given a fifth of the quota available to the category for the year (159.1 mt divided by five participants equals 31.8 mt per participant under the current ICCAT quota). Next, NMFS will determine the annual quota available for use by each individual tuna Purse Seine participant that year based on the previous year's performance. Each participant will have available either 25 percent, 50 percent, 75 percent, or 100 percent of its allocation share of the base Purse Seine quota, depending upon the level of that participant's bluefin catch the previous year.

Provide Additional Flexibility for General Category Quota-Adjustment

Paragraph 635.27(a)(1)(ii) was modified to clarify the measure. This final rule clarifies that, based on public comments, NMFS will prioritize the transfer of quota from December sub-quota time period to the January subquota time period within a fishing year in order to address the unique characteristics of the January sub-quota period.

Adjustment of Management Measures

Paragraph 635.34 was modified to clarify as follows: As a result of the implementation of new management tools via Amendment 7, the proposed rule added to the list of management measures that NMFS may modify or establish in accordance with the framework procedures of the FMP. This final rule adds two items to this list of management measures and provides examples of Amendment 7 measures that are within the scope of management measures currently listed in the regulations. The Amendment 7 measures not included in the proposed rule list are as follows: Electronic monitoring requirements and examples of measures under the purview of the administration of the IBQ Program (quota share caps by individual or by category, permanent sale of shares, and NED IBQ rules).

Classification

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

NMFS prepared an environmental impact statement that analyzes the impact on the environment of a range of alternatives that would achieve the objectives of Amendment 7, which are described in the background section of the preamble for this action. A copy of the FEIS is available from NMFS (see **ADDRESSES**). As further explained in the Background, in this action, NMFS is implementing measures to minimize bycatch to the extent practicable; optimize fishing opportunity and account for dead discards; reduce bluefin tuna dead discards; enhance reporting; and adjust other aspects of the 2006 Consolidated HMS FMP as necessary and appropriate.

This final rule has been determined to be not significant for purposes of Executive Order 12866. The Agency has consulted, to the extent practicable, with appropriate state and local officials to address the principles, criteria, and requirements of Executive Order 13132.

Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis (FRFA) was prepared for this rule. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, our responses to those comments, and a summary of the analyses completed to support the action. The full FRFA and analysis of economic and ecological impacts are available from NMFS (see ADDRESSES). A summary of the FRFA follows.

The purpose of this final rulemaking, consistent with the Magnuson-Stevens Act, and the 2006 Consolidated HMS FMP and its amendments, is to implement HMS management measures that: (1) Optimize the ability for all permit categories to harvest their full bluefin quota allocations, account for mortality associated with discarded bluefin in all categories; maintain flexibility of the regulations to account for the highly variable nature of the bluefin fisheries; and maintain fairness among permit/quota categories; (2) reduce dead discards of bluefin tuna and minimize reductions in target catch in both directed and incidental bluefin fisheries, to the extent practicable; (3) improve the scope and quality of catch data through enhanced reporting and monitoring to ensure that landings and dead discards do not exceed the quota and to improve accounting for all sources of fishing mortality; and (4) adjust other aspects of the 2006 Consolidated HMS FMP as necessary and appropriate. These objectives are intended to support the following goals: Prevent overfishing and rebuild bluefin tuna, achieve on a continuing basis optimum yield, and minimize bluefin bycatch to the extent practicable by ensuring that domestic bluefin tuna fisheries continue to operate within the overall TAC set by ICCAT consistent with the existing rebuilding plan.

Summary of Significant Issues Raised by Public Comments

Section 604(a)(2) of the RFA requires a summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the Agency of such issues, and a statement of any changes made in the rule as a result of such comments. NMFS received many comments on the proposed rule and IRFA. Summarized public comments and the Agency's responses to them are included in this final rule, in the ''Responses to Comments'' section of this preamble, above. The specific economic concerns raised in the comments are also summarized and addressed here (the numbering of the excerpted comments reflects the numbering in the ''Responses to Comments'' section, above).

Comment 2: Many commenters, particularly those with small businesses involved in the pelagic longline fishery, expressed concern regarding the potential for negative economic impacts of Amendment 7 on jobs, families, and communities, and noted the importance of pelagic longline-caught fish in supplying high quality seafood to the nation. These commenters were concerned about the potential for the Amendment 7 measures to put people out of business, and ''destroy the pelagic longline fishery.'' Commenters stated that vessels that are currently only marginally economically viable would be at particular risk of going out of business, but were also concerned about

any secondary impacts on related businesses such seafood dealers, gear manufacturers, etc. They urged NMFS to use a balanced regulatory approach to address the Amendment 7 objectives, and stated that Amendment 7 measures would increase uncertainty in the pelagic longline fishery.

Response: The seafood supplied to the Nation by the pelagic longline fleet is valuable as both a source of food, and for the generation of income supporting local jobs, communities, and the broader economy. NMFS designed management measures to minimize economic impacts by relying on the combined effects of multiple management tools and incorporating flexibility into the system. The preferred measures will affect all permit/quota categories, and reflect the balance of addressing the issues confronting the bluefin tuna stock and management of the fishery while maintaining the viability of the pelagic longline and other fisheries dependent upon bluefin tuna. For example, reductions in dead discards would be achieved through the use of multiple measures, including gear restricted areas, the IBQ system, and quota allocation measures. The preferred measures would modify the quota system to increase management flexibility in order to allocate quota among categories to maximize opportunities to catch available quota, account for dead discards, and respond to changing conditions in the fishery. As the pelagic longline fleet is adjusting to the suite of new measures, NMFS would have the flexibility to allocate a limited amount of additional quota to the pelagic longline vessels if necessary to prevent a fishery closure, and still, as a result of the gear restricted areas and IBQ system, reduce the net amount of bluefin catch from the levels recently caught. The management measures work together to reduce dead discards and otherwise reduce bycatch to the extent practicable, increase accountability, enhance reporting and monitoring, and optimize quota allocation, in a predictable but flexible manner. The potential economic impacts of the measures affecting the pelagic longline fleet are analyzed in Chapters 5 and 7, of the FEIS, and the economic rationale is summarized in this FRFA.

Comment 3: Commenters stated that when determining whether the pelagic longline fleet should be subject to additional restrictions, NMFS should consider the current and past regulatory environment and other factors as context. Commenters stated the pelagic longline fishery is already heavily regulated to minimize its environmental impacts, especially in the GOM (*e.g.,* closures, weak hook requirement, observer deployment, bait requirements), and that progress is being made. Furthermore, increases in fuel costs strain fishers' ability to make a living, and events such as the 2010 oil spill in the GOM continue to be relevant. Commenters noted that bluefin tuna is managed at the international level and believe that the United States manages its citizens in a more effective and responsible way than other countries, and that NMFS should not further regulate bluefin tuna and increase the management disparity between the United States and other countries.

Response: The context in which vessels operate, including current regulations was a relevant factor NMFS considered in determining whether new regulations are justified. NMFS took into consideration many factors in selecting preferred measures that address the diverse objectives of Amendment 7 in a balanced manner. Chapter 6 of the FEIS contains a cumulative impacts analysis which is broad in scope and takes into consideration past, present, and reasonably foreseeable factors. In addition, Chapter 2 of the FEIS contains a description of measures and the rationale for the preferred measures. This FRFA includes a description of the steps taken to minimize the economic impacts on small entities, and the reasons for the preferred measures.

The United States manages its exclusive economic zone in accordance with applicable U.S. laws and in response to the unique characteristics of its fisheries, and therefore the U.S. regulations regarding bluefin tuna are different from the rules affecting citizens of other countries, which operate under different laws and circumstances. Where U.S. regulations are more restrictive than those abroad, NMFS believes that the corresponding ecological and socio-economic benefits that result from such restrictions are also likely to be greater than those abroad.

Comment 12: Many commenters strongly opposed reallocating quota to the Longline category because of concerns about the economic impacts on a particular geographic region (*e.g.,* New England or mid-Atlantic), or quota category (*e.g.,* the General category or the Angling category). Some commenters urged NMFS to respect the historical allocation percentages, and noted that reallocation would have the effect of pitting the different categories against each other. Some commenters suggested that NMFS consider other regulatory and economic circumstances facing vessels that may be impacted by a reduced quota. For example, Congressional representatives from Massachusetts and the New England Fishery Management Council (Council) stated that the proposed reallocation would disadvantage the New England Fishery, the traditional Massachusetts fleet, and shore-side infrastructure, and would allow fleets from other regions to use a disproportionate amount of quota. They were concerned about the commercial fleet, which is experiencing economic damage due to the decline in key stocks in the groundfish fishery. The Council suggested that NMFS assess the port-specific impacts of reallocation. A commenter was concerned that recreational vessels in the mid-Atlantic region would be disproportionately affected by quota reallocation because the quota may not last until the time the bluefin are off the mid-Atlantic coast.

Response: A reduction in quota may impact the revenue associated with a particular quota category or geographic region, or result in secondary economic impacts on a community. The FEIS analysis estimates that reallocation of quota to the Longline category could reduce revenue for individual vessels with a General category permit by $850 and result in total reduction in maximum revenue of $542,000 for all General category vessels. Although thirty percent of the General category permits are associated with the State of Massachusetts (1,150 permits as of October 2013), the total number of active vessels is substantially lower. Of the total number of General category permits issued throughout the Atlantic coast (3,783), the average number of General category vessels landing at least one bluefin between 2006 and 2012 was 474 vessels. Thus, the number of active vessels in Massachusetts can be presumed to be substantially fewer than 1,150.

When considering the social and economic impacts of actions, different communities and regions may be impacted to different degrees due to their unique regulatory and economic circumstances. The FEIS contains an analysis of the community impacts from the 2010 Deepwater Horizon/BP Oil Spill, and a 2013 analysis that presents social indicators of vulnerability and resistance for 25 communities selected for having a greater than average number of HMS permits associated with them. Those communities with relatively higher dependence upon commercial fishing included Dulac, LA; Grand Isle, LA; Venice, LA; Gloucester, MA; New Bedford, MA; Beaufort, NC; Wanchese, NC; Barnegat, NJ; Cape May,

NJ; and Montauk, NY. The analyses are principally at a fishery-wide, or permit category level. The bluefin tuna fisheries (and other HMS fisheries) are widely distributed and highly variable due to the diversity of participants (location, gear types, commercial, recreational), and because bluefin tuna are highly migratory over thousands of miles, with an annual distribution that is highly variable. The specific ports and communities that provide the goods and services to support the fishery may vary as well, as vessels travel over large distances to pursue their target species. Due to this variability, it is difficult to predict potential revenue and secondary impacts of preferred management measures by port or by state. Vessels fishing in any geographic area in the Atlantic or Gulf of Mexico are likely to have only limited access to bluefin tuna, unless they travel long distances within the bluefin's migratory range.

It is important to note that the actual economic impacts of reallocation of quota depend upon the total amount of quota allocated to (and harvested from) each of the quota categories, as a result of the combined effect of all of the measures that affect quota. For example, in addition to the amount of quota available as a result of the percentage allocations, and deductions for the 68 mt Annual Reallocation, there may be quota available for redistribution to various quota categories. Specifically, pursuant to the preferred ''Annual Reallocation'' measure, as described in Chapter 2 of the FEIS, if the Purse Seine category has not caught 70 percent of its quota during the previous year, quota may be moved to the Reserve category and subsequently reallocated across multiple user groups. Furthermore, in recent years, many categories have not fully harvested their amount of quota available to them. Thus, the actual impacts of reallocation may be minor or may be mitigated by future reallocation when available.

Reallocation of quota may result in frustration or negative attitudes among fishery participants of different quota categories, due to the changes to an historically accepted quota allocation system, or perceptions of unfairness. However, the modifications to the quota system are warranted for the reasons described in the response to comments 8 through 1. They are also fair due to the fact that all quota categories are affected in proportion to their quota percentage. As explained in the response to Comment# 9 above, NMFS designed the quota allocation alternatives to minimize the economic impacts on the non-longline categories. The alternatives take into consideration the relative size of each category quota (in the case of the ''Codified Reallocation Alternative,'' or the level of activity of vessels (''Annual Reallocation Alternative''), and are designed to consider changing levels of quota or landings, respectively, in ways that reduce economic impacts.

Comment 13: Many recreational anglers wanted to insulate the Angling category from any potential effect of quota reallocation to the Longline category, citing the economic impacts and high value of the recreational bluefin fishery to the economy, as well as the economic investments of the participants and the current regulatory burden such vessels face. Vessel owners with General category commercial permits expressed concern about the potential impacts to the General category. Commenters requested additional quantitative analyses comparing the different quota categories, including primary and secondary impacts.

Response: As stated above in the response to the previous comment, a reduction in quota may impact the revenue associated with a particular quota category or result in secondary economic impacts on a community. The objective of the preferred allocation measures is not to reallocate quota based on economic optimization, but to: account for bluefin dead discards within the Longline category; reduce uncertainty in annual quota allocation and accounting; optimize fishing opportunity by increasing flexibility in the current bluefin quota allocation system; and ensure that the various quota categories are regulated fairly in relative to one another.

The reallocation measures implemented by this final rule will minimize adverse economic impacts to the extent practicable because the relative amount of quota reallocated is small and proportional to the size of the category quota, and the overall quota system will be more flexible and predictable and able to offset some or all of the negative economic impacts. This approach was developed consistent with our obligation under National Standard 6 (Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches) and National Standard 8 (Conservation and management measures shall, consistent with the conservation requirements of this chapter (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.)

Although the FEIS includes estimates of the value of bluefin tuna quota by quota category for comparative purposes, the preferred codified reallocation was not based on a specific economic analysis, but the achievement of the stated objectives. An elaborate quantitative analysis that compares the economic value of the Angling, Longline, and General category fisheries was not conducted due to the different characteristics of the Angling, Longline and General category fisheries, the variable amount of data associated with these fisheries, and the large number of factors and assumptions that contribute to estimating the value of a fishery. For example, under the preferred IBQ system, the availability of bluefin tuna quota may be a limiting factor for a pelagic longline vessel, and therefore the lack of adequate bluefin quota, by even a small amount, could result in a vessel being prohibited from fishing with pelagic longline gear. In that circumstance, the value of the bluefin quota to the vessel owner may be very high, and related to the value of the target catch (*e.g.,* swordfish or yellowfin tuna). On the other hand, the value of a bluefin tuna to a recreational angler or to the recreational fishery at-large may include the value of the recreational experience to the angler, as well as the associated goods and service supporting the fishing trip. The FEIS indicates that the Angling category would potentially face unquantified reductions in economic and social activity associated with the 7.36 percent reduction in available quota. In contrast, for a vessel fishing commercially in the General category, a high quality bluefin tuna sold to Japan may be extremely valuable and other catchfar less important.

Comment 20: NMFS should avoid closures to the pelagic longline fishery. Any closure would disrupt markets.

Response: NMFS acknowledges that GRAs designed to reduce bluefin tuna interactions and regulatory discards and to thus decrease bycatch have costs associated with them, and may have disruptive effects on local markets. NMFS designed the GRAs (*i.e.,* their timing and configuration) after considering the amount of reduced fishing opportunity as well as the amount of reduced bluefin interactions, in order to minimize potential disruptions in markets. NMFS designed the Modified Cape Hatteras GRA to provide access opportunities to

fishermen that have a proven ability to avoid bluefin, and are compliant with the observer and logbook requirements. As described in the Response to Comment #47, NMFS specifically modified the Cape Hatteras GRA from what was proposed to reduce disruption to ongoing fishing in an adjacent area, and thereby reduce potentially negative economic impacts of the alternative. Evaluation of all alternatives considered both economic and ecological considerations (*i.e.,* the potential reductions in revenue associated with estimated reductions in bluefin interactions).

Comment 21: NMFS should not implement GRAs. NMFS received comments indicating that, due to a variety of reasons, commercial fishermen may be limited to certain fishing locations by the size and configuration of their vessels, insurance requirements, or safety concerns, and that some participants in the fishing fleet have nowhere else to fish (except in the location of the GRA) and they would be ''shut out'' of the fishery.

Response: The underlying concept of the Modified Cape Hatteras GRA minimizes economic impacts by providing conditional access to the area, based on performance criteria. The majority of the pelagic longline fleet will be allowed to fish in the area upon implementation, and in the future if conditions for access continue to be met. In estimating ecological and socio-economic impacts of the Modified Cape Hatteras GRA, NMFS determined that 14 vessels will not have access to this GRA. Of these 14 vessels, four vessels made over 75 percent of their sets in the Modified Cape Hatteras GRA. Based upon the location of their historical catch, and to ensure that NMFS did not underestimate the potential economic impacts, the analysis assumes that these vessels would not redistribute effort outside of the gear restricted area. Although these four vessels could redirect from fishing grounds off Oregon Inlet, NC to fishing grounds between Cape Fear and Cape Hatteras, such a change in fishing grounds may involve substantial costs (fuel, longer trips, possible transfer and dockage in a new port, etc.). However, NMFS modified the Cape Hatteras GRA in a way that would achieve the reduction in bluefin discards, and would also allow fishermen to continue to deploy gear in regions south and west of the GRA, thereby reducing adverse impacts. With respect to the potential negative impacts of the Modified Spring Gulf of Mexico GRA, approximately 61 vessels that fish in the Gulf of Mexico would be affected. Given the consistent pattern of historical catch of large numbers of bluefin tuna in certain times and locations by pelagic longline gear, NMFS determined that a GRA in both the Gulf of Mexico and the Atlantic are necessary in order to achieve reductions in bluefin tuna dead discards, and that the potential economic impacts are warranted in order to achieve such reductions. The potential negative socio-economic impacts were minimized by using an iterative process to design the gear restricted areas. The Modified Spring Gulf of Mexico Pelagic Longline GRAs were designed in order to achieve a balance between a reduction in bluefin dead discards, protection of the Gulf of Mexico spawning stock, and continued operation of the pelagic longline fleet in the Gulf of Mexico. The specific boundaries of the area were determined by an iterative process, by selecting areas of historical pelagic longline interactions with bluefin, and comparing both the anticipated reduction in bluefin interactions with the estimated reduction in revenue, of different configurations. In addition, NMFS selected the time period due to its occurrence during the peak bluefin spawning period in the GOM.The magnitude of the potential economic impacts result from the specific location and duration of the GRA. The size of the Modified Spring Gulf of Mexico Pelagic Longline GRA was based upon the historical location and number of bluefin interactions, as well as the recent persistent trend in fishing effort shifting to the east of this area, and the known variability in the fishery in general. A smaller geographic area would be unlikely to achieve meaningful reductions in bluefin tuna interactions. The duration of the GRA encompasses the months with the highest number of interactions during the spawning period. An alternate, or shorter time period would coincide with neither the highest number of bluefin interactions nor the bluefin spawning period peak.

Comment 29: NMFS should not penalize small vessels because of their inability of provide adequate space for observers.

Response: NMFS designed the scoring system for the Pelagic Observer Program Performance metric in the preferred alternative such that valid reasons for not carrying an observer will not be penalized. Observer coverage is integral to the management of the fishery as it contributes important, objective data in support of the management of protected species and provides important information on the pelagic longline fishery utilized in the management of bluefin and other HMS species. Due to the importance of having enough observed trips to meet the observer coverage targets required by national and international law, NMFS also evaluated vessels on the number of trips observed. The agency utilizes observer data to develop estimates of protected resources interactions and estimates of discards of other species including bluefin. These data are essential for stock assessments and are critical in meeting international management obligations. Under ATCA and as a contracting party of ICCAT, the United States is required to take part in the collection of biological, catch, and effort statistics for research and management purposes.

Comment 48: NMFS should consider the potential negative economic impact on fishermen in the area who do not have access to other fishing grounds.

Response: The preferred design of the Cape Hatteras GRA was the result of an iterative process. NMFS analyzed multiple time periods and geographic areas in order to take into consideration both the potential reduction in the number of bluefin interactions and the potential reductions in target catch. The analysis considered relevant fisheries data and oceanographic trends. In the DEIS, due to current patterns in the Cape Hatteras area, the zone affected by the proposed Cape Hatteras GRA was analyzed beyond the explicit boundaries of the GRA. Analysis of a buffer region was needed because vessels to the south and west of the GRA would be prevented from fishing in these areas due to their gear drifting into the GRA (having the effort of creating a larger affected geographic area that the boundary of the GRA). The DEIS analysis of impacts not only considered the reduced fishing effort within the GRA, but also the reduced fishing effort in a buffer region to the south and west of the area. Therefore, NMFS included sets made in this buffer region into the redistribution analyses. In the FEIS, based on public comment and additional analyses, NMFS now prefers the Modified Cape Hatteras GRA which would minimize the adverse impacts on fishing opportunities while still achieving comparable reductions of bluefin discards and almost identical conservation and management benefits as the original proposal.

Comment 50: A large number of commenters expressed general support for a GRA in the GOM, while others stated that NMFS should not implement a GOM GRA, due to the severe economic impact it would have on the fishery.

Response: Implementation of a GRA in the GOM supports the achievement of the Amendment 7 objectives. A GRA will, in conjunction with the other management measures implemented by this final rule, result in the reduction of dead discards of bluefin tuna by the pelagic longline fishery. Although implementation of a GRA would have a negative economic impact on the pelagic longline fishery, the preferred alternative would have less of an impact than some of the other alternatives considered and analyzed. As described in more detail in the responses to comments below, NMFS analyzed a range of alternatives, and took into account the importance of fishery resources to fishing communities by analyzing economic and social data. Because GRAs may result in the reduction and/or redistribution of fishing effort by pelagic longline gear, the preferred alternative represents a balance between anticipated reductions in dead discards of bluefin, and potential negative economic impacts on the pelagic longline fishery. Furthermore, the preferred alternative will support the broader objectives of both stock rebuilding as well as the continued viability of the commercial and recreational fisheries that depend upon bluefin tuna.

Comment 55: One commenter noted that the size of the fishable area in the GOM is already small, given the constraints on the locations where they can fish, including existing pelagic longline closed areas, as well as the areas that must be avoided for other reasons (*e.g.,* activity range of seismographic vessels, which can operate for up to six months, and oils rigs).

Response: NMFS acknowledges that the preferred Spring Modified GOMo Pelagic Longline GRAs would further reduce the amount of fishable areas in the GOM available for the use of pelagic longline gear, and that vessels choosing to fish in the GOM with pelagic longline gear must work around other industrial users of Gulf of Mexico resources. NMFS selected the boundaries of the Spring Modified Gulf of Mexico GRAs with careful consideration of the associated benefits and costs. NMFS optimized the size of the preferred GRAs to achieve a meaningful reduction in dead discards, and still leave fishing grounds open for the pelagic longline fleet. The Cumulative Impacts Analysis in the FEIS (Chapter 6) considers the impacts of the preferred alternatives in the broader context of other historical and current activities.

Comment 56: NMFS should consider the impact on the yellowfin tuna and swordfish fisheries, which are active in the GOM and in the areas covered by the GRAs. Specifically, the commenter questioned whether the GOM pelagic longline fleet would be able to remain active.

Response: NMFS carefully considered the impact of the preferred Modified Spring Gulf of Mexico GRAs on yellowfin and swordfish fisheries, both of which are robust and healthy fisheries in the GOM. The estimated reductions in revenue totals of the preferred GRAs (assuming effort is redistributed) were calculated for the alternatives for both swordfish (ranged from $11,583 to $2,089,885 on average per year) and for yellowfin tuna (ranged from $59,500 to $3,964,682, on average per year) fisheries. The preferred Spring Modified Gulf of Mexico GRAs would achieve a balance between conservation objectives and providing continuing opportunity for the GOM swordfish and yellowfin tuna fisheries. The primary conservation objectives of the GRAs is to reduce bluefin interactions, and reduce bycatch and bycatch mortality to the extent practicable. NMFS compared among the alternatives the amount of 'savings' of bluefin tuna and the reduction in target catch as part of its analysis of the gear restricted areas. Under the Preferred Alternative, the annual reductions in revenue associated with the reduced catches of swordfish and yellowfin tuna are estimated at $41,504 and $207,110, respectively. The annual reduction in total revenue is estimated at $1,793,922. An example of how the data was compared and alternatives evaluated follows: Comparing the Preferred Alternative with the alternative that would restrict the full EEZ from March through May, the reduction in the weight of bluefin catch would be a little more than twice as much under the EEZ GRA (44.2 mt versus 19.2 mt under the Preferred), but the reduction in total revenue associated with the EEZ GRA would be more than six times larger than the reduction in total revenue associated with the Preferred Alternative ($1,793,922 versus $281,614 under the Preferred). In other words, compared to the Preferred Alternative, the amount of additional costs that would be associated with the EEZ GRA would be disproportionately greater than the additional conservation benefits associated with the EEZ GRA. The Amendment 7 measures are not designed to target a particular amount of reduction in dead discards, but rather reduce dead discards in a meaningful way, provide strong incentives to avoid and reduce bycatch, and take into account the potential impacts on the pelagic longline fishery. The combined effect of the Modified Spring Gulf of Mexico Pelagic Longline GRA and the Modified Cape Hatteras Pelagic Longline GRA, would reduce the number of bluefin discarded by 40 percent and the number of bluefin kept by 10 percent (fishery-wide).

Comment 63: Some commenters supported the proposed measure to allow vessels fishing with pelagic longline gear that are not authorized conditional access to the Cape Hatteras GRA, to fish under General category rules. Vessel owners wanted to have this type of fishing opportunity as mitigation for the lost opportunity of fishing with pelagic longline gear in the Cape Hatteras GRA, between December through April. Some commenters did not support the proposed opportunity for such vessels to fish under the General category rules for various reasons. Some noted that the activity would be a ''dangerous precedent,'' because limited access vessels would be allowed to fish under the rules applicable to an open access category, General category vessels would not be allowed to fish as a pelagic longline vessel. Others were concerned about the expansion of a targeted bluefin fishery in the Cape Hatteras GRA, an area that already has large numbers of interactions with bluefin. A commenter found it ironic that vessels not allowed to fish with pelagic longline gear in the Cape Hatteras GRA (proposed in order to reduce bluefin interactions with pelagic longline gear) due to their low performance criteria score would be provided an opportunity to target bluefin tuna. Some noted concern about the potential impacts on the rate of harvest of the General category quota, which is limited, and the indirect impacts on General category vessels. Others noted that the replacement of pelagic longline gear with handgear (targeting bluefin) is not economically viable due to the size of the pelagic longline vessels and the associated trip expenses. A commenter stated that the proposed measure would facilitate trans-shipment of bluefin from Longline category to General category vessels. A commenter suggested that all pelagic longline vessels should be able to fish under the General category rules, and not only those affected by the GRA.

Response: Based upon public comment and further consideration, NMFS is not implementing the management measure that would have allowed vessels fishing with pelagic longline gear that are not authorized conditional access to the Cape Hatteras GRA to fish under General category rules. While this measure would have

provided additional fishing opportunities to pelagic longline vessels without access to the Cape Hatteras GRA, the differences in fishing costs and productivity between pelagic longline gear and handgear are great enough that handgear fishing for bluefin tuna would not be economically viable for a pelagic longline vessel. Given the unlikely -economic benefits as well as public perceptions of unfairness, the potential benefits of allowing vessels to fish under the General category rules do not outweigh the potential costs and risks associated with this activity.

Comment 64: NMFS received a large number of comments that did not support the proposed limited conditional access to closed areas for vessels using pelagic longline gear, for a variety of reasons. Commenters, including the Florida Fish and Wildlife Conservation Commission, were foremost concerned about potential negative biological impacts on swordfish, billfish, and other species, as well as the indirect negative socio-economic impacts on the recreational fishing community if there were negative biological impacts. Specifically, commenters cited the benefits of the DeSoto Canyon and East Florida Coast closed areas contributing to the rebuilding of the swordfish stock, and the stabilization of the blue and white marlin stocks. Commenters stated that the biological analysis of the alternative was inadequate, and one commenter was concerned about the impacts on dusky sharks. Some commenters supported access, noting the importance of such access as a means to provide flexibility to pelagic longline vessels in the context of the IBQ Program restrictions, while others suggested modifications to the alternative such as allowing the use of electronic monitoring instead of human observers.

Response: Based upon public comment and further consideration of potential administrative costs, NMFS is not implementing this management measure. The potential benefits of allowing pelagic longline vessels limited conditional access to the closed areas would not outweigh the potential costs and risks associated with this activity. The objectives of the proposed measure were to maintain the relevant conservation aspects of the closure, balance the objectives of the closures, provide commercial data from within the closures, and provide additional fishing opportunities for permitted longline vessels (mitigating the potential negative economic impacts of Amendment 7). The East Florida Coast, Charleston Bump, and DeSoto Canyon Closed Area were implemented as part of a bycatch reduction strategy, based on three objectives: (1) Maximize the reduction in incidental catch of billfish and of swordfish less than 33 lb dressed weight; (2) minimize the reduction in the target catch of larger swordfish and other marketable species; and (3) ensure that the incidental catch of other species (*e.g.,* bluefin, marine mammals, and turtles) either remains unchanged or is reduced. Upon implementation, NMFS recognized that all three objectives might not be met to the maximum extent, and that conflicting outcomes would require some balancing of the objectives. There are data that supports the assertion that the closed areas have contributed to the achievement of their objectives, in concert with other management measures. NMFS provides an annual review of the potential effectiveness of the current suite of management measures, including closed areas, at reducing bycatch in its annual SAFE report for HMS. Although the SAFE report does not isolate and quantify the effectiveness of closed areas as a separate management tool, the estimated reductions in discards of swordfish, blue marlin, white marlin, sailfish, and spearfish, as a result of all management measures have remained consistently high (-50 to -70 percent), suggesting that the current suite of international and domestic management measures have played a significant role in allowing the United States to reduce its bycatch interactions. Given the likely benefits of the closed areas, the difficulty in determining the precise magnitude of the benefits of the closed areas in the context of other management measures, as well as the difficulty predicting the potential impacts that access to closed areas would have, NMFS believes that there is uncertainty whether in fact the first objective of the alternative (maintain relevant conservation aspects of the closure) would be met. The access to closed areas alternative did not include defined bycatch limits, but would have relied upon the assumption that low levels of fishing effort is sufficient to prevent excessive bycatch. Furthermore, there would be administrative costs associated with the access program. Therefore, the benefits associated with providing additional fishing opportunities (by providing access) would not outweigh the costs in terms of the risk of undermining the conservation benefits of the closed areas. With respect to providing commercial data from within the closures, as stated previously, NMFS may obtain data from within the closures through the use of exempted fishing permits.

Comment 68: Commenters supported implementation of the IBQ system in order to hold vessels accountable and provide incentives to reduce discards. Commenters noted that NMFS should provide some flexibility in the IBQ system, particularly in the short-term, to ensure that vessels, especially small vessels, are able to adapt to the new restrictions and the overall program is successful. Commenters urged NMFS to continue to support the pelagic longline swordfish fishery, which is important for multiple reasons.

Response: Implementation of the IBQ system will increase the responsibility and accountability of individual vessels and the pelagic longline fishery as a whole, for the catch of bluefin tuna. As explained in detail in the responses to more specific comments, the individual bluefin quota system implemented by this final rule is designed to provide a reasonable and effective means of reducing dead discards, increasing accountability, and maintaining a viable pelagic longline fishery. The management measures are intended to provide flexibility at the level of the individual vessel, and in the quota system as a whole, so that the fishery can operate under the challenges of a substantially new regulatory structure. Furthermore, the fishery must be able to adapt on a continuing basis to the variability of highly migratory species, and changing ecological conditions.

Individual pelagic longline vessels have the flexibility to change their fishing practices through modification of fishing behavior (including time, location and methods of fishing, and the use of non-longline gear); increasing communication within the fishery to facilitate bluefin avoidance; and leasing of individual bluefin quota. Under Amendment 7, NMFS may also provide additional flexibility by allocating additional quota to the Longline category, as described in the response to Comments 18 and 19.

Comment 76: The Louisiana Department of Natural Resources (Louisiana DNR) commented that Amendment 7 will have large negative socio-economic impacts on the GOM pelagic longline fishery, with greatest impacts in Louisiana. The Louisiana DNR also asserted the rule will have minimal benefits to the bluefin stock, and attributed the economic impacts mostly to the IBQ Program, which it feels is inconsistent with the Louisiana Coastal Resources Program. Louisiana DNR noted that the potential benefits to the stock of bluefin tuna are minimal compared to the potentially large socio-

economic impact to the targeted fisheries, and NMFS' consistency determination lacks sufficient data and information.

Response: Pelagic longline vessels may be negatively impacted by the preferred IBQ Program, and such impacts would likely be felt in the ports and communities associated with the fishery, including those in Louisiana, which is home to approximately 27 percent of the active pelagic longline vessels. Florida, New York, and New Jersey would also be impacted due to the distribution of active pelagic longline vessels (31 percent, 16 percent, and 16 percent of the active vessels, respectively). Bluefin dead discards in the GOM by pelagic longline vessels have typically ranged from 36 to 86 mt per year. The benefits of the preferred IBQ Program include strictly limiting bluefin catch in the pelagic longline fishery, reduction of dead discards and waste, and promotion of economic efficiency, all of which will contribute to stock growth and a sustainable bluefin tuna fishery in the long term. The fact that the GOM is a critically important spawning area for bluefin contributes to the biological importance of having a quota system that effectively limits bluefin catch and provides incentives for pelagic longline vessels to minimize interactions with bluefin.

The IBQ Program was analyzed by home port state, and the impacts by state vary, depending upon the specific measurement (*i.e.,* number of vessels with quota share, number of vessels that may need more quota than allocated; amount of quota that each vessel would need; and total amount of quota that each state would need). The states with the highest number of vessels with quota shares would be Florida (43 vessels with quota shares), Louisiana (25 vessels), New Jersey (18 vessels), North Carolina (14 vessels) and New York (11 vessels). Under the regulatory conditions of the Preferred Alternatives, within those home port states, the number of vessels that would need to lease additional quota (above their initial allocation) to continue fishing at their historic rates are as follows: Florida (5 vessels), Louisiana (13 vessels), New Jersey (4 vessels), North Carolina (2 vessels) and New York (3 vessels). Although the proportion of vessels in a particular state that would need to lease additional quota is highest in New Orleans, the average amount of quota that the vessels would need to lease is almost identical similar among vessels from the ports of Louisiana, Florida, and New Jersey. Vessels with the homeport state of New York would need to lease about four times more quota per vessel to continue fishing at their historic rates. The estimate of the total amount of quota that vessels with a home port of New York would need to lease is 13.4 mt (11 vessels), and the total amount of quota that vessels with a home port in Louisiana would need to lease is 17.4 mt (25 vessels). NMFS has concluded that this action is fully consistent with the enforceable policies of the management program, though the State of Louisiana objects. The FEIS analysis demonstrates that NMFS utilized many of the factors cited by Louisiana as lacking in NMFS' evaluation. Specifically, NMFS used the best available logbook, dealer, and observer data, conducted vessel-specific analyses for preferred alternatives on GRAs and IBQ measures, and relevant recent scientific information. NMFS also explored the availability of alternative methods of achieving the Amendment 7 objectives, and considered the economic impacts, and the long-term benefits of the measures. The alternative methods to reduce dead discards—no action or group or regional quotas—would have more adverse impacts and be less effective in achieving Amendment 7 objectives to reduce dead discards and maximize fishing opportunity. The design of the IBQ management measures and other aspects of Amendment 7 minimize the significant adverse economic impacts, disruption of social patterns, and adverse cumulative impacts, to the extent practicable, relative to other methods analyzed while also meeting Amendment 7 objectives.

The preferred IBQ Program was designed to provide flexibility for vessels to be able to continue to maintain viable businesses, through initial allocations, potential allocation of quota from the Reserve category, quota leasing, elimination of the target species requirement, and, as described above, the flexibility for vessels to fully account for their catch at the end of a trip, after sale of the bluefin.

