DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 200330–0091]

RIN 0648–BI51

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

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

ACTION: Final rule.

SUMMARY: This final action will undertake a review process to collect and review data to evaluate the continued need for the Northeastern United States Closed Area and the Spring Gulf of Mexico Gear Restricted Area; remove the Cape Hatteras Gear Restricted Area; and adjust the Gulf of Mexico gear requirements to shorten the duration of required weak hook use from year-round to seasonal (January–June). NMFS has adopted a suite of measures to manage bluefin tuna bycatch in the pelagic longline fishery for Atlantic highly migratory species (HMS), including mandatory weak hook use, time/area closures, gear restricted areas, and electronic monitoring and the Individual Bluefin Quota (IBQ) Program adopted in 2015 through Amendment 7 to the 2006 Consolidated HMS FMP. However, quotas for target species have continued to be significantly underharvested and available IBQ allocation remains unused at the end of each year, indicating that all of the measures in tandem may not be necessary to appropriately limit incidental catch of bluefin tuna in the pelagic longline fishery and may not best achieve other management objectives, such as allowing fishermen a reasonable opportunity to harvest available quotas. These actions will ensure that conservation obligations are met and that bluefin bycatch continues to be minimized, but in a way that is not unnecessarily restrictive of pelagic longline fishery effort.

DATES: This final rule is effective on April 2, 2020.

ADDRESSES: The Final Environmental Impact Statement (FEIS) containing a list of references used in this document is available online at *https://www.fisheries.noaa.gov/action/pelagic-longline-bluefin-tuna-area-based-and-weak-hook-management-measures.* The Western Atlantic bluefin tuna stock assessment is available on the website for the International Commission for the Conservation of Atlantic Tunas (ICCAT) at *https://www.iccat.int/en/.*

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

SUPPLEMENTARY INFORMATION:

Background

Atlantic HMS are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended, and the Atlantic Tunas Convention Act (ATCA). The Magnuson-Stevens Act, at 16 U.S.C. 1802(21), defines the term ''highly migratory species'' as ''tuna species, marlin (Tetrapturus spp. and Makaira spp.), oceanic sharks, sailfishes (Istiophorus spp.), and swordfish (*Xiphias gladius*).'' The 2006 Consolidated HMS FMP and its amendments are implemented by regulations at 50 CFR part 635. A summary of the background of this final rule is provided below. Additional information regarding bluefin tuna and pelagic longline fishery management can be found in the FEIS and proposed rule (84 FR 33205; July 12, 2019) associated with this rulemaking, the 2006 Consolidated HMS FMP and its amendments, the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Reports, and online at *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species.*

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

From 2007–2010, NMFS conducted research on the use of weak hooks by pelagic longline vessels operating in the Gulf of Mexico to reduce bycatch of spawning bluefin tuna. A weak hook is a circle hook that meets NMFS' hook size and offset restrictions for the pelagic longline fishery. Weak hooks are constructed of round wire stock that is a thinner gauge (*i.e.,* no larger than 3.65 mm in diameter) than the circle hooks otherwise used in the pelagic longline fishery. Weak hooks straighten to release large fish, such as bluefin tuna, when they are caught, while retaining smaller fish, such as swordfish and other tunas. Research results showed that the use of weak hooks can significantly reduce the amount of bluefin tuna caught by pelagic longline vessels. Some reductions in the amount of target catch of yellowfin tuna and swordfish were noted but were not statistically significant. In 2011, a large year class (2003) of bluefin tuna was approaching maturity and was expected to enter the Gulf of Mexico to spawn for the first time. Consistent with the advice of the ICCAT Standing Committee on Research and Statistics (SCRS) that ICCAT may wish to protect the strong 2003 year class until it reaches maturity and can contribute to spawning, and for other stated objectives, NMFS, in a final rule on Bluefin Tuna Bycatch Reduction in the Gulf of Mexico Pelagic Longline Fishery, implemented mandatory use of weak hooks on a year-round basis to reduce bycatch of bluefin tuna (76 FR 18653; April 5, 2011). Weak hooks have since been required for vessels fishing in the Gulf of Mexico that have pelagic longline gear on board, and that have been issued, or are required to have been issued, a swordfish, shark, or Atlantic Tunas Longline category limited access permit (LAP) for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico.

In 2015, Amendment 7 to the 2006 Consolidated HMP FMP (79 FR 71510; December 2, 2014) implemented the Gulf of Mexico and Cape Hatteras Gear Restricted Areas. These gear restricted areas were designed based on the identification of areas with relatively high bluefin interaction rates with

pelagic longline gear (see page 29 of the Amendment 7 FEIS), and were implemented to address incidental catch of bluefin tuna in the pelagic longline fishery The Spring Gulf of Mexico Gear Restricted Area, which consists of two areas in the central and eastern Gulf of Mexico, is closed to pelagic longline gear from April 1 through May 31 annually. This coincides with the peak of the spawning season for bluefin in the Gulf of Mexico. The time and location were also selected to reduce bluefin interactions based on past patterns of interactions with the pelagic longline fishery. The Spring Gulf of Mexico Gear Restricted Area was closed to all vessels with pelagic longline gear onboard (unless the gear is properly stowed), rather than using performance-based criteria for access, because the distribution of interactions was more widespread across both the areas and fishery participants.

The Cape Hatteras Gear Restricted Area, established off the coast of Cape Hatteras, North Carolina is effective each year from December 1 through April 30. While the area encompassed by the Cape Hatteras Gear Restricted Area had a high level of bluefin interactions, the majority of those interactions were by only a few pelagic longline vessels. Due to this dynamic, NMFS implemented performance measures to grant ''qualified'' fishery participants access to the Cape Hatteras Gear Restricted Area provided they meet specific criteria. Access is granted based on an annual assessment of pelagic longline vessels using performance-based metrics. Pelagic longline vessels are evaluated on their ratio of bluefin interactions to designated species landings, compliance with the Pelagic Observer Program, and timely submission of logbooks. Designated target species include swordfish, the ''BAYS'' tunas (bigeye, albacore, yellowfin, and skipjack tunas), pelagic sharks (shortfin mako, thresher, and porbeagle), dolphin, and wahoo. For the 2019–2020 effective period of the Cape Hatteras Gear Restricted Area, 70 out of 89 vessels evaluated were granted access to the area based on these metrics.

In 2015, Amendment 7 reconfigured the management and allocation of bluefin tuna quota, and shifted the focus of managing bluefin bycatch in the HMS pelagic longline fishery from fishery-wide management measures to individual vessel accountability through the implementation of a bluefin tuna catch share program (*i.e.,* the Individual Bluefin Quota, or IBQ, Program). The IBQ Program distributes IBQ allocation (*i.e.,* an amount of bluefin quota, expressed as a weight in pounds or metric tons) that may be used to account for landings and dead discards by fishery participants, with the annual initial distribution based on the IBQ share percentage associated with an eligible Atlantic Tunas Longline permit. NMFS recently published the Three-Year Review of the IBQ Program, which concluded that the IBQ Program has met or exceeded expectations with respect to reducing bluefin interactions and dead discards in the pelagic longline fishery, improved timely catch reporting across the fleet, and addressed previous problems with Longline category quota overages. The Three-Year Review of the IBQ Program also noted that a healthy, functioning IBQ allocation leasing market exists to support the IBQ Program. However, the Three-Year Review also found that effort—as defined by the number of vessels, trips, sets, and hooks within the pelagic longline fishery—has continued to decrease. The Three-Year Review of the IBQ Program noted that it is difficult to separate out the effects of the IBQ Program from other factors, including the effect of swordfish imports on the market for U.S. product, other regulations such as closed and gear restricted areas, as well as target species availability/price.

This rulemaking began with a scoping process to identify issues to be addressed related to the management of Atlantic HMS in March 2018. As IBQ Program implementation progressed, and with early signs of its success at limiting bluefin tuna interactions and catch in the pelagic longline fishery, NMFS received comments from pelagic longline fishery participants and other interested parties suggesting that NMFS examine whether fleet-wide measures intended to reduce bycatch (such as gear requirements, area restrictions, or time/area closures) remained necessary to effectively manage the Longline category quota and bluefin tuna bycatch in the pelagic longline fishery. Commenters (including the public and HMS Advisory Panel members) specifically requested that NMFS evaluate ways to potentially reduce regulatory burden or remove regulations that may have been rendered redundant with implementation of the IBQ Program. On March 2, 2018, NMFS published a Notice of Intent in the **Federal Register** to prepare a Draft Environmental Impact Statement and to undertake a public process to identify the scope of issues to be addressed related to the management of Atlantic HMS (83 FR 8969). The Notice of Intent included a request for comments on area-based and weak hook management measures implemented to reduce discards of, and interactions with, bluefin tuna in the pelagic longline fishery. Concurrent with the Notice of Intent, NMFS published a scoping document (available at *https://www.fisheries.noaa.gov/action/pelagic-longline-bluefin-tuna-area-based-and-weak-hook-management-measures*), accepted public comments, and hosted five scoping meetings between March 1 and May 30, 2018, to obtain public feedback. The Environmental Protection Agency (EPA) published the notice of availability for the Draft Environmental Impact Statement (DEIS) on May 17, 2019 (84 FR 22492), and NMFS published a proposed rule on July 12, 2019 (84 FR 33205). The DEIS and proposed rule identified and analyzed 14 alternatives that would either retain, modify, or remove certain management measures, including the Northeastern United States Closed Area, Cape Hatteras Gear Restricted Area, Spring Gulf of Mexico Gear Restricted Area, and Gulf of Mexico weak hook requirements. NMFS subsequently published a correction notice (August 8, 2019; 84 FR 38918) to address some minor errors in the description two preferred alternatives, and a notice announcing an additional hearing in Gloucester, MA (August 30, 2019; 84 FR 45734). In addition to the Advisory Panel meeting, NMFS hosted five public hearings and two webinars on the DEIS and the proposed rule. The comment period closed on September 30, 2019. The comments received on the DEIS and the proposed rule, and responses to those comments, are summarized below in the section labeled ''Responses to Comments.''

This final rule implements the measures preferred and analyzed in the FEIS for this rulemaking in order to: (1) Continue to minimize, to the extent practicable, bycatch and bycatch mortality of bluefin tuna and other Atlantic HMS by pelagic longline gear consistent with the conservation and management objectives (*e.g.,* prevent or end overfishing, rebuild overfished stocks, manage Atlantic HMS fisheries for continuing optimum yield) of the 2006 Consolidated Atlantic HMS FMP, its amendments, and all applicable laws; (2) simplify and streamline Atlantic HMS management, to the extent practicable, by reducing any redundancies in regulations established to reduce bluefin tuna interactions that apply to the pelagic longline fishery; and (3) optimize the ability for the pelagic longline fishery to harvest target

species quotas (*e.g.,* swordfish), to the extent practicable, while also considering fairness among permit/quota categories. The FEIS analyzed the direct, indirect and cumulative impacts on the human environment as a result of the preferred management measures. The Notice of Availability for the FEIS, including the preferred management measures, was published in the **Federal Register** on January 24, 2020 (85 FR 4320). On March 30, 2020, the Assistant Administrator for NOAA signed a Record of Decision (ROD) adopting these measures. The FEIS, which includes detailed analyses of a reasonable range of alternatives to meet rulemaking objectives, is available on the HMS Management Division website (see **ADDRESSES**). This final rule implements the preferred alternatives identified in the FEIS. In the FEIS, NMFS divided the alternatives into the following four broad categories for organizational clarity and to facilitate effective review: Northeastern United States Closed Area, Cape Hatteras Gear Restricted Area, Spring Gulf of Mexico Gear Restricted Area, and Gulf of Mexico Weak Hook. NMFS considered 14 alternatives within these categories in the FEIS and is implementing four measures (one in each category).

In developing the final measures, NMFS considered public comments received on the proposed rule for this action, comments received at HMS Advisory Panel meetings, other conservation and management measures that have been implemented in HMS fisheries since 2006 that have affected relevant fisheries and bycatch issues, and public comments received during scoping on the Issues and Options paper for this rulemaking (83 FR 8969; March 2, 2018), including comments provided at HMS Advisory Panel meetings.

The final rule implements the following preferred alternatives identified in the FEIS:

—Conversion of the Northeastern United States Closed Area and the Spring Gulf of Mexico Gear Restricted Area to monitoring areas, and establishes a three-year evaluation period during which fishing is initially allowed at times when these areas were previously closed to pelagic longline fishing provided the amount of IBQ allocation used to account for bluefin catch from sets made within these areas stays below a specified threshold;

—Elimination of the Cape Hatteras Gear Restricted Area; and

—Modification of the requirement to use weak hooks in the Gulf of Mexico from a year-round requirement to a seasonal (January–June) requirement.

In response to public comment on this proposed rule, NMFS made two clarifying changes to the measures as finalized. The Northeastern United States Closed Area and the Spring Gulf of Mexico Gear Restricted Area are changed to ''Monitoring Areas'' and initially allow pelagic longline vessels to fish in the areas under a set of controlled conditions during an evaluation period. NMFS has added a clarifying provision to address what would happen if the ICCAT quota changes. If the ICCAT western Atlantic bluefin tuna quota were to decrease, the final rule specifies that NMFS would adjust the threshold downward to an equivalent threshold level. If the quota increases, the threshold would remain the same. A second minor clarification is made concerning the timing of inseason closure notices that could occur in response to the Monitoring Area thresholds being met. These changes are described in greater detail in the section titled ''Changes from the Proposed Rule.'' For quota-managed stocks, including western Atlantic bluefin tuna and North Atlantic swordfish, the measures in this final rule would not affect or alter the science-based quotas for the stocks. Any action considered in the alternatives and finalized in this rule would manage stocks within these already-established levels. For these stocks, NMFS previously implemented the quotas through rulemaking with the appropriate environmental analyses of the effects of quota implementation. While some increases in catch in the pelagic longline fishery may occur, any such increases would be within previously-analyzed quotas and would be consistent with other management measures that appropriately conserve the stocks. Other measures established in 2015 in Amendment 7 regarding the amount of quota and IBQ allocation available to the Longline category, regional IBQ allocation designations, and inseason quota transfers among categories, among other things, remain unchanged. The rule only affects the time, place, and manner in which established quotas may be caught.

Response to Comments

Approximately 11,460 comments, many of which were form letter campaign submissions, were submitted to NMFS, including comments from the EPA, the Department of the Interior, and the State of Florida. Many of the comments submitted to NMFS concerned the Spring Gulf of Mexico Gear Restricted Area. While some constituent groups supported the proposed action to undertake a review process to evaluate the continued need for these management measures, many of the commenters were concerned that any change in management of the area could lead to negative impacts to spawning bluefin tuna. NMFS received similar comments about changing the management of the Northeastern United States Closed Area. In general commenters supported the removal of regulations associated with the Cape Hatteras Gear Restricted Area, and the modification of the Gulf of Mexico weak hook requirement to a seasonal requirement. All written comments can be found at *http://www.regulations.gov/* by searching for ''0648–BI51.'' NMFS included a preliminary Response to Comments in Appendix F of the FEIS and the responses below refer to the analyses and Preferred Alternatives in the FEIS. The FEIS can be accessed at *https://www.fisheries.noaa.gov/action/pelagic-longline-bluefin-tuna-area-based-and-weak-hook-management-measures* for cross references.