Comment 78: Commenters were concerned about the ability of new entrants to become active in the fishery, and some suggested that NMFS use an annual system to define eligible vessels, such as a minimum number of sets during the previous year. A commenter noted that businesses which supply new equipment to outfit pelagic longline vessels would be negatively impacted if new entrants were not able to enter the fishery.

Response: The ability for people who are currently not involved in the pelagic longline fishery to become participants in the fishery (new entrants) is an important consideration, and is a required consideration under the MSA. The preferred Amendment 7 IBQ Program would add a single additional prerequisite for participation in the pelagic longline fishery to the previously existing two prerequisites and associated monitoring and compliance requirements (*e.g.,* VMS). Prior to this Amendment, the two principal elements for participation in the fishery were a vessel and limited access permit. The preferred IBQ Program would implement a requirement for a vessel to have the minimum amount of bluefin quota allocation to fish with pelagic longline gear, as well as electronic monitoring requirements associated with preferred IBQ Program.

The preferred IBQ Program would provide adequate opportunities to new entrants to the fishery because there would be multiple means by which a new entrant may satisfy the quota requirement. The structure of the preferred IBQ Program would not create any unreasonable barriers to new entry. A person interested in participating in the fishery may purchase a permitted vessel with IBQ shares, and therefore be allocated quota annually (due to the IBQ share associated with the permit), or a person may purchase a permitted vessel without IBQ shares, and lease quota allocation from another permitted vessel. Under the preferred IBQ Program, as in the past, participation in the pelagic longline fishery by new entrants would require substantial capital investment and potential new entrants will face costs which are similar to historical participants.

NMFS considered the merits of setting aside a specified amount of quota for new entrants, but found several negative aspects of such a provision. For example, providing quota to new entrants would essentially create a second quota allocation system, which would complicate the overall preferred IBQ Program by creating separate class of vessels, with different allocations. A quota set aside for new entrants would result in less quota available for other participants in the fishery, and rather than the market controlling the quota, there would be many policy decisions to be made (*e.g.,* would the amount of set aside vary according to the number of new entrants, or be a fixed amount annually? Would the quota be divided equally among new entrants, be allocated in the minimum share amounts, or allocated based on fishing history?). NMFS believes in simplifying the IBQ Program upon implementation where possible, to minimize regulatory burden and complexity. A system of rules regarding quota set aside would

add additional complications to the IBQ Program. Therefore, when considering whether additional restrictions to facilitate new entrants to the fishery are warranted, NMFS determined that given the lack of information with which to base such restrictions, and the uncertainty whether there would be a pressing need for such restrictions, a quota set aside was not warranted. During the three year review of the IBQ Program NMFS will consider information from the fishery after implementation of the IBQ Program, and evaluate whether the IBQ Program provides adequate opportunities to new entrants.

As suggested by commenters, NMFS considered the concept of making an annual determination of which vessels are eligible to receive quota allocations based on a set of criteria (such as a certain number of longline sets during the previous year). NMFS found that there are negative aspects of such an annual system. If the vessels allocated quota shares varied on an annual basis, the IBQ Program would be more complex and difficult to administer; there would be greater uncertainty annually in the fishery; there would be incentives to fish on an annual basis (due to criteria to fish in order to receive quota); and any value associated with a permit that would be derived from the associated IBQ share may be minimized (if the IBQ share is only valid for a year). Although such a system could limit the number of years a vessel without quota share (*i.e.,* a new entrant) must lease quota, the negative aspects of this approach would be substantial. For example, in order to have an IBQ system that includes strong accountability, any quota 'debt' accrued must persist from one fishing year to the next. It would be difficult to implement persistent accountability if the vessels eligible for quota changed on an annual basis.

Comment 82: Many pelagic longline vessel owners expressed strong concerns that the amount of bluefin quota allocated to individual vessels would be inadequate to continue to fish, and that despite efforts to avoid bluefin, vessels would sooner or later encounter bluefin. The proposed allocations would make continuing fishing operations extremely difficult, because they would be forced to stop fishing, and therefore revenue would be cut off, but expenses would continue. Vessel owners stated that they would not be able to remain in business under such circumstances, and some estimated that a large vessel would need about 20 bluefin to account for the anticipated amount of bluefin catch (instead 2 to 13 fish). Some highlighted the difference between the proposed IBQ allocations and the number of bluefin tuna that may be retained by a vessel with a General category commercial permit (up to 5 bluefin a trip), as justification for having larger individual quota allocations.

Response: Under the preferred IBQ Program, some vessels will not have enough quota share to continue to account for the same amount of bluefin they caught in the past. The FEIS analysis indicates that at a quota level of 137 mt approximately 25 percent of vessels will need to lease additional bluefin quota in order to land their historical average amount of target species if they do not change their behavior to reduce their historical rate of bluefin interactions. If no leasing of IBQ allocation occurs, there could be a reduction in target species landings with an associated reduction in revenue of approximately $7,574,590 total, or $56,108 per vessel (135 vessels).

The precise impacts of the IBQ Program are difficult to predict due to the variability of bluefin distribution as well as the potential range of fishing behaviors (and business strategies) of vessels in response to the new regulations. In order to reduce the likelihood of interactions, vessel operators may have to pursue new strategies including communication with other pelagic longline operators regarding the known locations of bluefin, modifications to fishing time, location, and technique, and use of alternative gears. In conjunction with these strategies, leasing additional quota may be necessary. The preferred IBQ Program includes the requirement that the relevant vessel have a permit as of August 21, 2013, which reduced the number of eligible vessels, and therefore will slightly increase the amount of quota share per vessel. Due to the difficulty of predicting the precise impacts of the preferred IBQ Program, NMFS may, as the fishery adjusts to the new system, need to consider providing additional quota to the Longline category in order to increase the amount of quota available to individual vessels, thereby balancing the need to have an operational fishery with the need to reduce bluefin bycatch in the fishery. During the preferred alternative's three-year formal review of the IBQ system, NMFS will consider any structural changes to the program necessary.

The pelagic longline fishery is an incidental bluefin fishery unlike the directed General category handgear fishery, and retention limits and other management measures are different. The preferred alternatives in Amendment 7 would implement a regulatory system that would mitigate the effects of the different restrictions among the different permit categories.

Comment 84: Some commenters urged NMFS to allocate equal shares of bluefin quota to all eligible vessels, for multiple reasons. Equal shares would avoid the use of historical logbook data; would reduce potential negative feelings among permit holders with different amounts of allocation; and would provide higher quota allocations for some vessels than under the proposed method. Additionally, a commenter noted that it may not be necessary to consider the amount of target catch in the quota share formula (and provide more quota to vessels catching more target catch) because larger fishing operations are better equipped financially to adapt to new regulations. Another commenter supported basing the allocation on target species landings and fishing effort, because higher effort is likely to result in more bluefin catch.

Response: NMFS carefully considered allocating quota shares on an equal basis, but prefers to implement the method as proposed, which will incorporate two metrics of equal weight: Designated species landings and the ratio of bluefin to designated species landings. While an equal share formula has some positive attributes, the overall merits of the preferred method would be greater. It is important to take into consideration the diversity of the pelagic longline fleet, maximize the potential for the success of the IBQ Program, and provide incentives for vessels to avoid bluefin tuna.

NMFS analyzed the pelagic longline logbook data on target catch and bluefin interactions, and for most vessels, there is positive correlation between the amount of target catch, and the number of bluefin tuna interactions. For most vessels, the more swordfish, yellowfin tuna, or other target species a vessel catches, the more bluefin tuna it interacts with. However, a few vessels (those responsible for the largest number of interactions) interact with large numbers of bluefin out of proportion with the amount of their target catch. Considering this historic pattern, basing one of the allocation formula elements on the amount of designated species landings would increase the likelihood that vessels would be allocated quota in relation to the amount of quota they may need to account for their catch of bluefin.

The second of the two elements (the ratio of bluefin interactions to designated species landings) is useful because it takes into consideration the fact that relatively few vessels (*i.e.,* about fifteen percent of the vessels) are responsible for about 80 percent of the

interactions with bluefin tuna. Because the preferred allocation formula would result in a lower allocation for vessels with a higher rate of historic interactions, it will provide a strong incentive for such vessels to make changes in their fishing practices to reduce their number of bluefin interactions. Vessels with historically high catches of target species and a low rate of interactions with bluefin will receive a larger quota share than vessels with either higher rates of bluefin interactions or lower amounts of target species.

Comment 87: Commenters expressed concern about whether vessel owners would be willing to lease quota to other vessels, given the low amounts of quota allocated to vessels, and concern about whether the cost of leasing will be affordable, especially for owners of small vessels. Other commenters did not support leasing because access to additional quota could enable vessels to target bluefin.

Response: The analysis of the preferred IBQ Program in the FEIS indicates that at a quota of 137 mt, 25 percent of vessels will need to lease additional quota in order to land their historical average amount of designated species if they do not change their behavior to reduce their historical rate of bluefin interactions. Therefore, a majority of vessels may have quota in excess of what is needed to account for their bluefin catch, and may have incentive to lease quota to other vessels. Notwithstanding the analysis, there is uncertainty regarding both the amount and price of quota that may be leased. A well-functioning leasing market, which enables quota to be leased by those who need it, will be a key factor in whether the preferred IBQ Program functions as intended.

Comment 92: Comments on NMFS' authority to close the pelagic longline fishery ranged from those who support closing the fishery in conjunction with a Longline category quota allocation of 8.1 percent, to those who said that the fishery should be closed only if there is unusually high catch of bluefin (and not when the quota is reached. Commenters noted the potential impacts of closures early in the year on the pelagic longline fishery, supporting businesses, consumers of the fish products, and future ICCAT recommendations.

Response: A closure of the pelagic longline fishery may have adverse direct and secondary economic impacts, the severity of which will depend upon how early in the year the closure occurred. Under the preferred IBQ Program, in which individual vessels may not fish with pelagic longline gear unless they have quota, it is not likely that NMFS will be required to close the fishery as a whole. However, individual vessels will be prohibited from fishing if they have not accounted for their catch or do not have the required minimum amount of quota allocation to depart on a pelagic longline trip. If, based on the best available data, NMFS estimates that the total amount of dead discards and landings are projected to reach, have reached, or exceed the Longline category quota, NMFS may prohibit fishing with pelagic longline gear. Similarly, if there is high uncertainty regarding the estimated or documented levels of bluefin catch, NMFS may close the fishery to prevent overharvest of the Longline category quota, or prevent further discarding of bluefin.

As described in many of the responses to comments, NMFS has designed Amendment 7 not only reduce dead discards and implement accountability, but also to provide flexibility for pelagic longline vessels fishing under the preferred IBQ Program restrictions, and flexibility in the quota system as a whole, to balance the needs of the pelagic longline fishery with the needs of the other quota categories.

Comment 94: NMFS received comments that supported electronic monitoring (*i.e.,* video camera and gear sensors), while other comments either expressed concern or opposed it. Comments supporting electronic monitoring indicated that it is not cost prohibitive, that it would allow NMFS to ground-truth other data, and that it supports accountability and enforcement. Those opposed to electronic monitoring said that it is cost prohibitive, an invasion of privacy, and is redundant with existing information. Some comments expressed concern about the functionality of a system, considering the issues experienced with some VMS functionality, and the ability to identify the difference between bigeye and bluefin tuna using video cameras. Implementation using a pilot scale was suggested, which would allow time to set up a functioning infrastructure. Expansion of electronic monitoring to other categories with dead discards was also suggested.

Response: The preferred measures would establish requirements to monitor dead discards for all commercial user categories to better achieve the ICCAT requirement to account for sources of bluefin tuna fishing mortality and to better monitor the fishery for bluefin accounting purposes domestically. The Purse seine category would be required to report dead discards via VMS, and hand gear fisheries (General, Harpoon, and Charter/headboat categories) would be required to report using an automated catch reporting system via internet or phone. Longline category vessels would be required to coordinate installation and maintain a video and gear electronic monitoring system that would record all catch and relevant data regarding pelagic longline gear deployment and retrieval. The purpose of video monitoring for the Longline category would be to provide a cost effective and reliable source of information to verify the accuracy of bluefin tuna interactions reported via VMS and logbooks. In many instances, the FEIS analysis found discrepancies between logbook data and observer data (considered to be highly accurate) reported for the same trip. The preferred electronic monitoring measure would support accurate catch data and the preferred bluefin tuna IBQ management measures, by providing a means to verify the accuracy of the counts and identification of bluefin reported by the vessel operator. The per-vessel cost of this gear is expected to be approximately $19,175 for purchase and installation (including maintenance costs and loan interest), or $3,835 per year over the five-year life of the equipment. NMFS has been able to procure funding for the initial installation of these systems. Variable costs are approximately $225 per trip, including data retrieval, fishing activity interpretation, and catch data interpretation. These costs are lower than the cost of increased observer coverage. The Southeast Fisheries Science Center estimates that observer deployment costs approximately $1,075 per sea day, which equates to approximately $9,675 per average nine day pelagic longline trip.

Video monitoring is currently used in several fisheries, and NMFS has funded over 30 pilot projects to further research on the use and effectiveness of electronic monitoring, including research on the accuracy of finfish identification. These studies provide evidence that properly deployed and maintained video monitoring camera systems provide effective data for accurately identifying large pelagic species. NMFS white papers on electronic monitoring are available at the following Web address: *http://www.nmfs.noaa.gov/sfa/reg_svcs/Councils/ccc_2013/K_NMFS_EM_WhitePapers.pdf.* NMFS would take into account the time required for owners to outfit their vessels with newly required equipment when establishing the dates

of required effectiveness for electronic monitoring.

Comment 99: NMFS received a comment that NMFS should consider the fact that transfers of quota under the measure that would provide more flexibility for General category quota transfers will have the effect of moving quota from the traditional Northeast fishery to the mid-Atlantic and South; in other words that Alternative E1c will negatively impact Northeast fishermen. One commenter stated that NMFS should take no action on General category subquotas (Alternative E1a). Another commenter stated that NMFS should establish 12 equal monthly subquotas (Alternative E1b).

Response: NMFS acknowledges the concerns that quota distribution may impact temporal fishing opportunities and considered these factors in selecting preferred alternatives. Note that current regulations do not preclude General category and HMS Charter/Headboat category vessels from traveling from one area to another. In fact, many vessels travel from the northeast and mid-Atlantic states to participate in the winter fishery that occurs largely off North Carolina. NMFS would continue to consider the regulatory determination criteria regarding inseason quota transfers in an attempt to balance reasonable opportunity to harvest quota with other considerations, including variations in bluefin distribution and availability, among others. The preferred alternative would provide additional fishing opportunities within the General category quota while acknowledging the traditional fishery. Division of the quota equally by month was not preferred because the potential negative social and economic impacts outweigh the positive impacts. The negative aspects of this alternative include the potential for gear conflicts and a derby fishery, as well as the potential for the historical geographic distribution of the fishery to be dramatically altered. Although this alternative would provide some stability to the fishery by establishing a known amount of quota that would be available at the first of each month, if catch rates are high in the early portion of the month, these quotas could be harvested rapidly and may lead to derby style fisheries on the first of each month. Additionally, if catch rates are high and subquotas are reached quickly, NMFS under this alternative may have to implement multiple closures notices throughout the year.

Comment 101: NMFS received comments on allocating a portion of the trophy south subquota to the Gulf of Mexico (preferred Alternative E3b), including that NMFS should not reduce the trophy south subquota; the reduction would negatively affect charter captains in the mid-Atlantic and South Atlantic areas; and that the change in allocation would increase landings of spawning bluefin in the Gulf of Mexico. Other commenters stated that NMFS should change the division of subquota, but not split the subquota equally between the southern area and the Gulf of Mexico; or that NMFS should allocate 10% or 17% of the trophy south subquota to the Gulf of Mexico. The Mid-Atlantic Fishery Management Council commented that NMFS should take no action on this issue (Alternative E3a) and that Alternative E3b would lead to an unreasonably small recreational bluefin trophy quota for the northern region.

Response: Under the preferred alternative, the trophy subquota would be divided to provide 33 percent each to the northern area, the southern area outside the Gulf of Mexico, and the Gulf of Mexico. The objective of this alternative is to provide reasonable fishing opportunities for recreational vessels in the Atlantic and GOM, reduce discards, and account for incidentally caught bluefin. A separate subquota allocation for the GOM would improve the equity of the trophy-sized fish allocation by increasing the likelihood that there would be trophy quota available to account for incidental catch of bluefin in that area (while still providing incentives not to target bluefin). An equal 33 percent division among the three areas would provide the most equitable trophy subquota allocation. This preferred measure would not affect the amount of Trophy subquota available to the northern area.

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

Section 604(a)(3) of the RFA requires a description and estimate of the number of small entities to which the final rule would apply. This final rule is expected to directly affect commercial and for-hire fishing vessels that possess an Atlantic Tunas permit or Atlantic HMS Charter/Headboat permit. In general, the HMS Charter/Headboat category permit holders can be regarded as small entities for RFA purposes. HMS Angling (Recreational) category permit holders are typically obtained by individuals who are not considered small entities for purposes of the RFA. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a ''small business'' if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts (revenue) not in excess of $20.5 million for all its affiliated operations worldwide (NAICS code 114111, finfish fishing). NAICS is the North American Industry Classification System, a standard system used by business and government to classify business establishments into industries, according to their economic activity. The United States government developed NAICS to collect, analyze, and publish data about the economy. In addition, the SBA has defined a small charter/party boat entity (NAICS code 487210, for-hire) as one with average annual receipts (revenue) of less than $7.5 million. The SBA recently modified its definitions of small businesses, and therefore the definitions were slightly different between the proposed and final rules (79 FR 33647; June 12, 2014).

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 during that time period was less than $1.4 million, well below the SBA size threshold of $20.5 million in combined annual receipts. Therefore, NMFS considers all Tuna Longline category permit holders to be small entities. NMFS is unaware of any other Atlantic Tunas category permit holders that potentially could earn more than $20.5 million in revenue annually. Therefore, NMFS considers all Atlantic Tunas permit holders subject to this action to be considered small entities. NMFS is also unaware of any charter/headboat businesses that could exceed the SBA receipt/revenue thresholds for small entities.

The preferred alternatives would apply to the 4,059 Atlantic Tunas permit holders based on an analysis of permit holders in October 2013 (NMFS 2014). Of these permit holders, 252 have Longline category permits, 14 have Harpoon category permits, 7 have Trap category permits, 5 have Purse Seine category participants, and 3,783 have General category permits. The preferred alternatives would also impact HMS Angling category and HMS Charter/Headboat category permit holders. In 2013, 3,968 vessel owners obtained HMS Charter/Headboat category permits. It is unknown what portion of these permit holders actively participate in Atlantic HMS fishing or fishing services for recreational anglers. NMFS

has determined that the preferred alternatives would not likely directly affect any small government jurisdictions defined under RFA. More information regarding the description of the fisheries affected, and the categories and number of permit holders, can be found in Chapter 3 of the FEIS.

Description of Projected Reporting and Record-Keeping Requirements

Section 604(a)(4) of the RFA requires a description of the projected reporting, record-keeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. Several Amendment 7 measures include reporting, record-keeping, and compliance requirements that require a new Paperwork Reduction Act (PRA) filing, and some of the preferred alternatives would modify existing reporting and record-keeping requirements, and add compliance requirements. NMFS estimates that the number small entities that would be subject to these requirements would include the Longline category (252), Charter/Headboat category (3,968), General category (3,783), Harpoon category (14) and Purse Seine category (3), based on the number of permit holders in commercial bluefin tuna fishing categories in 2013. The following section describes the projected reporting, record-keeping and other compliance requirements of the final rule as required.

Area-Based Alternatives

Currently, pelagic longline vessels must have agency approved E–MTU VMS units installed and must use them to hail in and out of port prior to and at the end of a fishing trip. The Area-based preferred alternative that would grant conditional access (based on performance metric criteria) to the Modified Cape Hatteras GRA (Alternative B 1d) would require that pelagic longline vessels authorized to fish in the area also submit daily reports to NMFS via E–MTU VMS summarizing their fishing effort and bluefin tuna catch and harvest. This is a slightly modification of the preferred alternative in the DEIS and in the proposed rule, but it has the same additional reporting burden, which is expected to take five minutes per report/day at a cost of $0.12 per report. This data will allow NMFS to determine whether continued access to the areas is warranted based on bluefin tuna interaction rates, among other things.

NMFS would calculate performance metrics for each pelagic longline vessel to determine whether they qualify to gain access to the Cape Hatteras GRA. These metrics would be based on the vessel's historical catch and reporting compliance. Pelagic longline permit holders would be permitted to appeal their performance metrics by submitting a written request, indicating the reason for the appeal, and providing supporting documentation (*e.g.,* copies of landings records, permit ownership, etc.). Each appeal request is expected to take approximately two hours to compile.

Quota Control Alternatives

The preferred alternatives for bluefin tuna quota controls include several reporting requirements necessary to implement IBQs for pelagic longline vessels. Some of these requirements are also addressed under the alternatives in other sections of this document.

The alternatives in this section include options for assigning IBQ shares. Preferred alternative C2j would implement a process for individuals to appeal their IBQ share. Individuals would be required to submit a written request for an appeal, and include the reason for appeal and supporting documentation. The reporting burden associated with each appeal, those submitted to the HMS Management Division or to the National Appeals Office, are expected to be approximately two hours.

Preferred alternative C2c2 would authorize transfer of quota among eligible Atlantic tunas Longline permit holders and Purse Seine category participants. To support tracking of IBQ transfers among IBQ participants and establish a tracking system for purchase of bluefin tuna under the IBQ System, preferred alternative C2e1 would require IBQ participants to track and execute transfers of IBQ allocation via the IBQ System. To access the IBQ System eligible users must be able to access the system electronically. IBQ System users will need some basic computer and Internet skills to input information for bluefin tuna trade into the IBQ System. The record-keeping and reporting burden for permit holders is expected to be approximately 15 minutes per trade. The IBQ System will also require interaction with federal bluefin tuna dealer permit holders that purchase bluefin from pelagic long line vessels; however, electronic dealer reporting for bluefin tuna purchases was previously analyzed and approved by NMFS in the 2006 Consolidated HMS FMP rulemaking (71 FR 58058, October 2, 2006) and thus the rule effectively does not impose a new requirement for dealers in this category. An IBQ System for bluefin demands a high degree of accountability for providing accurate data on catch and harvest. Preferred alternative C2g2 (same as D2b) would require pelagic longline vessels to install an electronic monitoring system, including video cameras and associated recording and monitoring equipment, in order to record all longline catch and relevant data regarding pelagic longline gear deployment and retrieval. Data collected during each fishing trip would be required to be provided to NMFS, within a specified time frame after each trip. This alternative would require both fixed and variable costs over the service life of each camera installed onboard. The per-vessel cost of this gear is expected to be approximately $19,175 for purchase and installation (including maintenance costs and loan interest), or $3,835 per year over the five-year life of the equipment. NMFS has been able to procure funding for the initial installation of these systems. Variable costs are approximately $225 per trip, including data retrieval, fishing activity interpretation, and catch data interpretation.

Preferred alternative C2g1 (same as D1b) would require pelagic longline vessels to use their E–MTU VMS to submit daily reports of bluefin tuna catch and harvest and fishing effort. Purse seine vessels would be required to purchase and install E–MTU VMS units, and submit daily reports of catch, harvest, and effort as well. This alternative would provide more timely data as required by the IBQ system than the current pelagic longline logbook program and dealer reporting requirements. As noted above, the additional reporting burden for the VMS reports is 5 minutes per report/day and $0.12 per report. The cost of installing E–MTU VMS is $3,300 per vessel and daily position reports cost approximately $1.44 per day.

Several alternatives include additional compliance requirements without additional reporting. Preferred alternative C21.2b would require mandatory retention of all legal-sized dead bluefin tuna caught on pelagic longline gear. Preferred alternative C4b would allow NMFS to prohibit fishing using pelagic longline gear once the bluefin tuna quota is reached. Conversely, preferred alternative C21.1b would relieve certain compliance requirements by repealing target catch requirements for pelagic longline vessels.

Lastly, one of the preferred alternatives would have an additional reporting requirement, but would occur via a future action under separate rulemaking. As required by the MSA, a cost recovery program for management

and enforcement costs associated with the preferred IBQ Program (Preferred alternative C2i) will be addressed via a subsequent regulatory action, at which time NMFS will update/modify current record-keeping and compliance requirements. This action may require new PRA filings, but does not at this time.

Enhanced Reporting Measures

Several preferred alternatives are identified as measures to enhance reporting for bluefin tuna. Three of these include the VMS requirements (C2g1 and D1b), and electronic monitoring of the Longline category (C2g2 and D2b), discussed above. The last is the preferred alternative to require automated catch reporting for General, Harpoon, and Charter/Headboat permit categories (D3b). This alternative would require individuals with those vessel permits to report their catch (*i.e.,* landings and discards) after each trip using an automated system such as a Web site or phone recording system. NMFS estimates that each report will take approximately 5 minutes. Based on previous years' landings, NMFS estimates that the total annual reporting burden will be approximately 607 hours and could affect approximately 8,226 permit holders.

Other Measures

The other measures implemented by this rule would not increase reporting or compliance requirements.

Description of Steps Taken To Minimize Significant Economic Impacts of This Action

Section 604(a)(5) of the RFA requires a description of the steps NMFS has taken to minimize the significant economic impacts on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and the reason that each one of the other significant alternatives to the rule considered by the Agency which affected small entities was rejected. The impacts NMFS has identified and the steps NMFS has taken to minimize them are discussed below and in the FEIS. One of the requirements of an FRFA is to describe any alternatives to the preferred alternatives which accomplish the stated objectives and which minimize any significant economic impacts. These impacts and the steps taken to minimize them are discussed below and in Chapters 4 and 5 of the FEIS. Additionally, the RFA (5 U.S.C. 603(c)(1)–(4)) lists four general categories of ''significant'' alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. Use of performance rather than design standards; and,
4. Exemptions from coverage of the rule for small entities.

In order to meet the objectives of this Amendment, consistent with all legal requirements, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. Under the third category, ''use of performance rather than design standards,'' NMFS considers Alternative B 1c ''Cape Hatteras Gear Restricted Area with Access based on Performance'', Alternative B 1d ''Modified Cape Hatteras Pelagic Longline Gear Restricted Area with Access Based on Performance'', Alternative C 2 ''IBQs Based on Designated Species Landings and the Ratio of Bluefin Catch to Designated Species Landings'', and B 3b ''Limited Conditional Access to Closed Areas using Pelagic Longline Gear Based on Performance Criteria'' to all be alternatives that use performance standards. As described below, NMFS analyzed several different alternatives and provides the rationale for identifying the preferred alternatives to achieve the desired objective.

NMFS considered five different categories of potential bluefin management measures, each with its own range of alternatives that would meet the objectives of the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP. The first category, allocation alternatives, covers four main alternatives that address various quota reallocation strategies. The second category of alternatives, area based alternatives, explores various gear restricted areas, gear measures, and access to closed areas using pelagic longline gear. The third category of alternatives, bluefin tuna quota controls, covers four main alternatives, which include IBQs, regional and group quotas, and closure of the pelagic longline fishery. The fourth category of alternatives, enhanced reporting measures, covers six main alternatives, which include VMS requirements, electronic monitoring of the Longline category, automated catch reporting, deployment of observers, logbook requirements, and expanding the scope of the Large Pelagics Survey. The fifth category of alternatives, other measures, covers seven main alternatives that address other Tunas permit categories besides Longline and other tuna quotas. The expected economic impacts of the different alternatives considered and analyzed are discussed below.

The potential impacts that these alternatives may have on small entities have been analyzed and are discussed in the following sections. The economic impacts that would occur under these preferred alternatives were compared with the other alternatives to discuss how the economic impacts to small entities were minimized while still accomplishing the stated objectives of this rule.

Allocation Alternatives

These alternatives would either modify the base allocations (percentages of the U.S. quota designated to particular for bluefin quota categories) and remain the same until and if changed by future amendment, or would set up a regulatory mechanism for modifying the quotas annually or in certain years based on defined criteria.

Alternative A 1—No Action

The No Action alternative would make no changes to the current percentages that each quota category is allocated (General: 47.1 percent; Harpoon: 3.9 percent; Purse Seine: 18.6 percent; Longline: 8.1 percent; Trap: 0.1 percent; Angling: 19.7 percent; Reserve: 2.5 percent). Dead discards would continue to be accounted for separately from the quota allocations through the annual specification process.

In the short-term, minor to moderate direct adverse economic impacts are likely to be limited to the Longline category due to quota shortages. In 2012, NMFS projected that the Longline category was likely to fully harvest their allocated quota before the end of the fishing year, and closed the southern area on May 29, 2012 (77 FR 31546) and the northern area on June 30, 2012 (77 FR 38011, June 26, 2012). In 2013, the Longline category northern and southern areas were closed on June 25 (78 FR 36685) because the adjusted quota had been reached. In the long-term, there could be additional minor to moderate direct adverse economic impacts if other quota categories are closed early in the fishing year.

Alternative A 2—Codified Reallocation

The Codified reallocation alternative (Preferred) would reallocate quota and result in increased bluefin quota for the Longline category, and would therefore alleviate some of the current challenges associated with the domestic quota system.

This alternative would codify a quota category increase of 62.5 mt whole weight to the Longline category reflecting the historical 68 mt dead discard allowance and the current allocation percentages. All of the categories, including the Longline category, would contribute to the 68 mt historical allowance, with a net increase of 62.5 to the Longline category after its share of the deduction, (*i.e.,* based on the current 8.1 percent allocation, the Longline category portion of the 68 mt is 5.5 mt; 68 mt–5.5 mt equals 62.5 mt, hence an increase of 62.5 mt. This alternative results in a net increase of 62.5 mt for the Longline category, which would increase the potential revenue from bluefin for the Longline category by approximately $11,269 per permit holder per year. The General category would face a potential reduction in the maximum revenue from bluefin of approximately $850 per permit holder per year. The Harpoon category would face a potential reduction in the maximum revenue from bluefin of approximately $2,409 per permit holder per year. The Purse Seine category could face a potential reduction in the maximum revenue from bluefin of approximately $107,627 per permit holder per year. Although the magnitude of revenue loss appears to be high for the Purse Seine category, this alternative actually would likely have minor adverse economic impacts on Purse Seine fishermen since landings in this category have recently been very low. This alternative minimizes economic impacts by reallocating only a relatively small portion of each category's quota to the Longline category.

Alternative A 2b (Reallocation Incorporating Recent Catch Data) would revise the quota allocation percentages for all categories, basing the new allocation on both the current codified allocation (50%) and recent catch (50%) as applicable to each quota category. Reallocating the quota based on recent catch data would result in a 83.56% increase in the Longline category quota and an increase for the Angling category of 47.1%. However, this reallocation alternative would result in a decrease in the quotas of the General, Harpoon, Purse Seine, Trap, and Reserve categories of 10.85%, 15.56%, 49.01%, 55.56%, and 48.05%, respectively. Revising the quota allocations for all categories to reflect recent catch would increase the potential revenue from bluefin for the Longline category by approximately $11,305 per permit holder per year. The General category could face a potential reduction in the maximum revenue from bluefin of approximately $1,254 per permit holder per year. The Harpoon category could face a potential reduction in the maximum revenue from bluefin of approximately $4,996 per permit holder per year. The Purse Seine category could face a potential reduction in the maximum revenue from bluefin of approximately $713,558 per permit holder per year.

Alternative A 2c (Reallocation from Purse Seine to Longline Category) would reallocate two-fifths (40 percent) of the current Purse Seine category quota to the Longline category and would result in 91.84% increase in the Longline category quota and a decrease the Purse Seine quota by 39.99%. The permanent reallocation of two-fifths of the Purse Seine category to the Longline category would increase the potential revenue from bluefin for the Longline category by approximately $12,387 per permit holder per year. The Purse Seine category could face a potential reduction in the maximum revenue from bluefin of an equivalent $582,202 per permit holder per year. The other bluefin quota categories would not be impacted by this alternative.

Alternative A 3—Annual Reallocation of Bluefin Quota From Purse Seine Category

Annual reallocation Alternatives A 3a and A 3b would reallocate anticipated unused quota from the Purse Seine category to other quota categories or would allocate to the Purse Seine category in proportion to the number of permitted vessels (respectively).

Under alternative A 3a, the preferred alternative, 25 percent of the Purse Seine category bluefin quota would be guaranteed to be available to the five historically permitted fishery participants (permit holders) in that category, but beyond that, the bluefin quota would be based on the previous year's landings and dead discards. Based on a formula, quota may be reallocated from the Purse Seine category to the Reserve category annually. The allocation formula is designed to allocate a minimum level of quota to permitted fishery participants, as well as enable quota to increase over successive years, in order to avoid being too restrictive. Note that NMFS would still have the regulatory authority to transfer quota inseason to or from any fishing category to or from the Reserve, and could continue to transfer any amount of quota inseason, even if purse seine vessels receive the minimum amount of quota (25 percent) at the start of the season. In recent years, little of the Purse Seine category quota has been landed. If that continues into the future, under alternative A 3a, the Purse Seine quota could be reduced by 75 percent. The 23.8 mt associated with that reduction would reduce the maximum revenue from bluefin that the purse seine vessel could land by $403,000 annually. However, given the recent bluefin landings history of the purse seine fleet, it is unlikely that future bluefin landings would be constrained substantially by this reduction and allocations would be re-evaluated on an annual basis. Therefore, alternative A 3a would likely only result in minor direct adverse short-term economic impacts to permitted Purse Seine vessels. Other categories would benefit from the potential of increased revenue, and this alternative would increase predictability in the fishery. This alternative minimizes economic impacts by providing a means to optimize quota utilization and account for dead discards, enhance quota flexibility in a predictable manner, as well incorporate a system for Purse Seine fishery participants to be allocated their total base quota percentage if they are consistently active in the fishery.

Under alternative A 3b (Annual Purse Seine Allocation Commensurate with the Number of Purse Seine Vessels), NMFS would make Purse Seine category quota available annually to that category based on the number of active Purse Seine vessels and would reallocate the remainder to the Reserve category. An active Purse Seine vessel would be defined as a vessel with a valid Purse Seine category permit, which has requested and received an allocation in accordance with the regulations (§ 635.27(a)(4)), and is capable of fishing purse seine gear (defined at § 635.21(e)(vi)) to harvest Atlantic bluefin tuna. The net result would be that only those Purse Seine category permit holders with active vessels would receive Purse Seine quota, and individually they would be allocated one fifth of the overall Purse Seine base quota, acknowledging the preferred codified allocation alternative (Alternative A 2a), under which the Purse Seine base quota would be 159.1 mt. The economic impacts of this alternative would be similar to those under alternative A 3a. Alternative A 3b would also likely only result in minor

direct adverse short-term economic impacts resulting from the loss of potential revenue if current bluefin fishing levels remain the same.

Alternative A 4—Modifications to Reserve Category

Under the alternative A 4a, the No Action alternative, there would be no changes to the allocation to the Reserve category or the determination criteria that are considered prior to making any adjustments to/from this category. This alternative would not impact small entities. The Reserve category would be allocated the current 2.5 percent of the U.S. annual quota, and NMFS could allocate any portion of the Reserve category quota for inseason or annual adjustments to any other quota category provided NMFS considered the current determination criteria and other relevant factors first.

Alternative A 4b (Modify Reserve Category), the preferred alternative, would increase the amount of quota that may be put into the Reserve category from several sources and expand the potential uses of Reserve category quota. Specifically, it would potentially increase the Reserve category quota beyond the current baseline allocation of 2.5 percent and broaden the determination criteria to be considered in making adjustments to/from the Reserve category. This could result in moderate beneficial economic impacts if unused quota from a previous year could be reallocated to the Reserve category to potentially offset any overharvests in another category, consistent with ICCAT recommendations on carry-forward of unharvested quota.

Area Based Alternatives

Alternative B 1—Gear Restricted Areas

Under alternative B 1, NMFS considered a range of GRA alternatives from maintaining existing pelagic longline closures (the no action alternative) to a year-round GRA of the entire Gulf of Mexico EEZ (west of 82° longitude) in order to reduce interactions with bluefin tuna.

Alternative B 1a, the No Action Alternative, would result in the status quo regarding GRAss. Although the current pelagic longline closed areas would remain effective, the data indicate that large numbers of interactions of pelagic longline gear with bluefin occur in consistent areas during predictable time periods, which are outside of the current closed areas. The No Action alternative would therefore not reduce dead discards. The magnitude of the discards in the pelagic longline fishery is likely to stay the same or increase under the No Action alternative, without implementation of a new GRA. This could result in moderate long-term adverse economic impacts when the Longline category exceeds its quota earlier in the fishing year because of dead discards and is required to shut down.

Alternative B 1b would define a modified rectangular area off Cape Hatteras, North Carolina, and prohibit the use of pelagic longline gear in that area annually during the five-month period from December through April. Other gear types authorized for use by pelagic longline vessels, such as buoy gear, green-stick gear, or rod and reel, would be allowed. This region off North Carolina contains seasonally consistent concentrations of bluefin and catches by the pelagic longline fleet. Logbook and observer data indicate that historically there have been relatively high catches and catch rates of bluefin by pelagic longline vessels in this region. The specific time and area of the Cape Hatteras GRA represents a time and area combination likely to result in reduced bluefin interactions based on past patterns of interactions. This alternative is expected to have moderate short and long-term direct adverse economic impacts on 50 vessels that have historically fished in the Cape Hatteras GRA during the months of December through April. The average annual revenue per vessel made in the gear restricted area is approximately $28,000 annually during the restricted months assuming that fishing effort does not move to other areas. However, it is likely that some of the vessels that would be impacted by this gear restricted area would be able to redistribute their effort to other fishing areas. NMFS estimated that if a vessel historically made less than 40 percent of their sets in the GRA, it would likely redistribute all of its effort. If a vessel made more than 40 percent, but less than 75 percent of its sets in the GRA, it would likely redistribute 50 percent of its effort impacted by the gear restricted area to other areas. Finally, if a vessel made more than 75 percent of its sets solely within the gear restricted area, NMFS assumed it would not likely shift its effort to other areas. Based on these redistribution assumptions, the net impact of the Cape Hatteras GRA on fishing revenues after redistribution of effort is estimated to be $17,900 per year.

Under Alternative B 1c (Cape Hatteras Pelagic Longline GRA with Access based on Performance), NMFS would annually review pelagic longline vessel performance using three performance metrics, and based on that review, authorize some vessels fishing with pelagic longline gear to have access to the Cape Hatteras GRA. As described in more detail in Chapter 2, the performance metrics are: (1) Level of bluefin interactions/avoidance; (2) observer program participation; and (3) logbook submissions. NMFS would notify vessel owners by mail whether or not they are authorized to fish in the area. This alternative would use the same area off Cape Hatteras, North Carolina, as in Alternative B 1b, and would define criteria for access by HMS permitted vessels fishing with pelagic longline gear during the five-month period from December through April. Vessels that are determined by NMFS to have a relatively low rate of interactions with bluefin based on past performance, and that comply with reporting and monitoring requirements would be allowed to fish in the area using pelagic longline gear. Vessels that have not demonstrated their ability to avoid bluefin would not be allowed to fish with pelagic longline gear in this area; or if a vessel has demonstrated its ability to avoid bluefin, but has had poor record of compliance with reporting and monitoring requirements, it would not be allowed to fish with pelagic longline gear in this area from December through April. Individual vessel data would be evaluated annually for the purpose of determining access, and results would be communicated to the individual permit holders via a permit holder letter. This evaluation would be based on the most recent complete information available in order to provide future opportunities and accommodate changes in fishing behavior, both positively and negatively, based on performance.

Based on the proposed performance criteria, NMFS determined that, of 161 active vessels in the entire pelagic longline fleet, 50 vessels fished in the Cape Hatteras GRA or buffer region. Of these 50 active vessels, 16 vessels that fished in the Cape Hatteras GRA or buffer region did not meet the criteria for access based on their inability to avoid bluefin tuna, and/or compliance with POP observer and logbook reporting requirements. The average annual revenue made in the GRA by these 16 vessels is approximately $29,000 per vessel during the restricted months. However, it is likely that some of the vessels that would be impacted by this gear restricted area would be able to redistribute their effort to other fishing areas. The net impact of Alternative B 1c on fishing revenues after redistribution of effort is estimated

to be $19,000 per vessel per year for those 16 vessels.

Alternative B 1d (Modified Cape Hatteras Pelagic Longline GRA with Access Based on Performance; Preferred), would delineate a gear restricted area off Cape Hatteras, North Carolina and prohibit the use of pelagic longline gear in the area annually during the five-month period from December through April. Access to the GRA would be evaluated annually for each permitted vessel in the pelagic longline fleet using the same performance metrics discussed under Alternative B 1c.

NMFS proposed a Cape Hatteras GRA for the months of December through April during which time vessels would be prohibited from fishing with pelagic longline gear in the defined area, with the exception of vessels granted access based upon performance criteria. Based on public comment, NMFS re-analyzed the spatial and temporal configurations of the Cape Hatteras GRA, and instead is implementing a modified gear restricted area during the same months (December through April), but of a slightly different configuration than proposed. The total area of the Modified Cape Hatteras GRA being implemented is smaller than that of the proposed Cape Hatteras Gear Restricted Area, due to the modification of the southeastern region of the GRA. Specifically, the southeastern corner as proposed was a ninety degree angle, but this final rule connects the southwestern corner to a more northerly point on the eastern boundary of the Cape Hatteras GRA, eliminating a triangular shaped area from the southeast region of the Gear Restricted Area. The shape of the Modified Cape Hatteras GRA as implemented will minimize the likelihood that pelagic longline gear set south of the GRA will drift into the GRA due to the prevailing direction of currents. As a result of these analyses, and considerations, NMFS has modified the preferred alternative to a gear restricted area during the same months (December through April), but with a slightly different configuration.

NMFS determined that only 14 vessels that fished in the Modified Cape Hatteras GRA would not meet the criteria for access based on their inability to avoid bluefin tuna, and/or compliance with POP observer and logbook reporting requirements. The average annual revenue from fishing sets made in the GRA by these 14 vessels is approximately $22,000 per vessel during the restricted months based on past fishing patterns from 2006–2012. However, it is likely that some of the vessels that would be impacted by this alternative's implementation of the GRA would redistribute their effort to other fishing areas. The net impact of Alternative B 1d on fishing revenues after redistribution of effort is estimated to be $15,000 per vessel per year for those 14 vessels.

This alternative is as effective at reducing dead discards as the originally-proposed Cape Hatteras GRA but it minimizes economic impacts to the extent practicable, consistent with the objectives of Amendment 7. The modified alternative thereby strikes a better balance between reducing dead discards of bluefin and continued operation of the pelagic longline fleet in the Atlantic. Therefore, NMFS prefers this modification (*i.e.,* shaving off the southeast corner of the restricted area) to balance environmental, ecological, and economic impacts of the alternative. This alternative minimizes economic impacts by providing access to vessels if certain parameters are met and because the time and area of the GRA were set based on consideration of bluefin interactions as well as economic impacts in order to optimize the design to achieve the objectives.

Alternative B 1e would allow vessels with an Atlantic Tunas Longline permit to fish under the rules/regulations applicable to the General category as they pertain to targeting bluefin using non pelagic longline-gear (gear authorized under the General category, including rod and reel, handline, harpoon, etc.), in the area defined as the Cape Hatteras GRA during the time of the restriction (December through April), when the General category fishery is open. The bluefin landed with authorized handgear would be counted against the General category quota. The amount of bluefin landings allowed under this alternative would be limited by the available General category subquotas for December and for January. Alternative B 1d would result in short-term, direct, minor, beneficial economic impacts for Longline category fishermen that otherwise would not be able to fish for bluefin in the Cape Hatteras GRA. It would result in short-term, direct, minor, adverse economic impacts for General category participants to the extent that any Longline category vessel landings of bluefin under General category rules results in the available subquota being met earlier than it would otherwise. A loss or gain of one fish is approximately $3,500. If a Longline category vessel chooses to fish with General category gear in the Cape Hatteras GRA versus outside the area with pelagic longline gear, the ability to land and sell bigeye, albacore, yellowfin, and skipjack from that area would result in short-term, direct, minor, beneficial economic impacts, although substantially less so than continuing to use longline gear, which accounts for a much larger proportion of catch of bigeye, albacore, and yellowfin tuna than does handgear. If other alternatives, such as annual reallocation from the Purse Seine category (A3a) or providing additional flexibility for General category quota adjustment (E1c) are implemented, adverse economic impacts for General category participants may be reduced.

Alternative B 1f would prohibit the use of pelagic longline gears in the GOM for 3 months each year. This alternative is expected to have moderate short and long-term direct adverse economic impacts on 69 vessels that have historically fished in the GOM EEZ during the months of March through May. The average annual revenue from fishing sets made in the GRA is approximately $26,000 per vessel during the closure months. Based on historical fishing patterns of vessels that fish in the OM, it is unlikely that effort will be redistributed into areas outside of this region.

Alternative B 1g would define a rectangular area in the GOM and prohibit the use of pelagic longline gear during the two-month period from April through May. NMFS tailored the Small GOM GRA to maximize the reductions in bluefin interactions while minimizing the area where pelagic longline gear use is restricted. This alternative is expected to have moderate short- and long-term direct adverse economic impacts on 36 vessels that have historically fished in the Small Gulf of Mexico GRA during April and May. The average annual revenue from fishing sets made in the GRA is approximately $7,500 per vessel during the restricted months. However, it is likely that some of the vessels that would be impacted by this gear restricted area would be able to redistribute their effort to other fishing areas within the GOM. The net impact of the Small GOM GRA on fishing revenues after redistribution of effort is estimated to be $2,600 per vessel per year.

Alternative B 1h would prohibit the use of pelagic longlines in the same area as in the Gulf of Mexico EEZ GRA (*i.e.,* anywhere in the Gulf of Mexico), year-round. This alternative is expected to have moderate short- and long-term direct adverse economic impacts on 75 vessels that have historically fished in the Gulf of Mexico EEZ. The average annual revenue from fishing in the GRA is approximately $102,000 per vessel.

Alternative B 1i, a preferred alternative, would establish modified GRAs in the central GOM that would prohibit the use of pelagic longlines from April through May. This alternative is based upon public comments on the Small GOM GRA, which was the preferred alternative in the DEIS. The total area of the Modified Spring GOM GRA is larger than that of the Small GOM GRA. The Spring Gulf of MexicoGRAs are comprised of two separate areas: An area based on the Small GOM GRA preferred in the DEIS, but extended to the east and reduced in size on the western and northern borders, and a second area that is adjacent to the southern border of the Desoto Canyon Closed Area's northwestern 'block.' NMFS will also conduct a three-year review to determine the effectiveness of the Modified Spring GOMGRAs during the review of the IBA program and will consider any changes at that time as appropriate. This alternative is expected to have moderate short and long-term direct adverse economic impacts on 49 vessels that have historically fished in the Modified Spring GOM GRAs during April and May. The average annual revenue from fishing sets made in the gear restricted area is approximately $11,000 per vessel during the restricted months. However, it is likely that some of the vessels impacted by these GRAs would be able to redistribute their effort to other fishing areas within the GOMand therefore reduce any losses. The net impact of the Modified Spring GOM GRAs on fishing revenues after redistribution of effort is estimated to be $5,700 per vessel per year. The economic impacts of this alternative were minimized through the iterative design of the GRA. NMFS carefully evaluated the costs and benefits associated with this GRA, and determined that the specific time and area achieves a balance between a reduction in bluefin dead discards, protection of the GOM Spawning stock, and continued operation of the pelagic longline fleet in the GOM.

Alternative B 1j, a preferred alternative, would allow HMS vessels that possess bottom or pelagic longline gear on board to transit the closed areas and GRAs if they remove and stow the gangions, hooks, and buoys from the mainline and drum. The hooks would not be allowed to be baited. Allowing pelagic and bottom longline vessels to transit closed and GRAs after removing and stowing gear would result in direct short- and long-term beneficial economic impacts by potentially reducing fuel costs and time at sea for vessels that need to transit the closed or restricted areas. Allowing transit through these areas could also potentially improve safety at sea by allowing more direct transit routes and reducing transit time, particularly during inclement weather. More direct transit routes and reduced transiting time minimize economic impacts of the closed and restricted areas.

Alternative B 2—Gear Measures

Alternative B 2a, the preferred No Action alternative, would not change current authorized gear requirements (with respect to the use of buoy gear and associated restrictions on possession of bigeye, albacore, yellowfin, and skipjack tunas (BAYS) and bluefin) applicable to those vessels with an Atlantic Tunas Longline category permit and either a Swordfish Directed or Swordfish Incidental permit. Currently, vessels with an Atlantic Tunas Longline category permit must also have both a Swordfish Directed or Incidental permit, and a Shark Directed or Incidental permit. There are no economic impacts associated with this ''no action'' alternative. Alternative B 2b would authorize vessels with a Swordfish Incidental permit to fish with buoy gear, except vessels fishing in the East Florida Coast Pelagic Longline Closed Area. Under this alternative, vessels would still be limited to 35 buoys. The rationale for this alternative is to provide increased flexibility and encouragement for pelagic longline vessels to utilize gears other than pelagic longline to maintain and enhance fishing opportunities. This would result in short- and long-term direct beneficial economic impacts by providing greater flexibility in the gear type that can be used and also by reducing the need to acquire a different permit to use buoy gear. Alternative B 2c would allow vessels with an Atlantic Tunas Longline category permit and the Swordfish Directed or Incidental permit to retain BAYS and bluefin when fishing with buoy gear. The rationale for this alternative is the same as for Alternative B 2b: To provide increased flexibility and encouragement for pelagic longline vessels to utilize gears other than pelagic longline to maintain and enhance fishing opportunities in the context of new restrictions that may be implemented by Amendment 7. This alternative would result in short- and long-term direct beneficial economic impacts by increase the potential revenue opportunities by allowing additional species to be landed when using buoy gear, reducing costs associated with discarding, and reducing the costs associated with the potential need to acquire different permits while fishing with buoy gear. This alternative would have no effect on vessels with a Swordfish Incidental permit, unless Alternative B 2b is adopted. Without Alternative B 2b, this alternative would provide additional flexibility for vessels with a Swordfish Directed permit and an Atlantic Tunas Longline permit.

Alternative B 3—Access to Closed Areas Using Pelagic Longline Gear

Alternative B 3a, the preferred No Action alternative, would maintain the current regulations that do not allow vessels to enter a closed area with pelagic longline gear during the time of the closure, unless issued an Exempted Fishing Permit. It would not result in any further costs to small entities.

Alternative B 3b would allow restricted and conditional access to the following closed areas: Charleston Bump closed area (February through April), a portion of the East Florida Coast closed area (year-round), the DeSoto Canyon closed area (year-round), and the Northeastern U.S. closed area (June). All trips into any of the eligible pelagic longline closed areas would be required to be observed. Current NMFS Pelagic Observer Program vessel selection procedures would be used to select vessels using the current strata (*i.e.,* the procedures that select vessels to obtain observer coverage each calendar quarter, and deploy in each of various geographic (statistical) areas). If selected, a vessel would be informed of the statistical area for which the vessel was selected, and the vessel would be allowed to fish within the eligible pelagic longline closed area provided it is within that particular statistical area and that an observer is onboard. The scope of the alternative and its effects would depend upon the level of observer coverage. Currently, eight percent of fishing effort is covered by observers and funded wholly by NMFS. Due to the limits on the level of observers, observer availability and cost would serve as the principal constraint to the amount of access. Participating vessels would be required to ''declare into'' the area via their VMS unit and report species caught and effort daily via VMS. There would be minor short- and long-term direct beneficial economic and social impacts associated with the added option for vessels to potentially fish in these areas, which could potentially increase landings revenues and decrease fishing costs by providing access to closer and/or more productive fishing areas.

In addition to the requirement to carry an observer and declare and report catch via VMS, this alternative would further require that permitted pelagic longline vessels meet various performance criteria to be authorized to fish in a closed area. Vessels that are determined by NMFS to have a relatively low rate of interactions with bluefin based on past performance, and are compliant with reporting and monitoring requirements would be allowed to fish in the area using pelagic longline gear. Those vessels that have not demonstrated their ability to avoid bluefin or comply with reporting and monitoring requirements would not be allowed to fish with pelagic longline gear in the area. The rationale underlying this requirement is that the commercial data from within the closed areas may be utilized in the future as part of the information used to evaluate the effectiveness and impacts of closed areas, as well as for stock assessments or other management measures. Confidence in the data may be enhanced if the vessels allowed to fish in the closed areas have consistently demonstrated compliance with relevant regulations and are among the vessels that have demonstrated the ability to avoid bluefin at the level exhibited by the majority of the fleet. The performance criteria may lead to beneficial economic incentives for fishery participants to better comply with reporting and monitoring requirements and reduce bluefin interaction rates. Potential revenue would be gained if this alternative were implemented.

The maximum number of potential observed trips into the closed areas was estimated based on historical rates of observer coverage (per quarter) in various statistical areas, and the fact that observer coverage would be a condition of a trip into a closed area. NMFS estimated the maximum number of trips into the pelagic longline closed areas would be 20 trips into the East Florida Coast closed area, witht an average revenue of $17,575 per trip; 80 trips into the DeSoto Canyons at an average revenue of $17,692 per trip; 2 trips into the Northeast closure at an average revenue of $40,726 per trip; and 5 trips into the Charleston Bump at an average revenue of $17,575 per trip. It is import to note that these revenue estimates are an overestimate, with a large amount of uncertainty. The estimates are high because it is very unlikely that all observed trips in a particular statistical area would fish in a closed area. The estimates are uncertain because the average revenue per trip data is from locations outside the closed areas, and may not represent the potential revenue from inside the closed areas.

Bluefin Tuna Quota Controls

Alternative C1—No Action

Under this alternative, there would be no change to the current regulations that restrict pelagic longline vessel retention of bluefin once the Longline category quota has been reached; hence, the total amount of dead discards would not be restricted. There are no short-term economic impacts to vessel owners associated with this alternative, but in the long-term, if dead discards are not curtailed, the pelagic longline fishery could face reduced allocations and earnings.

Alternative C 2—Individual Bluefin Quotas

This preferred alternative would implement IBQs for vessels permitted in the Atlantic Tunas Longline category (provided they also hold necessary limited access swordfish and shark permits) that would result in prohibiting the use of pelagic longline gear when the vessel's annual pelagic longline IBQ has been caught. The allocation of an IBQ share to individual vessels/permits as well as a provision for transferability of IBQs would reduce bluefin dead discards by capping the amount of catch (landings and dead discards); provide strong incentives to reduce interactions and flexibility for vessels to continue to operate profitably; accommodate different fishing practices within the pelagic longline fleet; and create new potential for revenue (from a market for transferrable IBQs).

NMFS considered two alternatives for vessel eligibility to receive bluefin quota shares. The first alternative would be to consider any permitted Atlantic Tunas Longline category vessel (sub-alternative C 2a.1) as being eligible to receive an initial allocation of IBQs. Based on the most recent number of Atlantic Tuna longline limited access permit holders, NMFS estimates that 223 vessels would be eligible to receive IBQs under this alternative. While this alternative might be more inclusive of all members of the fishery, it would reduce the amount of IBQs allocated to each vessel. There would also likely be negative short-term and potentially long-term direct adverse economic impacts associated with reduced initial allocation of IBQs to the most active participants in the fishery. Their initial allocations would likely be insufficient to be able to maintain their current levels of fishing activity and they may not be able to find IBQs to lease or have sufficient capital to lease a sufficient amount of IBQs.

The second alternative, sub-alternative C 2a.2 is the preferred alternative and would consider only active permitted Atlantic Tunas longline vessels. Based on HMS Logbook records from 2006–2012, there were 135 active pelagic longline vessels during that period, with active defined as having reported in the HMS Logbook successfully setting pelagic longline gear at least once between 2006 and 2012. Allocation of quota shares to a smaller number of vessels may reduce the likelihood that a permitted vessel without quota shares would fish and increase the likelihood that available quota would be sufficient for active vessels. This alternative minimizes economic impacts by utilizing criteria that result in a pool of eligible vessels that is optimized in terms of the number of vessels. The optimization balances the benefits of a small number of eligible vessels (resulting in a larger percentage quota share per vessel), and the benefits of an inclusive criteria, which includes the majority of vessels that have fished with pelagic longline gear since 2006. The number of vessels eligible (135) is slightly larger than the average number of vessels that have fished annually since 2006.

In addition to determining who is eligible to receive IBQs, NMFS also considered four alternatives for how IBQ should be initially allocated to those eligible vessel owners. Under Alternative C 2b.1, NMFS would base the initial allocation of IBQs on an equal share of the quota to eligible vessels. To estimate the potential landings each vessel could make given its initial IBQ under this alternative, NMFS analyzed the ratio of bluefin tuna landings and dead discards to designated species weight. These estimated potential landings were then compared to average annual historical landings to estimate the reduction in designated species landings. Under the 74.8 mt Longline category quota scenario, NMFS estimates that there could be a reduction of 2.1 million pounds of designated species landing per year if an IBQ allocation based on designated species landings is used and no trading of IBQs occurs. This would be a reduction of annual landings of approximately 36 percent, and result in a reduction in annual revenues of approximately $91,000 per vessel. Under the 137 mt Longline category quota scenario, NMFS estimates that there could be a reduction of 1.5 million pounds of designated species landing per year if an IBQ allocation based on designated species landings is used and no trading of IBQs

occurs. This would be a reduction of annual landings of approximately 19 percent, and result in a reduction in annual revenues of approximately $47,000 per vessel. Under the 216.7 mt Longline category quota scenario, NMFS estimates that there could be a reduction of 0.9 million pounds of designated species landing per year if an IBQ allocation based on designated species landings is used and no trading of IBQs occurs. This would be a reduction of annual landings of approximately 10 percent and result in a reduction in annual revenues of approximately $27,000 per vessel.

Under Alternative C 2b.2, NMFS would base the initial allocation of IBQs based on the historical landings of designated species from 2006 through 2012. The designated species include swordfish, yellowfin tuna, bigeye tuna, albacore tuna, skipjack tuna, dolphinfish, wahoo, blue shark, porbeagle, shortfin mako, and thresher shark. These are the main marketable pelagic species landed by pelagic longline vessels in addition to bluefin. Under the 74.8 mt Longline category quota scenario, NMFS estimates that there could be a reduction of 2.2 million pounds of designated species landing per year if an IBQ allocation based on designated species landings is used and no trading of IBQs occurs. This would be a reduction of annual landings of approximately 40 percent and result in a reduction in annual revenues of approximately $102,000 per vessel. Under the 137 mt Longline category quota scenario, NMFS estimates that there could be a reduction of 2.0 million pounds of designated species landing per year if an IBQ allocation based on designated species landings is used and no trading of IBQs occurs. This would be a reduction of annual landings of approximately 24 percent, and result in a reduction in annual revenues of approximately $62,000 per vessel. Under the 216.7 mt Longline category quota scenario, NMFS estimates that there could be a reduction of 1.2 million pounds of designated species landing per year if an IBQ allocation based on designated species landings is used and no trading of IBQs occurs. This would be a reduction of annual landings of approximately 15 percent, and result in a reduction in annual revenues of approximately $37,000 per vessel.

Under Alternative C 2b.3, a preferred alternative, NMFS would base the initial allocation of IBQs on the historical landings of designated species from 2006 through 2012 and the ratio of bluefin catch to designated species landings. Using the ratio of bluefin tuna landings and dead discards to designated species weight, NMFS estimated the potential landings each vessel could make given its initial IBQ. These estimated potential landings were then compared to average annual historical landings to estimate the reduction in designated species. Under the 74.8 mt Longline category quota scenario, NMFS estimates that there could be a reduction of 2.7 million pounds of designated species landing per year if an IBQ allocation based on designated species landings is used and no trading of IBQs occurs. This would be a reduction of annual landings of approximately 33 percent, and result in a reduction in annual revenues or approximately $84,000 per vessel. Under the 137 mt Longline category quota scenario, NMFS estimates that there could be a reduction of 1.8 million pounds of designated species landing per year if an IBQ allocation based on designated species landings is used and no trading of IBQs occurs. This would be a reduction of annual landings of approximately 22 percent, and result in a reduction in annual revenues or approximately $56,000 per vessel. Under the 216.7 mt Longline category quota scenario, NMFS estimates that there could be a reduction of 1.2 million pounds of designated species landing per year if an IBQ allocation based on designated species landings is used and no trading of IBQs occurs. This would be a reduction of annual landings of approximately 14 percent and result in a reduction in annual revenues or approximately $36,000 per vessel. The economic impacts of the allocation alternative were minimized through the use of the dual criteria, which considers both the bluefin catch rate, as well as the amount of designated species catch. The scoring system that determines the allocations considers the diversity in the fleet so that some vessels are not disadvantaged due to the level of their fishing activity. Vessels that have historically caught larger amounts of target species, as reflected in the logbook and dealer data will score higher on the 'designated species' element of the allocation criteria. The other aspects of the IBQ Program (*e.g.,* quota allocation leasing) as well as other aspect of Amendment 7 (*e.g.,* allocation alternatives), were designed to mesh with the IBQ Program in order to provide flexibility to increase the likelihood of profitable fishing operations and minimize negative economic impacts, in addition to minimizing and accounting for bluefin catch.

After issuing IBQ shares and allocation based upon the formula, subalternative C 2b.4 would then designate all IBQ shares and allocations as either ''Gulf of Mexico'' or ''Atlantic'' based upon the geographic location of sets (associated with the vessels fishing history used to determine the vessel's quota share). Gulf of Mexico IBQ allocation could be used in either the Gulf of Mexico or the Atlantic, but Atlantic IBQ allocation could only be used in the Atlantic (and not the Gulf of Mexico). For a vessel to fish with pelagic longline gear in the Gulf of Mexico, the vessel would be required to have the minimum amount of IBQ to depart, and the IBQ would have to be Gulf of Mexico. The minimum IBQ amount required to fish in the Gulf of Mexico would be 0.25 mt based on the larger average size of bluefin in the Gulf of Mexico. The minimum IBQ amount required to fish in the Atlantic would be 0.125 mt based on the smaller average size of bluefin tuna encountered in the Atlantic. The economic impact of creating these two regional designations would primarily be associated with the larger minimum IBQ allocations required to fish in the Gulf of Mexico and the restriction from transferring or using Atlantic IBQ in the Gulf of Mexico. This would reduce the number of potential trading partners for IBQs in the Gulf of Mexico region, thus potentially leading to less available IBQ allocation that could be leased, potentially making it more difficult to find potential trading partners and therefore increasing transaction costs for conducting a lease. The regional designations minimize economic impacts by allowing Gulf of Mexico IBQ allocation to be utilized in the Atlantic, and through the rules regarding the NED, which provide different IBQ accounting rules for that unique particular area.

In defining the scope of IBQ transfer for alternative C 2c, NMFS considered two subalternatives, because only two Tuna permit categories are under limited access systems. Sub-alternative C 2c.1 would allow transfer of bluefin quota shares or quota allocation among permitted Atlantic Tunas Longline category vessels only, and would not include transferring with other limited access quota categories such as the Atlantic Tunas Purse Seine category. The rationale for this sub-alternative is to provide flexibility for pelagic longline vessels to obtain or sell quota as necessary, so that allocations may be aligned with catch (*i.e.,* vessels that catch bluefin may be able to obtain quota from those that do not interact with bluefin, or have not used their full allocation of bluefin). This sub-

alternative would constrain the amount of bluefin quota available to the Longline category vessels to the Longline category quota, and not make additional quota available. Quota transfers would be allowed among all Longline category vessels with a valid limited access permit, regardless of whether they have been allocated quota under Alternative C 2b. If a vessel catches bluefin using quota that has been leased from another vessel, the fishing history associated with the catch of bluefin tuna would be associated with the vessel that catches the bluefin (the lessee, not the lessor vessel). In other words, the lessee (vessel catching the fish) gets the 'credit' for the landings and dead discards, and not the lessor (the vessel that transferred the quota allocation to the catching vessel). NMFS assumed that the total surplus of IBQs would potentially be traded to vessels with IBQ shortfalls. To simulate trading, the total amount of IBQs surplus was divided equally by the number of vessels that needed additional IBQs. This occurred in two rounds of trades. Under the 74.8 mt quota scenario, the estimated reduction in annual revenues goes from $84,000 per vessel under no trading to $18,000 per vessel with trading. Under the 137 mt quota scenario, the estimated reduction in annual revenues goes from $56,000 per vessel under no trading to $19 per vessel with trading. Finally, under the 216.7 mt quota scenario, the estimated reduction in annual revenues goes from $36,000 per vessel under no trading to no change in annual revenues with trading since there would be a sufficient amount of surplus quota to easily cover the vessels that do not receive initial IBQ allocations to cover their historical fishing levels. While this alternative would have short-term direct minor beneficial economic impacts, those beneficial impacts would be lower than those under sub-alternative C 2c.2.

Sub-alternative C 2c.2, the preferred alternative, would allow transfer of bluefin quota shares or quota allocation between those permitted in the limited access Atlantic Tunas Longline and Purse Seine categories. This sub-alternative would provide flexibility for pelagic longline vessels to obtain, lease, or sell quota as necessary, so that allocations may be aligned with catch (*i.e.,* vessels that catch bluefin may be able to obtain quota from those that do not interact with bluefin, or have not used their full allocation of bluefin). This sub-alternative would not constrain the amount of bluefin quota available to pelagic longline vessels (*i.e.,* through the Longline category quota), but would make additional quota available if purse seine vessels are willing to lease quota. This alternative would also modify the Purse Seine category regulations which currently restrict the transfer of Purse Seine quota to vessels with Purse Seine category permits. Purse Seine quota would be transferable to vessels with an Atlantic Tunas Longline category permit. Similarly, Purse Seine fishery participants would be able to lease quota allocation from pelagic longline vessels. Quota transfer would be allowed among all Longline category vessels with a valid limited access permit, regardless of whether they have been allocated quota under Alternative C 2b. If a vessel catches bluefin using quota that has been leased from another vessel, the fishing history associated with the catch of bluefin tuna would be associated with the vessel that catches the bluefin (the lessee, not the lessor vessel). In other words, the lessee (vessel catching the fish) gets the 'credit' for the landings and dead discards, and not the lessor (the vessel that transferred the quota allocation to the catching vessel). This alternative would have short-term direct moderate beneficial economic impacts.

NMFS considered both annual leasing and permanent sale of IBQs under alternative C 2d. Sub-alternative C 2d.1, a preferred alternative, would allow temporary leasing of bluefin quota among eligible vessels on an annual basis. Temporary quota transfer would give vessels flexibility to lease quota, but as a separate and distinct type of transaction from the permanent sale of quota share. Vessel owners would be able to obtain quota on an annual basis to facilitate their harvest of target species. Sub-leasing of quota would be allowed (*i.e.,* IBQ leased from vessel A to vessel B, then to vessel C). This sub-alternative may be combined Sub-Alternative C 2d.2 (permanent sale of quota share), if implemented. IBQ allocation leases of one year duration would coincide with the time period of annual quota allocation for the fishery as a whole. For a particular calendar year, an individual lease transaction would be valid from the time of the lease until December 31. This alternative would have short-term direct moderate beneficial economic impacts to participants in the fishery. However, in the long-term, the annual transaction costs associated with matching lessors and lessees, the costs associated with drafting agreements, and the uncertainty vessel owners would face regarding quota availability would reduce some of the economic benefits associated with leasing. The IBQ allocation leasing alternatives minimize economic impacts by providing flexibility for pelagic longline vessels to lease IBQ as necessary so that their IBQ allocations may be aligned with catch (*i.e.,* vessels that catch bluefin may be able to obtain IBQ from those that do not interact with bluefin, or have not used their full IBQ allocation of bluefin).

Sub-alternative C 2d.2 would allow permanent sale of quota share among eligible vessels. Through this sub-alternative, vessel owners would be able to purchase (or sell) quota share and permanently increase (or decrease) their quota share percentage. Permanent sale of quota share provides a means for vessel owners to plan their businesses and manage their quota according to a longer time scale than a single year. Vessel owners may be able to save money through a single quota share transaction instead of reoccurring annual quota allocation transactions. This sub-alternative may be combined with the temporary transfer of quota (*i.e.,* annual leasing of quota, Sub-Alternative C 2d.2), but is a separate and distinct type of transaction. (Note, that elsewhere in this document NMFS considers measures for codified quota reallocation alternatives unrelated to an IBQ Program; See Alternative A 2). To enable effective accounting and reduce program complexity, permanent quota share transfers would become effective in the subsequent year, and would have to be executed prior to the annual allocation of quota to IBQ holders. Limits would be placed on the amount of quota an individual entity could permanently transfer in order to prevent the accumulation of an excessive share of quota. This alternative would have long-term direct moderate beneficial economic impacts to participants in the fishery by allowing the ownership of IBQs to shift to where they provide the best economic benefit in the long-term. However, in the short-term, there could be issues associated with the IBQ market. For example the process of the buyers and sellers arriving at a price for IBQ shares may be difficult or highly variable due to uncertainties such as how to value IBQ shares, information availability, and associated risks. Experiences in other catch share programs have shown that fishermen may not know how to effectively value the IBQs initially and uncertainty in this new market may cause IBQs to be undervalued in the first few years. This could result in both adverse social and economic impacts in the fishing community if participants sell out of the

IBQ market in the early years for less than the long-term value of the IBQs.

Sub-alternative C 2d.3, a preferred alternative, would allow permanent sale of quota shares among eligible vessel owners in the future, after NMFS and fishery participants have multiple years of experience with the IBQ Program. Until NMFS develops and implements a permanent IBQ transfer program, vessel owners would only be able to conduct temporary (annual) leasing of quota allocation, and therefore, vessel owners would not be able to purchase (or sell) quota share to permanently increase (or decrease) their quota share percentage. A phased-in approach would reduce risks for vessel owners during the initial stages of the IBQ Program, when the market for bluefin quota shares is new and uncertain. During the first years of the IBQ Program, price volatility may be reduced, as well as undesirable outcomes of selling or buying quota shares at the ''wrong'' time or price. NMFS intends to develop a program to allow the permanent sale of quota share in the future because it would provide a means for vessel owners to plan their business and manage their quota according to a longer time scale than a single year, in a manner that would be informed by several years of the temporary leasing market. NMFS may wait until a formal evaluation of the IBQ Program before developing this alternative (see IBQ Program Evaluation Alternatives C 2h.1 and C 2h.2). This sub-alternative may be combined with the temporary transfer of quota allocation (*i.e.,* annual leasing of quota, Sub-Alternative C 2d.1), but is a separate and distinct type of transaction. While this alternative may result in long-term moderate beneficial economic impacts, the uncertainty regarding the timeline may make business planning for vessel owners and IBQ holders more difficult and result in some minor adverse economic impacts. This alternative minimizes economic impacts by ensuring that during the initial years of the IBQ Program, permanent transfer of IBQ shares will not be possible, and therefore reduces one of the potential risks of the IBQ Program (that a transfer will have negative unintended economic impacts).