General Rulemaking Comments

Comment 1: NMFS received comments in favor of and in opposition to the implementation of changes to gear restricted areas. Commenters supported changing the gear restricted areas to monitoring areas for a variety of reasons, such as collecting more data to determine a future action, and balancing the objective of protecting bluefin tuna and optimizing the harvest of target species. Other commenters opposed changes to the gear restricted areas because existing management measures have been effective at reducing bluefin tuna dead discards that they characterize as having led to a recent rebound of the bluefin stock and should be kept in place. Commenters opposed to changes in the gear restricted area also noted that the International Union for the Conservation of Nature (IUCN) has identified bluefin as a ''critically endangered'' species. Commenters opposed to the evaluation processes described under Preferred Alternatives A4 and C3 noted that if the threshold is not met during the review process for the monitoring areas (and thus the area would not be closed for the following year), the process does not allow for other responsive action if needed. Some commenters noted that fisheries regulations should be based on the best available science to facilitate continued recovery. Other commenters felt that NMFS should not implement any measures that would increase bluefin mortality on the spawning grounds.

Response: NMFS agrees that existing management measures such as the gear restricted areas and weak hooks have been effective at reducing bluefin tuna interactions and dead discards but also notes that available quota for pelagic

longline fishery target species has gone unharvested under the current management measures and that the fishery has caught well below the available IBQ allocation each year since Amendment 7's implementation. NMFS agrees that the actions in this final rule, which implement the FEIS preferred alternatives, are consistent with balancing the objectives of this rulemaking. NMFS agrees with commenters that it is important to collect additional data to help inform any potential future action for certain spatially managed areas that have been closed for extended periods of time. This is certainly the case when the lack of fishery-dependent or -independent data creates high levels of uncertainty. To address such uncertainties, for instance, NMFS prefers to undertake an evaluation process for removal of certain restrictions to collect data from pelagic longline vessels fishing in what would become monitoring areas under the preferred alternatives. Aside from establishing a path to evaluation, the preferred alternatives also balance the objectives to ''optimize the ability of the fleet to harvest target species quota'' (via reopening previously closed areas) and to ''continue to minimize bycatch and bycatch mortality of bluefin'' (via thresholds established for each area and the expectation that vessels still must abide by the requirements of the IBQ Program and use weak hooks). Because both the Spring Gulf of Mexico Gear Restricted Area and the IBQ Program were implemented at the same time, it is difficult to isolate the specific ecological impacts of the gear restricted areas alone. Data collected during evaluation periods would either support or refute the contention that gear restricted areas or closed areas established to minimize bluefin catch within the IBQ allocation levels adopted in Amendment 7 are not needed or whether they continue to be needed in addition to the IBQ Program. Similarly, NMFS has determined that implementing an evaluation process for the Northeastern United States Closed Area also reflects the best balance of objectives for this rulemaking.

NMFS also agrees that the Cape Hatteras Gear Restricted Area reduced bluefin tuna interactions and discards in the pelagic longline fishery. The removal of the Cape Hatteras Gear Restricted Area is consistent with the objective of this action to ''simplify and streamline HMS management by reducing redundancies in regulations'' given that it appears that not all of the regulations in place are necessary to appropriately limit incidental bluefin tuna catch in the pelagic longline fishery within the limits established in Amendment 7. The Cape Hatteras Gear Restricted Area was implemented under an access determination system that granted access to vessels that demonstrated high rates of bluefin avoidance and compliance with observer and reporting requirements. The area was based on identification of a bluefin tuna interaction ''hotspot'' that occurred from 2006 to 2012 that was used to delineate the boundaries of this gear restricted area (*e.g.,* Figure 4.9 of the FEIS for this rule). It was uncertain at the time of Amendment 7 implementation whether the IBQ Program implementation alone would have the intended effects in relation to issues with the pelagic longline fishery exceeding its bycatch quota. Through collection of fishery dependent data within this area since its implementation, NMFS was able to determine that the hotspot no longer exists, even with the majority of vessels qualifying for access to the area. Since the area no longer has the same high rate of bluefin interactions, and bluefin tuna catch in the pelagic longline fishery since implementation of Amendment 7 is well below the amount of IBQ allocation available consistent with provisions in Amendment 7, NMFS determined its removal to be consistent with the objective of ''continuing to minimize bycatch and bycatch mortality of bluefin'' and to ''optimize the ability of the fleet to harvest target species quotas.''

NMFS disagrees that the current status of the western Atlantic bluefin stock is justification for not undertaking the actions in this rule. The critically endangered listing referred to is under IUCN standards, which are not the same as domestic standards for listing a species under the Endangered Species Act and generally do not drive decisions regarding needed management action under that Act or the Magnuson-Stevens Act. Bluefin tuna are not currently listed as threatened or endangered under the Endangered Species Act, which specifies criteria for listing a species as endangered or threatened. Domestic stock status is determined in accordance with stock status determination criteria established under the 2006 Consolidated HMS FMP consistent with the Magnuson-Stevens Act, based on the best scientific information available, which for western Atlantic bluefin tuna is the stock assessment conducted by the ICCAT SCRS. The western Atlantic bluefin stock is not experiencing overfishing. However, whether the stock is overfished remains unknown as of the last stock assessment (completed in 2017). ICCAT adopted a 20-year rebuilding program for western Atlantic bluefin in 1998. The rebuilding plan period was set as 1999 through 2018. In 2017, ICCAT adopted an interim conservation and management plan (ICCAT Recommendation 17–06) for western Atlantic bluefin tuna as an interim measure to transition from the rebuilding program to a long-term management strategy for the stock. This interim plan included an annual Total Allowable Catch set for 2018 through 2020 while ICCAT develops a management strategy evaluation approach to future stock management. The management measures in this action respect the science-based quotas for the stock as well as the relevant subquotas established in Amendment 7 in 2015.

NMFS disagrees that the evaluation process does not allow for responsive action if needed. The evaluation period includes a threshold of combined bluefin catch and dead discards that, if exceeded, would result in NMFS closing the monitoring area for the remainder of the three-year evaluation period. Provided that the threshold is not exceeded during the three-year evaluation period, the area would remain open until NMFS decides to take additional action. Following the three-year evaluation period, NMFS will review data collected from the Monitoring Areas and compile a report. Based on the findings of the report, NMFS may then initiate a follow up action to implement new management measures for the area, if needed.

NMFS agrees that fisheries management should be based on the best science information available. As discussed in Chapter 9 of the FEIS, the preferred alternatives are consistent with National Standard 2 because they are based on the best scientific information available, including the latest stock assessments, scientific research, and up-to-date data sources. The data sources cited throughout the FEIS represent the best available science. Additionally, the actions in this rule are designed in full consideration of science-based quotas set by ICCAT for western Atlantic bluefin tuna and with the category subquotas established in Amendment 7. The IBQ Program was designed with specific provisions in place to prevent potential increases in bluefin catch in the Gulf of Mexico, which could occur if fishing effort was redistributed from the Atlantic to the Gulf of Mexico through either vessel or permit movement or purchase of IBQ allocation. The IBQ Program limits incidental catch of bluefin tuna in the

pelagic longline fishery by putting limits on available IBQ allocation and puts the responsibility for compliance with the Program requirements on individual vessels. This action is expected to continue to limit bluefin tuna incidental catch to the levels previously established and implemented in Amendment 7. Furthermore, the preferred alternative for the Spring Gulf of Mexico Gear Restricted Area includes a provision to adjust the threshold incorporated into the evaluation option in the event that the U.S. allocation of bluefin quota is adjusted via a future ICCAT Recommendation. The threshold adopted in this final rule would limit the amount of Gulf of Mexico IBQ allocation (lb of quota) that could be used to account for bluefin landings and dead discards in the monitoring area. As described in Comment #11, if the ICCAT quota and U.S. allocation are decreased, then the threshold could become too large to be effective at minimizing bycatch and bycatch mortality of bluefin relative to the new ICCAT quota. This is a change between the DEIS and the FEIS made after consideration of a public comment asking NMFS to increase the threshold level if the ICCAT quota increases. While NMFS considered this comment, it determined it would not be appropriate to adjust the threshold upward but that it would be appropriate to adjust the threshold downward if the ICCAT quota is adjusted downward, consistent with a conservative approach to re-opening areas. This final action does not change regulations that prohibit directed fishing for bluefin tuna in the Gulf of Mexico and are consistent with ICCAT recommendation 17–06's prohibition of targeting bluefin tuna in the Gulf of Mexico.

Comment 2: NMFS received comments that the reduction in the number of active pelagic longline vessels and fishing effort began before gear restricted areas were implemented, and that the gear restricted areas were not the cause of such reduction.

Response: NMFS agrees that decreases in the number of active vessels and effort, landings, and revenue began prior to the implementation of the gear restricted areas under Amendment 7 in 2015. Table 1.1 in the FEIS (which shows data from 2012 through 2018) indicates that a decrease in estimated pelagic longline revenue and effort started prior to implementation of Amendment 7 despite efforts to revitalize the U.S. swordfish fishery for a number of years. Prior to initiation of this action, NMFS received suggestions from the public to consider the regulatory burden on the pelagic longline fleet and, at minimum, to evaluate whether current regulations are still needed to achieve management objectives (see Section 1.1.4 and Appendix A of the FEIS associated with this rulemaking for a history of public feedback concerning these issues and a summary of comments received during scoping, respectively). While the gear restricted areas may not be the sole factor influencing recent trends in the fleet, NMFS received public comment on the proposed rule noting that the collective regulatory burden may have had a role in decreasing the number of active vessels, effort, landings, and revenue of some target species (*e.g.,* swordfish).

Comment 3: NMFS received comments that relieving regulations associated with the Spring Gulf of Mexico Gear Restricted Area, the Cape Hatteras Gear Restricted Area, and the Northeastern United States Closed Area will increase billfish, sea turtle, and other non-target species bycatch mortality to levels that are not sustainable. NMFS also received comments that all preferred alternatives in this rulemaking would lead to unsustainable harvest of billfish, which would adversely affect recreational fishing communities. Specifically, commenters stated that reopening the closed areas and implementing a seasonal weak hook requirement would result in higher numbers of billfish interactions from pelagic longline fishing activity that could in turn reduce numbers of billfish in these areas. Such reductions in billfish would adversely affect Atlantic HMS tournaments and the jobs created by the recreational fishing industry.

Response: NMFS disagrees that implementing the actions in this final rule would increase bycatch mortality in a manner inconsistent with stock assessments or inconsistent with the requirement that NMFS minimize bycatch and bycatch mortality to the extent practicable. In the FEIS, NMFS presented an impacts analysis in Chapter 4 that discussed the potential effects of alternatives on restricted and protected species, such as marlin, spearfish, sailfish, shortfin mako, dusky shark, and sea turtles. Predicted total annual catch was, where possible, presented as a range of catch per unit effort (CPUE) in impact tables. NMFS also provided in the tables the annual catch from the applicable region for comparison to the No Action Alternative.

Regarding elimination of the Cape Hatteras Gear Restricted Area (Preferred Alternative B2 in the FEIS) ecological impacts to these species and sea turtles were anticipated to be neutral due to minimal change in fishing effort, as the majority of the fleet has recently already had access to the area. The vessels denied access to this area in recent years had few to no interactions with restricted and protected species in the boundaries of the Cape Hatteras Gear Restricted Area (see discussion in *Ecological Impacts on Restricted or Protected Species,* Section 4.2.2 of the FEIS). Regarding the action that establishes the Northeastern United States Pelagic Longline Monitoring Area (Preferred Alternative A4 in the FEIS), the predicted total annual discards of spearfish and dusky shark, and interactions with sea turtles, were less than predicted discards or interactions under the No Action Alternative. This suggests that the ecological impacts to spearfish, dusky shark, and sea turtles are anticipated to be more beneficial under the Preferred Alternative than under the No Action Alternative due to predicted redistribution away from areas with high CPUE. The predicted annual interactions of shortfin mako and discards of white and blue marlin, and sailfish, under the preferred alternative were calculated to be similar to the No Action Alternative, interactions or discards associated with the No Action Alternative fell within the range of predicted total annual interactions or discards that might occur under Preferred Alternative A4, suggesting that the ecological impacts would also be similar for these species. Regarding the action that would establish the Spring Gulf of Mexico Monitoring Area (Preferred Alternative C3 in the FEIS), the predicted total annual interactions with shortfin mako and discards of dusky sharks was calculated to be less than the current annual interactions and discards of these species in open areas of the Gulf of Mexico. This suggests that the ecological impacts to shortfin mako and dusky shark are predicted to be more beneficial under Preferred Alternative C3 than the No Action Alternative, due to predicted redistribution away from areas with high CPUE. The predicted annual sea turtle interactions, and discards of blue and white marlin and sailfish, were similar between the No Action Alternative and Preferred Alternative C3, suggesting comparable ecological impacts across the two alternatives for these species.

NMFS disagrees that allowing pelagic longline vessels access to these areas would adversely affect fishing tournaments or reduce jobs associated with recreational fishing. Roundscale

spearfish was the only species for which the predicted range of Gulf of Mexico discards under Preferred Alternative C3 exceeded the ongoing average levels (*i.e.,* the No Action Alternative). Given the results of these analyses, which do not imply a large increase in the number of interactions with most billfish species, NMFS does not anticipate that implementing the action would adversely affect the billfish stocks in the Gulf of Mexico.

NMFS also disagrees that the action to implement a seasonal weak hook requirement (Preferred Alternative D2 in the FEIS) would adversely affect billfish populations in the Gulf of Mexico. As noted in Appendix B of the FEIS, research conducted by the NOAA Southeast Fisheries Science Center (SEFSC) indicated that weak hook use did not have a statistically significant effect on CPUE of Atlantic sailfish or blue marlin. However, a statistically significant increase in CPUE of white marlin and roundscale spearfish was associated with weak hook use. Because catch per unit effort of white marlin and roundscale spearfish increases in the second half of the year, the implementation of a seasonal weak hook requirement is anticipated to have a positive impact on these stocks.

NMFS would continue to monitor bycatch of roundscale spearfish and other species during the evaluation period included in the alternatives related to the Spring Gulf of Mexico Monitoring Area and the Northeastern United States Pelagic Longline Monitoring Area (Preferred Alternatives C3 and A4) and compile results in a report generated from data collected during the evaluation period. The evaluation report may include, but not be limited to, target species landings and effort, bluefin catch rates, IBQ debt from vessels fishing in the area, percentage of IBQ allocation usage, compliance with other pelagic longline regulations, enforceability concerns, and amount of bycatch of restricted or protected species. Based on the findings of the report, NMFS may initiate a follow up action to implement new management measures for the area if necessary. As part of this evaluation, NMFS could compare these data to other data collected by the agency, such as tournament reporting, to determine whether a change in the number of landed billfish occurred during the evaluation period. The actions provide opportunities to monitor bycatch and bycatch mortality of numerous species in the Gulf of Mexico, and would not commit the agency to an action that would remove these protected areas from the regulations. Reopening the gear restricted area to fishing could provide more flexibility for fishermen to move away from areas with higher bycatch to areas with lower bycatch. By establishing the three-year evaluation period for the monitoring area before considering removal of gear restrictions for the longer term, NMFS is balancing the objective of ''minimizing bycatch and bycatch mortality of bluefin and other Atlantic HMS'' with the other two objectives of this rulemaking.

Comment 4: NMFS received comments that suggested modifying regulations associated with the Spring Gulf of Mexico Gear Restricted Area, the Cape Hatteras Gear Restricted Area, and the Northeastern United States Closed Areas could negatively impact Atlantic HMS essential fish habitat (EFH) and critical habitat identified under the ESA for loggerhead sea turtles. These commenters suggested that opening gear restricted or closed areas that overlap with EFH and critical habitat designations is not consistent with objectives of minimizing bycatch or bycatch mortality of these species.

Response: NMFS agrees that the Spring Gulf of Mexico Gear Restricted Area, the Cape Hatteras Gear Restricted Area, and the Northeastern United States Closed Area do overlap with critical habitat and EFH designations for Atlantic HMS and other species. However, NMFS disagrees that opening closed or restricted areas that overlap with loggerhead sea turtle critical habitat (79 FR 39855; August 11, 2014) or EFH is inconsistent with objectives to minimize bycatch and bycatch mortality of these species. Since NMFS is not changing any bluefin tuna or other quotas with this rulemaking, the likely effect of this rulemaking would be redistribution of fishing effort back into areas previously closed (but without a significant overall increase in effort). Some of this redistribution will occur from areas that have been designated as EFH and/or critical habitat. NMFS is currently undergoing reinitiated consultation over the effects of the pelagic longline fishery on ESA-listed species and habitat under the ESA. The HMS Management Division will continue to coordinate with the NMFS Office of Protected Resources during the consultation and on implementation of a new Biological Opinion after it is completed, which will include consideration of the impacts of fishing activities on listed species. Atlantic HMS EFH is not designated in a way that can distinguish the value of habitats in specific locations or across multiple scales (*i.e.,* it is based on Level 1 or presence/absence data); there is therefore no basis to determine that redistribution of effort from one location designated as EFH to another location designated as EFH would have either an adverse or beneficial ecological impact.

Based on the analysis presented in Amendment 10 to the 2006 Consolidated Atlantic HMS FMP, HMS gears fished in upper water column were determined to not have adverse effects on Atlantic HMS EFH or the EFH of other pelagic species. The importance of these habitats is based more on the combination of oceanic factors such as current influences, temperature edges, and surface structure. As discussed in Chapter 4 of the FEIS, NMFS has not identified new information that would supplant the conclusions of Amendment 10. The closed and gear restricted areas considered in this rulemaking do not in themselves provide protection for a specific type of habitat. Rather, the Northeastern United States Closed Area was implemented in response to a 1996 ICCAT recommendation that the United States reduce BFT discards. NMFS used pelagic longline logbook data collected between 1992 and 1997 to select a preferred alternative for the Northeastern United States Closed Area. The Gulf of Mexico and Cape Hatteras Gear Restricted Areas were designed using HMS logbook geographically referenced set data from 2006–2012 to identify areas with relatively high bluefin interaction rates with pelagic longline gear (see page 29 of the Amendment 7 FEIS). Given that the data used to implement these areas are dated, and that environmental conditions and distribution of fish may change, having an opportunity to collect new fishery-dependent data in these areas may assist with future evaluations of fishing impacts on EFH. The end of the three-year evaluation period in the preferred alternatives coincides with the timing of the next Atlantic EFH 5-Year Review, which provides an opportunity for the new fishery-dependent data collected in these areas to be incorporated into the EFH review.

Comment 5: NMFS received comments that any increased bluefin tuna landings from the pelagic longline fishery that result from having access to previously closed areas or gear restricted areas will negatively impact market prices of bluefin caught in directed fisheries.

Response: NMFS agrees that increased landings of bluefin tuna can have localized impacts on market prices if the landings are concentrated geographically and increase dramatically over a short period of time. However, the pelagic longline fleet only lands approximately 8.7% (88.1 metric

tons) of total Atlantic bluefin tuna landings of 1013 metric tons (U.S. total landings as reported in the 2019 U.S. Report to ICCAT). Often the global market for bluefin tuna has a more direct impact on the market prices for bluefin caught by the U.S. Atlantic directed fisheries than any change in U.S. Atlantic bluefin tuna incidental landings.

Comment 6: NMFS received comments that relieving restrictions on the pelagic longline fleet could result in, and/or encourage, the pelagic longline fishery targeting bluefin, and this should be avoided. Specifically, commenters expressed that allowing pelagic longline fishing in the Gear Restricted Area was comparable to allowing targeted fishing on Gulf of Mexico spawning bluefin, and that allowing pelagic longline vessels to retain spawning bluefin caught in the Gulf of Mexico has unintentionally resulted in a *de facto* ''incidental'' catch fishery for bluefin in this area in violation of ICCAT mandated measures.

Response: NMFS agrees that pelagic longline vessels are prohibited from targeting bluefin tuna and reiterates that current management measures are structured as such (see, *e.g.,* Amendment 7). NMFS has managed the pelagic longline fishery as an incidental category for bluefin for many years and has implemented a number of regulations to discourage interactions with bluefin and limit the bluefin that can be retained or discarded. Furthermore, ICCAT recommendations including the current management measure (Rec. 17–06) specify that there ''shall be no directed fishery on the bluefin tuna spawning stock in the western Atlantic spawning grounds (*i.e.,* the Gulf of Mexico).''

NMFS disagrees that implementing the preferred alternatives would result in targeting of bluefin tuna by pelagic longline vessels. The Longline quota category is an incidental category for bluefin tuna used to account for known bycatch in the pelagic longline fishery during directed fishing operations for other species. Specifically, bluefin tuna are caught as bycatch in pelagic longline fisheries that target swordfish and yellowfin tuna, and any mortality of that bycatch (retained or discarded dead) is subject to being accounted for via IBQ allocation. Longline category permit holders who qualified for IBQ shares through the process established in Amendment 7 annually receive a limited IBQ allocation, which they are required to use to account for incidentally caught bluefin tuna. Active vessels not associated with IBQ shares must lease IBQ allocation to depart on a trip with pelagic longline gear and must account for all bluefin bycatch during targeted fishing for other species. In limited circumstances (*i.e.,* when available and following consideration of regulatory determination criteria provided at 50 CFR 635.27(a)(8)), NMFS has distributed IBQ allocation directly to active vessels, where available, to facilitate fishing for other species that are the target.

Amendment 7 provided an amount of bluefin quota to the pelagic longline fishery that reduces dead discards yet accounts for a reasonable amount of incidental catch that can be anticipated and will enable the continued generation of revenue associated with the pelagic longline fishery's target catch while limiting allowable bluefin incidental catch. Implementation of the preferred alternatives would not change the amount of regionally specific pelagic longline IBQ allocation that is designated as either ''Atlantic'' or ''Gulf of Mexico.'' It would only change where fishing could occur within these regions. Atlantic Tunas Longline category permit holders would continue to be required to use IBQ allocation to account for incidental catch of bluefin tuna during directed fishery operations. When actively fishing, vessel operators are encouraged to modify their fishing behavior to minimize bluefin tuna interactions and therefore ensure that catch does not exceed the available IBQ allocation to cover the vessel's incidental catch of bluefin. Any exceedances must be accounted for via a lease of IBQ allocation (and may incur financial and logistical costs) to account for this catch, or the owner/operators risk limiting their ability to continue to participate in the fishery if outstanding quota debt is not resolved. Quota debt must be repaid on a quarterly basis or continued fishing would be prohibited. Overall limits are placed on available IBQ allocation consistent with the measures adopted in Amendment 7, and this action does not change the provisions on IBQ allocation availability.

NMFS disagrees that allowing pelagic longline vessels to retain bluefin tuna caught in sets made within the boundaries of the Spring Gulf of Mexico Gear Restricted Area incentivizes directed fishing on bluefin tuna. Any interactions with pelagic longline gear are incidental to other directed fishing, and regulations have been designed to discourage any such interactions and to minimize bycatch to the extent practicable. The boundaries of the Spring Gulf of Mexico Gear Restricted Area were originally delineated based on increased catch rates of bluefin tuna in the area relative to other areas in the Gulf of Mexico during the years of analysis for Amendment 7, not based on reports of targeted fishing.

NMFS disagrees that allowing retention of incidentally-caught bluefin in the Gulf of Mexico is in violation of ICCAT recommendations. The ICCAT recommendation, implemented as necessary and appropriate through regulations under ATCA, specifies that there is to be no directed fishery on the bluefin tuna spawning stock in the Gulf of Mexico. It does not prohibit retention of incidentally-caught bluefin tuna in the Gulf of Mexico during directed fishing operations for other species. Through the limitations in place (*i.e.,* weak hooks, GOM IBQ allocation limits, electronic monitoring), the regulations appropriately limit the pelagic longline fleet to an incidental fishery for bluefin tuna.

Comment 7: NMFS received comments that the DEIS mentions the removal of measures that could reduce redundancies in regulations without identifying or enumerating the alleged redundancies. Some commenters agreed that some or all of the management measures are redundant with other regulations such as the IBQ Program, while other commenters disagreed that these measures were redundant with the IBQ Program.

Response: The DEIS and proposed rule clearly articulated which regulations are being considered in this rulemaking as potentially having redundant effects with regard to limiting incidental catch of bluefin tuna in the pelagic longline fishery, after considering public input at earlier stages of the rulemaking. Each of these regulations has similar objectives related to limiting and managing bluefin tuna incidental catch in the pelagic longline fishery. Specifically, these include regulations for the Northeastern United States Gear Restricted Area (implemented to reduce dead discards of bluefin tuna), the Cape Hatteras Gear Restricted Area and the Spring Gulf of Mexico Gear Restricted Area (implemented to reduce interactions, thereby decreasing dead discards of bluefin tuna), and the current year-round weak hook requirements (implemented to reduce bluefin tuna bycatch in the Gulf of Mexico). The proposed rule clearly described the proposed management measures, and NMFS facilitated communication with the public via the internet and its website and through public hearings and Atlantic HMS Advisory Panel meetings.

As discussed in the scoping document and later in the proposed rule, NMFS

selected management measures for inclusion in the rulemaking because they had similar objectives to the IBQ Program. The IBQ Program was implemented to, among other things, limit the amount of landings and dead discards of bluefin tuna and incentivize the avoidance of bluefin tuna interactions. Through this rulemaking, NMFS is reviewing whether all of these measures implemented are still needed to appropriately limit incidental bluefin tuna catch, given the success of the IBQ Program, and, if not, whether leaving them all in place is unnecessarily restrictive of the pelagic longline fishery.

This review was undertaken, as explained in the proposed rule and DEIS, because significant regulatory action overhauled management of bluefin tuna several years ago, and it appears that not all of the measures in place remain needed to accomplish the management objectives of that rulemaking. To address, limit, and account for bluefin tuna incidental catch in the pelagic longline fishery, Amendment 7 modified the distribution of quota among categories, implemented the IBQ allocation program and electronic monitoring of every pelagic longline set, established regional limits on bluefin incidental catch—including in the Gulf of Mexico, which provided additional protections for spawning bluefin tuna—and implemented gear restricted areas. This was in addition to other measures already in place (*e.g.,* closed areas, weak hooks). Adopted in 2015, these measures were developed respecting science-based quotas and also making difficult management decisions regarding the need to balance multiple objectives, including limiting the pelagic longline fishery to incidental bluefin catch, the requirement to minimize bycatch and bycatch mortality to the extent practicable, and the requirement to provide vessels a reasonable opportunity to catch available quotas (*i.e.,* swordfish).

Several years later, participation in the pelagic longline fishery has continued to decline, available quota for target species remains unharvested (*e.g.,* swordfish), and available IBQ allocation within the limits set in the 2015 action goes unused. Given these factors and public feedback starting at the scoping stage, not all of the measures in place remain needed or useful in appropriately limiting incidental catch of bluefin tuna in the pelagic longline fishery consistent with the approach first established in Amendment 7. Through this rulemaking, NMFS also considers whether there are ecological benefits that warrant retaining management measures with similar objectives.

This rule analyzes multiple regulations in effect that are intended to reduce bluefin tuna bycatch, interactions, and/or discards. Specifically, NMFS has posed the question of whether weak hooks and gear restricted area measures are still needed in concert with the IBQ Program to meet overall management objectives of reducing bluefin interactions or dead discards. In some cases, where warranted by the extent of the benefits in relation to conservation objectives, it may be appropriate to maintain regulations that may be redundant in effect in relation to other objectives. Here, the SEFSC noted a statistically significant decrease in bluefin CPUE by 46 percent with the use of weak hooks. This rule maintains the weak requirement during the times that the hooks offer a substantial conservation benefit for bluefin. However, the SEFSC also noted a statistically significant increase in white marlin and roundscale spearfish catch-per-unit effort by 46 percent associated with weak hooks deployment. This suggests that the use of weak hooks may have an adverse ecological impact on white marlin and roundscale spearfish. Therefore, NMFS is retaining the weak hook requirement when bluefin tuna are present in the Gulf of Mexico but removing the requirement from July through December to mitigate the negative effects of the weak hook requirement on white marlin and roundscale spearfish. Even though weak hooks and the IBQ Program were implemented to reduce bluefin tuna bycatch in the pelagic longline fishery, the need and ecological benefit of weak hooks for bluefin remains when it is most effective, and NMFS has determined that the preferred alternative strikes the best balance between multiple objectives of this rulemaking and conservation objectives for white marlin and roundscale spearfish.

Because the IBQ Program and the Spring Gulf of Mexico Gear Restricted Area were implemented at the same time, NMFS acknowledges that it is challenging to separate out the impacts of the individual management measures. Data collection from this area during a Monitoring Area period would allow NMFS to isolate the impacts of implementing both the gear restricted areas and the IBQ Program versus just implementing the IBQ Program. Should the gear restricted areas be considered necessary to achieving management objectives, NMFS could consider retaining them in a future rulemaking despite the similar goals for the gear restricted areas and the IBQ Program. NMFS has addressed similar concerns regarding the Northeastern United States Closed Area, the Cape Hatteras Gear Restricted Area, and weak hook implementation in relevant sections of this Response to Comments.