Under sub-alternative C 2e.1, a preferred alternative, quota allocation and/or quota share transfers would be executed by the eligible vessel owners, or their representatives. For example, the two vessel owners involved in a lease of quota or sale of quota share could log into a password protected web-based computer system (*i.e.,* a NMFS database), and execute the quota allocation or quota share transfer. Owner-executed transfers would provide the quickest execution of a transfer because any eligibility criteria would be verified automatically via the user log-in and password, and not involve the submission or review of a paper application for a transfer to/by NMFS. This would result in short- and long-term minor beneficial economic impacts resulting from reduced transactions costs.

Under sub-alternative C 2e.2, quota and quota share transfers would be executed by NMFS. For example, a paper application for a sale of quota share could be submitted by the two vessel owners involved in the quota share transaction, and NMFS would review and approve the transaction based on eligibility criteria (and enter data into a computer database that would track the transfers of quota). This method would not include the use of a web-based system, but would rely upon mail or facsimile submission of applications by the vessel owners to NMFS. In comparison to sub-alternative C 2e.1, this alternative may result in some minor adverse economic impacts if delays in NMFS' review of applications results in increased transactions costs and fewer trades.

Under sub-alternative C 2f.1, there would be no limit on the amount of quota allocation an individual vessel (Longline or Purse Seine) could lease annually. This alternative would provide flexibility for vessels to purchase quota in a manner that could accommodate various levels of unintended catch of bluefin, and enable the development of an unrestricted market. Because the duration of a temporary lease would be limited to a single year, the impacts on an unrestricted market for bluefin quota would be limited in duration. Information on this unrestricted market could be used to develop future restrictions if necessary. This alternative would result in short- and long-term minor beneficial economic impacts by accommodating the various needs of vessel owners for IBQ trades.

Under sub-alternative C 2f.2,the limit on the amount of IBQ allocation that may be leased annually would be the combined Longline and Purse Seine category allocations. This alternative would provide flexibility for vessels to purchase quota in a manner that could accommodate various levels of unintended catch of bluefin, and enable the development of an unrestricted market. Because the duration of a temporary lease would be limited to a single year, the impacts on an unrestricted market for bluefin quota would be limited in duration. Information on this unrestricted market could be used to develop future restrictions (through proposed and final rulemaking) if necessary. This alternative would result in short- and long-term minor beneficial economic impacts by accommodating the various needs of vessel owners for IBQ trades.

Sub-alternative C 2f.3, a preferred alternative, would have NMFS consider in the future the development of further limits on the amount of quota allocation an individual vessel (Longline or Purse Seine), or the Longline or Purse Seine category (in its entirety), could lease annually. Setting a different limit than the combined amount of Longline and Purse Seine category allocations would be difficult, as the market for bluefin allocations is new and, as a consequence, there are no data to inform potential, alternative limits. Further, NMFS does not believe there is a need for a reduced limit. The IBQ Program preferred alternatives are designed to incentivize longline vessels to minimize bluefin interactions, and only 25 percent of vessels are expected to need to lease additional bluefin quota. In recent years, the Purse Seine category has not fished or not fully harvested the amount of quota available. This alternative could result in long-term minor adverse economic impacts if the limits cause some vessel owners to not be able to acquire sufficient IBQs for their fishing activity needs.

The measures under alternative C 2g are based on the premise that the success of an IBQ Program rests upon the ability to track ownership of quota shares and quota allocation holders; allocate the appropriate amount of annual harvest privileges (quota allocation); reconcile landings and dead discards against those privileges; and then balance the amounts against the total allowable quota. The current pelagic longline reporting requirements and the monitoring program that provide data on pelagic longline bluefin landings and dead discards were not designed to support inseason accounting of dead discards. More timely information on catch would be necessary in order to monitor a pelagic longline IBQ, inclusive of dead discards. VMS reporting Sub-alternative C 2g.1, a preferred alternative, is the same management alternative described in Alternative D 1b. This alternative is intended to support the implementation of a pelagic longline IBQ. The economic impacts are detailed in the section below discussing Alternative D 1b.

Electronic monitoring sub-alternative C 2g.2, a preferred alternative, is the same management alternative described in Alternative D 2b of this document.

This alternative is intended to support the implementation of a pelagic longline IBQ. The economic impacts are detailed in the section below discussing Alternative D 2b.

Under sub-alternative C 2g.3, a preferred alternative, in order to conduct inseason quota monitoring and estimate total bluefin dead discards and landings, NMFS may extrapolate observer-generated data (in-season) regarding bluefin discards (rate, number, location, etc.) by pelagic longline vessels, based on reasonable statistical methods, and available observer data. This alternative would not require a regulatory change, but would inform the public that NMFS would use this management practice if warranted. NMFS would use this observer information in conjunction with, or in place of, vessel-generated estimates of bluefin discards in order to develop inseason estimates of total bluefin landings and dead discards. NMFS may use this method to estimate dead discard rates of bluefin for individual vessels in the context of an IBQ Program. This sub-alternative would address the potential for uncertain dead discard data from the pelagic longline fleet that may result from challenges in the implementation of new regulations, technical problems relating to the reporting and monitoring system, or time lags in the availability of data. This alternative would potentially have short-term minor or neutral indirect beneficial economic impacts by addressing the potential for fishery disruptions if there are issues in the transition to an IBQ monitoring system.

Under sub-alternative C 2h.1, a preferred alternative, NMFS would formally evaluate the program after three years of operation and provide the HMS Advisory Panel with a publicly-available written document with its findings. NMFS would utilize its standardized economic performance indicators as part of its review. This would result in neutral economic impacts because it is administrative in nature.

Under sub-alternative C 2h.2, NMFS would conduct a formal evaluation of the IBQ Program after five years of operation and provide the HMS Advisory Panel with a written document with its findings. As described above, NMFS would utilize its standardized economic performance indicators (and associated standardized definitions) as part of its review. This alternative would result in neutral economic and social impacts because it is administrative in nature.

Under alternative C 2i, a preferred alternative, NMFS would develop and implement a cost recovery program of up to 3 percent of the ex-vessel value of fish harvested under the program, for costs associated with the costs of management, data collection and analysis, and enforcement activities, could result in direct long-term moderate adverse economic impacts to the industry. The Magnuson-Stevens Act provides NMFS the authority for cost recovery under § 303A(e). A cost recovery program would not be implemented until after the IBQ Program evaluation described in Alternative C 2h. Immediate implementation of a cost recovery program without the information obtained from the operation of the fishery under an IBQ Program would be very difficult, and would increase costs and uncertainty for fishing vessels during a time period when the fishery would be bearing other new costs and sources of uncertainty. This alternative could result in direct long-term moderate adverse economic impacts to the industry.

Alternative C 2j, a preferred alternative, would implement an appeals process for administrative review of NMFS' decisions regarding initial allocation of quota shares for the IBQ Program. The appeals process for administrative review of NMFS' decisions regarding initial allocation of quota shares for the IBQ Program would result in neutral economic impacts because it would utilize the National Appeals Office procedures and ensure a standardized and centralized appeals process, which would provide procedural certainty to the participants.

If an IBQ Program is implemented, preferred alternative C 2k would implement a control date in conjunction with the implementation (effective date) of the IBQ Program. The control date would serve as a reference date that may be utilized with future management measures, such as a modification to aspects of the IBQ program as a result of items identified during the 3-year review of the IBQ program. The implementation of a control date by itself would have no effect, but would provide NMFS with a potential management tool that may be utilized if necessary as part of a future management measure. A control date is typically used to discourage speculative fishing behavior or speculative entry into a fishery and notifies the public that a date may be used in conjunction with future management measures. This alternative would likely have neutral economic impacts and would only result in beneficial short-term economic impacts if it actually discouraged speculative fishing behavior that may have occurred without the control date.

Sub-alternative C 2l.1, the elimination of target catch requirements is a preferred alternative. Current target catch requirements act at the level of an individual trip to limit bluefin retention, but do not prevent interactions potentially resulting in discarding bluefin dead (although it is intended to dis-incentivize interactions with bluefin by reducing any financial incentive for such interactions by limiting retention). The target catch requirement therefore contributes to the discarding of bluefin if the amount of target catch species is insufficient to retain the numbers of bluefin caught. Under this sub-alternative C 2l.1a, the current target catch requirements would remain in effect. This would have neutral economic impacts since it would not change what is currently in place.

Sub-alternative C 2l.1b, preferred alternative, would eliminate the current target catch requirements for pelagic longline vessels. This alternative is intended to work in conjunction with an IBQ. The objective of this alternative is to reduce bluefin dead discards and optimize fishing opportunity for target species. If an IBQ Program is implemented, elimination of the target catch requirement could reduce dead discards, and enable vessels to fish for target species in a more flexible manner. A vessel that has caught some bluefin but has insufficient target species to meet the target catch requirement would no longer have to choose between discarding bluefin or fishing for more target species; rather, the vessel would use the annual individual bluefin quota (IBQ). Thus, the IBQ would replace the target catch requirement as the means of limiting the amount of bluefin landed and discarded dead per vessel on an annual basis, instead of on a per trip basis. This alternative would likely have direct short- and long-term minor beneficial economic impacts.

Sub-alternative C 2l.2a would maintain the status quo regarding retention of bluefin by pelagic longline vessels. There would be no requirement to retain commercial legal-sized bluefin that are dead. Vessels would continue to be able to discard bluefin even if they are of commercial legal-size (*i.e.,* 73″ or greater) and dead. If the IBQ Program is implemented, all dead discards would be accounted for under that program. This alternative would have neutral economic impacts since it does not change what is currently occurring.

Under sub-alternative C 2l.2b, a preferred alternative, pelagic longline

vessels would be required to retain all legal-sized commercial bluefin tuna that are dead at haul-back. Because these fish would be required to be retained, legal discards and the waste of fish would be decreased, and it would be more likely that such fish are accurately accounted for, and result in a positive use (marketed, used for scientific information, etc.). However, given that current behavior may be to discard some fish in order to optimize landings value of bluefin, there could be minor adverse economic impacts associated with this alternative since vessel operators would no longer have the option to discard legal-sized bluefin.

Alternative C 3—Regional and Group Quotas

Alternative C 3a would implement annual bluefin quotas by region for vessels possessing the Atlantic Tunas Longline category permit (combined with the required shark and swordfish limited access permits) that would result in prohibiting the use of pelagic longline gear when a particular region's annual bluefin quota has been caught. Both bluefin landings and dead discards would count toward the regional quota. Annual bluefin quotas would be associated with defined geographic regions. While regional quotas may be simpler than an IBQ system and have advantages over a single quota allocated for the entire Longline category, some regions may face chronic shortages of bluefin quota if that region experiences increased fishing effort or bluefin interaction rates. It is difficult to predict the total amount of fishing effort that would occur under regional quotas, and the amount of bluefin quota that would be caught. There is likely to be less fishing effort under the Regional quota control alternative (compared with the No Action alternative) because a few vessels could catch a large number of bluefin, and because of the closure of the entire area to the use of pelagic longline gear. The historical data indicate that the majority of bluefin have been caught by relatively few vessels. The amount of target species catch such as swordfish and yellowfin tuna, would depend primarily upon the amount of fishing effort and whether the regional quotas or IBQs become constraining. If the regional quotas reduce pelagic longline fishing effort, there may be some minor adverse economic and social impacts on regional fishing communities where effort is reduced.

Alternative C 3b would implement a quota system for vessels possessing the Atlantic Tunas Longline category permit (combined with the required shark and swordfish limited access permits) that would define three bluefin quota groups and assign vessels with a valid permit to one of the three groups. Both bluefin landings and dead discards would count toward the group quotas. Each active vessel would be assigned to a quota group based upon the associated permit's historical bluefin interactions to ''designated species'' landings ratio. Active vessels with relatively high numbers of bluefin interactions would be assigned to one quota group, active vessels with a moderate level of bluefin interactions would be assigned to a second group, and the active vessels with a low level of bluefin interactions would be assigned to a third quota group. Using the current quota allocation (8.1%) and the 2012 Longline category quota (74.8 mt) to illustrate, the low avoider quota group would be allocated 24.1 mt and the medium and high avoider quota groups would be allocated 25.1 mt. Although the three quota groups have almost the identical number of vessels assigned to them (53, 54, 54, respectively), as well as similar quota, the average amount of bluefin that they caught historically varies from group to group. The number of bluefin tuna interactions from 2006 to 2011 for the low, medium, and high avoiders was 8,050, 1,348, and 95, respectively. Converted to averages, the average annual number of bluefin interactions would be 1,342, 225, and 16. Utilizing a rough conversion factor of a .125 mt per fish, 225 fish is equivalent to 28 mt. The high and medium avoider groups are likely to have adequate quota, whereas the low avoider group would have inadequate quota if the future interaction rate of the vessels is similar. The average number of interactions associated with the low avoider group equates to approximately 168 mt. It is likely that the group quota associated with vessels with the highest historical rate of bluefin interactions would be attained first. This indicates that there would be potentially significant direct short- and long-term adverse economic impacts to the low avoider group. However, there could be moderate to minor positive economic impacts to the high and medium avoider groups.

Alternative C 4—NMFS Authority To Close the Pelagic Longline Fishery

Under alternative C 4a, No Action, the current regulatory situation would continue, in which NMFS does not have the authority to prohibit the use of pelagic longline gear when the bluefin quota is attained. When the quota is projected to be reached, pelagic longline vessels may no longer retain bluefin tuna, but may continue to fish for their target species, and must discard any bluefin caught. The economic impacts of this alternative would lead to short- and long-term direct minor economic and social impacts due the loss of revenue from bluefin tuna.

Under alternative C 4b, a preferred alternative, NMFS would close the pelagic longline fishery (*i.e.,* prohibit the use of pelagic longline gear) when the total Longline category bluefin quota is reached; projected to be reached; is exceeded; or in order to prevent over-harvest of the Longline category bluefin quota and prevent further discarding of bluefin; or when there is high uncertainty regarding the estimated or documented levels of bluefin catch. The economic impacts of this alternative would depend upon when the closure occurred, ranging from January through December. The time the pelagic longline fishery would be closed would depend upon many factors, including the size of the Longline category quota, the type of quota control alternative and other alternatives implemented by Amendment 7, and non-regulatory factors. The range of quotas that would be available to the Longline category would depend upon the combination of alternatives implemented.

Based on the Longline category being closed in late spring and early summer over the past few years and the 2013 closure occurring in June, NMFS estimates that a June closure is a plausible example to examine. A June closure of the pelagic longline fishery would result in a potential loss of revenue of approximately $21.0 million, or $156,000 per vessel per year. This would result in a major short-term adverse direct economic impact to the pelagic longline fishery and this economic impact would continue into the long-term if landings and dead discard rates continue along the current trend.

Enhanced Reporting Measures

Alternative D 1—VMS Requirements

Alternative D 1a, the No Action alternative, would have no requirement under HMS regulations for an Atlantic Tunas Purse Seine category vessel to obtain a VMS unit and there would be no change to the reporting requirements applicable to purse seine vessels. There would also be no additional VMS requirements under HMS regulations for a vessel using pelagic longline gear.

E–MTU VMS Installation and Operation

Alternative D 1b, a preferred alternative, would require the three vessels with an Atlantic Tunas Purse Seine category permit to have an E–

MTU VMS unit installed by a qualified marine electrician to remain eligible for the Purse Seine permit. Purse seine vessel owners would be required to provide a hail-out declaration using their E–MTU VMS units, indicating target species and gear possessed onboard the vessel when leaving port on every trip. Purse seine vessel owners would also be required to provide a hail-in declaration, using their E–MTU VMS units, providing information on the timing and location of landing before returning to port. The units would be required to send position information to NMFS every hour on a 24/7 basis, unless the vessel has declared out of the fishery or been granted a power-down exemption from NMFS.

All of the three vessels that are currently authorized to deploy purse seine gear for Atlantic tunas have already installed E–MTU VMS units in compliance with regulations for other Council-managed fisheries, including Northeast Multispecies and/or Atlantic scallop. If vessels have not already had a type-approved E–MTU VMS unit installed, or if permits were transferred to vessels that have not yet installed E–MTU VMS, they may be eligible for reimbursement (up to $3,100) to offset the costs of procuring a type-approved unit subject to availability of funds. This reimbursement would only cover the cost of the E–MTU VMS and could not be applied to offset installation costs by a qualified marine electrician ($400) or monthly communication costs ($44). Initial costs, per vessel, for compliance with E–MTU VMS requirements included in this alternative would be $3,500 if no reimbursement were received, and $400 if a reimbursement were received. On a monthly basis, vessels would be required to establish a communication service plan corresponding to the type-approved E–MTU VMS selected. Costs vary based on the E–MTU VMS unit and communication service provider that is selected; however, these costs average $44/month and include hourly transmission reporting and a limited amount of hail in and hail out declarations. Charges vary by communication service provider for additional messaging or transmission of data in excess of what allowed in their individual plan. Furthermore, costs might vary depending on how many trips a vessel makes on a monthly basis as the number of declarations (hail in/hail out) increase proportionately. For this analysis, all communication costs were expected to be covered under baseline monthly plan costs (*i.e.,* $44/month).

If a vessel has already installed a type-approved E–MTU VMS unit, this alternative would have neutral direct and indirect socioeconomic impacts in the short and long-term as the only expense would be monthly communication service fees which they are already paying for participation in a Council-managed fishery. If vessels do not have an E–MTU VMS unit installed or an Atlantic tunas purse seine permit is transferred to another vessel lacking VMS, direct, adverse, short-term socioeconomic impacts are expected as a result of having to pay for the E–MTU VMS unit and a qualified marine electrician to install the unit. In the long-term, direct economic impacts would become minor, because monthly communication service provider costs ($44) would be the only expense. Economic impacts to shore-based businesses, including fish dealers, bait and gear suppliers, and other fishing related industries are not expected.

Pelagic longline vessels are already required to use an E–MTU VMS that has been installed by a qualified marine electrician to provide hourly position reports and hail in/out declarations to provide information on target species, gear possessed, and expected time/location of landing. Therefore, this alternative would result in neutral economic impacts in the short and long term. Economic impacts to shore-based businesses, including fish dealers, bait and gear suppliers, and other fishing related industries are not expected.

Reporting Bluefin Tuna Interactions Using E–MTU VMS

Preferred alternative D 1b would also require vessels fishing for Atlantic tunas with pelagic longline or purse seine gear to report daily the number of bluefin retained, discarded (dead and alive), fish disposition, and fishing effort (number of sets, number of hooks, respectively). This alternative is intended to support the inseason monitoring of the purse seine and pelagic longline fisheries. Although NMFS currently has the authority to require logbook reporting for the purse seine fishery, NMFS has not exercised this authority (see Section 2.3.7). Current information on the catch of the purse seine fishery is limited to dealer data on sold fish, and does not include information of discarded bluefin or other species caught or discarded. Inseason information on catch, including dead discards, would enhance NMFS' ability to monitor and manage all quota categories.

Purse Seine

The characteristics of the purse seine fishery are unique. Many bluefin may be caught by the fishery in a relatively short period of time, and the proportion of discarded to retained fish may be high in some instances. Timely information on discarded bluefin tuna, and more timely information on retained bluefin, would improve the current monitoring of bluefin landings and dead discards. This alternative would provide timely information on purse seine fishing effort, and improve NMFS' ability to interpret and utilize the bluefin data in the context of the fishery as a whole. Recently, there has been limited effort in the Atlantic tunas purse seine fishery for a variety of reasons, including availability and quantity of commercial size bluefin and/or current permit holders are participating in Council-managed fisheries. This alternative would require vessel operators to use their E–MTU VMS to submit electronic reports describing the number and size of bluefin that were landed and discarded dead.

Vessel operators fishing for Atlantic tunas with purse seine gear are already be required to have an E–MTU VMS unit installed and capable of submitting hourly position reports while fishing in addition to hail out/in declarations before and after fishing. This alternative would, however, increase the amount of information that vessel operators provide using their E–MTU VMS units. Typically, fishermen would make a single declaration for each set that details the quantity and size of bluefin retained. This alternative would result in neutral economic impacts in the short and long-term because the vessel owners would already be paying, on average, $44 per month to cover the costs of a communication service provider. The number of additional characters transmitted to report bluefin retained and discarded dead are expected to be less than 50 characters per set, and are not expected to exceed the typical monthly allowance for data sent using the E–MTU VMS. Economic impacts to shore-based businesses, including fish dealers, bait and gear suppliers, and other fishing related industries are not expected.

Pelagic Longline

With respect to pelagic longline vessels, this alternative is intended to support the implementation of a pelagic longline IBQ Program, whether individual or regional, described under Section 2.3. For example, under an IBQ Program, each vessel must not harvest

more than is permitted by the total of his/her quota share. The IBQ Program would require vessel owners/operators have the ability to track quota shares and quota allocations, reconcile landings against quota allocations, and then balance the amounts against the total allowable quota. Although the current pelagic longline reporting requirements and the monitoring program provide data on pelagic longline discards and landings, and enable inseason monitoring and management based upon landings, the reporting requirements and monitoring program were not designed to support inseason monitoring of dead discards. More timely information on dead discards would be necessary in order to monitor and enforce a pelagic longline IBQ Program. Although the current information on bluefin discards from the pelagic longline fishery, which is obtained through logbook data on effort and catches from the observer program, is sufficient to estimate bluefin dead discards on an annual basis, the time lag associated with the current information is not useful for ''real-time'' in-season monitoring of an IBQ Program. Specifically, there is a time lag between the time logbooks are submitted or the field information is recorded by the observer during the fishing trip, the time the data are entered into a database, and the time the data are finalized (after a process of quality control) and available for use. A trip declaration requirement could be necessary in order for NMFS to obtain timely information on pelagic longline fishing effort, and interpret and utilize the bluefin data in the context of the fishery as a whole.

HMS logbook data (2006–2012) indicate that, on average, pelagic longline vessels have one interaction (9,660 interactions/10,262 trips = 0.94 interactions/trip) with a bluefin per vessel per trip. This alternative would require all pelagic longline vessel operators to report all interactions (kept, discarded dead, discarded alive) and estimate fish size (> or < than 73″ CFL) using their E–MTU VMS within 12 hours of the completion of the haul-back. Furthermore, additional information on fishing effort, including the number of hooks deployed on the set that had a bluefin would also be reported.

This alternative is expected to have neutral to minor adverse economic impacts on pelagic longline vessel operators and owners in the short and long-term. Economic impacts to shore-based businesses, including fish dealers, bait and gear suppliers, and other fishing related industries are not expected. Existing regulations require all pelagic longline vessel operators to provide hail out/in declarations and provide location reports on an hourly basis at all times unless they have declared out of the fishery or been granted a power down exemption by NMFS. In order to comply with these regulations, vessel owners must subscribe to a communication service plan that includes an allowance for sending similar declarations (hail out/in) describing target species, fishing gear possessed, and estimated time/location of landing using their E–MTU VMS. This alternative would require, on average, 1 additional report per trip that describe bluefin interactions and fishing effort. Each report is expected to be comprised of less than 50 characters. Because of the minimal time (approximately 5 minutes) required to submit these short reports and the fact that owners would likely already be enrolled in a communication service plan that would encompass transmission of these additional characters, adverse economic impacts are not expected.

Alternative D 2—Electronic Monitoring of Longline Category

Under alternative D2a, the No Action alternative, NMFS would maintain the status quo and would not pursue any additional measures that would require permitted pelagic longline vessels to install electronic devices such as cameras in order to support the monitoring or verification of bluefin catch under the IBQ Program. Currently, pelagic longline vessels are required to use E–MTU VMS units to provide hourly position reports and to provide hail out/in declarations describing target species, fishing gear onboard, and time/location of landing unless they have declared out of the fishery or been granted a power down exemption by NMFS. Under this alternative, these requirements would be maintained, and no additional electronic monitoring requirements would be implemented. This alternative would not result in economic impacts because it would maintain existing requirements.

Alternative D 2b, a preferred alternative, would require the use of electronic monitoring, including video cameras, by all vessels issued an Atlantic Tunas Longline category permit that intend to fish for highly migratory species. Specifically, vessels would be required to install and maintain video cameras and associated data recording and monitoring equipment in order to record all longline catch and relevant data regarding pelagic longline gear retrieval and deployment.

More specifically, this alternative would require the installation of NMFS-approved equipment that may include one to four video cameras, a recording device, video monitor, hydraulic pressure transducer, winch rotation sensor, system control box, or other equipment needed to achieve the objectives. Vessel owner/operators would be required to install, maintain, facilitate inspection of the equipment by NMFS, and obtain NMFS approval of the equipment. The vessel owner/operator would be required to store and make the data available to NMFS for at least 120 days, and facilitate the submission of data to NMFS. The vessel operator would be responsible for ensuring that all catch is handled in a manner than enables the electronic monitoring system to record such fish, and must identify a crew person or employee responsible for ensuring that all handling, retention, and sorting of bluefin occurs in accordance with the regulations.

While the electronic monitoring program is being designed and implemented, NMFS would continue to use logbook, observer, and landings information to assess catch by the pelagic longline fleet. NMFS would communicate in writing with the vessel owners during all phases of the program to provide information to assistant vessel owners, and facilitate the provision of technical assistance.

This alternative would require both fixed and variable costs over the service life of each camera installed onboard. Fixed costs for vessel owners would include purchasing the camera ($3,565) and having it installed on the vessel ($500). Variable costs for vessel owners include data retrieval ($45/hour; $4,500/year); service ($45/hour; $270/year); technician travel ($0.5/mile; $1,680/year); fishing activity interpretation ($47/hour; $1,175 year); and catch data interpretation ($1.5 hours per haul at a labor rate of $47/hour, 1 haul per trip and 100 trips; $7,050/year). The estimated total variable costs would be $14,663, and first year fixed costs would be $4,065 for the purchase and installation of the equipment. First year fixed and variable costs total $18,728/vessel for the first year. After the first year, the annual variable costs of operation are estimated to be $14,663/vessel. The estimate provided here for catch data interpretation is likely an overestimate as the Agency is primarily concerned with verification of bluefin reports and no other species (*i.e.,* yellowfin tuna, swordfish, dolphin, wahoo, etc.) being landed on pelagic longline vessels. After purchasing the camera and having it installed, expenses

would be limited to the variable costs listed. This alternative would result in direct and indirect adverse economic impacts to pelagic longline vessel owners in the short and long term. NMFS is minimizing the economic impacts of this alternative by paying for the initial installation of the equipment, as well as for some of the variable costs such as review of the data.

Alternative D 3—Automated Catch Reporting

The preferred alternative D 3 would require Atlantic Tunas General, Harpoon and HMS Charter/Headboat permit holders to report their bluefin catch (*i.e.,* landings and discards) using an expanded version of the bluefin recreational automated landings reporting system (ALRS). The automated system includes two reporting options, one that is web-based and an interactive voice response telephone system. The ''No Action'' alternative is not preferred because it would not meet the Amendment 7 objectives, and would have no social or economic impacts.

The primary impacts of the preferred alternative are the amount of time the new reporting requirement would take, and the reporting costs, respectively. NMFS estimated the potential annual catch for each permit category based on previous years data and multiplied it by the 5 minutes it takes to complete a report (NMFS 2013) for each fish to estimate a total reporting burden of 607 hours for potentially 8,226 permit holders as a result of this alternative. Since the data are collected online or via telephone, there are no monetary costs to fishermen or direct economic impacts to fishermen from this alternative.

Adjustments to both the online and IVR systems of the ALRS to implement catch reporting for General, Harpoon, and HMS Charter/Headboat category permit holders are estimated to cost NMFS a total of between $15,000 and $35,000 (B. McHale, pers. comm.) Annual maintenance would likely cost approximately $8,700 per year, which is the current cost for maintaining the ALRS and the call-in system for reports of other recreational HMS landings (NMFS 2013). The economic impacts of this alternative are minimized because the online reporting requirement results in a relatively low reporting burden.

Alternative D 4—Deployment of Observers

Under alternative D 4a, the No Action alternative, which is the preferred alternative, there would be no changes to the current observer coverage in the Atlantic Tunas Longline, General, Purse Seine, Harpoon, or HMS Charter/Headboat categories. Therefore, there would be no additional cost to small businesses.

Alternative D 4b would increase the level of NMFS-funded observers on a portion of trips by vessels fishing under the Atlantic Tunas Longline, General, Purse Seine, Harpoon, or HMS Charter/Headboat categories. There might be some minor costs to vessel operators with the increased chance that they will be selected for observer coverage and will have to accommodate an observer.

Alternative D 5—Logbook Requirement for Atlantic Tunas and HMS Category Permit Holders

Alternative D 5, the No Action alternative, is preferred and would make no changes to the current logbook requirements applicable to any of the permit categories. It would have no economic impact on fishing vessel owners.

Alternative D 5b would require the reporting of catch by Atlantic Tunas General, Harpoon, and HMS Charter/Headboat category vessels targeting bluefin through submission of an HMS logbook to NMFS. The direct social and economic impacts of this non-preferred alternative include the amount of time to complete logbook forms and the cost of submission (*i.e.,* mailing) for all fishermen permitted in the affected permit categories. These impacts would be minor, adverse, and long-term. A high-end proxy for the impacts of this alternative is the current reporting burden and cost for the entire HMS logbook program, which have been estimated for all commercial HMS fisheries (28,614 permits, NMFS 2011a). The annual reporting burden for the entire program is estimated at 36,189 hours and costs are $94,779 for postage. A more refined estimate is 6,735 hours, which is based on the number of fishermen likely to conduct directed fishing trips for bluefin based on the total number of General, Charter/Headboat, and Harpoon category permit holders in the states from Maine through South Carolina. This is likely also an over-estimate, since many General and Charter/Headboat permit holders in these states fish for yellowfin, or other tunas rather than bluefin, or, for Charter/Headboat permit holders, other HMS. NMFS estimates this alternative would have a total annual reporting burden of 16,526 hours and a cost of $8,263.

Alternative D 6—Expand the Scope of the Large Pelagics Survey

''No Action'' is the preferred alternative for the scope of the Large Pelagics Survey, and would have no social or economic impacts. The non-preferred alternative would expand the Large Pelagics Survey to include May, November, and December, and add surveys to the states south of Virginia, including those bordering the Gulf of Mexico, in order to increase the amount of information available about the recreational bluefin fishery, and further refine recreational bluefin landings estimates.

The direct economic impact of this non-preferred alternative is the amount of time that fishermen would expend participating in the survey. The impacts would be minor, adverse, and long-term. There are no financial costs to fishermen since the survey is conducted in person and over the phone, and there would be no direct economic impacts to fishermen for this alternative. NMFS estimates that the dockside survey takes 5 minutes on average, the phone survey takes 8 minutes, and collection of supplemental biological information takes about 1 minute. Previously, NMFS estimated that annual implementation of the Large Pelagics Survey throughout Atlantic and Gulf coastal states using the current target sample-size of 7,870 for the dockside survey, 10,780 for the phone survey and 1,500 for the biological survey would result in a reporting burden of 656 hours, 924 hours, and 25 hours respectively, for a total reporting burden of 1,730 hours (NMFS 2011b). This estimate could be used as a high-end proxy for the reporting burden associated with this alternative. Another method for estimating the reporting burden associated with this alternative is to use a ratio comparing the sample frame (*i.e.,* number of permits) used in the coastwide estimate with the sample frame for the alternative (*i.e.,* number of permits in states south of VA). Using this method, the reporting burden estimate is 559 hours. Because of the sampling design, adding the months of May, November, and December is not expected to add any reporting burden or cost (Ron Salz, pers. comm.).

Other Measures

Alternative E 1—Modify General Category Subquota Allocations

If no action is taken under Alternative E 1a to modify the General category sub-period allocations, economic impacts would be neutral and largely would vary by geographic area, with continued higher potential revenues during the

summer months in the northeast and lower amounts to winter fishery participants off the mid- and south Atlantic states. General category participants that fish in the January bluefin fishery may continue to perceive a disadvantage as the available quota for that period is relatively small (5.3% of the General category quota) and they do not benefit from the rollover of unused quota either inseason or from one time period to the next. Nor do they benefit from prior-year underharvest, because of the timing of the annual final quota specifications (published in the middle of the year).

Alternative E 1b would establish a 12 equal monthly subquotas. It would allow the General category to remain open year-round, and would revise subquotas so that they are evenly distributed throughout the year (*i.e.,* the base quota of 435.1 mt would be divided into monthly subquotas of 8.3 percent of the General category base quota, or 36.1 mt). NMFS would continue to carry forward unharvested General category quota from one time period to the next time period. This alternative would result in increased harvest in the earlier portions of the General category bluefin season and decreased harvest in the later portions of the season. For early season (January–March) General category participants, an additional 85.2 mt would be available (*i.e.,* 108.3–23.1 mt). At $9.13/lb, this represents a potential increase in revenue of approximately $1.7 million overall during this time period, nearly five times the current amount. NMFS does not have General category price/lb information for April or May since there is currently no General category fishing during those months, but using $9.13/lb as an estimate, potential revenues for each of those months would be $726,621. Potential revenues for the current June–August and September periods would decrease by approximately $2.2 million (50%) and $1.7 million (69%), given recent average price ($9.13 and $9.61, respectively). For October–November and for December, potential revenues would increase by approximately $317,000 (28%) and $287,000 (60%) at $9.21/lb and $9.65/lb, respectively. Relative to the No Action alternative, under Alternative E 1b, there would generally be substantially increased revenues for January through May and October through December and substantially decreased revenues for June through September, and total annual revenues would decrease by approximately $100,000 (1%).

Alternative E 1c, a preferred alternative, is similar to Alternative E 1b and could result in a shift in the distribution of quota and thus fishing opportunities to the earlier portion of the year. For example, in 2011 and 2012, June through August General category landings totaled 140.3 mt and 192.2 mt, out of an available (base) quota of 217.6 mt. In 2010, June through August General category landings totaled 125.4 mt of an available (adjusted) quota of 269.4 mt. If quota that is anticipated to be unused in the first part of the summer season is made available to January period General category participants and bluefin are landed against the January period subquota, it would potentially result in improved and fuller use of the General category quota. Also, because bluefin price per lb is often higher in the January period than during the summer, shifting quota to this earlier period would result in beneficial impacts to early season General category participants off the mid- and south Atlantic states. It is possible, however, that an increase of bluefin on the market in the January period could reduce the average price for that time of year. Participants in the summer fishery may perceive such quota transfer to be a shift away from historical participants in the traditional General category bluefin fishing areas off New England and thus adverse. However, because unused quota rolls forward within a calendar year from one period to the next, any unused quota from the adjusted January period would return to the June through August period and onward if not used completely during that period. Overall, short-term, direct impacts depend on the amount and timing of quota transferred inseason and would be expected to be neutral to minor, beneficial for January fishery participants and neutral to minor, adverse impacts for participants in the June through December General category fishery. This alternative minimizes economic impacts by providing additional regulatory flexibility for NMFS to transfer quota among seasons, and respond to and adapt to changes in the bluefin fishery. This flexibility therefore enhances NMFS' ability to optimize quota distribution among participants, seasons, and regions.

Alternative E 2—NMFS Authority To Adjust Harpoon Category Retention Limits Inseason

Under the No Action alternative, alternative E 2a, Harpoon category participants would continue to have the ability to retain and land up to four large medium fish per vessel per day, as well as unlimited giants. The economic impact of the No Action alternative is expected to be direct and neutral to slightly beneficial and short-term, as participants would continue to be able to retain and land a 3rd and 4th large medium bluefin, if available, and would not have to discard these fish if caught while targeting giant bluefin. In 2012, the first year following implementation of the four-fish limit on large mediums, there were only two trips on which three large mediums were landed and two trips on which four large mediums were landed, or 6% total of successful trips. Harpoon quota revenues in 2012 were 24 percent lower than 2011 and 71 percent higher than in 2010.