Comment 8: NMFS received comments in support of and in opposition to modifying the spatial extent of the Spring Gulf of Mexico Gear Restricted Area and the Northeastern United States Closed Area. Specifically, commenters suggested that NMFS create a large box (on the map of the management area) that contains both areas comprising the Spring Gulf of Mexico Gear Restricted Area, and expand the Northeastern United States Closed Area northeastward to encompass an area south of Georges Bank along the continental shelf that includes areas with higher bluefin interactions (*e.g.,* see dark blue cells southeast of Cape Cod in Figure 3.11 of the FEIS associated with this rulemaking). NMFS received comments expressing concern that pelagic longline fishery participants have fished around the edges of the closure for years, particularly to the east of the Northeastern United States Closed Area, and that reopening the area could result in high bluefin tuna bycatch, including ''disaster sets.''

Response: NMFS disagrees that it is appropriate to expand existing gear restricted areas to cover adjacent areas where pelagic longline interactions with bluefin occur. While such an expansion would be consistent with objectives to ''minimize bycatch and bycatch mortality of bluefin,'' expanding these areas to include additional productive fishing grounds in these regions is not consistent with the objective to ''optimize the ability for the pelagic longline fleet to harvest target species quotas.'' Although some fishing activity did occur along the northeastern corner of the Northeastern United States Closed Area in 2015–2016, and was included in analyses for the FEIS alternatives, the implementation of the National Monument has shifted fishing effort out of this area due to lack of space in which to deploy gear between the boundaries of the two closures. NMFS acknowledges that there is uncertainty associated with reopening the Northeastern United States Closed Area due to the amount of time that has passed since fishery dependent data has been collected in this area during the month of June. For this reason, instead of selecting an alternative that would reopen the area immediately, NMFS has preferred an alternative that would allow for fishery-dependent data

collection provided that bluefin landings and dead discards do not exceed a specified threshold. Because these suggestions do not represent a reasonable balance between the three rulemaking objectives, NMFS has not included them for further consideration in the FEIS.

Comment 9: NMFS received comments on the evaluation of spatially managed areas (*i.e.,* Preferred Alternatives A4 and C3). Some commenters felt that review processes for spatially managed areas are important and should be included in the implementing design for any closed area to understand the effectiveness/level of impact of the areas and to gather data. Other commenters felt that the review process should also include consideration of whether the size and shape of the closed area should be adjusted. Many commenters were opposed to the changes proposed to the Northeastern United States Closed Area and the Spring Gulf of Mexico Closed Area (Preferred Alternative A4 and Preferred Alternative C3 in the FEIS) because they felt that the design of the evaluation period that is a component of the new ''monitoring areas'' is unscientific. NMFS received comments that the agency should only explore data collection from gear restricted or closed areas through a separate initiative on how to collect data in support of area-based fishery management and not make any decisions about opening any areas to fishing until after such data collection and evaluation processes that come from that initiative are implemented. NMFS also received suggestions to research the location and variability of bluefin preferred habitat (temperature, chlorophyll, depth, etc.), and use electronic tagging data to check incidence of bluefin in the proposed closed areas. Some commenters felt that NMFS should incorporate the implementation of target catch requirements (previously removed in Amendment 7) in the evaluation process for the Northeastern United States Monitoring Area and the Spring Gulf of Mexico Monitoring Area (Preferred Alternatives A4 and C3 in the FEIS) to ensure that pelagic longline vessels do not target bluefin in sensitive areas.

Response: NMFS agrees that it is important to undertake periodic evaluations of management measures to ensure that they meet FMP objectives. In particular, NMFS agrees that review processes for spatially managed areas that impose restrictions or closures in space or time are important, because distribution of fishing effort, managed species, or environmental conditions upon which Atlantic HMS are dependent may change with time. NMFS acknowledges that modifications to the spatial extent of the area may be included as a future management option for these areas if the outcomes of the evaluation process indicates that such an idea warrants further consideration. As part of the monitoring area actions, NMFS would compile data for an evaluation report that may include, but not be limited to, target species landings and effort, bluefin catch rates, IBQ debt from vessels fishing in the area, percentage of IBQ allocation usage, compliance with other pelagic longline regulations, enforceability concerns, and amount of bycatch with restricted or protected species. NMFS will use data from this report to consider additional next steps for the Spring Gulf of Mexico Gear Monitoring Area and the Northeastern United States Monitoring Area, which may include consideration of the size and shape of the area in addition to options such as reinstating the areas, removing the areas from the regulations, or some form of provisional access. NMFS chose to include bluefin tuna fisheries management measures in this rulemaking that were originally implemented with similar objectives; namely, to minimize bluefin tuna interactions or dead discards with pelagic longline gear. NMFS is undertaking a separate initiative which considers data collection and research in closed areas to consider other time area closures implemented for different species or different reasons. The initiative on HMS spatial management data collection and research will consider spatial management measures for all HMS.

NMFS disagrees that the actions being implemented in this rule are unscientific, as they have been developed to work within science-based quotas for target and bycatch species, and with the intent of collecting fishery dependent data upon which to base ongoing and future management measures in accordance with the monitoring protocols established by this action.

NMFS disagrees that target catch requirements should be re-instituted and included in the evaluation process to prevent targeting of bluefin in sensitive areas. The pelagic longline fishery in the United States does not target bluefin tuna; rather, it targets swordfish and yellowfin tuna and catches bluefin tuna incidentally. Regulations minimize bycatch and bycatch mortality of bluefin tuna in the fishery and limit it to an incidental fishery through the IBQ Program, and the use of available fishery data including vessel monitoring system (VMS) set reporting and monitoring via electronic monitoring (EM) to ensure that targeted fishing of bluefin is not occurring. Prior to Amendment 7, target catch requirements were used to limit retention of bluefin tuna incidentally caught during directed fishing operations for other HMS species. As discussed in Amendment 7, however, this sometimes led to wasteful discards of bluefin tuna if the amount of target species catch was insufficient to retain the numbers of bluefin caught. Under Amendment 7's approach, vessels that caught some bluefin tuna but had insufficient target species to meet the target catch requirement would not have to choose between discarding bluefin or fishing for more target species; rather the vessel would use its available IBQ allocation or lease allocation. The IBQ Program replaced 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. The Amendment 7 management measures, inclusive of the IBQ Program and removal of target catch requirements, have had a substantial effect on the number of dead discards occurring in the pelagic longline fishery. As noted in the Three-Year Review of the IBQ Program, the average amount of dead discards in the pelagic longline fishery was 89 percent less after (2015–2017) implementation of the IBQ Program than in the three years immediately prior to implementation (2012–2014). Reinstating the target catch requirements, while also maintaining the IBQ Program as a means of limiting the amount of bluefin landed and discarded dead, is unnecessarily restrictive on pelagic longline fishery effort and not consistent with the objective to ''simplify and streamline Atlantic HMS management, to the extent practicable, by reducing redundancies in regulations.''

Comment 10: NMFS received comments suggesting that there was a significant role for government observers in the design or implementation of the Northeastern United States and Spring Gulf of Mexico Monitoring Areas, or in making changes to the Cape Hatteras Gear Restricted Area. For example, some commenters felt that only data collected by an official government observer should be used in designing evaluative options to ensure that there is no bias. Others felt that the monitoring areas would only be effective if an official government observer (not contracted commercial fishing industry observer or technician) is on board to ensure no bias.

Response: NMFS agrees that the observer program provides important scientific data for management and science-based stock assessments. NMFS has available a variety of sources of commercial fisheries data to inform management decisions. While extremely useful in estimating dead discards and providing other information, the observer program is not a complete census of the fishery, and the extent of observer coverage is not necessarily useful in all cases in assessing ecological or economic effects of time/area closures, especially on a very fine scale. Furthermore, there is a small percentage of vessels that have not been observed. In addition to observer data, there are other fishery-dependent data streams that NMFS finds acceptable for use in these monitoring areas and their evaluation including the HMS logbook, EM, and the IBQ Program. NMFS disagrees that the presence of observers should be a condition for entry into the Northeastern United States Monitoring Area or the Spring Gulf of Mexico Monitoring Area. NMFS believes that the current data streams, including but not limited to the observer program, provide sufficient mechanisms to crosscheck data validity and ensure compliance.

NMFS disagrees with the commenter that only observer data should have been used in the design and analysis of the evaluation process in the DEIS and FEIS, or in making management decisions about the Cape Hatteras Gear Restricted Area. NMFS would consider all available sources of fishery data, including observer program data, collected between 2020 and 2022 when finalizing the report generated as part of the evaluation process for the Northeastern United States Monitoring Area or the Spring Gulf of Mexico Monitoring Area (Preferred Alternatives A4 and C3 in the FEIS). NMFS considered multiple data sources in the development of this action, as reflected in the DEIS and FEIS. This action focuses on area-based measures, whether related to fishing vessel access or gear requirements. Given that the action addresses discrete geographical area designations and gear configuration within certain areas, rather than, for example, the amount of allowable catch for a stock or estimates of stock abundance for a stock assessment, the most relevant data sources for this action are fishery-dependent data that reflect the needed geographic and other data for the area-based analyses. Atlantic HMS logbook data is required, self-reported data that includes landings, discards, gear, location, and other set and trip information. All pelagic longline fishermen with Atlantic HMS permits are required to use this logbook. NMFS used the HMS logbook as the primary data source for the analysis of ecological and socioeconomic impacts on preferred alternatives for the Cape Hatteras Gear Restricted Area, the Northeastern United States Closed Area, and the Spring Gulf of Mexico Gear Restricted Area in this rulemaking for the following reasons: (1) The need for action focuses on the HMS pelagic longline fishery; (2) all HMS pelagic longline fishermen are required to report in this logbook; (3) data can be cross-validated with other data sources; and (4) the HMS logbook data provides location and other fishing variables required for various analyses of ecological and socio-economic impacts. NMFS also used some Atlantic HMS electronic dealer data and weighout slips provided to the fishermen by dealers (which must be submitted with the logbooks) for the socioeconomic calculations.

Comment 11: NMFS received comments in support of and in opposition to incorporating thresholds into the evaluation process component of the Northeastern United States Monitoring Area and the Spring Gulf of Mexico Monitoring Area (Preferred Alternatives A4 and C3 in the FEIS). Commenters in support of the threshold (particularly for the Northeastern United States Monitoring Area) expressed concern that the threshold would be met quickly, triggering a closure. These commenters questioned whether NMFS would disburse additional IBQ allocation via an inseason quota transfer if that occurs. NMFS also received suggestions that a threshold in the evaluation process was not necessary, as the evaluation process itself was too complex for a rulemaking with an objective focused on simplifying or streamlining regulations, and would result in micromanagement. NMFS also received comments with suggested modifications to the threshold, including the use of a percentage of the available Gulf IBQ allocation instead of setting a hard poundage limit for a threshold in the Gulf of Mexico Monitoring Area. Regarding thresholds established for the Northeastern United States Monitoring Area, the 150,519-pound threshold for June in just the Northeastern area is equivalent to 68 mt. Since this is almost the entire longline catch for all months and all areas of 2018 (88.1 mt), commenters questioned whether such a threshold is limiting as part of an ''evaluation'' program.

Response: NMFS disagrees that the threshold for the Northeastern United States Monitoring Area would be met quickly. The analysis of Preferred Alternative A4 predicts that between 14 and 68 bluefin would be retained per year from the Northeastern United States Monitoring Area and adjacent reference area as a result of implementing this action. If all of these fish were harvested from sets made within the Northeastern United States Monitoring Area, based on the average weight of an Atlantic region landed bluefin (275 lb), the amount of IBQ allocation used to account for these landed fish would be between 3,850 lb and 18,700 lb per year. Under the No Action Alternative, 48 bluefin are estimated to be retained per year. Using the same calculation, the amount of IBQ allocation used to account for landed fish in this region under the No Action Alternative is estimated to be around 13,200 lb. NMFS therefore predicts that a range of impacts could occur, which might result in a small increase in the number of landed bluefin (+ 20 fish per year, based on the high end of the estimated range of fish kept) and the corresponding amount of IBQ allocation required to account for those fish (+5,500 lb IBQ allocation) (Table 4.9 in the FEIS associated with this rulemaking). This increase would not meet the threshold established in the action, and fishing could occur for the three-year evaluation period if the high range estimate were to occur. While the provisions on the evaluative period and opening the Northeastern United States Monitoring Area are new, the provisions in Amendment 7 regarding inseason quota transfers among categories remain the same as those adopted in 2015. The disbursement of inseason quota transfers to the Longline category depends on several factors and are listed at 50 CFR 635.27(a)(8). NMFS would continue to evaluate any inseason quota transfers on a case by case basis consistent with regulatory criteria and provisions previously established.

NMFS acknowledges that the review process is complex with several steps involved, but disagrees that the threshold is not necessary. The threshold was designed to address uncertainties associated with allowing access back into areas that had previously been closed, and to ensure that steps taken by the agency to assess potential deregulation does not compromise management goals and objectives for the pelagic longline fishery. Specifically, the evaluation periods for the Northeastern United States Monitoring Area and the Spring

Gulf of Mexico Monitoring Area (Preferred Alternatives A4 and C3 in the FEIS) include a mechanism to collect fishery dependent data from these Monitoring Areas, monitor the fishing practices and close the area if excessive incidental catch of bluefin tuna during directed fishing occurs, and formulate a report of data collected to determine the best management decision for the area based on current data. NMFS agrees that there are situations where it makes sense to codify a percentage instead of a hard number into the regulations for the thresholds identified for the evaluation process for the Monitoring Areas. The 63,150 lb IBQ allocation threshold for the Spring Gulf of Mexico Monitoring Area (Alternative C3) and the 150,519 lb IBQ allocation threshold for the Northeastern United States Monitoring Area (Alternative A4) are respectively equivalent to 55 percent of the total Gulf of Mexico IBQ annual allocation and 72 percent of the total Atlantic IBQ annual allocation issued to the fleet in 2018. The final rule modifies the proposed action to adjust the threshold to a comparable percentage of Gulf of Mexico IBQ allocation (*i.e.,* 55 percent) and Atlantic IBQ allocation (*i.e.,* 72 percent) in the event that ICCAT reduces the U.S. allocation of bluefin quota. Although NMFS acknowledges that the threshold is large for the Northeastern United States Monitoring Area, it is less than the entire Longline category quota. NMFS based the threshold for the Northeastern United States Monitoring Area on the recent average amount of available quota on June 1 because fishing is happening in multiple locations along the east coast at this time of year. While it is true that this threshold is equivalent to a large proportion of the bluefin catch (landings and dead discards), NMFS designed the threshold is to ensure that opening the area to fishing would not compromise the ability of fishery participants to obtain enough IBQ allocation to account for Atlantic-wide bluefin landings and dead discards for the rest of the year. This threshold will allow for data collection to continue for the three-year period and continue to manage incidental catch of bluefin tuna in the pelagic longline fishery consistent with the Longline category subquota, the limits established for use of IBQ allocation in the Atlantic and Gulf of Mexico regions, and with the science-based overall quotas.