Under alternative E 2b, a preferred alternative, the daily retention limit of large medium bluefin would range from two to four bluefin, and the default large medium limit would be set at two fish. On a per-trip basis, there would be minor short-term direct adverse social and economic impacts that would depend on availability of large mediums to Harpoon category vessels on a per trip basis and the actual retention limit that NMFS sets inseason (or that is in place by default). Looking at successful 2012 trips, NMFS can estimate potential impacts of this change by determining the number of trips on which three or four large mediums were landed in 2012, and assume that those fish may not be able to be landed under this alternative. Using 2012 successful trip data, if the limit was set at two large mediums, the revenue from up to six large mediums would be foregone for the season, and with a three fish limit, the revenue of up to two large mediums would be foregone. At an average 2012 weight of 296 lbs. and an average price of $9.13/lb for the Harpoon category, a loss of one to six fish would be approximately $2,702 to $16,215 for the Harpoon category as a whole for the year.

Potentially beneficial economic impacts are possible if a lower limit at the beginning of the season results in the Harpoon category quota lasting longer into the season, as the average price/lb is generally higher in July and August than it is in June. NMFS has not needed to close the Harpoon category in recent years (*i.e.,* as a result of the quota being met), but depending on the size of the amount of quota available and the number of Harpoon category participants, this may be a consideration. This alternative minimizes economic impacts by providing additional regulatory flexibility for NMFS to set bluefin trip limits, and respond to and adapt to changes in the bluefin fishery.

Alternative E 3—Angling Category Subquota Distribution

Under alternative E 3a, the No Action alternative, Angling category participants fishing south of 39°18′ N. lat. (approximately, Great Egg Inlet, NJ) would continue to have their landings of trophy bluefin count toward a shared 66.7% of the Angling category large medium and giant bluefin subquota. The social impact of the No Action alternative is expected to vary by geographic area and be dependent on the availability of trophy-sized bluefin on the fishing grounds. If the pattern of high activity off Virginia and North Carolina continues, fishermen in the mid-Atlantic may have greater opportunities to land a bluefin and participants in the Gulf of Mexico may have no opportunity to land a bluefin when the fish are in their area as the southern trophy fishery may already be closed for the year. For Angling and Charter/Headboat fishermen, based on the last two years, there would be direct, beneficial, short-term social impacts in the mid-Atlantic and direct, adverse, short-term impacts for participants south of that area, including the Gulf of Mexico. The issue of economic costs for Angling category participants is not relevant as there is no sale of tunas by Angling category participants. For charter vessels, which sell fishing trips to recreational fishermen, economic impacts are expected to be neutral to beneficial for those in the mid-Atlantic and neutral to adverse for those south of that area, including the Gulf of Mexico, as the perceived opportunity to land a trophy bluefin may be diminished. This should be tempered in the Gulf of Mexico, where there is no directed fishing for bluefin allowed. Given that the current southern trophy bluefin subquota of 2.8 mt represents approximately 17–30 individual fish, impacts are expected to be minor.

Under Alternative E 3b, the preferred alternative, a portion of the trophy south subquota would be allocated specifically for the Gulf of Mexico. Specifically, the trophy subquota would be divided as 33% each to the northern area, the southern area outside the Gulf of Mexico, and the Gulf of Mexico. At the current average trophy fish weight, this would allow annually up to 8 trophy bluefin to be landed in each of the three areas.

There would be minor, short-term, direct, beneficial social impacts to a small number of vessels in the Gulf of Mexico given the small amount of fish that would be allowed to be landed (as well as indirect beneficial economic impacts for charter vessels), but the perception of greater fairness among southern area participants may result in indirect, longer-term, beneficial, social impacts. There would be minor, short-term, direct and indirect adverse social impacts (and economic impacts for charter vessels) for those outside the Gulf of Mexico as the perceived opportunity to land a trophy bluefin may be diminished.

Alternative E 4—Change Start Date of Purse Seine Category to June 1

Under Alternative E 4a, the No Action alternative, there would be no change to the start date of the Purse Seine category fishery, which is currently set at July 15. Economic impacts would be expected to be direct and neutral to adverse depending on availability of schools of bluefin for purse seine operators to decide to make a set on. That is, currently, if conditions would warrant making a set (*e.g.,* based on information from spotter pilots) before July 15, purse seine operators would not be able to fish and would miss the economic opportunity to land and sell bluefin while the other commercial bluefin fisheries are open. Social impacts would be minor and neutral to adverse for purse seine fishery participants and would be minor and neutral to beneficial for fishermen in other categories due to reduced actual or perceived gear conflict from June 1 through July 14.

Under the preferred alternative, E 4b, extending the range of potential start dates for the Purse Seine fishery, beginning fishing on June 1, would allow NMFS more flexibility in determining when the appropriate start date should be set, and the potential for increased flexibility for purse seine operators to choose when to fish, based on availability of schools of appropriate-sized bluefin and market price. Economic impacts would be expected to be direct and neutral to moderate and beneficial depending on when determines the start date should be, and depending upon the availability of schools of bluefin for purse seine operators to decide to make a set on and market conditions. Social impacts would be minor and neutral to beneficial for purse seine fishery participants and would be minor and neutral to adverse for fishermen in other categories due to increased actual or perceived gear conflict from June 1 through July 14. In 2012, the average price per pound was $12.46, although the price likely reflects the relatively small amount of purse seine-caught bluefin on the market that year. In 2009, the last year in which there were Atlantic purse seine bluefin landings, the average price per pound was $5.96. NMFS minimized the potential economic impacts of this alternative by altering this measure from that which was proposed, to remove the default start date of June 1, which was of concern to handgear fishermen, but instead will finalize an expanded range of potential start dates to the Purse Seine fishery.

Alternative E 5—Rule Regarding Permit Category Changes

Under the No Action alternative, E 5a, there would be no changes made to current regulations regarding the ability of an applicant to make a correction to their open-access HMS permit category. The current regulations prohibit a vessel issued an open-access Atlantic Tunas or an HMS permit from changing the category of the permit after 10 calendar days from the date of issuance. This No Action alternative is administrative in nature, and therefore the social and economic impacts associated with it would be neutral for most applicants. However, for those applicants who discover their permit category may not allow the vessel to fish in a manner as intended, they may experience moderate adverse social and economic impacts at an individual level. For example, if a commercial fishermen obtained an Angling category permit (recreational) versus a General category permit (commercial) and did not discover the error until after the 10 calendar day window, their vessel would not be allowed to fish commercially for Atlantic tunas for the remainder of that year. Likewise, if recreational fishermen obtained a General category permit (commercial) versus an Angling category permit (commercial) and did not discover the error until after the 10 calendar window, their vessel would not be allowed to fish under the recreational rules and regulations for the remainder of the year. These two examples demonstrate the potential in lost fishing opportunities as a result of the No Action alternative.

Under the preferred alternative, E 5b, NMFS would allow category changes to an open-access HMS permit for a time period greater than 10 calendar days (*e.g.,* 30, 45, or 60 days), provided the vessel has not fished as verified via landings data. This alternative would result in neutral social and economic impacts for most applicants as there are approximately 20 requests annually that would fall outside the 10 calendar day window. However, those applicants who discover their permit category may not allow the vessel to fish in a manner as intended (~20 per year), would

experience moderate beneficial social and economic impacts provided they discover the error in the liberalized window (*e.g.,* 30, 45, or 60 days). Using the two examples illustrated above and assuming no bluefin were caught in either case, each applicant would be allowed to correct their open-access HMS permit category to match their intended fishing practices for the remainder of that year, thereby mitigating the potential of lost fishing opportunities, as well as potential income.

Alternative E 6—North Atlantic Albacore Tuna Quota

Alternative E 6a, the No Action alternative, maintains the current northern albacore tuna quota. In the last 10 years, U.S. catches reached or exceeded the current U.S. initial quota (527 mt for 2013) in 2004 with 646 mt and in 2007 with 532 mt. However, catches have been less than the adjusted U.S. quotas (currently about 659 mt) for the last several years. Under the No Action alternative, there is no domestic mechanism to limit annual catches of northern albacore beyond the current requirements for Atlantic tunas or HMS vessel permits, authorized gear, observers/logbooks, and time/area closures. Therefore, expected short-term, direct economic impacts and social impacts under the No Action alternative would be neutral. If future overharvests result in the United States being out of compliance with the ICCAT recommendation, the United States would need to put control measures in place and neutral to adverse longer-term direct economic and social impacts could occur if the resulting annual quota needs to be reduced by the amount of the overharvest.

If, under preferred alternative, E 6b, NMFS implements a domestic quota for northern albacore and recent catch levels continue, and the U.S. quota (including the adjusted quota) recommended by ICCAT is maintained at the current amount, economic and social impacts would not be expected. However, if either the U.S. quota is reduced as part of a new TAC recommendation or catches increase above the current adjusted U.S. quota, there could be adverse impacts resulting from reduced future fishing opportunities and ex-vessel revenues. At an average price of $1.29/lb for commercially-landed albacore in 2011, a reduction of one mt would represent approximately $2,800 under a full quota use situation. Actual impacts would largely depend on the availability of northern albacore and the ability of fishery participants to harvest the quota. In addition, any adverse social and economic impacts of exceeding the TAC, which was adopted as part of the overall ICCAT northern albacore rebuilding program, would be reduced and, in the long term, may be beneficial for fishermen as the stock grows. There may be slight differences in the level of economic and social impacts experienced by the specific individuals of the northern albacore fishery, as well as by participants within a particular fishery sector.

NMFS has determined that Amendment 7 does not require reinitiation of consultation and that, per ESA section 7(d), it would not result in an ''irreversible or irretrievable commitment of resources'' that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures during the ongoing consultations.

On March 31, 2014, NMFS reinitiated consultation for the pelagic longline fishery. That fishery operates consistent with a 2004 Biological Opinion (BiOp) that concluded that the Atlantic pelagic longline fishery was not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley or olive ridley sea turtles but was likely to jeopardize the continued existence of leatherback sea turtles. NMFS implemented the Reasonable and Prudent Alternatives (RPAs) and Terms and Conditions specified in that BiOp (*e.g.,* hook type, bait type, mandatory workshops). On March 31, 2014, NMFS requested reinitiation of consultation of the pelagic longline BiOp due to new information on mortality rates and total mortality estimates for leatherback turtles that exceed those specified in the RPAs, changes in information about leatherback and loggerhead populations, and new information on sea turtle mortality. While the mortality rate measure needs to be re-evaluated, this does not affect the overall ability of the RPAs to avoid jeopardy during the reinitiation.

NMFS is continuing to implement these RPAs during the ongoing consultation and has previously determined that ongoing operations in compliance with that BiOp are consistent with sections 7(a)(2) and 7(d) of the ESA.

Implementation of this final rule will not affect NMFS' ability to comply with the RPAs and RPMs in the 2004 BiOp, and will not trigger additional ESA requirements or considerations pertaining to the pelagic longline fishery and listed sea turtles and other species covered in the 2004 BiOp. Amendment 7 measures (including those that could reduce fishing effort) implemented in conjunction with current measures in the HMS fisheries would not change the determination that ongoing operations are unlikely to jeopardize the continued existence of the right whale, humpback, fin, or sperm whales, or Kemp's ridley, green, loggerhead, hawksbill or leatherback sea turtles. A complete discussion of the effect of the alternatives applicable to the Longline category on quota allocation and fishing effort is located in Section 4.1.6.1 of the FEIS.

On July 3, 2014, NMFS published a final rule to list four Distinct Populations Segments (DPS) of scalloped hammerhead sharks (*Sphyrna lewini*): Two as threatened (Central and Southwest Atlantic DPS and Indo-West Pacific DPS) and two as endangered (Eastern Atlantic DPS and Eastern Pacific DPS) under the Endangered Species Act (79 FR 38214). The Central and Southwest Atlantic DPS consists primarily of the population found in the Caribbean Sea and off the Atlantic coast of Central and South America (includes all waters of the Caribbean Sea, including the U.S. EEZ off Puerto Rico and the U.S. Virgin Islands).

On August 27, 2014, NMFS published a final rule to list the following 20 coral species as threatened: Five in the Caribbean including Florida and the Gulf of Mexico (*Dendrogyra cylindrus, Orbicella annularis, Orbicella faveolata, Orbicella franksi,* and *Mycetophyllia ferox*); and 15 in the Indo-Pacific (*Acropora globiceps, Acropora jacquelineae, Acropora lokani, Acropora pharaonis, Acropora retusa, Acropora rudis, Acropora speciosa, Acropora tenella, Anacropora spinosa, Euphyllia paradivisa, Isopora crateriformis, Montipora australiensis, Pavona diffluens, Porites napopora,* and *Seriatopora aculeata*). Additionally, in that August 2014 rule, two species that had been previously listed as threatened (*Acropora cervicornis* and *Acropora palmata*) in the Caribbean were found to still warrant listing as threatened.

The Central and Southwest Atlantic DPS of scalloped hammerhead sharks and seven Caribbean species of corals occur within the management area of Atlantic Highly Migratory Species (HMS) commercial and recreational fisheries which are managed by NMFS's Office of Sustainable Fisheries, HMS Management Division. Following these listings and based on the information included in an October 2014 biological evaluation, NMFS determined that certain authorized Atlantic HMS gear types may affect and are likely to adversely affect scalloped hammerhead sharks within the Central and

Southwest Atlantic DPS. Additionally, certain authorized Atlantic HMS gear types may affect, but are not likely to adversely affect, threatened Caribbean coral species. Thus, on October 30, 2014, NMFS requested reinitiation of ESA section 7 consultation for the 2006 Consolidated Atlantic HMS Fishery Management Plan activities, as amended and as previously consulted on in the 2001 Atlantic HMS biological opinion and the 2012 Shark and Smoothhound biological opinion, to assess potential adverse effects of certain gear types on the Central and Southwest DPS of scalloped hammerhead sharks and seven threatened coral species.

With regard to the new listings, per ESA section 7(d), NMFS has determined that Amendment 7 would not result in an ''irreversible or irretrievable commitment of resources'' that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures during the ongoing consultations. There are scalloped hammerhead shark interactions in the Central and Southwest Atlantic DPS, based on Fisheries Logbook System and Pelagic Observer Program data. The number of interactions is consistent with the conclusion that scalloped hammerhead sharks in the Central and Southwest Atlantic DPS are rarely targeted and that recreational fishing results in catch and release of low numbers of under-sized scalloped hammerhead sharks. Additionally, Atlantic HMS gear types may affect but are not likely to adversely affect, threatened Caribbean coral species.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control numbers 0648–0372, 0648–0328, and 0648–0677. Public reporting burden for these collections of information are estimated to average, as follows:

1. Purse Seine VMS hail out & in, OMB # 0648–0372, (5 min/response);

2. Pelagic Longline (PLL) and Purse Seine (PS) VMS catch reports and verification, OMB # 0648–0372, (5 min/response for PLL; 15 min for PS)

3. Electronic Monitoring of Pelagic Longline Vessels, Data Retrieval, OMB # 0648–0328, (5 min/response)

4. General, Harpoon, and Charter/Headboat reporting via automated systems, OMB # 0648–0328, (5 min/response)

5. Pelagic Longline appeal of Performance Metrics, OMB # 0648–0677, (2 hr/response)

6. Pelagic Longline appeal of Quota Shares, OMB # 0648–0677, (2 hr/response)

7. Pelagic Longline and Purse Seine IBQ Trade Execution and Tracking, Transfer of Allocation, OMB # 0648–0677, (2 min/response)

8. IBQ Trade Execution and Tracking, Online Account Initial Application, OMB # 0648–0677, (10 min/response)

9. IBQ Trade Execution and Tracking, Online Account Renewal Application, OMB # 0648–0677, (10 min/response)

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of this final rule and the compliance guide are available upon request from NMFS (see **ADDRESSES**). Copies of the compliance guide will also be available from the Highly Migratory Species Management Division Web site at *http://www.nmfs.noaa.gov/sfa/hms/*.

This final rule does not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the ACTA, 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. We do not believe that the new regulations duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

The State of Louisiana objected to the consistency determination required by 15 CFR 930.39, and stated that the potential biological benefits of the Amendment are minimal compared to the potentially large socio-economic impacts for pelagic longline vessels, especially those related to the IBQ program. The State of Louisiana also disagreed with the conclusion that the proposed activity is consistent to the maximum extent practicable with the LCRP, claiming that the determination lacks information sufficient to support the consistency statement ''as required by federal regulations at 15 CFR 930.39(a) and as identified in the enforceable policies of the Louisiana Administrative Code, Title 43, Part I.''

The State of Louisiana states that Amendment 7 is inconsistent with three, and is not fully consistent with six, of the enforceable policies of the Louisiana Administrative Code and states that Amendment 7 lacks comprehensive data and information sufficient to support the consistency statement. The specific factors of section 701 of the Louisiana Administrative Code that the State of Louisiana states are not fully consistent with Amendment 7 are Section 701 F(5), availability of feasible alternative sites or methods of implementing the use; F(7) economic need for use and extent of impacts of use on economy of locality; F(11) extent of impacts on existing and traditional uses of the area and on future uses for which the area is suited; F(16) proximity to and extent of impacts on public lands or works, or historic, recreational, or cultural resources; F(17) extent of impacts on navigation, fishing, public access, and recreational opportunities; and F(19) extent of long term benefit or adverse impacts.

After reviewing these concerns and, in accordance with the Coastal Zone Management Act (CZMA) regulations at 15 CFR 930.43(d)(2), NMFS has concluded that the proposed action is consistent to the maximum extent practicable with the enforceable policies of the LCRP, as noted below, though the State of Louisiana objects. Specifics on this conclusion are as follows.

Regarding factor F(5), there are no alternative sites for implementing the use of pelagic longline fishing within the Gulf of Mexico—pelagic longline fishing already occurs within all available federal and state waters. As noted below, alternative methods of reducing dead discards that were analyzed included group or regional quotas and would have had more adverse impacts than the preferred alternative. Regarding factor F(7), the State of Louisiana correctly states that pelagic longline fishing is an important economic activity contributing to the Louisiana economy. Pelagic longline fishing will continue to be authorized within the Gulf of Mexico, and valuable target species such as swordfish and yellowfin tuna are abundant in the region such that, should pelagic

longline vessels continue to offload to Louisiana-based federal dealers, pelagic longline fishing will continue to contribute to the Louisiana economy.

Regarding factor F(11), as stated above, pelagic longline fishing will continue to be authorized within the Gulf of Mexico such that existing and traditional uses as well as future uses of the area will continue. Therefore, NMFS believes that the proposed action is consistent to the maximum extent practicable with the enforceable policies of the LCRP.

Regarding factor F(16), productive fishing grounds will still be available for pelagic longline fishing within the Gulf of Mexico even with the preferred alternative that would implement the Modified Spring Gulf of Mexico GRAs. As noted in Chapter 4 of the Final Environmental Impact Statement (FEIS), with redistribution of effort, NMFS anticipates a reduction of approximately $281,000 in ex-vessel value from implementing the preferred alternative, which, while approximately 3 percent of the Gulf of Mexico pelagic longline fleet total ex-vessel value of $9.74 million, means that roughly 97 percent of ex-vessel value within the Gulf of Mexico will continue to contribute to the State of Louisiana economy. Therefore, NMFS believes that the proposed action is consistent to the maximum extent practicable with the enforceable policies of the LCRP.

Regarding factor F(17), the preferred alternative to implement the Modified Spring Gulf of Mexico GRA would restrict access to two additional areas within the Gulf of Mexico where bluefin bycatch has consistently occurred from 2006–2012 and which comprise approximately 11 percent of the area. In combination with the DeSoto Canyon pelagic longline closed areas, which were closed to reduce bycatch of juvenile swordfish and overfished billfish and coastal sharks, and other applicable HMS pelagic longline closed areas, approximately 25 percent of the Gulf of Mexico is restricted to pelagic longline gear. While these measures impact pelagic longline fishing, other fishing activities, navigation, public access, and recreational opportunities would remain unaffected. Therefore, NMFS believes that the proposed action is consistent to the maximum extent practicable with the enforceable policies of the LCRP.

Regarding factor F(19), implementation of Amendment 7 measures would provide different benefits and adverse impacts for the pelagic longline fleet within the Gulf of Mexico depending on the measure. The preferred Codified and Annual Reallocation alternatives would provide short and long term benefits to the pelagic longline fishery through an increased codified quota of 62 mt in addition to potential for additional quota as a result of the annual reallocation alternative. Implementation of IBQs, as noted above, would provide approximately 75 percent of pelagic longline vessels an allocation sufficient for reported bluefin interactions. A portion of Louisiana homeported vessels would likely need to lease additional bluefin quota or modify fishing behavior to reduce bluefin interactions, although implementation of the Modified Spring Gulf of Mexico GRAs would limit access to areas of high bluefin interactions, thereby likely reducing bluefin interactions without additional changes by fishermen. Therefore, NMFS believes that the proposed action is consistent to the maximum extent practicable with the enforceable policies of the LCRP.

The State of Louisiana also states that Amendment 7 is inconsistent with the enforceable policies of the Lousiana Administrative Code's Section 701G (2), adverse economic impacts on the locality of the used and affected governmental bodies; (6), adverse disruption of existing social patterns; and (10), adverse effects of cumulative impacts.

Regarding factors G(2) and (6), the implementation of Amendment 7 measures would provide different benefits and adverse impacts for the pelagic longline fleet within the Gulf of Mexico depending on the measure. While some impacts are expected to be short-and long-term moderate adverse impacts, NMFS has balanced the overall impacts to the pelagic longline fleet as well as other user groups to achieve Amendment 7 objectives in a fair and appropriate manner, and as described in Chapters 5, 7, and 8 of the FEIS, has minimized adverse social and economic impacts to the extent practicable, consistent with the National Environmental Policy Act, Regulatory Flexibility Act, and CZMA. Providing additional codified quota as well as the potential of additional quota through annual reallocation, in combination with GRAs where bluefin interactions have been historically high and IBQs that provide 75 percent of the fleet with sufficient quota to continue current fishing practices- balances the need to reduce dead discards with providing fishing opportunities to all user groups. The adverse impacts to 13 Louisiana homeported vessels that would likely need to lease approximately 7 metric tons of bluefin are warranted given the long-term benefits to the overall pelagic longline fleet under the combination of all preferred alternatives.

Regarding G(10), the Gulf of Mexico pelagic longline fleet is a heavily regulated fishery and has experienced several natural and man-made adverse impacts as well as regulatory changes in recent years. Several regulatory measures have been implemented to reduce bycatch of threatened or endangered species (*i.e.,* circle hooks in 2004) and overfished species such as bluefin (*e.g.,* weak hooks in 2011) or coastal sharks (*i.e.,* sandbar sharks in 2008 and scalloped hammerhead sharks in 2013). These measures often have short term adverse impacts but are ultimately needed for the sustainability of the fishery in the long term. In each of these actions, NMFS has minimized adverse impacts to the extent practicable while still meeting conservation objectives, consistent with applicable law.

Furthermore, the FEIS analysis demonstrates that NMFS utilized many of the factors cited by the State of Louisiana as lacking in NMFS's evaluation. Specifically, NMFS used the best available logbook, dealer, and observer data, conducted vessel-specific analyses for preferred alternatives on gear restricted areas and IBQ measures, and relied on relevant recent scientific information. NMFS also explored the availability of alternative methods of achieving the Amendment 7 objectives, and considered the economic impacts, as well as the long term benefits of the measures. The alternative methods to reduce dead discards of no action or group or regional quotas would have more adverse impacts and be less effective in achieving Amendment 7 objectives to reduce dead discards and maximize fishing opportunity. The design of the IBQ management measures and other aspects of Amendment 7 minimize the significant adverse economic impacts, disruption of social patterns, and adverse cumulative impacts, to the extent practicable, relative to other methods analyzed while also meeting Amendment 7 objectives.

As explained in Chapter 5 of the FEISit includes limited state specific analyses of the impacts of the preferred codified and IBQ measures. Due to the nature of the bluefin fisheries (widely distributed and highly variable), the FEIS analyses are principally at a fishery-wide, or permit category level. The IBQ analyses show that approximately 75 percent of the pelagic longline fleet would receive an initial allocation that would be consistent with their historical reported landings such that they would be able to continue to

operate without having to acquire additional quota. Under the preferred 137 mt alternative (see Table 5.26), the total additional amount of quota needed to continue fishing at historical levels is estimated to total 51.3 metric tons across all the vessels needing additional quota. Many vessels, however, would not need their full initial IBQ allocation to continue fishing at their historic levels. The total of this surplus quota across all vessels likely not fully use their initial IBQ allocation is estimated to be 82.8 mt in the context of the preferred 137 mt alternative. The total surplus of quota exceeds the total amount needed under the preferred 137 mt alternative, so the transfer of quota among pelagic longline vessels should reduce potential economic impacts of the IBQ program.

The states with the largest amount of additional IBQ needed include Louisiana, New York, and Florida, while vessels with home ports in Florida, New Jersey, and Louisiana would have the most surplus quota available to trade. Specific to pelagic longline vessels homeported in Louisiana, NMFS estimates that approximately 12 vessels would receive an initial allocation either at or above their historical reported landings and would have approximately 10.4 mt of surplus allocation. Conversely, approximately 13 vessels would need additional quota of 17.4 mt to maintain current fishing practices. Therefore, the total quota need among State of Louisiana homeported vessels would be 7 mt. Vessels may change their fishing practices such that the amount of quota they need is reduced or they may be able to lease quota from other vessels with surplus quota. Therefore, the adverse impacts to State of Louisiana homeported vessels would be minimized to the extent practicable while still meeting the objectives of Amendment 7.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 635

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

Dated: November 21, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 635 are amended as follows:

Title 15—Commerce and Foreign Trade

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 350 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding new entries in numerical order for §§ 635.5(a)(4), 635.9(e), 635.14(d), 635.15(a)(2), (c)(2) and (k)(4), and 635.69(a) and (e)(4) to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR Part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR:	.....
* * * * *	
635.5(a)(4)	–0328
* * * * *	
635.9(e)	–0328
635.14(d)	–0677
635.15(a)(2), (c)(2) and (k)(4)	–0677
* * * * *	
635.69(a) and (e)(4)	–0372
* * * * *	

Title 50—Wildlife and Fisheries

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 3. 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.*

■ 4. In § 635.2:

■ a. Revise the definitions of ''Bottom longline,'' ''Green-stick gear,'' and ''Pelagic longline,'' and

■ b. Add the definitions of ''Cape Hatteras gear restricted area,'' ''In transit,'' ''Spring Gulf of Mexico gear restricted area,'' and ''Transiting'' in alphabetical order.

The revisions and additions read as follows:

§ 635.2 Definitions.

* * * * *

Bottom longline means a longline that is deployed with enough weights and/or anchors to maintain contact with the ocean bottom. For the purposes of this part, a vessel is considered to have bottom longline gear on board when a power-operated longline hauler, a mainline, weights and/or anchors capable of maintaining contact between the mainline and the ocean bottom, and leaders (gangions) with hooks are on board. Removal of any of these elements constitutes removal of bottom longline gear. Bottom longline vessels may have a limited number of floats and/or high flyers onboard for the purposes of marking the location of the gear but removal of these floats does not constitute removal of bottom longline gear.

* * * * *

Cape Hatteras gear restricted area means the area within the Atlantic Ocean bounded by straight lines connecting the following coordinates in the order stated: 34°50′ N. lat., 75°10′ W. long.; 35°40′ N. lat., 75°10′ W. long.; 35°40′ N. lat., 75°00′ W. long.; 37°10′ N. lat., 75°00′ W. long.; 37°10′ N. lat., 74°20′ W. long.; 34°30′ N. lat., 74°20′ W. long.; 34°50′ N. lat., 75°00′ W. long; 34°50′ N. lat., 75°10′ W.

* * * * *

Green-stick gear means an actively trolled mainline attached to a vessel and elevated or suspended above the surface of the water with no more than 10 hooks or gangions attached to the mainline. The suspended line, attached gangions and/or hooks, and catch may be retrieved collectively by hand or mechanical means. Green-stick does not constitute a pelagic longline or a bottom longline as defined in this section.

In transit means non-stop progression through an area without any fishing activity occurring.

* * * * *

Pelagic longline means a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom. For the purposes of this part, a vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks are on

board. Removal of any of these elements constitutes removal of pelagic longline gear.

* * * * *

Spring Gulf of Mexico gear restricted area means two areas within the Gulf of Mexico described here. The first area is bounded by straight lines connecting the following coordinates in the order stated: 26°30′ N. lat., 94°40′ W. long.; 27°30′ N. lat., 94°40′ W. long.; 27°30′ N. lat., 89° W. long.; 26°30′ N. lat., 89° W. long.; 26°30′ N. lat., 94°40′ W. long. The second area is bounded by straight lines connecting the following coordinates in the order stated: 27°40′ N. lat., 88° W. long.; 28° N. lat., 88° W. long.; 28° N. lat., 86° W. long.; 27°40′ N. lat., 86° W. long.; 27°40′N. lat., 88° W. long.

* * * * *

Transiting means progressing through an area without any fishing activity occurring.

* * * * *

■ 5. In § 635.4 revise paragraphs (j)(3) and (o)(4) to read as follows:

§ 635.4 Permits and fees.

* * * * *

(j) * * *

(3) A vessel owner issued an Atlantic Tunas permit in the General, Harpoon, or Trap category or an Atlantic HMS permit in the Angling or Charter/Headboat category under paragraph (b), (c), or (d) of this section may change the category of the vessel permit once within 45 calendar days of the date of issuance of the permit, provided the vessel has not landed bluefin tuna during those 45 calendar days as verified by NMFS via landings data. After 45 calendar days from the date of issuance of the permit, the vessel owner may not change the permit category until the following fishing season.

* * * * *

(o) * * *

(4) The owner of a vessel issued an HMS Commercial Caribbean Small Boat permit may fish for, take, retain, or possess only BAYS tunas, Atlantic swordfish, and Atlantic sharks, subject to the trip limits specified at § 635.24.

* * * * *

■ 6. In § 635.5:

■ a. Paragraph (a)(3) is revised;

■ b. Paragraph (a)(4) is redesignated as paragraph (a)(5);

■ c. New paragraphs (a)(4) and (a)(6) are added;

■ d. Paragraph (b)(2)(i)(A) is revised;

■ e. Paragraph (b)(2)(iii) is added; and

■ f. Paragraph (c)(1) is revised.

The revisions and additions read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(3) *Bluefin tuna landed by a commercial vessel and not sold.* If a person who catches and lands a large medium or giant bluefin tuna from a vessel issued a permit in any of the commercial categories for Atlantic tunas does not sell or otherwise transfer the bluefin tuna to a dealer who has a dealer permit for Atlantic tunas, the person must contact a NMFS enforcement agent, at a number designated by NMFS, immediately upon landing such bluefin tuna, provide the information needed for the reports required under paragraph (b)(2)(i) of this section, and, if requested, make the tuna available so that a NMFS enforcement agent or authorized officer may inspect the fish and attach a tag to it. Alternatively, such reporting requirement may be fulfilled if a dealer who has a dealer permit for Atlantic tunas affixes a dealer tag as required under paragraph (b)(2)(ii) of this section and reports the bluefin tuna as being landed but not sold on the reports required under paragraph (b)(2)(i) of this section. If a vessel is placed on a trailer, the person must contact a NMFS enforcement agent, or the bluefin tuna must have a dealer tag affixed to it by a permitted Atlantic tunas dealer, immediately upon the vessel being removed from the water. All bluefin tuna landed but not sold will be applied to the quota category according to the permit category of the vessel from which it was landed.

(4) *Bluefin tuna discarded dead, or landed by a commercial vessel and sold.* The owner of a vessel that has been permitted or that is required to be permitted under § 635.4 in the Atlantic Tunas General or Harpoon categories, or has been permitted or is required to be permitted under § 635.4 under the HMS Charter/Headboat category and fishing under the General category quotas and daily limits as specified at § 635.23(c), must report all discards and/or landings of bluefin tuna through the NMFS electronic catch reporting system within 24 hours of the landings or the end of trip. Such reports may be made by either calling a phone number designated by NMFS or by submitting the required information online to a Web site designated by NMFS. The owner of a vessel that has been permitted in a different bluefin tuna category must report as specified elsewhere in this section (§ 635.5).

* * * * *

(6) Atlantic Tunas permitted vessels. The owner or operator of an Atlantic Tunas vessel fishing with pelagic longline gear or an Atlantic Tunas Purse Seine category participant is subject to the VMS reporting requirements under § 635.69(e)(4) and the applicable Individual Bluefin Quota (IBQ) Program and/or leasing requirements under § 635.15(a)(2).

(b) * * *

(2) * * *

(i) * * *

(A) Landing reports. Each dealer with a valid Atlantic Tunas dealer permit issued under § 635.4 must submit the landing reports to NMFS for each bluefin received from a U.S. fishing vessel. Such reports must be submitted electronically by sending a facsimile to a number designated by NMFS not later than 24 hours after receipt of the bluefin. Landing reports must include the name and permit number of the vessel that landed the bluefin and other information regarding the catch as instructed by NMFS. Landing reports submitted via facsimile must be signed by the permitted vessel owner or operator immediately upon transfer of the bluefin. When purchasing bluefin tuna from eligible IBQ Program participants or Atlantic Tunas Purse Seine category participants, permitted Atlantic Tunas dealers must also enter landing reports into the electronic IBQ System established under 635.15, not later than 24 hours after receipt of the bluefin. The vessel owner or operator must confirm that the IBQ System landing report information is accurate by entering a unique PIN when the dealer report is submitted. The dealer must inspect the vessel's permit to verify that it is a commercial category, the required vessel name and permit number as listed on the permit are correctly recorded on the landing report, and that the vessel permit has not expired.

* * * * *

(iii) Dealers must comply with dealer requirements related to the Individual Bluefin Quota Program under § 635.15(a)(4)(iii).

* * * * *

(c) * * *

(1) *Bluefin tuna.* The owner of a vessel permitted, or required to be permitted in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category under § 635.4 must report the catch of all bluefin tuna discarded dead and/or retained under the Angling category quota designated at § 635.27(a) through the NMFS electronic catch reporting system within 24 hours of the landing.

* * * * *

■ 7. Add § 635.9 to subpart A—with paragraphs (b)(2)(ii) and (e)(1) effective June 1, 2015—to read as follows:

§ 635.9 Electronic monitoring.

(a) *Applicability.* An owner or operator of a commercial vessel permitted or required to be permitted in the Atlantic Tunas Longline category under § 635.4, and that has pelagic longline gear on board, is required to have installed, operate, and maintain an electronic monitoring (EM) system on the vessel, as specified in this section. Vessel owner or operators can contact NMFS or a NMFS-approved contractor for more details on procuring an EM system.

(b) *EM Installation.* (1) NMFS or a NMFS-approved contractor will assess individual Atlantic Tunas Longline permitted vessels that are currently eligible for IBQ share, install and test all EM systems; provide training to vessel owners or operators or their designees; and develop in consultation with vessel owners or operators or their designees required operational plans (Vessel Monitoring Plan or VMP) for the EM systems, as described in paragraph (e)(2) of this section.

(2) Vessel owners or operators, as instructed by NMFS, will be required to coordinate with NMFS or a NMFS-approved contractor to schedule a date or range of dates for EM installation, and/or may be required to steam to a designated port for EM installation on NMFS-determined dates. NMFS may require vessel owners to make minor modifications to vessel equipment to facilitate installation and operation of the EM system, such as, but not limited to, installation of a fitting for the pressure side of the line of the drum hydraulic system, a power supply for the EM system and power switches/connections, additional lighting, and/or a mounting structure(s) for installation of the camera(s). EM installation must be completed by June 1, 2015 in order to fish with pelagic longline gear after that date.

(i) *Certificate of Installation.* After confirming that an EM system that meets the requirements of this section is properly installed, the system has been tested, and training and a required operational plan (VMP) are completed, NMFS or the NMFS-approved contractor will provide a Certificate of Installation to the vessel owner or operator.