Comment 12: NMFS received comments that generally supported deregulation. Specifically, these comments expressed that the IBQ Program is an output control, and that input controls are not needed as much when the output control is effective. Other comments expressed that removing spatial restrictions would enhance the ability of the fleet to avoid bycatch, as closures hinder the ability to move away from a problem area and locate elsewhere. These comments also noted that in order for the IBQ Program to work well, fishermen need access to enough productive fishing grounds in order to make choices about location based on bluefin interactions of the fleet. If they don't have good alternatives to fish in, they will be forced to fish in riskier areas. Some commenters felt that fishermen have better tools and information (*e.g.,* rapid access to environmental data to make informed decisions on fishing locations), and increased capabilities to avoid bluefin. Fishermen can therefore be precautionary in selecting where to fish.

Response: NMFS agrees that it was appropriate to evaluate through this rulemaking and the associated FEIS whether certain regulations are necessary to meet management objectives. Under the IBQ Program, fishermen are incentivized to minimize incidental catch of bluefin in the pelagic longline fishery directing on other Atlantic HMS direct accountability for such incidental catch and associated costs and risks if it exceeded (*e.g.,* the cost to lease additional IBQ allocation, risk of not fishing in a quarter if quota debt is not resolved). NMFS also agrees that fishermen have tools to make informed decisions in advance of trips to select fishing locations that optimize target catch and minimize bluefin bycatch, such as the availability of free or commercially available environmental or satellite data and communication with other members of the fleet. While outright removal of spatially managed areas would provide the most flexibility concerning site selection for commercial fishermen, NMFS is implementing actions that would include an evaluation period to collect fishery-dependent data before such areas would be removed. NMFS believes this provides a more precautionary approach and a better balance of rulemaking objectives than removing the areas immediately without an evaluative period.

Comment 13: NMFS received comments that the Secretary of Commerce recently called for action in removing unnecessary restrictions on U.S. fishermen which contributes to the United States reliance on imported seafood to meet consumer demand.

Response: This rulemaking is considered to be deregulatory in nature, and would either remove restrictions, or provide a mechanism to evaluate whether the management measures are still needed to meet management objectives. The latter would provide information to support a future potential rulemaking that could modify or remove restrictions on U.S. commercial fishermen.

Comment 14: NMFS received comments requesting geographically referenced catch and effort data in the form of ''shot charts'' be included in the FEIS.

Response: In order to be responsive to the request for information, NMFS provided the requested charts in Appendix D of the FEIS associated with this rulemaking. ''Shot charts,'' as referenced by the commenters, are based on a graphic tool initially popularized by Kirk Goldsberry for depicting basketball statistics. Spatial data are joined to a hexagon grid, which removes clustering and allows for easier pattern visualization. Unlike other maps produced by NMFS, shot charts contain a bivariate display that allows a single symbol to convey two pieces of information. For example, colors might be used to confer rate information while size indicates frequency. Commenters requested that NMFS include higher resolution shot charts for bluefin, yellowfin, and swordfish in the areas surrounding the Northeastern United States Closed Area and the Spring Gulf of Mexico Gear Restricted Area in the FEIS. Although the shot charts provide a new way to visualize information, the underlying catch and effort data was presented in the DEIS in the form of tables, figures, and maps depicting single variables on $10' \times 10'$ grid cells. No new or different information from that analyzed in the DEIS and proposed rule is presented. The new charts are only a new visual presentation of the earlier data. The administrative burden to create a shot chart is significantly higher than other data maps that were included in the DEIS (4 hours versus a half hour), therefore NMFS retained current data mapping protocols and analyses in addition to including shot charts as an appendix of the FEIS. NMFS will continue to evaluate the best tool to depict data in the future on an as-needed basis.

Comment 15: NMFS received comments suggesting that the proposed rule is not aligned with National Standard 9, which requires NMFS to ''avoid or minimize bycatch'' and ''minimize the mortality of bycatch which cannot be avoided.'' 16 U.S.C. 1851(a)(9). NMFS also received comments that this rule is not aligned with § 1853(a)(11), which requires all

FMPs to contain measures to minimize bycatch and bycatch mortality, because it does not propose that bycatch be avoided or reduced.

Response: NMFS disagrees that the proposed rule is not consistent with National Standard 9. NMFS analyzed consistency with the National Standards in Chapter 9 of the FEIS. This rulemaking includes as an objective the need to ''continue to minimize, to the extent practicable, bycatch and bycatch mortality of bluefin tuna and other Atlantic HMS by pelagic longline gear consistent with conservation and management objectives. . . .'' NMFS evaluated and selected preferred alternatives that best meet and/or balance the rulemaking objectives. As an example, NMFS has chosen to retain a seasonal weak hook requirement in the Gulf of Mexico as a tool to continue to minimize bycatch and bycatch mortality of both bluefin and white marlin. Furthermore, although the establishment of the Northeastern U.S. Monitoring Area and the Spring Gulf of Mexico Monitoring Area (preferred alternatives A4 and C3 in the FEIS) would allow the pelagic longline fleet access to previously closed areas, there would still be measures in place requiring individual accountability for bluefin catch and incentivizing avoidance of bluefin tuna (accountability requirements, regional IBQ share/allocation designations, minimum IBQ allocation requirements, enhanced monitoring and reporting) and to provide a safety precaution against uncertainty (thresholds) in the monitoring areas. Pelagic longline fishing would be allowed in the areas provided total catch (landings and dead discards) remains under an established threshold, measured by the amount of IBQ allocation used to account for bluefin catch in the area. After the 2020–2022 evaluation period, NMFS will evaluate data collected from the Monitoring Area and compile a report. Based on the findings of the report, NMFS may then decide to initiate a follow-up action to implement new, longer-term management measures for the area (*e.g.,* retaining the closure, removing the closure, applying another monitoring period, applying performance metrics for access). This evaluation would review new fishery-dependent data collected on bluefin tuna and other bycatch that would inform future decisions. Furthermore, the requirement that bycatch be minimized to the extent practicable does not require the agency to reduce bycatch to zero with every fishery action, as to do so would not be practicable, given other fishery objectives and requirements.

Northeastern United States Closed Area

Comment 16: NMFS received comments in favor of and in opposition to making any changes to the Northeastern United States Closed Area under the preferred alternative. Comments in favor of the preferred alternative noted that the evaluation process provides a reasonable level of precaution to ensure that pelagic longline fleet-wide bluefin tuna mortality is appropriately managed. Comments in opposition noted that the existing closed area regulations have been effective in managing the bluefin tuna fishery and reducing bluefin tuna dead discards and have effectively created a conservation area. NMFS received comments that this area overlaps with the migratory pathway for bluefin headed north to forage in the Gulf of Maine, and that bluefin tuna are vulnerable to high catches by the pelagic longline fleet in the area encompassed by the Northeastern United States Closed Area, (*i.e.,* the area is still a ''hot spot.'')

Response: NMFS agrees that the evaluation process that is a component of the Northeastern United States Monitoring Area (Preferred Alternative A4 in the FEIS) provides an opportunity to collect information about the area and determine what future management action would be appropriate for the Northeastern United States Closed Area. After the three-year evaluation period, NMFS would analyze data collected and compile an evaluation report. This report would be used to inform any necessary management changes to the Northeastern United States Closed Area. The processes established for the Northeastern United States Monitoring Area could include a number of options for NMFS action after the evaluation period.

NMFS acknowledges that there is considerable uncertainty concerning the Northeastern United States Closed Area. Since this area closure was implemented, fishery-dependent data have not been collected from the area in over 20 years. While this area may provide a conservation benefit for bluefin tuna as they migrate northward, changes in both the ocean environment and pelagic longline fishery have occurred since 1999 making it difficult to ascertain both its value as a conservation area and as a location where bluefin are vulnerable to high catches by the pelagic longline fleet in that area. The preferred alternative in the FEIS will provide a way to collect fishery dependent data from the area under close monitoring and evaluation. The preferred alternative includes a threshold of allowable bluefin catch (landings and dead discards) for the area during the month of June. If mortality exceeds this threshold, NMFS would re-close the area. Data collection is essential in order to determine if this area is still necessary for the management of the Atlantic pelagic longline fishery.

Comment 17: NMFS received comments suggesting we change the shape of the Northeastern United States Closed Area by removing the western area as considered in Alternative A2 and potentially shift the area eastward to include certain canyon areas to account for areas of higher CPUE. The commenter notes that this would free up western portions of the closure that historically had low pelagic longline bluefin tuna interactions.

Response: NMFS disagrees that shifting the Northeastern United States Closed Area eastward would result in additional protections beyond those currently in place for bluefin tuna. Much of the area to the east of the Northeastern United States Closed Area is now part of the Northeast Canyon and Seamount Marine National Monument as shown in Figure 3.4 of the FEIS. This area prohibits commercial fishing operations, including pelagic longlining, thus the area immediately east of the Northeastern United States Closed Area is effectively closed to the pelagic longline fishery.

NMFS did consider opening the western portion of the Northeastern United States Closed Area (Alternative A2 in the FEIS) based on historically low catches from that area in 1996 and 1997. NMFS did not prefer this alternative in the DEIS or the FEIS because this area also had historically low catch rates of target species and little effort, making this alternative less aligned than others with the objective to ''optimize the ability of the pelagic longline fleet to harvest target species quotas.'' While this alternative would allow for some data collection in western portions of the closure, the ecological and socio-economic benefits of this alternative for bluefin, target species, and protected or restricted species were anticipated to be neutral. NMFS therefore is implementing an action (Alternative A4) that would collect data, under close scrutiny, from the entire closure in order to evaluate fishery trends from within the entire spatial extent of the Northeastern United States Closed Area.

Comment 18: NMFS received comments in opposition to Alternative A2 in the FEIS, which considered

modifying the Northeastern United States Closed Area to remove a western portion of the closure. The comment stated the alternative relies on outdated data that are irrelevant to current fishing practices and the ecosystem and that it would maintain a substantial part of the closure, which in their view is ineffective, inefficient, and redundant.

Response: NMFS agrees that this alternative does rely on some historical data for justification of where the Northeastern United States Closed Area should be opened and where it should remain closed. Current catch rates from a surrounding reference area, delineated by NMFS, were used to predict catch rates that would occur in the area that would be opened under Alternative A2. NMFS included this data in the analysis because it is the most recent fishery-dependent data collected in the area which can be used for management decisions.

NMFS is not implementing this approach because it does not balance the objectives of this rulemaking as well as other alternatives. Retaining portions of the closure might coarsely address uncertainty associated with bluefin distribution through retaining portions of the closure where historically there were elevated fishery interactions, especially if bluefin distribution is presumed to not have changed since the early to mid-1990s. In this case, this alternative is aligned with the objective to ''*minimize bycatch and bycatch mortality of bluefin tuna and other Atlantic HMS . . .*''. When this area was open, the pelagic longline fleet largely fished for target species in areas that became the eastern portion of the closure. Retaining this area as a closure may, depending on the distribution and abundance of target species, not be consistent with the rulemaking objective to ''optimize the ability of the pelagic longline fleet to harvest target species quotas.'' Given the uncertainty, NMFS believes it is appropriate to evaluate the entire closed area to determine if it is still needed to manage bluefin tuna bycatch in the pelagic longline fishery. Retaining a portion of the Northeastern United States Closed Area does not provide the same opportunity in this area to ''simplify and streamline HMS regulations . . . by reducing any redundancies in regulations established to reduce bluefin tuna interactions.''

Comment 19: NMFS received comments that NMFS should eliminate the Northeastern United States Closed Area (Alternative A5) as this closed area is an ineffective and inefficient input-control measure and is redundant with the far more effective and efficient output control IBQ Program now in place. It also is an important fishing area for pelagic longline vessels because of the continental shelf break and local current patterns, and may now be where longliners need to have access to fishing ground while avoiding bluefin tuna.

Response: NMFS disagrees that it is appropriate to eliminate the Northeastern United States Closed Area without an appropriate evaluative period, given the lack of data collected since implementation of the closure in 1999. The lack of current data makes it difficult to determine if bycatch of bluefin tuna would be a problem in the Northeastern United States Closed Area. It is therefore difficult to determine the extent to which this alternative can be aligned with objectives to ''minimize . . . bycatch and bycatch mortality of bluefin tuna and other Atlantic HMS . . .''. This alternative does not provide NMFS the ability to restrict fishing if bycatch impacts to bluefin tuna or other species are beyond acceptable levels. This alternative also does not provide a mechanism for NMFS to initiate the review of the monitoring area after the three-year evaluation period, which makes it difficult to ascertain whether removal of this area is an appropriate balance between the objective to ''simplify and streamline Atlantic HMS management . . . by reducing redundancies in regulations established to reduce bluefin tuna interactions'' with other objectives. NMFS is aware that the area around the edge of the continental shelf in the Northeastern United States Closed Area is an important area for pelagic longline fishermen to target swordfish and BAYS tunas. The preferred alternative will allow access to that area for fishermen to pursue target species and collect fishery-dependent data to inform future management of the Northeastern United States Closed Area. Presuming that the distribution of target species in this area has not changed, removing the regulations associated with this area might provide additional fishing opportunities to pelagic longline fishermen, and therefore be aligned with the objective to ''optimize the ability of the pelagic longline fishery to harvest target species quotas.'' However, given the uncertainty associated with the length of time the area has been closed, it is unclear how closely aligned Alternative A5 would be with this objective. For these reasons, NMFS did not prefer this alternative in the DEIS or FEIS.

Cape Hatteras Gear Restricted Area

Comment 20: NMFS received comments in support of and in opposition to removal of the Cape Hatteras Gear Restricted Area (Alternative B2). Specifically, comments in favor of removal noted that this area is potentially redundant with the IBQ Program; that ecological benefits may be negligible due to low numbers of vessels which did not meet criteria for access; that the stock condition is improving; and removal of the Cape Hatteras Gear Restricted Area is consistent with section 304(g) of the Magnuson-Stevens Act (which requires fishing vessels be provided a reasonable opportunity to harvest allocation). NMFS also received suggestions on future steps if the Cape Hatteras Gear Restricted Area is removed. Specifically, comments suggested that continued oversight over bluefin interactions with pelagic longline vessels in the Cape Hatteras region (utilizing observers) is necessary to monitor interactions with bluefin tuna and other species.

Comments in opposition to removing the Cape Hatteras Gear Restricted Area noted that the existing gear restricted area measures have been effective at managing bluefin tuna and reducing bluefin tuna discards and serve as a deterrent against future bad behavior. Removal of the Cape Hatteras Gear Restricted Area could change fishing behavior and result in vessels directly targeting bluefin tuna. NMFS also received comments that the gear restricted area should be retained because it has not caused any economic hardships to date. NMFS also received comments that the Cape Hatteras Gear Restricted Area should be maintained because climate change may shift the location of future bluefin spawning into this area.

Response: NMFS agrees with the commenters that the Cape Hatteras Gear Restricted Area should be removed given data about the results of the implementation of the performance metrics, and the broader context of quota management of bluefin. NMFS would closely monitor future fishing activity by vessels in this area, and levels of bluefin tuna bycatch would be limited by the IBQ Program and other measures such as EM. Although removal of the gear restricted area would give vessel owners more flexibility in deciding where to fish, NMFS does not anticipate substantive changes to fishing behavior as a result of removal of the Cape Hatteras Gear Restricted Area because a majority of the fleet has had access to this area in recent years. Data presented in Chapter 4 of the FEIS (*e.g.,* Figure 4.9 and Figure 4.11) shows that despite the majority of the fleet meeting criteria to access the area, the interaction and CPUE hotspots that previously was noted within the

boundaries of the gear restricted area no longer exist. NMFS therefore agrees that the overall impact of the Cape Hatteras Gear Restricted Area on reducing bluefin interactions is likely low due to the small proportion of total effort that was excluded from the area as a result of access decisions and the temporary nature of the access decisions. Removal of the Cape Hatteras Gear Restricted Area is not anticipated to have negative impacts on the Western Atlantic bluefin stock. Since 2015, the catch of bluefin tuna (landings and dead discards) by the pelagic longline fishery has been well within the bluefin quota allocated to the Atlantic tunas longline category. The western Atlantic bluefin stock is not experiencing overfishing (see description of stock status under Response to Comment #1). However, whether the stock is overfished remains unknown as of the last stock assessment (completed in 2017). The total U.S. bluefin quota is consistent with ICCAT recommendations, which are based upon the best available scientific information on the status of the Western Atlantic bluefin stock.

NMFS agrees that in addition to evaluating the utility of the gear restricted area in reducing bluefin interactions, providing reasonable fishing opportunity is an important consideration in determining management actions. NMFS will continue to closely monitor bluefin catch in the Cape Hatteras area, and in the future may take additional steps to manage fisheries within this or other areas to address bycatch concerns. NMFS does not anticipate changes to observer requirements applicable to pelagic longline vessels fishing off Cape Hatteras or elsewhere.

Although the Cape Hatteras Gear Restricted Area has had some positive impacts in reducing bluefin tuna discards through the incentives associated with the performance metrics and conditional access, as a whole, the Cape Hatteras Gear Restricted Area is not needed to maintain the low level of bluefin catch documented by NMFS for 2015 through 2018. NMFS agrees that the gear restricted area may have curtailed interactions within the first few years following implementation, given that nearly 40 percent of vessels that fished in the area did not meet criteria for access in the first year of the program. However, more recently the vessels fishing locally within the Cape Hatteras region have met criteria for access to the gear restricted area. Vessels that did not meet criteria for access primarily fish in other regions, and therefore may not be incentivized to adjust and maintain ''good behavior'' to ensure access to the gear restricted area. NMFS disagrees that removal of the Cape Hatteras Gear Restricted Area will change behavior. As discussed above, only a small proportion of vessels recently did not meet criteria for access to the gear restricted area. The fishery has adjusted to new requirements under the IBQ Program, and new VMS reporting and EM monitoring requirements. Pelagic longline vessels are prohibited from targeting bluefin tuna with pelagic longline gear. However, while fishing for other target species they may elect to retain more bluefin than what was previously allowed (*i.e.,* target catch requirements prior to 2015). These vessels must account for all incidental catch of bluefin tuna during direction fishing operations of the pelagic longline fishery for other Atlantic HMS, possibly incurring significant financial costs to obtain sufficient quota to cover landings or dead discards. NMFS disagrees that the Cape Hatteras Gear Restricted Area has not had any negative economic impacts. It is highly likely that some vessels not qualified to fish in the Cape Hatteras Gear Restricted Area incurred greater fishing costs on some trips where they fished in alternate locations instead of in the boundary of the Cape Hatteras Gear Restricted Area. NMFS agrees that climate change may substantially alter the spatial distribution of the life stages of fish, including bluefin tuna, but disagrees that continuation of the Cape Hatteras Gear Restricted Area is warranted based on current information concerning the primary spawning grounds for western Atlantic bluefin tuna or any hypothetical future changes thereof.

Comment 21: NMFS received comments that supported retaining the Cape Hatteras Gear Restricted Area and questioned whether there is a relationship between the performance metrics and the ability of vessels to avoid bluefin. Specifically, comments indicated that there was no rigorous scientific evaluation of the metrics, and that the Cape Hatteras Gear Restricted Area has weak accountability associated with it (*i.e.,* no observers or ''other recording system''). NMFS also received comments suggesting that the bluefin performance metric, which is used in part to determine access to the Cape Hatteras Gear Restricted Area, may reward under-reporting.

Response: NMFS disagrees that the performance metrics provided no incentive to avoid bluefin tuna. NMFS acknowledges that the relationship of the performance metrics to fishers' avoidance behavior is complex and drivers of such behavior may be variable, depending upon the performance metric formulas, the level of interest of vessels in fishing in the area, and the regulatory context of the gear restricted area. The performance metric formulas were specifically tailored to address an observed hotspot of bluefin interactions and compliance issues that were observed in the Cape Hatteras region at the time of implementation. Nearly 40 percent of the vessels that fished in the gear restricted area did not meet criteria for access in the first year that the gear restricted area was implemented. Most of these vessels have subsequently met criteria for access due to lower bluefin interaction rates and improvements in logbook and observer program compliance. As discussed in the FEIS, the number of vessels which did not meet criteria for access that also operate locally within the Cape Hatteras region has decreased. Most of the vessels that did not meet criteria for access to the gear restricted area have recently fished elsewhere, such as the South Atlantic Bight, the high seas east of the Bahamas, the Northeast Distant Area, or the Gulf of Mexico. These vessels may not be incentivized to adjust behavior by access determinations because they do not fish in the Cape Hatteras Gear Restricted Area. Therefore, the application of the specific metrics in the context of the IBQ Program has recently had relatively low impact in achieving the objectives of the Cape Hatteras Gear Restricted Area (*i.e.,* minimizing bycatch and bycatch mortality of bluefin tuna).

The implementation of the Cape Hatteras Gear Restricted Area coincided with the implementation of the IBQ Program under Amendment 7 (2015), and at that time the effectiveness of the IBQ Program was unknown. The gear restricted area therefore served as a secondary means to reduce bluefin interactions in this hotspot and was intended specifically to address the behavior of a few vessels responsible for the majority of interactions in the area. These vessels must now account for incidental catch of bluefin tuna during pelagic longline fishery operations through the IBQ Program, and have not accrued the same number of bluefin in sets recently made within the Cape Hatteras Gear Restricted Area. However, the removal of the Cape Hatteras Gear Restricted Area should not be interpreted as an indication that performance metrics are an invalid management tool.

NMFS disagrees that there was no scientific basis for the performance metrics. The design of the Cape Hatteras Gear Restricted Area was the result of an

iterative process. In Amendment 7, 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 species retained. The analysis considered relevant fisheries data, and also oceanographic trends. NMFS identified appropriate performance metrics to address two issues: (1) Relatively few vessels were consistently responsible for the majority of bluefin tuna dead discards in the Longline category; and (2) some vessels had poor records of compliance with reporting and monitoring programs that provide fishery data necessary for successful management of pelagic longline fisheries. Based on the performance metrics, between 7 and 34 vessels were determined to be not qualified to fish in the Cape Hatteras Gear Restricted Area (from 2014 to 2019). There was a declining pattern in the number of vessels that were not qualified on the basis of compliance with either logbook or observer requirements declined from 2014 to 2019. In contrast, the pattern in the number of vessels that did not meet criteria due to high bluefin interaction rates was more variable, with a slight increase over time. NMFS disagrees that there was weak accountability associated with the Cape Hatteras Gear Restricted Area. All pelagic longline vessels, including those that met criteria for access to fish in the Cape Hatteras Gear Restricted Area were subject to observer and electronic monitoring system requirements.

In the development of this final rule, NMFS could have considered revision of the formula underlying the performance metric so that fewer bluefin interactions would result in a vessel being not qualified. However, it is not likely that the benefits associated with a revised Cape Hatteras Gear Restricted Area would outweigh the costs to vessels excluded from fishing in the area, given what is now known about the effectiveness of the IBQ Program. Reductions in bluefin interactions can be achieved through the IBQ Program, which provides incentives for vessels to reduce bluefin interactions, but also allows flexibility for vessels to make decisions when and where to fish.

NMFS acknowledges that individual accountability measures may incentivize certain behaviors such as underreporting. NMFS has implemented specific, enhanced monitoring and reporting procedures to discourage underreporting. As discussed in the Three-Year Review of the IBQ Program (*e.g.,* see page 52 and Figure 3.18), the frequency of bluefin catch is similar across observer, audited EM sets, and VMS set reports. NMFS also observed relatively good correspondence between logbook data and VMS data for the number of bluefin tuna released alive and number discarded dead (see Section 6.7 of the Three-Year Review). NMFS has not identified a significant underreporting issue in the Mid-Atlantic Region, but will continue to cross-validate data streams and take additional management or enforcement steps as necessary to address future underreporting of bluefin.

Spring Gulf of Mexico Gear Restricted Area

Comment 22: NMFS received comments in support of and in opposition to Preferred Alternative C3, which would undertake an evaluation of the Spring Gulf of Mexico Gear Restricted Area to assess its continued need to meet bluefin tuna management objectives. Comments in opposition to the Preferred Alternative noted that the Spring Gulf of Mexico Gear Restricted Area should be retained in order to protect western Atlantic bluefin tuna on their primary spawning grounds. Specifically, NMFS should not undertake management measures that could result in catch of spawning bluefin tuna or elevating the mortality rates in the Gulf of Mexico. The Gulf of Mexico is the known primary spawning ground for the western Atlantic stock of bluefin tuna, and thus the area is important to protect. Comments in opposition to the preferred alternative also noted the effectiveness of existing measures and indicated that removal would not meet the objective of minimizing bycatch and bycatch mortality of bluefin tuna. NMFS received comments in support of Preferred Alternative C3 for a variety of reasons, such as collecting more data to determine a future action, and balancing the objective of protecting bluefin tuna and optimizing the harvest of target species.

Response: NMFS acknowledges that current information shows the Gulf of Mexico contains the known primary spawning grounds for western Atlantic bluefin tuna, and that bluefin tuna present in the Gulf of Mexico during the early winter and spring are primarily there for spawning. NMFS agrees that bluefin tuna should be protected while on the spawning grounds. A number of management measures that limit bluefin catch and mortality in the Gulf of Mexico would still be in effect under the preferred alternative. For example, pelagic longline vessels would still be required to comply with the requirements of the IBQ Program. NMFS designed specific provisions of the IBQ Program to prevent potential increases in bluefin catch in the Gulf of Mexico, which could occur if fishing effort was redistributed from the Atlantic region. NMFS designated a separate quota for the Gulf of Mexico equivalent to 35 percent of the total Longline category quota, which limits overall bluefin catch in this region. In comparison to bluefin catch in the Atlantic region (which can be accounted for with allocation from the Purse Seine category or Gulf of Mexico IBQ allocation), Gulf of Mexico bluefin catch may only be accounted for with Gulf of Mexico IBQ allocation. This regional category designation, and stricter rules for Gulf of Mexico IBQ allocation use, provides additional protection for spawning bluefin by restricting the amount of bluefin mortalities that can occur within the Gulf of Mexico. The IBQ Program also provides a constraint on effort, since pelagic longline vessels must acquire a minimum amount of Gulf of Mexico IBQ allocation in order to depart on a trip and must account for quota debt on a quarterly basis. NMFS also is retaining a seasonal weak hook requirement in the Gulf of Mexico (Preferred Alternative D2 in the FEIS) to provide additional protections for spawning bluefin. As discussed below and in Appendix B of the FEIS, a statistically significant 46 percent decline in CPUE for bluefin tuna has been associated with weak hook use. In addition, there are enhanced reporting and monitoring requirements that support data validation in the monitoring area under the preferred alternative.

As discussed in Comment #1 above, NMFS agrees that existing management measures such as the gear restricted areas or weak hooks have been effective at reducing bluefin tuna interactions and dead discards. However, NMFS committed to a three-year evaluation of the effectiveness of gear restricted areas in Amendment 7. Page 30 of the Amendment 7 FEIS notes that the ''effectiveness of [the Gulf of Mexico and Cape Hatteras Gear Restricted Areas] depends on the defined area and time of the restriction(s) coinciding with the presence of bluefin in the area(s), the availability of target species outside of gear restricted area(s), the presence of bluefin outside the gear restricted area(s), annual variability in bluefin interactions, environmental conditions that may drive the distribution of bluefin, and other factors that affect the feasibility of fishing for target species outside of the gear restricted area(s).''

The most efficient and relevant means of considering these effectiveness measures in the context of pelagic longline fishery operations is through fishery dependent data collection.

NMFS disagrees that the preferred alternative would not meet the objective to ''continue to minimize bycatch and bycatch mortality of bluefin tuna''. Given the uncertainty associated with allowing pelagic longline fishing in an area that has previously been closed, NMFS agrees that it is appropriate to collect information to inform future management decisions. NMFS prefers a more incremental approach that focuses on data collection and requires a future rulemaking to remove the closed area from the regulations as opposed to removing regulations in this action. The evaluation period of both the Spring Gulf of Mexico Gear Restricted Area and Northeastern United States Closed Area will be closely monitored under a threshold designed for each area, which is intended to ensure that the proposed evaluation process would not result in high bluefin catch rates. In the event that bluefin catch is higher than this threshold, NMFS would close the area to pelagic longline fishing. Furthermore, as discussed in the Response to Comment #11 above, the final action was adjusted from the proposed action but ensures that the threshold remains conservative in the event that the U.S. allocation is adjusted at a future ICCAT meeting. In the event that ICCAT adjusts the U.S. allocation downward, this threshold would also be adjusted downward such that it would be equivalent to 55 percent of the total Gulf of Mexico allocation. Even if the threshold is reached, the incidental catch of bluefin tuna by the pelagic longline fishery would be within previously-adopted relevant levels, including the science-based overall quota, the Longline category quota and other limits adopted in Amendment 7, and the Gulf of Mexico allowable IBQ allocation.