(ii) Vessels described under paragraph (a) of this section may not depart on a fishing trip without having a valid Certificate of Installation and VMP on board.

(c) *EM System Components.* The EM system installed by the NMFS-approved contractor must be comprised of video camera(s), recording equipment, and other related equipment and must have the following components and capabilities:

(1) *Video camera(s).* (i) Video cameras must be mounted and placed so as to provide clear, unobstructed views of the area(s) where the pelagic longline gear is retrieved and of catch being removed from hooks prior to being placed in the hold or discarded. There must be lighting sufficient to illuminate clearly individual fish.

(ii) Video camera(s) must be in sufficient numbers (a minimum of two and up to four), with sufficient resolution (no less than 720p (1280 × 720)) for NMFS, the USCG, and their authorized officers and designees, or any individual authorized by NMFS to determine the number and species of fish harvested. To obtain the views described in paragraph (c)(1)(i), at least one camera must be mounted to record close-up images of fish being retained on the deck at the haulback station, and at least one camera must be mounted to record activity at the waterline along the side of the vessel at the haul back station. NMFS or the NMFS-approved contractor will determine if more cameras are needed.

(iii) The EM system must be capable of initiating video recording at the time gear retrieval starts. It must record all periods of time when the gear is being retrieved and catch is removed from the hooks until it is placed in the hold or discarded.

(2) *GPS receiver.* A GPS receiver is required to produce output, which includes location coordinates, velocity, and heading data, and is directly logged continuously by the control box. The GPS receiver must be installed and remain in a location where it receives a strong signal continuously.

(3) *Hydraulic and drum rotation sensors.* Hydraulic sensors are required to continuously monitor the hydraulic pressure and a drum rotation sensor must continuously monitor drum rotations.

(4) *EM control box.* The system must include a control box that receives and stores the raw data provided by the sensors and cameras. The control box must contain removable hard drives and storage systems adequate for a trip lasting 30 days.

(5) *EM systems monitor.* A wheelhouse monitor must provide a graphical user interface for harvester to monitor the state and performance of the control box and provide information on the current date and time synchronized via GPS, GPS coordinates, current hydraulic pressure reading, presence of a data disk, percentage used of the data disk, and video recording status.

(6) The EM system must have software that enables the system to be tested for functionality and that records the outcome of the tests.

(d) *Data maintenance, storage, and viewing.* The EM system must have the capacity to allow NMFS, the USCG, and their authorized officers and designees, or any NMFS-approved contractor to observe the live video on the EM systems monitor as described in paragraph (c)(5) of this section. Vessel owner or operators must provide access to the system, including the data upon request.

(e) *Operation.* (1) Unless otherwise authorized by NMFS in writing, a vessel described in paragraph (a) of this section must collect video and sensor data in accordance with the requirements in this section, in order to fish with pelagic longline gear.

(2) *Vessel monitoring plan.* The vessel owner or operator must have available onboard a written VMP for its system, which is an operational plan developed by the NMFS-approved contractor containing the standardized procedures relating to the vessel's EM system. VMPs may include, but are not limited to, information on the locations of EM system components; contact information for technical support; instructions on how to conduct a pre-trip system test; instructions on how to verify proper system functions; location(s) on deck where fish retrieval should occur to remain in view of the cameras; procedures for how to manage EM system hard drives; catch handling procedures; a size reference for facilitating determination of fish size; periodic checks of the monitor during the retrieval of gear to verify proper functioning; reporting procedures. The VMP should minimize to the extent practicable any impact on the current operating procedures of the vessel, and should help ensure the safety of the crew.

(3) *Handling of fish and duties of care.* The vessel owner or operator must ensure that all fish that are caught, even those that are released, are handled in a manner that enables the video system to record such fish, and must ensure that all handling and retention of bluefin tuna occurs in accordance with relevant regulations and the operational procedures outlined in the VMP. The vessel owner or operator is responsible for ensuring the proper continuous functioning of the EM system, including that the EM system must remain powered on for the duration of each fishing trip from the time of departure to time of return; cameras must be cleaned routinely; and EM system components must not be tampered with.

(4) *Completion of trip.* Within 48 hours of completing a fishing trip,, the vessel owner or operator must mail the removable EM system hard drive(s) containing all data to NMFS or NMFS-approved contractor, according to instructions provided by NMFS. The vessel owner or operator is responsible for using shipping materials suitable to protect the hard drives (*e.g.,,* bubble wrap), tracking the package, and including a self-addressed mailing label for the next port of call so replacement hard drives can be mailed back to the vessel owner or operator. Prior to departing on a subsequent trip, the vessel owner or operator must install a replacement EM system hard drive(s) to enable data collection and video recording. The vessel owner or operator is responsible for contacting NMFS or NMFS-approved contractor if they have requested but not received a replacement hard drive(s) and for informing NMFS or NMFS-approved contractor of any lapse in the hard drive management procedures described in the VMP.

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

(g) *Repair and replacement.* If the vessel owner or operator becomes aware that the EM system on the vessel is not functioning properly at sea, the vessel owner or operator must contact NMFS and follow the instructions given. Such instructions may include but are not limited to returning to port until the EM system is repaired. Once in port, an EM system must be functioning properly (*e.g.,* repaired, reinstalled, or replaced) consistent with the installation requirements in this section before the vessel can fish with pelagic longline gear.

Subpart B—Individual Vessel Measures

■ 8. Revise the subpart B heading to read as set forth above.

■ 9. Add § 635.14 to subpart B to read as follows:

§ 635.14 Performance metrics.

(a) *General.* For purposes of § 635.21(c)(3), NMFS will determine ''qualified'' vessels based on the performance metrics in paragraph (b) of this section. Specifically, NMFS will use fishery dependent and fishery independent data to evaluate vessel performance based on avoidance of bluefin tuna interactions while fishing with a pelagic longline gear and history of compliance with the observer and logbook requirements of §§ 635.7 and 635.5, respectively.

(b) *Calculation of performance metrics.* In year one of implementation, NMFS will analyze the relevant data from the period 2006 to 2012 to determine a vessel's score and qualification status. Subsequently, NMFS will analyze available data from the most recent complete three consecutive year period to determine a vessel's score and qualification status. NMFS will communicate the results of the annual determination to individual permit holders in writing. NMFS may revise, through the framework procedures under § 635.34, the scoring system to reflect changes in the fishery or ensure that it provides the desired incentives and meets the goals of this program. The process used to calculate the performance metrics are described fully in Amendment 7 to the 2006 Consolidated HMS FMP. The main metrics are summarized below.

(1) *Bluefin tuna interactions performance metric.* The basis for the bluefin tuna interactions performance metric is the ratio of the number of bluefin tuna interactions (*i.e.,* the number of fish landed, discarded dead, and discarded alive) to the total weight of designated target species landings (in pounds). For the purposes of this section, the designated target species are: Swordfish; yellowfin, bigeye, albacore, and skipjack tunas; dolphin; wahoo; and porbeagle, shortfin mako, and thresher sharks. A relatively low bluefin tuna interaction to designated species ratio ('bluefin tuna ratio') indicates that the vessel has successfully avoided catching bluefin tuna while fishing with pelagic longline gear in the performance metric period.

(2) *Observer compliance performance metric.* NMFS will score vessels based on both the vessel owner's and the operator's compliance with the observer requirements outlined in § 635.7 of this part and § 600.746 of this chapter. In addition, the scoring system will consider the number of trips for which an individual vessel was selected to carry an observer, the number of trips actually observed, the reason why a particular trip was not observed, and other relevant observer information. The scoring system is neutral with respect to valid reasons that a vessel may have been selected by the observer program, but did not take an observer (*e.g.,* no observer was available or the vessel was not fishing with pelagic longline gear). The scoring system is designed to weigh trips that were not observed due to noncompliance with the communication requirements more heavily than those not observed due to noncompliance with the safety and accommodation requirements. The scoring system is also designed to consider evidence of fishing activity that may have occurred without required communication or observer coverage.

(3) *Logbook compliance performance metric.* NMFS will score vessels based on both the vessel owner's and vessel operator's compliance with the logbook reporting requirements outlined in § 635.5. This metric will reflect the timeliness of the submission of the logbooks (for example, the amount of time elapsed between the offloading of the catch and the logbook submission).

(4) *Combining performance metrics.* The performance metrics described under paragraphs (b)(1) through (3) of this section will be combined through the use of a decision formula described in Amendment 7 to the 2006 Consolidated HMS FMP. The decision formula will result in a designation for each vessel of ''qualified'' or ''not qualified.''

(c) *Annual notification.* NMFS will notify permitted vessel owners annually of the score of their vessel (*i.e.,* ''qualified'' or ''not qualified'') by certified mail. The score applies for only one year. NMFS will make aggregate data regarding access to gear restricted areas available to the general public.

(d) *Appeals.* Permitted vessel owners can appeal their performance score determinations pursuant to the procedures, timing, and other requirements at § 635.15(k)(4)(i), (ii), and (iv). Any initial administrative determination or appeal would be evaluated based upon the following criteria:

(1) The accuracy of NMFS records regarding the relevant information; and

(2) correct assignment of historical data to the vessel owner/permit holder. The current owner of a permitted vessel

may also appeal on the basis of historical changes in vessel ownership or permit transfers. Appeals based on hardship factors will not be considered.

■ 10. Add § 635.15 to subpart B—with paragraphs (b)(3), (b)(4)(ii) and (b)(5)(i) effective January 1, 2016—to read as follows:

§ 635.15 Individual bluefin tuna quotas.

(a) *General.* This section establishes an IBQ Program for eligible Atlantic Tunas Longline permit holders that use pelagic longline gear under this part and addresses Atlantic Tunas Purse Seine category leasing.

(1) *Overview.* Under the IBQ Program, NMFS will assign eligible Atlantic Tunas Longline permit holders initial IBQ shares equivalent to a percentage of the annual Longline category quota. Purse Seine Category quota shares are allocated separately pursuant to § 635.27(a)(4).

(2) *Electronic IBQ System.* IBQ Program participants, Atlantic Tunas Purse Seine category participants, and other permit holders eligible to lease IBQ allocations under paragraph (c) of this section, must have access to the electronic IBQ system and set up an IBQ account on that system as instructed by NMFS.

(b) *IBQ allocation and usage.* An IBQ quota allocation is the amount of bluefin tuna (whole weight) in metric tons (mt), which an IBQ Program participant is allotted to account for incidental catch of bluefin tuna during a given calendar year. Unless otherwise required under paragraph (b)(5) of this section, an Atlantic Tunas Longline permitted vessel's initial IBQ allocation for a particular year is derived by multiplying its IBQ share (percentage) by the Longline category quota for that year.

(1) *Annual calculation and notification of IBQ allocations.* Annually, as described in detail in paragraph (f) of this section, NMFS will notify IBQ share recipients of their IBQ allocation for the next calendar year. IBQ allocations expire at the end of each calendar year.

(2) *Regional designations.* As described further under paragraph (k)(3) of this section, all IBQ shares and resultant allocations are designated as either ''Gulf of Mexico'' or ''Atlantic'' based upon the geographic location of sets as reported to NMFS under the requirements of § 635.5. Regional percentages determine the share and allocation within the two pelagic longline (PLL) share categories: Gulf of Mexico (PLL GOM) and Atlantic (PLL ATL). PLL GOM shares and resultant allocations can be used to fish with pelagic longline gear in either the Gulf of Mexico or the Atlantic regions. PLL ATL shares and resultant allocations can only be used to fish with pelagic longline gear in the Atlantic region. Purse Seine category annual allocations can only be used to fish in the Atlantic region, even if leased to a PLL participant. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c) and the Atlantic region includes all other waters of the Atlantic Ocean with the exception regarding fishing taking place in the Northeast Distant (NED) gear restricted area defined at § 635.2 and is further described in paragraph (b)(8) of this section.

(3) *Minimum IBQ allocation.* Before departing on a fishing trip, a vessel with an eligible Atlantic Tunas Longline category permit that fishes with or has pelagic longline gear onboard, must have the minimum IBQ allocation for either the Gulf of Mexico or Atlantic, depending on fishing location. The minimum IBQ allocation for a vessel fishing in the Gulf of Mexico, or departing for a fishing trip in the Gulf of Mexico, is 0.25 mt ww (551 lb ww). The minimum IBQ allocation for a vessel fishing in the Atlantic or departing for a fishing trip in the Atlantic is 0.125 mt ww (276 lb ww). A vessel owner or operator may not declare into or depart on a fishing trip with pelagic longline gear onboard unless it has the relevant required minimum IBQ allocation for the region in which the fishing activity will occur.

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

(ii) If the amount of bluefin tuna catch on a particular trip exceeds the amount of the vessel's IBQ allocation, the vessel may continue to fish and complete the trip, but must resolve any quota debt (see paragraph (b)(5) of this section before declaring into or departing on a subsequent fishing trip with pelagic longline gear onboard by acquiring additional IBQ allocation through leasing, as described in paragraph (c) of this section.

(iii) IBQ Program participants, Atlantic Tunas Purse Seine category participants, and dealers must comply with reporting requirements at § 635.5(b)(2)(i)(A). The vessel owner or operator of a vessel that caught bluefin tuna must enter dead discard information from the trip simultaneously with the dealer entering that trip's landings information into the electronic IBQ system (pursuant to § 635.5(b)(2)(i)(A)). The vessel owner or operator must also confirm the accuracy of the dealer reported data at the time of entry in the electronic IBQ System. No IBQ transactions will be processed between 6 p.m. eastern time on December 31 and 2 p.m. Eastern Time on January 1 of each year to provide NMFS time to reconcile IBQ accounts and update IBQ shares and allocations for the upcoming fishing year.

(5) *Exceeding an available allocation.* This paragraph (b)(5) applies to a vessel with, or an permit holder of, an Atlantic Tunas Longline category permit or an Atlantic Tunas Purse Seine category permit unless otherwise specified. If the amount of bluefin tuna catch for a particular trip (as defined at § 600.10 of this chapter) exceeds the amount of allocation available to the vessel, the permitted vessel is considered to have a ''quota debt'' equal to the difference between the catch and the allocation. For example, if a vessel has an allocation of 0.40 mt (882 lb), and catches 0.50 mt (1,102 lb) of bluefin tuna on a trip, that vessel would have a quota debt of 0.10 mt (220 lb).

(i) *Trip level quota debt.* Vessels with a quota debt cannot fish with or have gear for which the vessel is permitted onboard until the quota debt is settled by leasing allocation for the appropriate region (per paragraph (c) of this section) and applying the leased allocation to settle the quota debt or through additional allocation (per paragraph (f) of this section) such that the permitted vessel has at least the minimum quota allocation required to fish as specified in paragraph (b)(3) of this section.

(ii) *Annual level quota debt.* If, by the end of the fishing year, a permit holder does not have adequate allocation (obtained either through leasing under paragraph (c) of this section) or additional allocation under paragraph (f) of this section to settle their vessel's quota debt, the vessel's allocation will be reduced in the amount equal to the quota debt in the subsequent year or years until the quota debt is fully accounted for. A vessel may not fish if it has outstanding quota debt, even across fishing years.

(iii) *Association with permit.* Quota debt is associated with the vessel's permit, and remains associated with the permit if/when the permit is transferred or sold. At the end of the year, if an owner with multiple permitted vessels has a quota debt on one or more vessels owned, the IBQ system will apply any remaining unused allocation associated

with that owner's other vessels to resolve the quota debt.

(6) *Duration.* IBQ allocation issued under this section is valid for the relevant fishing year unless it is revoked, suspended, or modified or unless the Atlantic Tunas Longline category quota is closed per § 635.28(a).

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

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

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

(ii) When NED bluefin quota is filled. Permitted vessels fishing with pelagic longline gear may fish in the NED after the ICCAT-allocated separate NED quota has been filled but the permitted vessels must abide by all the requirements of the IBQ program. Bluefin catch will be accounted for using the vessel's IBQ allocation, as described under paragraphs (b)(2) and (k)(3) of this section.

(c) *IBQ Allocation Leasing*—(1) *Eligibility.* The permit holders of vessels issued valid Atlantic Tunas Longline permits and participants in the Atlantic Tunas Purse Seine category are eligible to lease IBQ allocation to and/or from each other. A person who holds an Atlantic Tunas Longline permit that is not associated with a vessel may not lease IBQ allocation.

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

(ii) *Approval of lease application.* Unless NMFS denies an application to lease IBQ allocation according to paragraph (c)(2)(iii) of this section, the electronic IBQ system will provide an approval code to the IBQ lessee confirming the transaction.

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

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

(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 calculation of the performance metrics described under § 635.14(b), or other relevant restrictions based upon bluefin catch.

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

(iv) *Temporary prohibition of leasing IBQ allocation.* No leasing of IBQ allocation is permitted between 6 p.m. eastern time on December 31 of one year and 2 p.m. Eastern Time on January 1 of the next. . This period is necessary to provide NMFS time to reconcile IBQ accounts, and update IBQ shares and allocations for the upcoming fishing year.

(v) *Related restrictions.* Other regulations specific to the Atlantic Tunas Purse Seine category are set forth at § 635.27(a)(4)(v).

(d) *Sale of IBQ shares.* Sale of IBQ shares currently not permitted.

(e) *Changes in vessel and permit ownership.* In accordance with the regulations specified under § 635.4(l), a vessel owner that has an IBQ share may transfer the Atlantic Tunas Longline category permit to another vessel that he or she owns or transfer the permit to another person. The IBQ share as described under this section would transfer with the permit to the new vessel, and remain associated with that permit. Within a fishing year, when an Atlantic Tunas Longline permit transfer occurs (from one vessel to another), the associated IBQ shares are transferred with the permit, however IBQ allocation is not, unless the IBQ allocation is also transferred through a separate transaction within the electronic IBQ system. As described under paragraphs (c)(1) and (k)(1) of this section, a person or entity that holds an Atlantic Tunas Longline permit that is not associated with a vessel may not receive or lease IBQ allocation.

(f) *Annual notification of shares and allocations.* On January 1 of each year, NMFS will notify eligible IBQ Participants, as specified in paragraph (k)(1) of this section, of their IBQ share and the resulting IBQ allocation (mt) for the relevant fishing year, as well as the regional designations based on the available Atlantic Tunas Longline category quota, and any existing quota debt. NMFS will provide this information through the electronic IBQ system and via annual permit holder letters. Unless specified otherwise, those IBQ shares and resultant allocations will be available for use at the start of each fishing year. Permit holders (of eligible Atlantic Tunas Longline category permits) that have not completed the process of permit renewal or permit transfer as of December 31 will be issued IBQ allocation upon completion of the permit renewal or permit transfer, provided the eligible permit is associated with a vessel.

(g) *Evaluation.* NMFS will continually monitor the IBQ Program with respect to the objectives listed in the FEIS and make any changes through future rulemakings as deemed necessary to meet those objectives. Three years after full implementation, NMFS will publish a written report describing any findings.

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

(i) *Enforcement and monitoring.* NMFS will enforce and monitor the IBQ Program through the use of the reporting and record keeping requirements described under § 635.5, the monitoring requirements under §§ 635.9 and 635.69, and its authority to close the

pelagic longline fishery specified under § 635.28.

(j) *Cost recovery.* In a future action, NMFS will develop and implement cost recovery for the IBQ program that will cover costs of management, data collection and analysis, and enforcement activities. Fees shall be collected from quota share and/or allocation holders for the IBQ program pursuant to Magnuson-Stevens Act sections 303A(e) and 304(d)(2). Such fees shall not exceed 3 percent of the ex-vessel value of fish harvested under the program.

(k) *Initial IBQ shares.* During year one of implementation of the IBQ Program described in this section, NMFS will issue IBQ shares to eligible Atlantic Tunas Longline permit holders, as specified in paragraph (k)(1) of this section. New entrants to the pelagic longline fishery would need to obtain an Atlantic Tunas Longline permit, as well as other required limited access permits, as described under § 635.4(l), and would need to lease IBQ allocations per paragraph (c) of this section if the permits acquired did not qualify for an initial IBQ share.

(1) *Eligible IBQ share Recipients.* (i) Atlantic Tunas Longline category permit holders whose valid permit was associated with a vessel as of August 21, 2013, and that was determined to be ''active'' would be eligible to receive an initial IBQ share. ''Active'' vessels are those vessels that have used pelagic longline gear on at least one set between 2006 and 2012 as reported to NMFS on logbooks, per the requirements of § 635.5. In determining a permitted vessel's initial IBQ share eligibility and calculating the initial IBQ share, NMFS used the data associated with the qualifying vessel's history (and not the permit). Therefore, for the purposes of this section, the vessel owner at the time of reporting is not relevant. If the logbook reports indicate that a particular vessel used pelagic longline gear for at least one set between 2006 and 2012, and the vessel was issued a valid Atlantic Tunas Longline category permit as of August 21, 2013, the current permit holder is qualified to receive an initial IBQ share.

(ii) Except as described in paragraph (k)(4) of this section regarding appeals, if the logbook reports indicate that a particular vessel did not use pelagic longline gear for at least one set between 2006 and 2012, and/or the vessel was not issued a valid Atlantic Tunas Longline category permit on August 21, 2013, the current permit holder is not eligible to receive an initial IBQ share even if the current permit holder fished with pelagic longline gear on a different vessel between 2006 and 2012. Persons that held an Atlantic Tunas Longline category permit that was not associated with a vessel as of August 21, 2013 are not eligible for an initial IBQ share. Atlantic Tunas Longline category permits holders that are ineligible to receive an initial IBQ share would need to lease IBQ allocation per paragraph (c) of this section, as well as meet all other applicable requirements, before the vessel could fish with or possess pelagic longline gear onboard.

(2) *IBQ share determination* (i) Initial IBQ shares. NMFS has reviewed each permitted vessel's reported bluefin tuna interactions (all discards and landings) and landings of designated species (swordfish, yellowfin, bigeye, albacore, and skipjack tunas; dolphin; wahoo; and porbeagle, shortfin mako and thresher sharks) and placed each permitted vessel into one of three tiers: Low, medium and high based on the ratio of bluefin tuna interactions. The IBQ share will be assigned based on the three tiers.

(ii) Appeals to initial IBQ shares. When NMFS determines that all appeals pursuant to paragraph (k)(4) of this section have been resolved, NMFS may adjust the initial IBQ share percentages described under paragraph (k)(2)(i) as necessary to accommodate those appellants that have been deemed eligible for an initial IBQ share or are provided an increased IBQ share.

(3) *Regional designations.* All initial IBQ shares and resultant allocations are designated as either ''Gulf of Mexico'' or ''Atlantic'' based upon the geographic location of sets as reported to NMFS under the requirements of § 635.5. Eligible permit holders may use Gulf of Mexico IBQ shares and resultant allocations to fish in either the Gulf of Mexico or the Atlantic regions. Eligible permit holders may use Atlantic IBQ shares and resultant allocations only to fish in the Atlantic region. If a permitted vessel had fishing history in both the Gulf of Mexico and Atlantic, it may receive both the Gulf of Mexico and Atlantic IBQ shares, depending upon the amount of IBQ share and the proportion of fishing history in the two areas. Based on the procedures described under paragraphs (k)(1) and (2) of this section, if a permit holder would be issued a regional IBQ share that results in a regional allocation less than a minimum amount for a particular area (*i.e.,* less than 0.125 mt for the Atlantic or less than 0.25 mt for the Gulf of Mexico), the de minimis regional IBQ share and resultant allocation would be designated to the other regional designation.

(4) *Appeals of initial IBQ share.* Atlantic Tunas Longline Permit holders may appeal their initial IBQ shares through the two-step process described below. NMFS will provide further explanation on how to submit an appeal when it informs permit holders of their initial IBQ shares.

(i) *Initial administrative determination (IAD).* The HMS Management Division will evaluate requests from Atlantic Tunas Longline Permit holders regarding their initial IBQ shares. Any request must be postmarked no later than March 2, 2015, be in writing, and indicate the reason for the request, and contain documentation supporting the request (see paragraphs (k)(4)(iii) and (iv) of this section). The HMS Management Division will evaluate the request and supporting documentation, and notify the appellant by a written IAD regarding a decision to approve or deny the request. The IAD will explain the basis for any denial decision.

(ii) *Appeal of IAD.* Within 90 days after the date of issuance of the IAD, the permit holder may appeal the IAD to the NMFS National Appeals Office, pursuant to procedures at 15 CFR part 906.

(iii) *Items subject to IAD and appeal.* The only items subject to an IAD or appeal are: Initial IBQ share eligibility based on ownership of an active vessel with a valid Atlantic Tunas Longline category permit combined with the required shark and swordfish limited access permits; the accuracy of NMFS records regarding that vessel's amount of designated species landings and/or bluefin interactions; and correct assignment of target species landings and bluefin interactions to the vessel owner/permit holder. As described under paragraph (k)(1) of this section, the IBQ share formulas are based upon historical data associated with a permitted vessel. Because vessels may have changed ownership or permits may have been transferred during 2006 through 2012, the current owner of a permitted vessel may also appeal on the basis of historical changes in vessel ownership or permit transfers. Appeals based on hardship factors (*e.g.,* illness of vessel owner, divorce, etc.) will not be considered.

(iv) *Supporting documentation for IAD or appeal.* NMFS will consider official NMFS logbook records or weighout slips for landings between January 1, 2006, through December 31, 2012, that were submitted to NMFS prior to March 2, 2013 (60 days after the cutoff date for eligible landings) and verifiable sales slips, receipts from registered dealers, state landings records, and permit records as supporting documentation for a request

or appeal under paragraph (k)(4) of this section. NMFS will count only those designated species landings that were landed legally when the owner had a valid permit. No other proof of catch history or species interactions will be considered, except for NMFS logbook records, observer data, or other NMFS data. NMFS permit records will be the sole basis for determining permit transfers. Copies of documents may be submitted, provided they are of equal legibility and quality as the originals, and such copies shall have the same force and effect as if they were originals. NMFS may request the originals at a later date. NMFS may refer any submitted materials that are of questionable authenticity to the NMFS Office of Enforcement for investigation.

■ 11. Add § 635.19 to subpart C to read as follows:

§ 635.19 Authorized gears.

(a) *General.* No person may fish for, catch, possess, or retain any Atlantic HMS with gears other than the primary gears specifically authorized in this part. Consistent with § 635.21(a), secondary gears may be used at boat side to aid and assist in subduing, or bringing on board a vessel, Atlantic HMS that have first been caught or captured using primary gears. For purposes of this part, secondary gears include, but are not limited to, dart harpoons, gaffs, flying gaffs, tail ropes, etc. Secondary gears may not be used to capture, or attempt to capture, free-swimming or undersized HMS. Except for vessels permitted under § 635.4(o) or as specified in this section, a vessel using or having onboard in the Atlantic Ocean any unauthorized gear may not possess an Atlantic HMS on board.

(b) *Atlantic tunas.* A person that fishes for, retains, or possesses an Atlantic bluefin tuna may not have on board a vessel or use on board a vessel any primary gear other than those authorized for the category for which the Atlantic tunas or HMS permit has been issued for such vessel. Primary gears are the gears specifically authorized in this section. When fishing for Atlantic tunas other than bluefin tuna, primary gear authorized for any Atlantic Tunas permit category may be used, except that purse seine gear may be used only on board vessels permitted in the Purse Seine category and pelagic longline gear may be used only on board vessels issued an Atlantic Tunas Longline category tuna permit, a LAP other than handgear for swordfish, and a LAP for sharks. A person issued an HMS Commercial Caribbean Small Boat permit who fishes for, retains, or possesses BAYS tunas in the U.S. Caribbean, as defined at § 622.2 of this chapter, may have on board and use handline, harpoon, rod and reel, bandit gear, green-stick gear, and buoy gear.

(1) *Angling.* Speargun (for BAYS tunas only), and rod and reel (including downriggers) and handline (for all tunas).

(2) *Charter/headboat.* Rod and reel (including downriggers), bandit gear, handline, and green-stick gear are authorized for all recreational and commercial Atlantic tuna fisheries. Speargun is authorized for recreational Atlantic BAYS tuna fisheries only.

(3) *General.* Rod and reel (including downriggers), handline, harpoon, bandit gear, and green-stick.

(4) *Harpoon.* Harpoon.

(5) *Longline.* Longline and green-stick.

(6) *Purse seine.* Purse seine.

(7) *Trap.* Pound net and fish weir.

(c) *Billfish.* (1) Only persons who have been issued a valid HMS Angling or valid Charter/Headboat permit, or who have been issued a valid Atlantic Tunas General category or Swordfish General Commercial permit and are participating in a tournament as provided in § 635.4(c), may possess a blue marlin, white marlin, or roundscale spearfish in, or take a blue marlin, white marlin, or roundscale spearfish from, its management unit. Blue marlin, white marlin, or roundscale spearfish may only be harvested by rod and reel.

(2) Only persons who have been issued a valid HMS Angling or valid Charter/Headboat permit, or who have been issued a valid Atlantic Tunas General category or Swordfish General Commercial permit and are participating in a tournament as provided in § 635.4(c), may possess or take a sailfish shoreward of the outer boundary of the Atlantic EEZ. Sailfish may only be harvested by rod and reel.

(d) *Sharks.* No person may possess a shark in the EEZ taken from its management unit without a permit issued under § 635.4. No person issued a Federal Atlantic commercial shark permit under § 635.4 may possess a shark taken by any gear other than rod and reel, handline, bandit gear, longline, or gillnet. No person issued an HMS Commercial Caribbean Small Boat permit may possess a shark taken from the U.S. Caribbean, as defined at § 622.2 of this chapter, by any gear other than with rod and reel, handline or bandit gear. No person issued an HMS Angling permit or an HMS Charter/Headboat permit under § 635.4 may possess a shark if the shark was taken from its management unit by any gear other than rod and reel or handline, except that persons on a vessel issued both an HMS Charter/Headboat permit and a Federal Atlantic commercial shark permit may possess sharks taken with rod and reel, handline, bandit gear, longline, or gillnet if the vessel is not engaged in a for-hire fishing trip.

(e) *Swordfish.* (1) No person may possess north Atlantic swordfish taken from its management unit by any gear other than handgear, green-stick, or longline, except that such swordfish taken incidentally while fishing with a squid trawl may be retained by a vessel issued a valid Incidental HMS squid trawl permit, subject to restrictions specified in § 635.24(b)(2). No person may possess south Atlantic swordfish taken from its management unit by any gear other than longline.

(2) An Atlantic swordfish may not be retained or possessed on board a vessel with a gillnet. A swordfish will be deemed to have been harvested by gillnet when it is onboard, or offloaded from, a vessel fishing with or having on board a gillnet.

(3) A person aboard a vessel issued or required to be issued a valid directed handgear LAP for Atlantic swordfish or an HMS Commercial Caribbean Small Boat permit may not fish for swordfish with any gear other than handgear. A swordfish will be deemed to have been harvested by longline when the fish is on board or offloaded from a vessel fishing with or having on board longline gear. Only vessels that have been issued a valid directed or handgear swordfish LAP or an HMS Commercial Caribbean Small Boat permit under this part may utilize or possess buoy gear.

(4) Except for persons aboard a vessel that has been issued a directed, incidental, or handgear limited access swordfish permit, a Swordfish General Commercial permit, an Incidental HMS squid trawl permit, or an HMS Commercial Caribbean Small Boat permit under § 635.4, no person may fish for North Atlantic swordfish with, or possess a North Atlantic swordfish taken by, any gear other than handline or rod and reel.

(5) A person aboard a vessel issued or required to be issued a valid Swordfish General Commercial permit may only possess North Atlantic swordfish taken from its management unit by rod and reel, handline, bandit gear, green-stick, or harpoon gear.

■ 12. Section 635.21 is revised to read as follows:

§ 635.21 Gear operation, restricted areas, and deployment restrictions.

(a) *All Atlantic HMS fishing gears.* (1) An Atlantic HMS harvested from its management unit that is not retained must be released in a manner that will ensure maximum probability of

survival, but without removing the fish from the water.

(2) If a billfish is caught by a hook and not retained, the fish must be released by cutting the line near the hook or by using a dehooking device, in either case without removing the fish from the water.

(3) *Restricted gear and closed areas for all Atlantic HMS fishing gears.* (i) No person may fish for, catch, possess, or retain any Atlantic HMS or anchor a fishing vessel that has been issued a permit or is required to be permitted under this part, in the areas and seasons designated at § 622.34(a)(3) of this chapter.

(ii) From November through April of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson closed area or the Steamboat Lumps closed area, as defined in § 635.2.

(iii) From May through October of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson or the Steamboat Lumps closed areas except for surface trolling. For the purposes of this section, surface trolling is defined as fishing with lines trailing behind a vessel which is in constant motion at speeds in excess of four knots with a visible wake. Such trolling may not involve the use of down riggers, wire lines, planers, or similar devices.

(iv) From January through April of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Edges 40 Fathom Contour closed area, as defined in § 635.2.

(b) *Longline—general restrictions.* (1) All vessels that have pelagic or bottom longline gear onboard and that have been issued, or are required to have, a limited access swordfish, shark, or tuna Longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must possess inside the wheelhouse the document provided by NMFS entitled ''Careful Release Protocols for Sea Turtle Release with Minimal Injury,'' and must also post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS.

(2) Transiting and gear stowage: If a vessel issued a permit under this part is in a closed or gear restricted area described in this section with pelagic or bottom longline gear on board, it is a rebuttable presumption that any fish on board such a vessel were taken with pelagic or bottom longline in the closed or gear restricted area except where such possession is aboard a vessel transiting a closed 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).

(3) When a marine mammal or sea turtle is hooked or entangled by pelagic or bottom longline gear, the operator of the vessel must immediately release the animal, retrieve the pelagic or bottom longline gear, and move at least 1 nm (2 km) from the location of the incident before resuming fishing. Similarly, when a smalltooth sawfish is hooked or entangled by bottom longline gear, the operator of the vessel must immediately release the animal, retrieve the bottom longline gear, and move at least 1 nm (2 km) from the location of the incident before resuming fishing. Reports of marine mammal entanglements must be submitted to NMFS consistent with regulations in § 229.6 of this title.

(4) Vessels that have pelagic or bottom longline gear on board and that have been issued, or are required to have been issued, a permit under this part must have only corrodible hooks on board.

(c) *Pelagic longlines.* (1) If a vessel issued or required to be issued a permit under this part:

(i) Is in a closed area designated under paragraph (c)(2) of this section and has bottom longline gear onboard, 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.

(ii) Has pelagic longline gear on board, persons aboard that vessel may not possess, retain, transship, land, sell, or store silky sharks, oceanic whitetip sharks, or scalloped, smooth, or great hammerhead sharks.

(2) Except as noted in paragraph (c)(3) of this section, if pelagic longline gear is on board a vessel issued or required to be issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear:

(i) In the Northeastern United States closed area from June 1 through June 30 each calendar year;

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

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

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

(v) In the Cape Hatteras gear restricted area from December 1 through April 30 each year;

(vi) In the Spring Gulf of Mexico gear restricted area from April 1 through May 30 each year;

(vii) In the Northeast Distant gear restricted area at any time, unless persons onboard the vessel complies with the following:

(A) The vessel is limited to possessing onboard and/or using only 18/0 or larger circle hooks with an offset not to exceed 10 degrees. The outer diameter of the circle hook at its widest point must be no smaller than 2.16 inches (55 mm) when measured with the eye on the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis), and the distance between the circle hook point and the shank (*i.e.,* the gap) 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. If green-stick gear, as defined at § 635.2, is onboard, a vessel 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; and,

(B) The vessel is limited, at all times, to possessing onboard and/or using only whole Atlantic mackerel and/or squid bait, except that artificial bait may be possessed and used only with green-stick gear, as defined at § 635.2, if green-stick gear is onboard; and,

(C) Vessels must possess, inside the wheelhouse, a document provided by NMFS entitled, ''Careful Release Protocols for Sea Turtle Release with Minimal Injury,'' and must post, inside the wheelhouse, sea turtle handling and release guidelines provided by NMFS; and,

(D) Required sea turtle bycatch mitigation gear, which NMFS has approved under paragraph (c)(5)(iv) of this section, on the initial list of ''NMFS-Approved Models For Equipment Needed For The Careful Release of Sea Turtles Caught In Hook And Line Fisheries,'' must be carried onboard, and must be used in accordance with the handling requirements specified in paragraphs (c)(2)(vii)(E) through (G) of this section; and,

(E) Sea turtle bycatch mitigation gear, specified in paragraph (c)(2)(vii)(D) of this section, must be used to disengage any hooked or entangled sea turtles that cannot be brought on board, and to facilitate access, safe handling, disentanglement, and hook removal or hook cutting from sea turtles that can be brought on board, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines specified in paragraph (c)(2)(vii)(C) of this section, and in accordance with the onboard handling and resuscitation requirements specified in § 223.206(d)(1) of this title.