As discussed in Comment #1 above, NMFS agrees that the actions implemented under this rule, including the actions to evaluate the Spring Gulf of Mexico Gear Restricted Area and the Northeastern United States Closed Area by converting them to Monitoring Areas, are highly consistent with balancing the objectives of this rulemaking. While outright removal of the restrictions associated with the gear restricted areas or closed area would provide the most flexibility to fishermen to select locations that would optimize target species catch and minimize bluefin bycatch that alternative would not provide the same amount of agency monitoring and control as would occur under an evaluation process. As discussed in Comment #1, the actions undertaken in this rule would also provide an opportunity to evaluate the continued need for these spatially managed areas, with removal being one of many potential outcomes in a future rulemaking that considers next steps. Establishing such an evaluation process, instead of outright removal of the area, is therefore consistent with balancing the objectives to ''simplify and streamline HMS regulations . . . by reducing redundancies in regulations'' and the need to ''continue to minimize bycatch and bycatch mortality of bluefin.''

Comment 23: NMFS received comments that the DEIS and proposed rule did not demonstrate whether the Spring Gulf of Mexico Gear Restricted Area still contains areas of high concentration of bluefin, and therefore the agency has not determined whether the original rationale for closing the Spring Gulf of Mexico Gear Restricted Area (''locations of high bluefin tuna concentrations and interactions with pelagic longline gear'') is still valid.

Response: NMFS acknowledges that the current regulations do not routinely allow for fishery-dependent data collection in areas that have been closed, which makes it difficult to determine if these areas still meet the objectives for which they were originally implemented. Interannual variability in biological, oceanographic, or fishery conditions may shift the location of fishery interactions. As new information comes available concerning spatio-temporal bluefin interactions with the longline fleet, NMFS will consider whether it is appropriate to undertake different management actions. NMFS has incorporated such information into management in recent years. For example, between the draft and final EIS for Amendment 7, NMFS adjusted the boundaries of the Spring Gulf of Mexico Gear Restricted Area eastward (as part of a new alternative) and added a second area for inclusion adjacent to the Desoto Canyon closure. As discussed in the FEIS for Amendment 7, this adjustment was based on new information that had recently come available and public comment which suggested the original proposed boundaries would not be as effective. In this final rule, NMFS is implementing a measure that would include an evaluation via fishery-dependent data collection to determine whether the Spring Gulf of Mexico Gear Monitoring Area still contains relatively high bluefin interaction rates. The evaluation process does not permanently remove the gear restricted area requirements from the regulations. Rather, it establishes a timeline for evaluation and dictates the status (*i.e.,* whether it is open or closed to pelagic longline fishing) of the area during that evaluation and development of a subsequent action.

Comment 24: NMFS received comments in opposition to making regulatory changes to the Spring Gulf of Mexico Gear Restricted Area, noting that the Spring Gulf of Mexico Gear Restricted Area has not had adverse economic impacts on the pelagic longline fleet. Comments also noted that the preferred alternative was bad for fishermen due to a decrease in the estimated pelagic longline revenue as a result of implementing the preferred alternative (according to the impacts analysis presented in the DEIS.

Response: The analysis of socio-economic impacts of Spring Gulf of Mexico Gear Restricted Area alternatives in Chapter 4 of the FEIS includes quantitative estimates of average annual revenues. These analyses were updated from the DEIS with an additional year of data in the FEIS and reflect a range of potential annual revenues for Longline category permitted vessels fishing in the Gulf of Mexico generated from select target species and incidentally-caught bluefin tuna. For the No Action alternative, such annual revenue in April and May (2015–2018) averaged approximately $677,007. For Preferred Alternative C3, the estimated range of potential revenues is between $538,151 and $687,962.

NMFS acknowledges that much of this range reflects a decrease in potential revenue from the Preferred Alternative compared to the No Action alternative. We expect, however, that fishermen would operate to optimize their revenues. Access to the Spring Gulf of Mexico Monitoring Area will give fishermen the opportunity to make decisions about where to fish depending on fish availability, and the flexibility to fish in areas that optimize target catch while minimizing bycatch. If swordfish and yellowfin tuna landings in the Gulf of Mexico decrease due to shifting effort into the Monitoring Areas, then fishermen would likely continue fishing outside of the areas. Thus, we expect that revenue results would bear out at the high end of the range.

NMFS disagrees that the Spring Gulf of Mexico Gear Restricted Area has not had adverse economic impacts on pelagic longline fishermen. In addition to the quantitative analyses, pelagic longline fishermen have commented during this rulemaking process that

there are adverse economic impacts and regulatory burdens associated with complying with the number of regulations and restrictions on the fishery. During the effective period of the Spring Gulf of Mexico Gear Restricted Area, pelagic longline fishermen in the northern Gulf of Mexico must conduct fishing operations around the geographic patchwork of the Spring Gulf of Mexico Gear Restricted Area's two designated areas as well as the Desoto Canyon closure (See Figure 3.4 of the FEIS associated with this rulemaking). These restrictions on available fishing grounds limit operational flexibility and fishermen cannot react as quickly to changing conditions—a particularly variable factor when fishing for highly migratory species such as bluefin tuna, yellowfin tuna, and swordfish. This, in turn, means that they cannot make decisions to best increase revenue and best avoid potential costs associated with accounting for incidental bluefin tuna catch. Fishermen have also reported general operational costs of having to move to fishing grounds farther away and incurring fuel and opportunity costs given the additional time that can be needed.

Given that we have concluded that all of the measures in place are likely not needed to continue to appropriately limit incidental catch in the pelagic longline fishery as first established in Amendment 7, it is appropriate for the agency to consider this feedback in examining how to relieve regulatory burden on individuals, minimize costs, and avoid unnecessary regulatory duplication. See 16 U.S.C. 1851(a)(7) (National Standard 7). This is consistent with the guidelines, which specify that management measures should be designed ''to give fishermen the greatest possible freedom of action in conducting business and pursuing recreational opportunities that are consistent with ensuring wise use of the resources and reducing conflict in the fishery.''

Comment 25: Commenters questioned the impact of the IBQ Program on reducing discards of bluefin tuna in the Gulf of Mexico. Some commenters stated that the Spring Gulf of Mexico Gear Restricted Area, not the IBQ Program, is the reason for reductions in bluefin tuna bycatch in the pelagic longline fishery since implementation of Amendment 7 in 2015. Other commenters felt that the IBQ Program by itself cannot be credited with reduction in mortality in the Gulf of Mexico; therefore, removing the gear restricted area could compromise management objectives and could inappropriately increase catch of spawning bluefin tuna. Commenters noted that, based on Table 6.32 in the Draft Three-Year Review of the IBQ Program (page 151), the rate of change in bluefin tuna catch in February and March versus in April and May is not constant before and after implementation of the closed area. Since the reduction in catch was not the same, these commenters felt that the IBQ Program alone cannot be credited with this reduction in mortality.

Response: Both the IBQ Program and the Spring Gulf of Mexico Gear Restricted Area, along with reduced fishery effort that has been occurring within the Gulf of Mexico over the last decade, have likely played a role in reducing bluefin tuna interactions. Because the IBQ Program and the gear restricted areas were implemented at the same time, it is difficult to separate out the impact each has had in relation to reducing bluefin tuna interactions and catch. NMFS therefore strongly prefers an evaluative option that will enable certain data collection under a single management tool, which is the IBQ Program. These data could then be compared to data that were collected while both the IBQ Program and the gear restricted areas were in place to better evaluate the impacts when both regulatory measures were in place against the impacts of having just one measure (the IBQ Program) in place. This evaluation will enable NMFS to determine whether there remains sufficient justification to retain both management measures, each of which may be effective in their own right but are not necessarily needed to continue in tandem to minimize bluefin tuna bycatch and bycatch mortality to the extent practicable given other management objectives that also must be considered, particularly where all of these actions occur within an overall, science-based total allowable catch.

NMFS received a specific comment on the Proposed Rule and DEIS, which drew conclusions about the continued need for the Spring Gulf of Mexico Gear Restricted Area in tandem with the IBQ Program. The commenter concluded, based on a relatively simple analysis of a limited set of data, that the IBQ Program alone could not appropriately limit incidental catch of bluefin tuna by the pelagic longline fishery in the Gulf of Mexico. As a number of other comments used this conclusion as their foundation, we determined a more in-depth response was warranted. Although NMFS considered the comment as presented, we concluded that it oversimplified a number of relevant factors, and that the conclusions drawn were not consistent with those that would be drawn from a broader analysis. In Appendix E of the FEIS associated with this rulemaking, NMFS offers information to support our response to this comment, reviewing pelagic longline catch data from the Gulf of Mexico prior to and following the implementation of the Spring Gulf of Mexico Gear Restricted Area and the IBQ Program in Amendment 7. The information is included in an Appendix given its length and the inclusion of several figures. Appendix E of the FEIS associated with this rulemaking does not present any new or different information than was in the DEIS, the referenced Three-Year Review of the IBQ Program, or in the analyses developed for Amendment 7.

NMFS agrees with public comment noting that Table 6.32 in the Draft Three-Year Review shows a reduction between two time periods (2012–2014 vs. 2015–2016), and that the magnitude of that reduction is greater for the months during which the Spring Gulf of Mexico Gear Restricted Area was effective (April and May), however these data reflect *landings,* which are only a subset of the relevant interactions that could inform effects, including reported mortalities, reported landings, reported discards, and reported dead discards across multiple time periods. The comment also compared an uneven number of years before (2012–2014, *i.e.,* 3 years) and after (2015–2016, *i.e.,* 2 years) implementation of Amendment 7 without standardizing the data, which might influence results since more years presumably result in more data and influences the weight of the variables influencing catch. As discussed in Appendix E of the FEIS, events in the management environment may influence year-to-year behavior within the fishery. In general, temporal data variables can influence fishery trend analyses. For example, analyzing years of data under different management requirements (*e.g.,* the 2006 Consolidated HMS FMP versus previous FMPs; target catch requirements for retention of bluefin tuna versus accounting for bluefin incidental catch through the IBQ Program; before and after weak hook implementation) or in years where significant events may have an impact on fishing behavior (*e.g.,* Deepwater Horizon oil spill, Hurricane Katrina) may have an impact on the conclusions of these analyses that might either be not relevant to the current management environment or unlikely to occur under normal circumstances. Furthermore, it takes time for a fishery to adapt to change. As shown in Table

3.4 of the DEIS, the number of swordfish retained by the fleet in the Gulf of Mexico decreased after implementation of Amendment 7 for two years before starting to increase in 2017. Therefore, just considering 2015 and 2016 as representative of a post-Amendment 7 environment may not be reflective of the current state of the fishery. This is why NMFS tends to estimate potential ecological impacts over multiple years of data and carefully considers the selection of years included in ecological impacts analyses. Therefore, for the information presented in Appendix E of the FEIS associated with this rulemaking, NMFS presented data from different time periods in an effort to balance out the suite of variables that could have influenced information derived from the pelagic longline fishery's operations in the Gulf of Mexico.

As presented in Appendix E of the FEIS associated with this rulemaking, NMFS found that the difference in the percent change by month varied depending on time period and which variable was considered in the analysis. For example, the change in landings of fish was higher during Gear Restricted Area effective months (April and May) than it was in the two months preceding the Gear Restricted Area effective months (February and March) when comparing time periods immediately prior to (2012–2014) and after (2015–2017) implementation of Amendment 7 management measures (Table E.3). However, a slightly different analysis comparing the change in average annual number of landings noted similar reductions in landings in February, April and May across a historical (2006–2012) and more recent (2015–2018) time period (Table E.3). NMFS found that adding a year of data can change the conclusions that might be drawn (*e.g.,* comparing reductions in landings in Table E.2 and E.3 in Appendix E of the FEIS associated with this rulemaking).

In general, given the influence of time on data trends and the short periods of time analyzed by the commenter, NMFS believes these analyses demonstrate a benefit of data collection to inform future management.

The preferred alternative would allow fishery-dependent data collection to explore catch rates, landings, mortality, and other data in the Spring Gulf of Mexico Gear Restricted Area. By collecting fishery dependent data in this area while vessels are operating under the IBQ Program, NMFS will be better able to isolate the impacts of the gear restricted area and determine if both management measures are needed to meet the objectives for reducing bluefin tuna bycatch in the pelagic longline fishery as set out in Amendment 7 when both measures were adopted and consistent with the objectives of this rulemaking. Certain aspects of the IBQ Program (*e.g.,* regional IBQ allocation designations and individual accountability) and design elements of this evaluation process (*e.g.,* thresholds) will both allow for this data collection and stop pelagic longline fishing in the area if the fleet were to use Gulf of Mexico IBQ allocation in exceedance of an established annual threshold to account for bluefin landings or dead discards caught within the boundaries of the Monitoring Area. This will ensure that fishing is not counter to the objectives of ''minimiz[ing], to the extent practicable, bycatch and bycatch mortality of bluefin tuna and other Atlantic HMS by pelagic longline gear consistent with the conservation and management objectives of the 2006 Consolidated HMS FMP, its amendments, and all applicable laws.''

Regarding the effects of the preferred alternative specifically on spawning bluefin tuna, the preferred alternative may increase catch of bluefin tuna compared to the No Action alternative, although the actual predicted increase (versus the potentially allowable amount) is relatively minor. While some increases in target catch and bluefin tuna bycatch could occur as a result of removal of the area, any such increases would be within previously analyzed, applicable quotas and would be consistent with other management measures that NMFS determined appropriately limit bycatch and conserve the stock in Amendment 7, including the Longline subquota and the IBQ allocation provisions.

Comment 26: NMFS received comments requesting that NMFS expand the current Spring Gulf of Mexico Gear Restricted Area, by creating a larger box that encompasses both areas within a single larger closure in time and space.

Response: NMFS' management objectives under Amendment 7 included both the reduction of bluefin tuna interactions and dead discards, and to balance the need to limit landings and dead discards with the objective of optimizing fishing opportunity and maintaining profitability, among other things. One of the objectives of this rulemaking was to optimize the ability for the pelagic longline fishery to harvest target species quotas while also considering fairness among permit/quota categories. Expansion of the Spring Gulf of Mexico Gear Restricted Area is not considered to be consistent with current management objectives or objectives of this rulemaking because such a box would likely encompass the remaining, non-regulated pelagic longline fishing grounds in the northern Gulf of Mexico. Closing these areas would remove most fishing opportunity for fleets that fish in these areas. Thus, NMFS did not determine expansion of this area was warranted.

In an analysis completed for the Amendment 7 rulemaking, NMFS also considered the need to gather scientific data from the Gulf of Mexico longline fishery for the development of effective conservation and management measures. A larger Gear Restricted Area (*e.g.,* such as the Gulf of Mexico EEZ) was noted to 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 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. Closing additional area would likely reduce the amount of available data for these stock assessment indices.

Weak Hooks

Comment 27: NMFS received comments that expressed support for the Preferred Alternative (D2) to require weak hooks in the pelagic longline fishery for six months of the year (January–June) in order to reduce bycatch of bluefin in the winter and spring and white marlin in the summer and fall. NMFS also received comments in opposition to the preferred alternative, indicating that weak hook use in the summertime has no ecological value, so fishermen will not care if the requirement goes away. Other comments indicated that the IBQ Program is sufficient for its purpose.