(F) Boated turtles: When practicable, active and comatose sea turtles must be brought on board, with a minimum of injury, using a dipnet approved on the initial list specified in paragraph (c)(2)(vii)(D) of this section. All turtles less than 3 ft. (.91 m) carapace length should be boated, if sea conditions permit. A boated turtle should be placed on a standard automobile tire, or cushioned surface, in an upright orientation to immobilize it and facilitate gear removal. Then, it should be determined if the hook can be removed without causing further injury. All externally embedded hooks should be removed, unless hook removal would result in further injury to the turtle. No attempt to remove a hook should be made if the hook has been swallowed and the insertion point is not visible, or if it is determined that removal would result in further injury. If a hook cannot be removed, as much line as possible should be removed from the turtle using approved monofilament line cutters from the initial list specified in paragraph (c)(2)(vii)(D) of this section, and the hook should be cut as close as possible to the insertion point, using bolt cutters from that list, before releasing the turtle. If a hook can be removed, an effective technique may be to cut off either the barb, or the eye, of the hook using bolt cutters, and then to slide the hook out. When the hook is visible in the front of the mouth, an approved mouth-opener from the initial list specified in paragraph (c)(2)(vii)(D) of this section may facilitate opening the turtle's mouth, and an approved gag from that list may facilitate keeping the mouth open. Short-handled dehookers for ingested hooks, long-nose pliers, or needle-nose pliers from the initial list specified in paragraph (c)(2)(vii)(D) of this section should be used to remove visible hooks that have not been swallowed from the mouth of boated turtles, as appropriate. As much gear as possible must be removed from the turtle without causing further injury prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (c)(2)(vii)(C) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

(G) Non-boated turtles: If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear, specified in paragraph (c)(2)(vii)(D) of this section, must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in paragraph (c)(2)(vii)(C) of this section. Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. A front flipper or flippers of the turtle must be secured, if possible, with an approved turtle control device from the list specified in paragraph (c)(2)(vii)(D) of this section. All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using an approved line cutter from the list specified in paragraph (c)(2)(vii)(D) of this section. If the hook can be removed, it must be removed using a long-handled dehooker from the initial list specified in paragraph (c)(2)(vii)(D) of this section. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (c)(2)(vii)(C) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

(3) *Restricted access to the Cape Hatteras Gear Restricted Area.* A vessel that has been issued, or is required to have been issued, a limited access permit under this part may fish with pelagic longline gear in the Cape Hatteras gear restricted area described in paragraph (c)(2)(v) of this section, provided the vessel has been determined by NMFS to be ''qualified,'' (for the relevant year) using the performance metrics described in § 635.14.

(4) In the Gulf of Mexico, pelagic longline gear may not be fished or deployed from a vessel issued or required to have been issued a limited access permit under this part with live bait affixed to the hooks; and, a person aboard a vessel issued or required to have been issued a limited access permit under this part that has pelagic longline gear on board may not possess live baitfish, maintain live baitfish in any tank or well on board the vessel, or set up or attach an aeration or water circulation device in or to any such tank or well. 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).

(5) The operator of a vessel permitted or required to be permitted under this part and that has pelagic longline gear on board must undertake the following sea turtle bycatch mitigation measures:

(i) *Possession and use of required mitigation gear.* Required sea turtle bycatch mitigation gear, which NMFS has approved under paragraph (c)(5)(iv) of this section as meeting the minimum design standards specified in paragraphs (c)(5)(i)(A) through (M) of this section, must be carried onboard, and must be used to disengage any hooked or entangled sea turtles in accordance with the handling requirements specified in paragraph (c)(5)(ii) of this section.

(A) *Long-handled line clipper or cutter.* Line cutters are intended to cut high test monofilament line as close as possible to the hook, and assist in removing line from entangled sea turtles to minimize any remaining gear upon release. NMFS has established minimum design standards for the line cutters, which may be purchased or fabricated from readily available and low-cost materials. The LaForce line cutter and the Arceneaux line clipper are models that meet these minimum design standards. One long-handled line clipper or cutter meeting the minimum design standards, and a set of replacement blades, are required to be onboard. The minimum design standards for line cutters are as follows:

(*1*) A protected and secured cutting blade. The cutting blade(s) must be capable of cutting 2.0–2.1 mm (0.078 in.–0.083 in.) monofilament line (400-lb test) or polypropylene multistrand material, known as braided or tarred mainline, and must be maintained in working order. The cutting blade must be curved, recessed, contained in a holder, or otherwise designed to

facilitate its safe use so that direct contact between the cutting surface and the sea turtle or the user is prevented. The cutting instrument must be securely attached to an extended reach handle and be easily replaceable. One extra set of replacement blades meeting these standards must also be carried on board to replace all cutting surfaces on the line cutter or clipper.

(*2*) An extended reach handle. The line cutter blade(s) must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the height of the vessel's freeboard, or 6 feet (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. There is no restriction on the type of material used to construct this handle as long as it is sturdy and facilitates the secure attachment of the cutting blade.

(B) *Long-handled dehooker for ingested hooks.* A long-handled dehooking device is intended to remove ingested hooks from sea turtles that cannot be boated. It should also be used to engage a loose hook when a turtle is entangled but not hooked, and line is being removed. The design must shield the barb of the hook and prevent it from re-engaging during the removal process. One long-handled device, meeting the minimum design standards, is required onboard to remove ingested hooks. The minimum design standards are as follows:

(*1*) Hook removal device. The hook removal device must be constructed of 5/16-inch (7.94 mm) 316 L stainless steel and have a dehooking end no larger than 1–7/8-inches (4.76 cm) outside diameter. The device must securely engage and control the leader while shielding the barb to prevent the hook from re-engaging during removal. It may not have any unprotected terminal points (including blunt ones), as these could cause injury to the esophagus during hook removal. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) Extended reach handle. The dehooking end must be securely fastened to an extended reach handle or pole with a minimum length equal to or greater than 150 percent of the height of the vessel's freeboard, or 6 ft. (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. The handle must be sturdy and strong enough to facilitate the secure attachment of the hook removal device.

(C) *Long-handled dehooker for external hooks.* A long-handled dehooker, meeting the minimum design standards, is required onboard for use on externally-hooked sea turtles that cannot be boated. The long-handled dehooker for ingested hooks described in paragraph (c)(5)(i)(B) of this section would meet this requirement. The minimum design standards are as follows:

(*1*) Construction. A long-handled dehooker must be constructed of 5/16-inch (7.94 mm) 316 L stainless steel rod. A 5-inch (12.7-cm) tube T-handle of 1-inch (2.54 cm) outside diameter is recommended, but not required. The design should be such that a fish hook can be rotated out, without pulling it out at an angle. The dehooking end must be blunt with all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) Extended reach handle. The handle must be a minimum length equal to the height of the vessel's freeboard or 6 ft. (1.83 m), whichever is greater.

(D) *Long-handled device to pull an ''inverted V.''* This tool is used to pull a ''V'' in the fishing line when implementing the ''inverted V'' dehooking technique, as described in the document entitled ''Careful Release Protocols for Sea Turtle Release With Minimal Injury,'' required under paragraph (a)(3) of this section, for disentangling and dehooking entangled sea turtles. One long-handled device to pull an ''inverted V'', meeting the minimum design standards, is required onboard. If a 6-ft (1.83 m) J-style dehooker is used to comply with paragraph (c)(5)(i)(C) of this section, it will also satisfy this requirement. Minimum design standards are as follows:

(*1*) *Hook end.* This device, such as a standard boat hook or gaff, must be constructed of stainless steel or aluminum. A sharp point, such as on a gaff hook, is to be used only for holding the monofilament fishing line and should never contact the sea turtle.

(*2*) *Extended reach handle.* The handle must have a minimum length equal to the height of the vessel's freeboard, or 6 ft. (1.83 m), whichever is greater. The handle must be sturdy and strong enough to facilitate the secure attachment of the gaff hook.

(E) *Dipnet.* One dipnet, meeting the minimum design standards, is required onboard. Dipnets are to be used to facilitate safe handling of sea turtles by allowing them to be brought onboard for fishing gear removal, without causing further injury to the animal. Turtles must not be brought onboard without the use of a dipnet. The minimum design standards for dipnets are as follows:

(*1*) *Size of dipnet.* The dipnet must have a sturdy net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm) to accommodate turtles below 3 ft. (0.914 m) carapace length. The bag mesh openings may not exceed 3 inches (7.62 cm). There must be no sharp edges or burrs on the hoop, or where the hoop is attached to the handle.

(*2*) *Extended reach handle.* The dipnet hoop must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the height of the vessel's freeboard, or at least 6 ft (1.83 m), whichever is greater. The handle must made of a rigid material strong enough to facilitate the sturdy attachment of the net hoop and able to support a minimum of 100 lbs (34.1 kg) without breaking or significant bending or distortion. It is recommended, but not required, that the extended reach handle break down into sections.

(F) *Tire.* A minimum of one tire is required onboard for supporting a turtle in an upright orientation while it is onboard, although an assortment of sizes is recommended to accommodate a range of turtle sizes. The required tire must be a standard passenger vehicle tire, and must be free of exposed steel belts.

(G) *Short-handled dehooker for ingested hooks.* One short-handled device, meeting the minimum design standards, is required onboard for removing ingested hooks. This dehooker is designed to remove ingested hooks from boated sea turtles. It can also be used on external hooks or hooks in the front of the mouth. Minimum design standards are as follows:

(*1*) *Hook removal device.* The hook removal device must be constructed of ¼-inch (6.35 mm) 316 L stainless steel, and must allow the hook to be secured and the barb shielded without re-engaging during the removal process. It must be no larger than 15⁄16 inch (3.33 cm) outside diameter. It may not have any unprotected terminal points (including blunt ones), as this could cause injury to the esophagus during hook removal. A sliding PVC bite block must be used to protect the beak and facilitate hook removal if the turtle bites down on the dehooking device. The bite block should be constructed of a ¾-inch (1.91 cm) inside diameter high impact plastic cylinder (*e.g.,* Schedule 80 PVC) that is 10 inches (25.4 cm) long to allow for 5 inches (12.7 cm) of slide along the shaft. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic

longline fishery targeting swordfish and tuna.

(*2*) *Handle length.* The handle should be approximately 16–24 inches (40.64 cm–60.69 cm) in length, with approximately a 5-inch (12.7 cm) long tube T-handle of approximately 1 inch (2.54 cm) in diameter.

(H*) Short-handled dehooker for external hooks.* One short-handled dehooker for external hooks, meeting the minimum design standards, is required onboard. The short-handled dehooker for ingested hooks required to comply with paragraph (c)(5)(i)(G) of this section will also satisfy this requirement. Minimum design standards are as follows:

(*1*) *Hook removal device.* The dehooker must be constructed of 5/16-inch (7.94 cm) 316 L stainless steel, and the design must be such that a hook can be rotated out without pulling it out at an angle. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) *Handle length.* The handle should be approximately 16–24 inches (40.64 cm–60.69 cm) long with approximately a 5-inch (12.7 cm) long tube T-handle of approximately 1 inch (2.54 cm) in diameter.

(I) *Long-nose or needle-nose pliers.* One pair of long-nose or needle-nose pliers, meeting the minimum design standards, is required on board. Required long-nose or needle-nose pliers can be used to remove deeply embedded hooks from the turtle's flesh that must be twisted during removal. They can also hold PVC splice couplings, when used as mouth openers, in place. To meet the minimum design standards such pliers must generally be approximately 12 inches (30.48 cm) in length, and should be constructed of stainless steel material.

(J) *Bolt cutters.* One pair of bolt cutters, meeting the minimum design standards, is required on board. Required bolt cutters may be used to cut hooks to facilitate their removal. They should be used to cut off the eye or barb of a hook, so that it can safely be pushed through a sea turtle without causing further injury. They should also be used to cut off as much of the hook as possible, when the remainder of the hook cannot be removed. To meet the minimum design standards such bolt cutters must generally be approximately 17 inches (43.18 cm) in total length, with 4-inch (10.16 cm) long blades that are 2¼ inches (5.72 cm) wide, when closed, and with 13-inch (33.02 cm) long handles. Required bolt cutters must be able to cut hard metals, such as stainless or carbon steel hooks, up to ¼-inch (6.35 mm) diameter.

(K) *Monofilament line cutters.* One pair of monofilament line cutters is required on board. Required monofilament line cutters must be used to remove fishing line as close to the eye of the hook as possible, if the hook is swallowed or cannot be removed. To meet the minimum design standards such monofilament line cutters must generally be approximately 7½ inches (19.05 cm) in length. The blades must be 1 in (4.45 cm) in length and 5/8-in (1.59 cm) wide, when closed, and are recommended to be coated with Teflon (a trademark owned by E.I. DuPont de Nemours and Company Corp.).

(L) *Mouth openers/mouth gags.* Required mouth openers and mouth gags are used to open sea turtle mouths, and to keep them open when removing ingested hooks from boated turtles. They must allow access to the hook or line without causing further injury to the turtle. Design standards are included in the item descriptions. At least two of the seven different types of mouth openers/gags described below are required:

(*1*) A block of hard wood. Placed in the corner of the jaw, a block of hard wood may be used to gag open a turtle's mouth. A smooth block of hard wood of a type that does not splinter (*e.g.* maple) with rounded edges should be sanded smooth, if necessary, and soaked in water to soften the wood. The dimensions should be approximately 11 inches (27.94 cm) 1 inch (2.54 cm) 1 inch (2.54 cm). A long-handled, wire shoe brush with a wooden handle, and with the wires removed, is an inexpensive, effective and practical mouth-opening device that meets these requirements.

(*2*) A set of three canine mouth gags. Canine mouth gags are highly recommended to hold a turtle's mouth open, because the gag locks into an open position to allow for hands-free operation after it is in place. A set of canine mouth gags must include one of each of the following sizes: small (5 inches) (12.7 cm), medium (6 inches) (15.24 cm), and large (7 inches) (17.78 cm). They must be constructed of stainless steel. A 1-inch (4.45 cm) piece of vinyl tubing (¾-inch (1.91 cm) outside diameter and 5/8-inch (1.59 cm) inside diameter) must be placed over the ends to protect the turtle's beak.

(*3*) A set of two sturdy dog chew bones. Placed in the corner of a turtle's jaw, canine chew bones are used to gag open a sea turtle's mouth. Required canine chews must be constructed of durable nylon, zylene resin, or thermoplastic polymer, and strong enough to withstand biting without splintering. To accommodate a variety of turtle beak sizes, a set must include one large (5½–8 inches (13.97 cm–20.32 cm) in length), and one small (3½–4½ inches (8.89 cm–11.43 cm) in length) canine chew bones.

(*4*) A set of two rope loops covered with hose. A set of two rope loops covered with a piece of hose can be used as a mouth opener, and to keep a turtle's mouth open during hook and/or line removal. A required set consists of two 3-foot (0.91 m) lengths of poly braid rope (3/8-inch (9.52 mm) diameter suggested), each covered with an 8-inch (20.32 cm) section of ½-inch (1.27 cm) or ¾-inch (1.91 cm) light-duty garden hose, and each tied into a loop. The upper loop of rope covered with hose is secured on the upper beak to give control with one hand, and the second piece of rope covered with hose is secured on the lower beak to give control with the user's foot.

(*5*) A hank of rope. Placed in the corner of a turtle's jaw, a hank of rope can be used to gag open a sea turtle's mouth. A 6-foot (1.83 m) lanyard of approximately 3/16-inch (4.76 mm) braided nylon rope may be folded to create a hank, or looped bundle, of rope. Any size soft-braided nylon rope is allowed, however it must create a hank of approximately 2–4 inches (5.08 cm–10.16 cm) in thickness.

(*6*) A set of four PVC splice couplings. PVC splice couplings can be positioned inside a turtle's mouth to allow access to the back of the mouth for hook and line removal. They are to be held in place with the needle-nose pliers. To ensure proper fit and access, a required set must consist of the following Schedule 40 PVC splice coupling sizes: 1 inch (2.54 cm), 1¼ inch (3.18 cm), 1½ inch (3.81 cm), and 2 inches (5.08 cm).

(*7*) A large avian oral speculum. A large avian oral speculum provides the ability to hold a turtle's mouth open and to control the head with one hand, while removing a hook with the other hand. The avian oral speculum must be 9-inches (22.86 cm) long, and constructed of 3/16-inch (4.76 mm) wire diameter surgical stainless steel (Type 304). It must be covered with 8 inches (20.32 cm) of clear vinyl tubing (5/16-inch (7.9 mm) outside diameter, 3/16-inch (4.76 mm) inside diameter).

(M) *Turtle control devices.* One turtle control device, as described in paragraph (c)(5)(i)(M)(*1*) or (*2*) of this section, and meeting the minimum design standards, is required onboard and must be used to secure a front flipper of the sea turtle so that the animal can be controlled at the side of

the vessel. It is strongly recommended that a pair of turtle control devices be used to secure both front flippers when crew size and conditions allow. Minimum design standards consist of:

(*1*) Turtle tether and extended reach handle. Approximately 15–20 feet of ½-inch hard lay negative buoyance line is used to make an approximately 30-inch loop to slip over the flipper. The line is fed through a ¾-inch fair lead, eyelet, or eyebolt at the working end of a pole and through a ¾-inch eyelet or eyebolt in the midsection. A ½-inch quick release cleat holds the line in place near the end of the pole. A final ¾-inch eyelet or eyebolt should be positioned approximately 7-inches behind the cleat to secure the line, while allowing a safe working distance to avoid injury when releasing the line from the cleat. The line must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the height of the vessel's freeboard, or a minimum of 6 feet (1.83 m), whichever is greater. There is no restriction on the type of material used to construct this handle, as long as it is sturdy. The handle must include a tag line to attach the tether to the vessel to prevent the turtle from breaking away with the tether still attached.

(*2*) T&G ninja sticks and extended reach handles. Approximately 30–35 feet of ½-inch to ⅝-inch soft lay polypropylene or nylon line or similar is fed through 2 PVC conduit, fiberglass, or similar sturdy poles and knotted using an overhand (recommended) knot at the end of both poles or otherwise secured. There should be approximately 18–24 inches of exposed rope between the poles to be used as a working surface to capture and secure the flipper. Knot the line at the ends of both poles to prevent line slippage if they are not otherwise secured. The remaining line is used to tether the apparatus to the boat unless an additional tag line is used. Two lengths of sunlight resistant ¾-inch schedule 40 PVC electrical conduit, fiberglass, aluminum, or similar material should be used to construct the apparatus with a minimum length equal to, or greater than, 150 percent of the height of the vessel's freeboard, or 6 feet (1.83 m), whichever is greater.

(ii) *Handling and release requirements.* (A) Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(A) through (D) of this section, must be used to disengage any hooked or entangled sea turtles that cannot be brought onboard. Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(E) through (M) of this section, must be used to facilitate access, safe handling, disentanglement, and hook removal or hook cutting of sea turtles that can be brought onboard, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines specified in paragraph (a)(3) of this section, and in accordance with the onboard handling and resuscitation requirements specified in § 223.206(d)(1) of this title.

(B) *Boated turtles.* When practicable, active and comatose sea turtles must be brought on board, with a minimum of injury, using a dipnet as required by paragraph (c)(5)(i)(E) of this section. All turtles less than 3 ft. (.91 m) carapace length should be boated, if sea conditions permit.

(*1*) A boated turtle should be placed on a standard automobile tire, or cushioned surface, in an upright orientation to immobilize it and facilitate gear removal. Then, it should be determined if the hook can be removed without causing further injury.

(*2*) All externally embedded hooks should be removed, unless hook removal would result in further injury to the turtle. No attempt to remove a hook should be made if it has been swallowed and the insertion point is not visible, or if it is determined that removal would result in further injury.

(*3*) If a hook cannot be removed, as much line as possible should be removed from the turtle using monofilament cutters as required by paragraph (c)(5)(i) of this section, and the hook should be cut as close as possible to the insertion point before releasing the turtle, using boltcutters as required by paragraph (c)(5)(i) of this section.

(*4*) If a hook can be removed, an effective technique may be to cut off either the barb, or the eye, of the hook using bolt cutters, and then to slide the hook out. When the hook is visible in the front of the mouth, a mouth-opener, as required by paragraph (c)(5)(i) of this section, may facilitate opening the turtle's mouth and a gag may facilitate keeping the mouth open. Short-handled dehookers for ingested hooks, long-nose pliers, or needle-nose pliers, as required by paragraph (c)(5)(i) of this section, should be used to remove visible hooks from the mouth that have not been swallowed on boated turtles, as appropriate.

(*5*) As much gear as possible must be removed from the turtle without causing further injury prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (a)(3) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

(C) *Non-boated turtles.* If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear required by paragraphs (c)(5)(i)(A) through (D) of this section must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in paragraph (a)(3) of this section.

(*1*) Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. A front flipper or flippers of the turtle must be secured with an approved turtle control device from the list specified in paragraph (c)(2)(v)(D) of this section.

(*2*) All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using a line cutter as required by paragraph (c)(5)(i) of this section. If the hook can be removed, it must be removed using a long-handled dehooker as required by paragraph (c)(5)(i) of this section.

(*3*) Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (a)(3) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) for additional information.

(iii) *Gear modifications.* The following measures are required of vessel operators to reduce the incidental capture and mortality of sea turtles:

(A) *Gangion length.* The length of any gangion on vessels that have pelagic longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, or tuna Longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must be at least 10 percent longer than any floatline length if the total length of any gangion plus the total length of any floatline is less than 100 meters.

(B) *Hook size, type, and bait.* Vessels fishing outside of the NED gear restricted area, as defined at § 635.2, that have pelagic longline gear on board, and that have been issued, or are required to have, a limited access swordfish, shark, or Atlantic Tunas Longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, are limited, at all times, to possessing on board and/or using only whole finfish and/or squid bait, and the following types and sizes of fishing hooks:

(*1*) 18/0 or larger circle hooks with an offset not to exceed 10°; and/or,

(*2*) 16/0 or larger non-offset circle hooks.

(*i*) For purposes of paragraphs (c)(5)(iii)(B)(*1*) and (*2*) of this section, the outer diameter of an 18/0 circle hook at its widest point must be no smaller than 2.16 inches (55 mm), and 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 an 18/0 circle hook must be no larger than 1.13 inches (28.8 mm), and the gap on a 16/0 circle hook must be no larger than 1.01 inches (25.8 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. In the Gulf of Mexico, as described at § 600.105(c) of this chapter, circle hooks also must be constructed of corrodible round wire stock that is no larger than 3.65 mm in diameter.

(*ii*) [Reserved]

(*3*) If green-stick gear, as defined at § 635.2, is onboard, a vessel 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. If green-stick gear is onboard, artificial bait may be possessed, but may be used only with green-stick gear.

(iv) *Approval of sea turtle bycatch mitigation gear.* NMFS will file with the Office of the Federal Register for publication an initial list of required sea turtle bycatch mitigation gear that NMFS has approved as meeting the minimum design standards specified under paragraph (c)(5)(i) of this section. Other devices proposed for use as line clippers or cutters or dehookers, as specified under paragraphs (c)(5)(i)(A), (B), (C), (G), (H), and (K) of this section, must be approved as meeting the minimum design standards before being used. NMFS will examine new devices, as they become available, to determine if they meet the minimum design standards, and will file with the Office of the Federal Register for publication notification of any new devices that are approved as meeting the standards.

(d) *Bottom longlines.* (1) If bottom longline gear is onboard a vessel issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in the following areas:

(i) The mid-Atlantic shark closed area from January 1 through July 31 each calendar year;

(ii) The areas designated at § 622.33(a)(1) through (3) of this chapter, year-round; and

(iii) The areas described in paragraphs (d)(1)(iii)(A) through (H) of this section, year-round.

(A) *Snowy Grouper Wreck.* Bounded by rhumb lines connecting, in order, the following points: 33°25′ N. lat., 77°04.75′ W. long.; 33°34.75′ N. lat., 76°51.3′ W. long.; 33°25.5′ N. lat., 76°46.5′ W. long.; 33°15.75′ N. lat., 77°00.0′ W. long.; 33°25′ N. lat., 77°04.75′ W. long.

(B) *Northern South Carolina.* Bounded on the north by 32°53.5′ N. lat.; on the south by 32°48.5′ N. lat.; on the east by 78°04.75′ W. long.; and on the west by 78°16.75′ W. long.

(C) *Edisto.* Bounded on the north by 32°24′ N. lat.; on the south by 32°18.5′ N. lat.; on the east by 78°54.0′ W. long.; and on the west by 79°06.0′ W. long.

(D) *Charleston Deep Artificial Reef.* Bounded by rhumb lines connecting, in order, the following points: 32°04′ N. lat., 79°12′ W. long.; 32°08.5′ N. lat., 79°07.5′ W. long.; 32°06′ N. lat., 79°05′ W. long.; 32°01.5′ N. lat., 79°09.3′ W. long.; 32°04′ N. lat., 79°12′ W. long.

(E) *Georgia.* Bounded by rhumb lines connecting, in order, the following points: 31°43′ N. lat., 79°31′ W. long.; 31°43′ N. lat., 79°21′ W. long.; 31°34′ N. lat., 79°29′ W. long.; 31°34′ N. lat., 79°39′ W. long; 31°43′ N. lat., 79°31′ W. long.

(F) *North Florida.* Bounded on the north by 30°29′ N. lat.; on the south by 30°19′ N. lat.; on the east by 80°02′ W. long.; and on the west by 80°14′ W. long.

(G) *St. Lucie Hump.* Bounded on the north by 27°08′ N. lat.; on the south by 27°04′ N. lat.; on the east by 79°58′ W. long.; and on the west by 80°00′ W. long.

(H) *East Hump.* Bounded by rhumb lines connecting, in order, the following points: 24°36.5′ N. lat., 80°45.5′ W. long.; 24°32′ N. lat., 80°36′ W. long; 24°27.5′ N. lat., 80°38.5′ W. long; 24°32.5′ N. lat., 80°48′ W. long.; 24°36.5′ N. lat., 80°45.5′ W. long.

(2) The operator of a vessel required to be permitted under this part and that has bottom longline gear on board must undertake the following bycatch mitigation measures to release sea turtles, prohibited sharks, or smalltooth sawfish, as appropriate.

(i) *Possession and use of required mitigation gear.* The equipment listed in paragraph (c)(5)(i) of this section must be carried on board and must be used to handle, release, and disentangle hooked or entangled sea turtles, prohibited sharks, or smalltooth sawfish in accordance with requirements specified in paragraph (d)(2)(ii) of this section.

(ii) *Handling and release requirements.* Sea turtle bycatch mitigation gear, as required by paragraph (d)(2)(i) of this section, must be used to disengage any hooked or entangled sea turtle as stated in paragraph (c)(5)(ii) of this section. This mitigation gear should also be employed to disengage any hooked or entangled species of prohibited sharks as listed under heading D of Table 1 of appendix A of this part, any hooked or entangled species of sharks that exceed the retention limits as specified in § 635.24(a), and any hooked or entangled smalltooth sawfish. In addition, if a smalltooth sawfish is caught, the fish should be kept in the water while maintaining water flow over the gills and the fish should be examined for research tags. All smalltooth sawfish must be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water or any research tags from the fish.

(3) If a vessel issued or required to be issued a permit under this part is in a closed area designated under paragraph (d)(1) of this section and has pelagic longline gear onboard, the vessel may not, at any time, possess or land any demersal species listed in Table 3 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.

(e) *Purse seine*—(1) *Mesh size.* A purse seine used in directed fishing for bluefin tuna must have a mesh size equal to or smaller than 4.5 inches (11.4 cm) in the main body (stretched when

wet) and must have at least 24-count thread throughout the net.

(2) *Inspection of purse seine vessels.* Persons that own or operate an Atlantic Tunas purse seine vessel must have their fishing gear inspected for mesh size by an enforcement agent of NMFS prior to commencing fishing for the season in any fishery that may result in the harvest of Atlantic tunas. Such persons must request such inspection at least 24 hours before commencement of the first fishing trip of the season. If NMFS does not inspect the vessel within 24 hours of such notification, the inspection requirement is waived. In addition, at least 24 hours before commencement of offloading any bluefin tuna after a fishing trip, such persons must request an inspection of the vessel and catch by notifying NMFS. If, after notification by the vessel, NMFS does not arrange to inspect the vessel and catch at offloading, the inspection requirement is waived.

(f) *Rod and reel.* Persons who have been issued or are required to be issued a permit under this part and who are participating in a ''tournament,'' as defined in § 635.2, that bestows points, prizes, or awards for Atlantic billfish must deploy only non-offset circle hooks when using natural bait or natural bait/artificial lure combinations, and may not deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination.

(g) *Gillnet.* (1) Persons fishing with gillnet gear must comply with the provisions implementing the Atlantic Large Whale Take Reduction Plan, the Bottlenose Dolphin Take Reduction Plan, the Harbor Porpoise Take Reduction Plan, and any other relevant Take Reduction Plan set forth in §§ 229.32 through 229.35 of this title. If a listed whale is taken, the vessel operator must cease fishing operations immediately and contact NOAA Fisheries as required under part 229 of this title.

(2) While fishing with a gillnet for or in possession of any of the large coastal, small coastal, and pelagic sharks listed in section A, B, and/or C of table 1 of appendix A of this part, the gillnet must remain attached to at least one vessel at one end, except during net checks.

(3) Vessel operators fishing with gillnet for, or in possession of, any of the large coastal, small coastal, and pelagic sharks listed in sections A, B, and/or C of table 1 of appendix A of this part are required to conduct net checks every 0.5 to 2 hours to look for and remove any sea turtles, marine mammals, or smalltooth sawfish. Smalltooth sawfish should not be removed from the water while being removed from the net.

(h) *Buoy gear.* Vessels utilizing buoy gear may not possess or deploy more than 35 floatation devices, and may not deploy more than 35 individual buoy gears per vessel. Buoy gear must be constructed and deployed so that the hooks and/or gangions are attached to the vertical portion of the mainline. Floatation devices may be attached to one but not both ends of the mainline, and no hooks or gangions may be attached to any floatation device or horizontal portion of the mainline. If more than one floatation device is attached to a buoy gear, no hook or gangion may be attached to the mainline between them. Individual buoy gears may not be linked, clipped, or connected together in any way. Buoy gears must be released and retrieved by hand. All deployed buoy gear must have some type of monitoring equipment affixed to it including, but not limited to, radar reflectors, beeper devices, lights, or reflective tape. If only reflective tape is affixed, the vessel deploying the buoy gear must possess on board an operable spotlight capable of illuminating deployed floatation devices. If a gear monitoring device is positively buoyant, and rigged to be attached to a fishing gear, it is included in the 35 floatation device vessel limit and must be marked appropriately.

(i) *Speargun fishing gear.* Speargun fishing gear may only be utilized when recreational fishing for Atlantic BAYS tunas and only from vessels issued either a valid HMS Angling or valid HMS Charter/Headboat permit. Persons fishing for Atlantic BAYS tunas using speargun gear, as specified in § 635.19, must be physically in the water when the speargun is fired or discharged, and may freedive, use SCUBA, or other underwater breathing devices. Only free-swimming BAYS tunas, not those restricted by fishing lines or other means, may be taken by speargun fishing gear. ''Powerheads,'' as defined at § 600.10 of this chapter, or any other explosive devices, may not be used to harvest or fish for BAYS tunas with speargun fishing gear.

(j) *Green-stick gear.* Green-stick gear may only be utilized when fishing from vessels issued a valid Atlantic Tunas General, Swordfish General Commercial, HMS Charter/Headboat, or Atlantic Tunas Longline category permit. The gear must be attached to the vessel, actively trolled with the mainline at or above the water's surface, and may not be deployed with more than 10 hooks or gangions attached.

■ 13. In § 635.23, the section heading and paragraphs (d), (e) and (f) are revised to read as follows:

§ 635.23 Retention limits for bluefin tuna.

* * * * *

(d) *Harpoon category.* Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land an unlimited number of giant bluefin tuna per day. An incidental catch of two large medium bluefin tuna per vessel per day may be retained, possessed, or landed, unless the retention limits is increased by NMFS through an inseason adjustment to three, or a maximum of four, large medium bluefin tuna per vessel per day, based upon the criteria under § 635.27(a)(8). NMFS will implement an adjustment via publication in the **Federal Register**. If adjusted upwards to three or four large medium bluefin tuna per vessel per day, NMFS may subsequently decrease the retention limit down to the default level of two, based on the criteria under § 635.27(a)(8).

(e) *Purse Seine category.* Persons aboard a vessel permitted in the Atlantic Tunas Purse Seine category may retain giant bluefin tuna (81 inches and larger), and smaller bluefin, as restricted by paragraphs (e)(1) and (2) of this section, up to the amount of individual quota allocated under § 635.27(a)(4)(ii). Purse seine vessel owners who, through landing and/or leasing, have no remaining bluefin tuna quota allocation may not use their permitted vessels in any fishery in which Atlantic bluefin tuna might be caught, regardless of whether bluefin tuna are retained, unless such vessel owners lease additional allocation through the Individual Bluefin Quota Allocation Leasing Program, under § 635.15(c). Persons aboard a vessel permitted in the Atlantic Tunas Purse Seine category,

(1) May retain, possess, land, or sell large medium bluefin in amounts not exceeding 15 percent, by weight, of the total amount of giant bluefin landed during that fishing year.

(2) May retain, possess, or land bluefin smaller than the large medium size class that are taken incidentally when fishing for skipjack tuna in an amount not exceeding 1 percent, by weight, of the skipjack tuna and yellowfin tuna landed on that trip. Landings of bluefin smaller than the large medium size class may not be sold and are counted against the Purse Seine category bluefin quota allocated to that vessel.

(3) May fish for yellowfin, bigeye, albacore, or skipjack tuna at any time; however, landings of bluefin tuna taken

incidental to fisheries targeting other Atlantic tunas or in any fishery in which bluefin tuna might be caught will be deducted from the individual vessel's quota.

(f) *Longline category.* Persons aboard a vessel permitted in the Atlantic Tunas Longline category are subject to the bluefin tuna retention restrictions in paragraphs (f)(1) and (2) of this section.

(1) A vessel fishing with pelagic longline gear may retain, possess, land and sell large medium and giant bluefin tuna taken incidentally when fishing for other species if in compliance with all the IBQ requirements of § 635.15, including the requirement that a vessel may not declare into or depart on a fishing trip with pelagic longline onboard unless it has the required minimum bluefin tuna IBQ allocation required for the region where fishing activity will occur.

(2) A vessel with pelagic longline gear onboard must retain all dead bluefin tuna that are 73 inches or greater CFL.

* * * * *

■ 14. In § 635.27:

■ a. Paragraphs (a) introductory text, (a)(1) through (3), and (a)(4)(i) through (iv) are revised;

■ b. Paragraph (a)(4)(v) is added;

■ c. Paragraphs (a)(5) and (6), (a)(7) heading, and (a)(7)(i) are revised;

■ d. Paragraphs (a)(8)(x) through (xiv) are added;

■ e. Paragraphs (a)(9), and (a)(10)(i) through (iii) are revised; and

■ f. Paragraph (e) is added.

The revisions and additions read as follows:

§ 635.27 Quotas.

(a) *Bluefin tuna.* Consistent with ICCAT recommendations, and with paragraph (a)(10)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. bluefin tuna quota, and make the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. bluefin tuna quota will be allocated among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories, as described in this section. The baseline annual U.S. bluefin tuna quota is 923.7 mt ww, not including an additional annual 25 mt ww allocation provided in paragraph (a)(3) of this section. The bluefin quota for the quota categories is calculated through the following process. First, 68 mt ww is subtracted from the baseline annual U.S. bluefin tuna quota and allocated to the Longline category quota. Second, the remaining quota is divided among the categories according to the following percentages: General—47.1 percent (403 mt ww); Angling—19.7 percent (168.6 mt ww), which includes the school bluefin tuna held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon—3.9 percent (33.4 mt ww); Purse Seine—18.6 percent (159.1 mt ww); Longline—8.1 percent (69.3 mt ww) plus the 68 mt ww allocation (137.3 mt ww total not including 25 mt ww allocation from paragraph (a)(3)); Trap—0.1 percent (0.9 mt ww); and Reserve—2.5 percent (21.4, mt ww). NMFS may make inseason and annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section, including quota adjustments as a result of the annual reallocation of Purse Seine quota described under paragraph (a)(4)(v) of this section. Bluefin tuna quotas are specified in whole weight.

(1) *General category quota.* (i) Catches from vessels for which General category Atlantic Tunas permits have been issued, catches from vessels issued an Atlantic Tunas Longline permit fishing under the provisions of § 635.21(c)(3)(vi)(B), and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). Pursuant to paragraph (a) of this section, the amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold under the General category quota is 403 mt ww, and is apportioned as follows, unless modified as described under paragraph (a)(1)(ii) of this section:

(A) January 1 through the effective date of a closure notice filed by NMFS announcing that the January subquota is reached, or projected to be reached under § 635.28(a)(1), or until March 31, whichever comes first—5.3 percent (21.4 mt ww);

(B) June 1 through August 31—50 percent (201.5 mt ww);

(C) September 1 through September 30—26.5 percent (106.8 mt ww);

(D) October 1 through November 30—13 percent (52.4 mt ww); and

(E) December 1 through December 31—5.2 percent (21 mt ww).

(ii) NMFS may adjust each period's apportionment based on overharvest or underharvest in the prior period, and may transfer subquota from one time period to another time period, earlier in the year, through inseason action or annual specifications. For example, subquota could be transferred from the December 1 through December 31 time period to the January time period; or from the October 1 through November 30 time period to the September time period. This inseason adjustment may occur prior to the start of that year. In other words, although subject to the inseason criteria under paragraph (a)(8) of this section, the adjustment could occur prior to the start of the fishing year. For example, an inseason action transferring the 2016 December 1 through December 31 time period subquota to the 2016 January 1 time period subquota could be filed in 2015.

(iii) When the General category fishery has been closed in any quota period specified under paragraph (a)(1)(i) of this section, NMFS will publish a closure action as specified in § 635.28. The subsequent time-period subquota will automatically open in accordance with the dates specified under paragraph (a)(1)(i) of this section.

(2) *Angling category quota.* In accordance with the framework procedures of the Consolidated HMS FMP, prior to each fishing year, or as early as feasible, NMFS will establish the Angling category daily retention limits. In accordance with paragraph (a) of this section, the total amount of bluefin tuna that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 168.6 mt ww. No more than 2.3 percent (3.9 mt ww) of the annual Angling category quota may be large medium or giant bluefin tuna. In addition, over each 2-consecutive-year period (starting in 2011, inclusive), no more than 10 percent of the annual U.S. bluefin tuna quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school bluefin tuna (*i.e.,* 94.9 mt ww). The Angling category quota includes the amount of school bluefin tuna held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for bluefin tuna are further subdivided as follows:

(i) After adjustment for the school bluefin tuna quota held in reserve (under paragraph (a)(7)(ii) of this section), 52.8 percent (40.8 mt ww) of the school bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining school bluefin tuna Angling category quota (36.5 mt ww) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(ii) An amount equal to 52.8 percent (36.9 mt ww) of the large school/small medium bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining large school/small medium bluefin tuna Angling category quota (32.9 mt ww) may be caught,

retained, possessed or landed north of 39°18′ N. lat.

(iii) One third (1.3 mt ww) of the large medium and giant bluefin tuna Angling category quota may be caught retained, possessed, or landed, in each of the three following geographic areas: North of 39°18′ N. lat.; south of 39°18′ N. lat., and outside of the Gulf of Mexico; and in the Gulf of Mexico. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(3) *Longline category quota.* Pursuant to paragraph (a) of this section, the total amount of large medium and giant bluefin tuna that may be caught, discarded dead, or retained, possessed, or landed by vessels that possess Atlantic Tunas Longline category permits is 137.3 mt ww. In addition, 25 mt ww shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area, and subject to the restrictions under § 635.15(b)(8).

(4) * * *

(i) *Baseline Purse Seine quota.* Pursuant to paragraph (a) of this section, the baseline amount of large medium and giant bluefin tuna that may be caught, retained, possessed, or landed by vessels that possess Atlantic Tunas Purse Seine category permits is 159.1 mt ww, unless adjusted as a result of inseason and/or annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section; or adjusted (prior to allocation to individual participants) based on the previous year's catch as described under paragraph (a)(4)(v) of this section. Annually, NMFS will make a determination when the Purse Seine fishery will start, based on variations in seasonal distribution, abundance or migration patterns of bluefin tuna, cumulative and projected landings in other commercial fishing categories, the potential for gear conflicts on the fishing grounds, or market impacts due to oversupply. NMFS will start the bluefin tuna purse seine season between June 1 and August 15, by filing an action with the Office of the Federal Register, and notifying the public. The Purse Seine category fishery closes on December 31 of each year.

(ii) *Allocation of bluefin quota to Purse Seine category participants.* Annually, NMFS will make equal allocations of the baseline Purse Seine category quota described under paragraph (a)(4)(i) of this section to individual Purse Seine participants (*i.e.,* 38.1 mt each), then make further determinations regarding the allocations per paragraph (a)(4)(v) of this section. Allocations of individual bluefin quota to individual Purse Seine participants may only be transferred through leasing in accordance with procedures and requirements at § 635.15(c) and other requirements under this paragraph (a)(4).

(iii) *Duration.* Bluefin tuna quota allocation issued under this section is valid for the relevant fishing year unless it is revoked, suspended, or modified or unless the Atlantic Tunas Purse Seine category quota is closed per § 635.28(a).

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

(v) *Annual reallocation of Atlantic Tunas Purse Seine category quota.* (A) By the end of each year, NMFS will determine the amount of quota available to each Atlantic Tunas Purse Seine category participant for the upcoming fishing year, based on his/her bluefin catch (landings and dead discards). Specifically, NMFS will allocate each Atlantic Tunas Purse Seine category participant either 100 percent, 75 percent, 50 percent, or 25 percent of his/her individual baseline quota allocation, described in paragraph (a)(4)(ii) of this section, according to the following criteria: if the Purse Seine participant's catch in year one ranges from 0 to 20 percent of his/her individual baseline quota allocation, as described under paragraph (a)(4)(ii) of this section, the Purse Seine category participant would be allocated 25 percent of his/her individual baseline quota allocation in year two, and 75 percent of his/her individual allocation would be reallocated to the Reserve category for that year. Similarly, if the Purse Seine participant's catch in year one is from greater than 20 percent up to 45 percent of his/her individual baseline quota allocation, that Purse Seine category participant would be allocated 50 percent of his/her individual baseline quota allocation in year two, and 50 percent of his/her individual allocation would be reallocated to the Reserve category for that year. If the Purse Seine participant's catch in year one is from greater than 45 percent up to 70 percent of his/her individual baseline quota allocation, that Purse Seine category participant would be allocated 75 percent of his/her individual baseline quota allocation in year two, and 25 percent of his/her individual allocation would be transferred to the Reserve category for that year. If the Purse Seine participant's catch in year one is greater than 70 percent of his/her individual baseline quota allocation, that Purse Seine category participant would be allocated 100 percent of his/her individual baseline quota allocation in year two, and no quota would be transferred to the Reserve category for that year. These criteria would apply following the same pattern in years two and beyond.

(B) Purse Seine category participants may only lease to eligible IBQ participants allocated quota available to them that year, consistent with the purse seine allocation availability provisions in this section. For example, if a Purse Seine category participant was allocated 50 percent of his/her baseline quota, he/she would be able to catch and/or lease that allocation to an eligible IBQ participant. The individual participant's remaining baseline quota would not be available to lease but would be transferred to the Reserve category. Allocation of less than 100% of a participant's baseline quota (*i.e.,* 25 percent, 50 percent, or 75 percent) does not preclude the participant from leasing additional quota, as needed, consistent with § 635.15(c).

(C) NMFS will inform each Atlantic Tunas Purse Seine category participant annually of its determination regarding the amount of individual quota allocated for the subsequent year through the electronic IBQ system established under § 635.15 and in writing via a permit holder letter, when NMFS has the complete catch data for the Purse Seine fishery.

(5) *Harpoon category quota.* The total amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 33.4 mt ww. The Harpoon category fishery commences on June 1 of each year, and closes on November 15 of each year.

(6) *Trap category quota.* The total amount of large medium and giant bluefin tuna that may be caught, retained, possessed, or landed by vessels that possess Trap category Atlantic Tunas permits is 0.9 mt ww.

(7) *Reserve category quota.* (i) The total amount of bluefin tuna that is held in reserve for inseason or annual adjustments and research using quota or subquotas is 21.4 mt ww, which may be augmented by allowable underharvest from the previous year, or annual reallocation of Purse Seine category quota as described under paragraph (a)(4)(v) of this section. Consistent with paragraphs (a)(8), (a)(9), and (a)(10) of this section, NMFS may allocate any portion of the Reserve category quota for

inseason or annual adjustments to any fishing category quota.

* * * * *

(8) * * *

(x) Optimize fishing opportunity.

(xi) Account for dead discards.

(xii) Facilitate quota accounting.

(xiii) Support other fishing monitoring programs through quota allocations and/or generation of revenue.

(xiv) Support research through quota allocations and/or generation of revenue.

(9) *Inseason adjustments.* To be effective for all, or a part of a fishing year, NMFS may transfer quotas specified under this section, among fishing categories or, as appropriate, subcategories, based on the criteria in paragraph (a)(8) of this section.

(10) *Annual adjustments.* (i) Adjustments to category quotas specified under paragraphs (a) (1) through (7) of this section may be made in accordance with the restrictions of this paragraph and ICCAT recommendations. Based on landing, catch statistics, other available information, and in consideration of the criteria in paragraph (a)(8) of this section, if NMFS determines that a bluefin quota for any category or, as appropriate, subcategory has been exceeded (overharvest), NMFS may subtract all or a portion of the overharvest from that quota category or subcategory for the following fishing year. If NMFS determines that a bluefin quota for any category or, as appropriate, subcategory has not been reached (underharvest), NMFS may add all or a portion of the underharvest to, that quota category or subcategory, and/or the Reserve category for the following fishing year. The underharvest that is carried forward may not exceed 100 percent of each category's baseline allocation specified in paragraph (a) of this section, and the total of the adjusted fishing category quotas and the Reserve category quota are consistent with ICCAT recommendations. Although quota may be carried over for the Longline or Purse Seine categories as a whole (at the category level), individual fishery participants that have been allocated individual quota may not carry over such quota from one year to the next, as specified under § 635.15(b)(6) and (7) for the pelagic longline fishery, and under paragraph (a)(4)(iv) of this section for the purse seine fishery.

(ii) NMFS may allocate any quota remaining in the Reserve category at the end of a fishing year to any fishing category, provided such allocation is consistent with the determination criteria specified in paragraph (a)(8) of this section.

(iii) Regardless of the estimated landings in any year, NMFS may adjust the annual school bluefin quota to ensure that the average take of school bluefin over each ICCAT-recommended balancing period does not exceed 10 percent by weight of the total annual U.S. bluefin quota, inclusive of the allocation specified in paragraph (a)(3) of this section (NED), for that period, consistent with ICCAT recommendations.

* * * * *

(e) *Northern albacore tuna*—(1) *Annual quota.* Consistent with ICCAT recommendations and domestic management objectives, the total baseline annual fishery quota is 527 mt ww. The total quota, after any adjustments made per paragraph (e)(2) of this section, is the fishing year's total amount of northern albacore tuna that may be landed by persons and vessels subject to U.S. jurisdiction.

(2) *Annual adjustments.* Consistent with ICCAT recommendations and domestic management objectives, and based on landings statistics and other information as appropriate, if for a particular year the total landings are above or below the annual quota for that year, the difference between the annual quota and the landings will be subtracted from, or added to, the following year's quota, respectively, or subtracted or added through a delayed, or multi-year adjustment. Carryover adjustments shall be limited to 25 percent of the baseline quota allocation for that year. NMFS will file with the Office of the Federal Register for publication any adjustment or apportionment made under this paragraph (e)(2).

■ 15. In § 635.28, paragraph (a) is revised; and paragraphs (b)(6), (c)(3), and (d) are added to read as follows:

§ 635.28 Fishery closures.

(a) *Bluefin tuna.* (1) When a bluefin tuna quota specified in § 635.27(a), is reached, or is projected to be reached, NMFS will file a closure action with the Office of the Federal Register for publication. On and after the effective date and time of such action, for the remainder of the fishing year or for a specified period as indicated in the notice, fishing for, retaining, possessing, or landing bluefin tuna under that quota is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

(2) If NMFS determines that variations in seasonal distribution, abundance, or migration patterns of bluefin, or the catch rate in one area, precludes participants in another area from a reasonable opportunity to harvest any allocated domestic category quota, as stated in § 635.27(a), NMFS may close all or part of the fishery under that category. NMFS may reopen the fishery at a later date if NMFS determines that reasonable fishing opportunities are available, *e.g.,* bluefin have migrated into the area or weather is conducive for fishing. In determining the need for any such interim closure or area closure, NMFS will also take into consideration the criteria specified in § 635.27(a)(8).

(3) When the Atlantic Tunas Longline category quota is reached, projected to be reached, or exceeded, or when there is high uncertainty regarding the estimated or documented levels of bluefin tuna catch, NMFS will file a closure action with the Office of the Federal Register for publication. On and after the effective date and time of such action, for the remainder of the fishing year or for a specified period as indicated in the closure action, vessels that have been issued or are required to have a limited access permit under § 635.4 and that have pelagic longline gear onboard are prohibited from leaving port, regardless of the amount of bluefin tuna quota allocation remaining to each vessel or the amount of fishery quota remaining for other species. In addition to providing notice in the **Federal Register**, NMFS will also notify vessels of any closures and their timing via VMS and may use other electronic methods, such as email. Vessels would be required to return to port prior to the closure date/time. When considering whether to close or reopen the Longline category quota, NMFS may consider the following factors:

(i) Total estimated bluefin tuna catch (landings and dead discards) in relation to the quota;

(ii) The estimated amount by which the bluefin tuna quota might be exceeded;

(iii) The usefulness of data relevant to monitoring the quota;

(iv) The uncertainty in the documented or estimated dead discards or landings of bluefin tuna;

(v) The amount of bluefin tuna landings or dead discards within a short time;

(vi) The effects of continued fishing on bluefin tuna rebuilding and overfishing;

(vii) The provision of reasonable opportunity for pelagic longline vessels to pursue the target species;

(viii) The variations in seasonal distribution, abundance or migration patterns of bluefin tuna; and

(viii) Other relevant factors.

(b) * * *

(6) If the Atlantic Tunas Longline category quota is closed as specified in paragraph (a)(4) of this section, vessels that have pelagic longline gear on board cannot possess or land sharks.

* * * * *

(c) * * *

(3) *Bluefin tuna Longline category closure.* If the Atlantic Tunas Longline category quota is closed as specified in paragraph (a)(4) of this section, vessels that have pelagic longline gear on board cannot possess or land any North Atlantic swordfish or bluefin tuna.

(d) *Northern albacore tuna*—When the annual fishery quota specified in § 635.27(e) is reached, or is projected to be reached, NMFS will file a closure action with the Office of the Federal Register for publication. When the fishery for northern albacore tuna is closed, northern albacore tuna may not be retained. If the Atlantic Tunas Longline category quota is closed as specified in paragraph (a)(4) of this section, vessels that have pelagic longline gear on board cannot possess or land any northern albacore tuna.

■ 16. In § 635.31, paragraphs (a)(1) and (2), (c)(1) and (4), and (d)(1) and (2) are revised to read as follows:

§ 635.31 Restrictions on sale and purchase.

(a) * * *

(1) A person that owns or operates a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit; a valid General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic tunas; or a valid HMS Commercial Caribbean Small Boat permit issued under this part and the appropriate category has not been closed, as specified at § 635.28(a). However, no person may sell a bluefin tuna smaller than the large medium size class. Also, no large medium or giant bluefin tuna taken by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may be sold (see § 635.23(c)). A person may sell Atlantic bluefin tuna only to a dealer that has a valid permit for purchasing Atlantic bluefin tuna issued under this part. A person may not sell or purchase Atlantic tunas harvested with speargun fishing gear.

(2) Dealers may purchase Atlantic tunas only from a vessel that has a valid commercial permit for Atlantic tunas issued under this part in the appropriate category and the appropriate category has not been closed, as specified at § 635.28(a).

(i) Dealers may purchase Atlantic bluefin tuna only from a vessel that has a valid Federal commercial permit for Atlantic tunas issued under this part in the appropriate category. Vessel owners and operators of vessels that have been issued an Atlantic Tunas Longline category permit can sell bluefin tuna and dealers can purchase bluefin tuna from such vessels only if the Longline category is open, per § 635.28(a) and if:

(A) The vessel has met the minimum quota allocation and accounting requirements at § 635.15(b)(4) and (5) for vessels departing on a trip with pelagic longline gear aboard, and

(B) The dealer and vessel have met the IBQ program participant requirements at § 635.15(a)(2).

(ii) Dealers may first receive BAYS tunas only if they have submitted reports to NMFS according to reporting requirements at § 635.5(b)(1)(ii), and only from a vessel that has a valid Federal commercial permit for Atlantic tunas issued under this part in the appropriate category. Vessel owners and operators of vessels that have been issued an Atlantic Tunas Longline category permit can sell BAYS tunas and dealers can purchase BAYS tunas from such vessels only if the Longline category is open per § 635.28(a). Individuals issued a valid HMS Commercial Caribbean Small Boat permit, and operating in the U.S. Caribbean as defined at § 622.2 of this chapter, may sell their trip limits of BAYS tunas, codified at § 635.24(c), to dealers and non-dealers. Persons may only sell albacore tuna and dealers may only first receive albacore tuna if the northern albacore tuna fishery has not been closed as specified at § 635.28 (d).

* * * * *

(c) * * *

(1) Persons that own or operate a vessel that possesses a shark from the management unit may sell such shark only if the vessel has a valid commercial shark permit issued under this part. Persons may possess and sell a shark only to a federally-permitted dealer and only when the fishery for that species, management group, and/or region has not been closed, as specified in § 635.28(b). Persons that own or operate a vessel that has pelagic longline gear onboard can only possess and sell a shark if the Atlantic Tunas Longline category has not been closed, as specified in § 635.28(a).

* * * * *

(4) Only dealers who have a valid a Federal Atlantic shark dealer permit and who have submitted reports to NMFS according to reporting requirements at § 635.5(b)(1)(ii) may first receive a shark from an owner or operator of a vessel that has, or is required to have, a valid federal Atlantic commercial shark permit issued under this part. Atlantic shark dealers may purchase, trade for, barter for, or receive a shark from an owner or operator of a vessel who does not have a federal Atlantic commercial shark permit if that vessel fishes exclusively in state waters. Atlantic shark dealers may first receive a sandbar shark only from an owner or operator of a vessel who has a valid shark research permit and who had a NMFS-approved observer on board the vessel for the trip in which the sandbar shark was collected. Atlantic shark dealers may first receive a shark from an owner or operator of a fishing vessel who has a valid commercial shark permit issued under this part only when the fishery for that species, management group, and/or region has not been closed, as specified in § 635.28(b). Atlantic shark dealers may first receive a shark from a vessel that has pelagic longline gear onboard only if the Atlantic Tunas Longline category has not been closed, as specified in § 635.28(a).

* * * * *

(d) * * *

(1) Persons that own or operate a vessel on which a swordfish in or from the Atlantic Ocean is possessed may sell such swordfish only if the vessel has a valid commercial permit for swordfish issued under this part. Persons may offload such swordfish only to a dealer who has a valid permit for swordfish issued under this part; except that individuals issued a valid HMS Commercial Caribbean Small Boat permit, and operating in the U.S. Caribbean as defined at § 622.2 of this chapter, may sell swordfish, as specified at § 635.24(b)(3), to non-dealers. Persons that own or operate a vessel that has pelagic longline gear onboard can only possess and sell a swordfish if the Atlantic Tunas Longline category has not been closed, as specified in § 635.28(a)(4).

(2) Atlantic swordfish dealers may first receive a swordfish harvested from the Atlantic Ocean only from an owner or operator of a fishing vessel that has a valid commercial permit for swordfish issued under this part, and only if the dealer has submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii). Atlantic swordfish dealers may first receive a swordfish from a vessel that has pelagic longline gear onboard only if the Atlantic Tunas

Longline category has not been closed, as specified in § 635.28(a)(4).

■ 17. In § 635.34, paragraphs (a), (b) and (d) are revised to read as follows:

§ 635.34 Adjustment of management measures.

(a) NMFS may adjust the IBQ shares or resultant allocations for bluefin tuna, as specified in § 635.15; catch limits for bluefin tuna, as specified in § 635.23; the quotas for bluefin tuna, shark, swordfish, and northern albacore tuna, as specified in § 635.27; the regional retention limits for Swordfish General Commercial permit holders, as specified at § 635.24; the marlin landing limit, as specified in § 635.27(d); and the minimum sizes for Atlantic blue marlin, white marlin, and roundscale spearfish, as specified in § 635.20.

(b) In accordance with the framework procedures in the 2006 Consolidated HMS FMP, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: Maximum sustainable yield or optimum yield based on the latest stock assessment or updates in the SAFE report; domestic quotas; recreational and commercial retention limits, including target catch requirements; size limits; fishing years or fishing seasons; shark fishing regions or regional quotas; species in the management unit and the specification of the species groups to which they belong; species in the prohibited shark species group; classification system within shark species groups; permitting and reporting requirements; workshop requirements; the IBQ shares or resultant allocations for bluefin tuna; administration of the IBQ Program (including but not limited to requirements pertaining to leasing of IBQ allocations, regional or minimum IBQ share requirements, IBQ share caps (individual or by category), permanent sale of shares, NED IBQ rules, etc.); time/area restrictions; allocations among user groups; gear prohibitions, modifications, or use restriction; effort restrictions; observer coverage requirements; EM requirements; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

* * * * *

(d) When considering a framework adjustment to add, change, or modify time/area closures and/or gear restricted areas, NMFS will consider, consistent with the FMP, the Magnuson-Stevens Act and other applicable law, but is not limited to the following criteria: Any Endangered Species Act related issues, concerns, or requirements, including applicable BiOps; bycatch rates of protected species, prohibited HMS, or non-target species both within the specified or potential closure area(s) and throughout the fishery; bycatch rates and post-release mortality rates of bycatch species associated with different gear types; new or updated landings, bycatch, and fishing effort data; evidence or research indicating that changes to fishing gear and/or fishing practices can significantly reduce bycatch; social and economic impacts; and the practicability of implementing new or modified closures compared to other bycatch reduction options. If the species is an ICCAT managed species, NMFS will also consider the overall effect of the U.S.'s catch on that species before implementing time/area closures, gear restricted areas, or access to closed areas.

■ 18. In § 635.69, paragraph (a) introductory text and paragraphs (a)(1) and (4) are revised; and paragraph (e)(4) is added to read as follows:

§ 635.69 Vessel monitoring systems.

(a) *Applicability.* To facilitate enforcement of time/area and fishery closures, enhance reporting, and support the IBQ Program (§ 635.15), an owner or operator of a commercial vessel permitted, or required to be permitted, to fish for Atlantic HMS under § 635.4 and that fishes with pelagic or bottom longline, gillnet, or purse seine gear, is required to install a NMFS-approved enhanced mobile transmitting unit (E–MTU) vessel monitoring system (VMS) on board the vessel and operate the VMS unit under the circumstances listed in paragraphs (a)(1) through (a)(4) of this section. For purposes of this section, a NMFS-approved E–MTU VMS is one that has been approved by NMFS as satisfying its type approval listing for E–MTU VMS units. Those requirements are published in the **Federal Register** and may be updated periodically.

(1) Whenever the vessel has pelagic longline or purse seine gear on board;

* * * * *

(4) A vessel is considered to have pelagic or bottom longline gear on board, for the purposes of this section, when the gear components as specified at § 635.2 are on board. A vessel is considered to have gillnet gear on board, for the purposes of this section, when gillnet, as defined in § 600.10 of this chapter, is on board a vessel that has been issued a shark LAP. A vessel is considered to have purse seine gear on board, for the purposes of this section, when the gear as defined at § 600.10 is onboard a vessel that has been issued an Atlantic Tunas Purse Seine category permit.

* * * * *

(e) * * *

(4) Bluefin tuna and fishing effort reporting requirements for vessels fishing either with pelagic longline gear or purse seine gear—(i) *Pelagic longline gear.* The vessel owner or operator of a vessel that has pelagic longline gear on board must report to NMFS using the attached VMS terminal, or using an alternative method specified by NMFS as follows: For each set, as instructed by NMFS, the date and area of the set, the number of hooks and the length of all bluefin retained (actual), and the length of all bluefin tuna discarded dead or alive (approximate), must be reported within 12 hours of the completion each pelagic longline haul-back.

(ii) *Purse Seine gear.* The vessel owner or operator of a vessel that has purse seine gear on board must report to NMFS using the attached VMS terminal, or using an alternative method specified by NMFS as follows: For each purse seine set, as instructed by NMFS, the date and area of the set, and the length of all bluefin retained (actual), and the length of all bluefin tuna discarded dead or alive (approximate), must be reported within 12 hours of the completion of the retrieval of each set.

* * * * *

■ 19. In § 635.71:

■ a. Paragraphs (a)(14), (a)(19), (a)(23), (a)(31), (a)(33), (a)(34), and (a)(40) are revised;

■ b. Paragraphs (a)(57) through (60) are added;

■ c. Paragraphs (b)(5), (b)(7), (b)(8), (b)(13), (b)(17), (b)(23), (b)(36), and (b)(38) are revised;

■ d. Paragraphs (b)(41) through (59) are added; and

■ e. Paragraphs (c)(1) and (7), (d)(12) and (13), and (e)(8), (e)(11), (e)(16) and (e)(18) are revised.

The revisions and additions read as follows:

§ 635.71 Prohibitions

* * * * *

(a) * * *

(14) Fail to install, activate, repair, or replace a NMFS-approved E–MTU vessel monitoring system prior to leaving port with pelagic longline gear, bottom longline gear, gillnet gear, or purse seine gear on board the vessel as specified in § 635.69.

* * * * *

(19) Utilize secondary gears as specified in § 635.19(a) to capture, or attempt to capture, any undersized or free swimming Atlantic HMS, or fail to

release a captured Atlantic HMS in the manner specified in § 635.21(a).

* * * * *

(23) Fail to comply with the restrictions on use of pelagic longline, bottom longline, gillnet, buoy gear, speargun gear, or green-stick gear as specified in § 635.21.

* * * * *

(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 period specified at § 635.21(c), except under the conditions listed at § 635.21 (c)(3).

* * * * *

(33) Deploy or fish with any fishing gear from a vessel with pelagic or bottom longline gear on board without carrying the required sea turtle bycatch mitigation gear, as specified at § 635.21(c)(5)(i) for pelagic longline gear and § 635.21(d)(2) for bottom longline gear. This equipment must be utilized in accordance with § 635.21(c)(5)(ii) and (d)(2) for pelagic and bottom longline gear, respectively.

(34) Fail to disengage any hooked or entangled sea turtle with the least harm possible to the sea turtle as specified at § 635.21 (c)(5) or (d)(2).

* * * * *

(40) Deploy or fish with any fishing gear, from a vessel with bottom longline gear on board, without carrying a dipnet, line clipper, and dehooking device as specified at § 635.21(d)(2).

* * * * *

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

(58) Fish with pelagic longline gear in the Cape Hatteras Gear Restricted area if not determined by NMFS to be ''qualified'' under § 635.21(c)(3).

(59) Fish for, retain, possess, or land any HMS from a vessel with a pelagic longline on board when the Atlantic Tunas Longline category fishery is closed, as specified in § 635.28(a)(3), (b)(6), (c)(3), and (d).

(60) Buy, trade, or barter for any HMS from a vessel with pelagic longline gear is on board when the Atlantic Tunas Longline category fishery is closed, as specified in § 635.31(a)(2), (c), and (d).

(b) * * *

(5) Fail to report a large medium or giant bluefin tuna that is not sold, as specified in § 635.5(a)(3), or fail to report a bluefin tuna that is sold, as specified in § 635.5(a)(4).

* * * * *

(7) Fish for, catch, retain, or possess a bluefin tuna with gear not authorized for the category permit issued to the vessel or to have such gear on board when in possession of a bluefin tuna, as specified in § 635.19(b).

(8) Fail to request an inspection of a purse seine vessel, as specified in § 635.21(e)(2).

* * * * *

(13) As a vessel with an Atlantic Tunas General category permit, fail to immediately cease fishing and immediately return to port after catching the applicable limit of large medium or giant bluefin tuna on a commercial fishing day, as specified in § 635.23(a)(3).

* * * * *

(17) As a vessel with an Atlantic Tunas Purse Seine category permit, catch, possess, retain, or land bluefin in excess of its allocation of the Purse Seine category quota as specified in § 635.23(e), or fish for bluefin under that allocation prior to the commencement date of the directed bluefin purse seine fishery as specified in § 635.27(a)(4).

* * * * *

(23) Fish for, catch, possess, or retain a bluefin tuna, except as specified under § 635.23(f), or if taken incidental to recreational fishing for other species and retained in accordance with § 635.23(b) and (c).

* * * * *

(36) Possess J-hooks onboard a vessel that has pelagic longline gear onboard, and that has been issued, or is required to have, a limited access swordfish, shark, or Atlantic Tunas Longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, except when green-stick gear is onboard, as specified at § 635.21(c)(2)(vii)(A) and (c)(5)(iii)(C)(*3*).

* * * * *

(38) Possess more than 20 J-hooks onboard a vessel that has been issued, or is required to have, a limited access swordfish, shark, or tuna Longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, when possessing onboard both pelagic longline gear and green-stick gear as defined at § 635.2.

* * * * *

(41) Fail to report bluefin catch by pelagic longline or purse seine gear, through VMS as specified at § 635.69(e)(4).

(42) Fail to report all dead discards or landings of bluefin through the NMFS electronic catch reporting system within 24 hours of landing or the end of the trip as specified at § 635.5(a)(4).

(43) Fish for, retain, possess, or land albacore tuna when the fishery is closed, as specified in § 635.28(d).

(44) Buy, purchase, trade, or barter for albacore tuna when the fishery is closed, as specified in § 635.31(a)(2)(ii).

(45) Fail to comply with landing report requirements, as specified under § 635.5(b)(2)(i)(A).

(46) Deploy or fish with any fishing gear from a vessel with a pelagic longline on board that does not have an approved and working EM system as specified in § 635.9; tamper with, or fail to install, operate or maintain one or more components of the EM system; obstruct the view of the camera(s); or fail to handle bluefin tuna in a manner that allows the camera to record the fish; as specified in § 635.9.

(47) Depart on a fishing trip or deploy or fish with any fishing gear from a vessel with a pelagic longline on board without a minimum amount of IBQ allocation available for that vessel, as specified in § 635.15(b)(3), as applicable.

(48) Depart on a fishing trip or deploy or fish with any fishing gear from a vessel with a pelagic longline on board without accounting for bluefin caught on a previous trip as specified in § 635.15(b)(4)(ii).

(49) Lease bluefin quota allocation to or from the owner of a vessel not issued a valid Atlantic Tunas Longline permit or not an Atlantic Tunas Purse Seine participant as specified under § 635.15(c)(1).

(50) Fish in the Gulf of Mexico with pelagic longline gear on board if the vessel has only designated Atlantic IBQ allocation, as specified under § 635.15(b)(2).

(51) Depart on a fishing trip or deploy or fish with any fishing gear from a vessel with a pelagic longline on board in the Gulf of Mexico, without a minimum amount of designated GOM IBQ allocation available for that vessel, as specified in § 635.15(b)(3).

(52) If leasing IBQ allocation, fail to provide all required information on the application, as specified under § 635.15(c)(2).

(53) Lease IBQ allocation in an amount that exceeds the amount of IBQ allocation associated with the lessor, as specified under § 635.15(c)(2).

(54) Sell quota share, as specified under § 635.15(d).

(55) Fail to provide bluefin tuna landings and dead discard information as specified at § 635.15(b)(4)(iii).

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

(57) Lease IBQ allocation during the period from 6 p.m. December 31 to 2

p.m. January 1 (Eastern Time) as specified at § 635.15(c)(3)(iv).

(58) Lease IBQ allocation if the conditions of paragraph § 635.15(c)(2) are not met.

(59) Fish with or have pelagic longline gear on board if any annual level quota debt associated with the vessel from a preceding year has not been settled, as specified at § 635.15(b)(5)(ii).

(c) * * *

(1) As specified in § 635.19(c), retain a billfish harvested by gear other than rod and reel, or retain a billfish on board a vessel unless that vessel has been issued an Atlantic HMS Angling or Charter/Headboat permit or has been issued an Atlantic Tunas General category permit and is participating in a tournament in compliance with § 635.4(c).

* * * * *

(7) Deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination when participating in a tournament for, or including, Atlantic billfish, as specified in § 635.21(f).

* * * * *

(d) * * *

(12) Fish for Atlantic sharks with unauthorized gear or possess Atlantic sharks on board a vessel with unauthorized gear on board as specified in § 635.19(d).

(13) Fish for Atlantic sharks with a gillnet or possess Atlantic sharks on board a vessel with a gillnet on board, except as specified in § 635.21(g).

* * * * *

(e) * * *

(8) Fish for North Atlantic swordfish from, possess North Atlantic swordfish on board, or land North Atlantic swordfish from a vessel using or having on board gear other than pelagic longline, green-stick gear, or handgear, except as specified at § 635.19(e).

* * * * *

(11) As the owner of a vessel permitted, or required to be permitted, in the swordfish directed, swordfish handgear limited access permit category, or issued a valid HMS Commercial Caribbean Small Boat permit and utilizing buoy gear, to possess or deploy more than 35 individual floatation devices, to deploy more than 35 individual buoy gears per vessel, or to deploy buoy gear without affixed monitoring equipment, as specified at § 635.21(h).

* * * * *

(16) Possess any HMS, other than Atlantic swordfish, harvested with buoy gear as specified at § 635.19 unless issued a valid HMS Commercial Caribbean Small Boat permit and operating within the U.S. Caribbean as defined at § 622.2 of this chapter.

* * * * *

(18) As the owner of a vessel permitted, or required to be permitted, in the Swordfish General Commercial permit category, possess North Atlantic swordfish taken from its management unit by any gear other than rod and reel, handline, bandit gear, green-stick, or harpoon gear, as specified in § 635.19(e).

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