Response: NMFS agrees that implementing a seasonal requirement for weak hooks in the Gulf of Mexico will provide protections for bluefin tuna during the spawning season and may decrease bycatch of white marlin in the

summer and fall. The preferred alternative, which would implement a seasonal weak hook requirement, was selected in the DEIS and the FEIS as the alternative expected to strike the best balance between the objectives of ''continue to minimize . . . bycatch and bycatch mortality of bluefin tuna and other Atlantic HMS by pelagic longline gear . . .''. and to ''optimize the ability of the pelagic longline fishery to harvest target species quotas.'' This alternative provides increased flexibility with respect to hook requirements in the second half of the year (provided basic circle hook requirements are still met). This alternative only requires the use of gear intended to minimize bluefin bycatch when spawning bluefin are abundant in the Gulf of Mexico and the ecological benefits for spawning bluefin are the greatest (*i.e.,* in the first half of the year). The preferred alternative in the FEIS would not prohibit the use of weak hooks in the summer and fall. Some commenters from pelagic longline fishermen in the central Gulf of Mexico prefer the use of weak hooks year round. These fishermen noted that yellowfin tuna catch is slightly higher with weak hooks and they may continue to use weak hooks during the months that they are not required. NMFS agrees that the use of weak hooks in the summer (*i.e.,* after June) may not provide ecological benefits to bluefin tuna. Removing the weak hook requirements when they have negligible ecological benefit for spawning bluefin (due to low abundance in the second half of the year) is consistent with the rulemaking objectives to simplify and streamline Atlantic HMS management by reducing redundancies in regulations established to reduce bluefin interactions. NMFS also designed this alternative to mitigate bycatch of white marlin. This alternative therefore balances the bycatch mitigation needs for two different species, which is consistent with the alternative *to* ''continue to minimize . . . bycatch and bycatch mortality of bluefin tuna and other Atlantic HMS by pelagic longline gear . . .''

Comment 28: NMFS received comments that suggested that weak hooks should only be required while pelagic longline vessels are fishing in the within the boundaries of the Spring Gulf of Mexico Gear Restricted Area if the preferred alternative (Alternative C3) was finalized.

Response: NMFS disagrees with this comment to require weak hooks within the boundaries of the Spring Gulf of Mexico Gear Restricted Area. Although the catch rates were higher in the Spring Gulf of Mexico Gear Restricted Area during the Amendment 7 rulemaking, distributions of spawning bluefin tuna may change throughout the Gulf of Mexico and requiring their use in all portions of the Gulf of Mexico will maximize the conservation benefit provided by weak hooks. Additionally, requiring weak hook use in a discrete area of the Gulf of Mexico may present enforcement challenges and require extensive at-sea resources. Some fishing could occur on the border of the current Gear Restricted Area and gear drift could inadvertently create compliance issues.

Comment 29: Weak hook regulations are obsolete and redundant given that the restrictions of a vessel's IBQ allocation maintains the conservation goals in the Gulf of Mexico and elsewhere.

Response: NMFS disagrees that weak hooks are redundant with the IBQ Program for maintaining low levels of bycatch of bluefin tuna in the Gulf of Mexico. While the IBQ Program incentivizes fishery participants to avoid bluefin tuna, there is a proven scientific benefit in the use of weak hooks with pelagic longline gear in the Gulf of Mexico. Research has shown a statistically significant 46 percent decline in bluefin tuna catch-per-unit-effort associated with weak hook use. The release of large spawning bluefin tuna caught on weak hooks creates conservation benefits to the western Atlantic bluefin tuna stock during the spawning season.

Comment 30: NMFS received comments that a weak hook requirement from January through June would continue to severely impact the winter swordfish fishery in the eastern Gulf of Mexico. Comments indicated that there has been a large reduction in swordfish landings in the eastern Gulf of Mexico winter swordfish fishery; that there is no conservation value to maintaining this regulation in the eastern Gulf of Mexico; and that the loss of revenue is making it harder to find crew for longline boats. NMFS received comments suggesting that NMFS create a new spatially managed area in the southeastern Gulf of Mexico where weak hook use would not be required. NMFS also received comments suggesting that the monofilament on swordfish leaders that have straightened hooks are usually very opaque instead of clear, which may indicate physical stress on the line from a swordfish bill striking the leader as the escaped fish reacts to being hooked. One commenter estimated their 2017 losses at 5,000–6,000 lb of swordfish, with an estimated value of $30,000.

Response: NMFS investigated catch rates of several target species occurring in the area in the eastern Gulf of Mexico delineated by several pelagic longline fishermen during the development of the FEIS. Appendix D of the FEIS includes this data analysis. NMFS compared catch rates from the area from 2009–2011 (3 years prior to weak hook implementation; 2011 included since weak hooks were not mandatory until May) and 2015–2017 (3 years after implementation). Overall catch rates and landings of swordfish were annually variable from before and after implementation of weak hooks. Although variable from year to year, data suggested landings and catch rates have not changed in this area since implementation of weak hooks in the Gulf of Mexico

NMFS also analyzed bluefin tuna landings and dead discard catch rates and catch numbers. Bluefin tuna catches were slightly higher in the eastern Gulf of Mexico area delineated by several pelagic longline fishermen prior to the implementation of weak hooks. Since higher catch rates were experienced prior to implementation of weak hooks, there is likely to be a continued conservation benefit to retaining a seasonal weak hook requirement in the area shown in Appendix E of the FEIS because bluefin tuna are likely to still occur in the eastern Gulf of Mexico.

Comment 31: NMFS received comments indicating that the original NOAA weak hook experiments conducted between 2008 and 2012 occurred in a yellowfin tuna fishery, and resulted in few swordfish data points (and the swordfish interactions were mostly juvenile). This gives an inaccurate portrayal of the swordfish fishery in the Gulf of Mexico and the results of the study should not be used for management purposes.

Response: NMFS disagrees that the weak hook research was not representative of the entire Gulf of Mexico fishery. During the research conducted from 2007–2010, eight vessels were involved in the experiment observing 418 sets and deploying 245,881 hooks. An additional 51,067 hooks were deployed over 111 sets on 2 vessels in 2012. A Fisher's Exact, which is a common statistical test used to determine significance of two classes of objects, in this case the object being hooks (weak and standard) and significant differences in their catch rates, was used to analyze results. The research did show reductions in the amount of target catch of yellowfin tuna and swordfish; however, these reductions were not statistically significant.

NMFS also compared the catch rates, prior to and after implementation, of weak hooks of several species from the entire Gulf of Mexico in Appendix C of the FEIS. In general, actual weak hook effects match results from the 2007–2010 research project. Bluefin tuna catch-per-unit effort and interactions both dropped after the requirement while catch-per-unit effort and interactions for swordfish, yellowfin tuna, and blue marlin remained relatively stable. White marlin and roundscale spearfish catch-per-unit effort and interactions increased with the use of weak hooks (Table C.2 in the FEIS). White marlin and roundscale spearfish were combined for analytical purposes because they can be difficult to tell apart, and because combination of data enabled a more robust sample size for analysis. Therefore, this data suggest that the weak hook research was an accurate representation of the Gulf of Mexico fishery.

Comment 32: NMFS received comments regarding a seasonal weak hook requirement stating that there is a substantial expense in changing gear type in labor and materials. Financial burden is not just associated with the cost of hooks. As shown in Chapter 3 of the FEIS associated with this rulemaking, Figure 3.2 and 3.3, pelagic longline gear consists of a mainline suspended in the water column, from which branch lines (which hang off the mainline and are used to suspend hooks in the water column). Monofilament line is used widely for both the mainline (the longline) and branchlines. Branchlines may incorporate a section of line (of variable length) known as a leader, with a lead weight at one end and the baited hook at the other. Commenters noted that they must purchase a different, stretchy type of leader to deploy with weak hooks that keep small swordfish from straightening the hooks. NMFS received comments that there is an impracticality to carrying double gear and/or storing the non-weak hook gear shoreside. Its takes a full crew two days to change out the gear. Additionally, because of regulations, the hooks must be corrosive and the aluminum crimps will eventually fail; extra supplies to support the deployed hook of choice are needed to be stored onboard. Few boats in the fishery have the deck capacity to carry double gear.

Response: NMFS disagrees with this comment because fishermen may fish with weak hooks in the Gulf of Mexico for the entire year if they wish to do so. The removal of the requirement for the July–December time period does not prohibit the use of weak hooks during that period. If fishermen find that using weak hooks throughout the year is less burdensome they may do so. NMFS recognizes that vessels that fish outside the Gulf of Mexico, may not be rigged with weak hooks and would need to re-rig their gear to use weak hook when the requirement is in effect. Due to little change in the catch and catch rates of swordfish in the Gulf of Mexico and the conservation benefit afforded to bluefin tuna when spawning, NMFS is at this time preferring a seasonal requirement. NMFS also notes that currently in the entire Gulf of Mexico, all vessels with pelagic longline onboard must only possess weak circle hooks 50 CFR 635.21(c)(5)(iii)(B)(*2*)(*i*) (with a limited exception when greenstick gear is also onboard).

Comment 33: NMFS received comments that noted a seasonal weak hook requirement may create enforcement concerns when switching between weak hooks and standard circle hooks.

Response: NMFS disagrees that modifying the weak hook requirement to become seasonal would reduce enforceability of the requirement. Enforcement officers have tools that allow them to determine the type of hook on board a vessel and are accustomed to making those determinations during vessel boardings. With this rule, the only change from an enforcement perspective is that it will not be necessary to verify the exclusive use of weak hooks on pelagic longline vessels in the Gulf of Mexico during the months of July to December.

Changes From the Proposed Rule

This section explains the changes from the proposed rule to the final rule and resulting changes in the regulatory text. NMFS is making two minor clarifying changes to actions proposed regarding the Northeastern United States Closed Area and the Spring Gulf of Mexico Gear Restricted Area were made in response to public comment. NMFS has also made some minor clarifications to regulatory text for the final rule in support of these changes.

NMFS has added two clarifying modifications from the DEIS to the FEIS to Preferred Alternative A4. The first addresses what would happen if the U.S. allocation of bluefin is changed at a future ICCAT meeting. The 150,519 lb threshold is approximately 72 percent of the adjusted total Atlantic IBQ allocation currently distributed to the fleet. In the event that the western Atlantic bluefin tuna quota later is reduced at ICCAT and the U.S. allocation of bluefin quota is adjusted downward as a result, the threshold would also be adjusted. Such adjustment would make the threshold 72 percent of the total Atlantic IBQ allocation disbursed to the fleet as a result of the lower U.S. allocation. If the ICCAT quota were to increase and the United States' allocation increased as well, adjustments would not be made to increase the threshold for several reasons. The second clarifying modification concerns the timing of inseason notices that could be filed in response to the threshold for this area being met. NMFS originally noted in the DEIS in the description of the preferred alternative that ''If no closure notice is filed between January 1, 2020 and December 31, 2022, the Monitoring Area would remain open, unless, and until, NMFS decides to take additional action''. Since the thresholds are not cumulative in nature with respect to IBQ allocation use by the pelagic longline fishery to account for landings and dead discards, the design of this process would not necessitate inseason closure to be filed until after the respective start dates for monitoring. NMFS is adjusting this statement to read ''If no closure notice is filed between April 1, 2020 and December 31, 2022, the Monitoring Area would remain open, unless, and until, NMFS decides to take additional action.''

NMFS has added two clarifying modifications from the DEIS to the FEIS to Preferred Alternative C3. The first addresses what would happen if the U.S. allocation of bluefin is changed at a future ICCAT meeting. The 63,150 lb threshold is approximately 55 percent of the adjusted total Gulf of Mexico IBQ allocation currently distributed to the fleet. In the event that the western Atlantic bluefin tuna quota later is reduced at ICCAT and the U.S. allocation of bluefin quota is adjusted downward as a result, the threshold would also be adjusted. Such adjustment would make the threshold 55 percent of the total Gulf of Mexico IBQ allocation disbursed to the fleet as a result of the lower U.S. allocation. The second clarifying modification concerns the timing of inseason notices that could be filed in response to the threshold for this area being met. NMFS originally noted in the DEIS in the description of the preferred alternative that ''If no closure notice is filed between January 1, 2020 and December 31, 2022, the Monitoring Area would remain open, unless, and until, NMFS decides to take additional action''. Since the thresholds are not cumulative in nature with respect to IBQ allocation use by the pelagic longline fishery to account for landings and dead discards, the design

of this process would not necessitate inseason closure to be filed until after the respective start dates for monitoring. NMFS is adjusting this statement to read ''If no closure notice is filed between April 1, 2020 and December 31, 2022, the Monitoring Area would remain open, unless, and until, NMFS decides to take additional action.''

Classification

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

NMFS is waiving the 30-day delay in effectiveness for this final rule under 5 U.S.C. 553(d)(3) for good cause and because it is in the public interest. Among other things, this final rule will allow pelagic longline fishing in two previously closed or gear restricted areas, subject to a monitoring and evaluation period. For the Spring Gulf of Mexico Closed Area, if this final rule does not become effective by April 1, the area will close under the existing regulations. It would then re-open as a Monitoring Area when the final rule becomes effective. In such an event, delaying the effectiveness of this final rule would unnecessarily deny vessels fishing opportunities and flexibility in choosing fishing locations by keeping the area closed. Furthermore, multiple actions in relation to the area in a short time could confuse the regulated community. A delay in effectiveness could also affect the evaluation process for the Spring Gulf of Mexico Monitoring Area. If this measure is not implemented on or before April 1, pelagic longline fishermen would not be able to fish in the area until later in the period, affecting the efficacy of the evaluation. The fishery would be subject to the requirements of the Spring Gulf of Mexico Gear Restricted Area for the first part of the April 1–May 31 time period, and then subject to a different set of requirements when the 30-day delay in effectiveness period ends. The evaluation process culminates in the compilation of data and creation of a report that would guide future management measures for the area. Delayed implementation would reduce the amount of information that could be incorporated into the evaluation for future management of the area and would affect the comparability of the before- and after- rulemaking components of the evaluation. Finally, the action relieves regulatory burden in relation to access to these fishing grounds, by allowing fishing in a previously closed area, and the regulated community does not need a 30-day period in which to come into compliance with that provision. It is in the public interest to implement these measures in a timely manner to fully achieve the objectives of the rulemaking and to implement the deregulatory action in a way that is concurrent with the relevant timing provisions of the new evaluative measures. Therefore, NMFS is waiving the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3) to make the rule effective immediately upon publication in the **Federal Register**.

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. This final rule is an Executive Order 13771 deregulatory action.

In compliance with section 604 of the Regulatory Flexibility Act (RFA), NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule. The FRFA analyzes the anticipated economic impacts of the final actions and any significant economic impacts on small entities. The FRFA is below. This FRFA has been updated from the Initial Regulatory Flexibility Analysis (IRFA) to reflect analyses that were updated with the inclusion of an additional year of data (2018). In the FRFA, revenue estimates associated with the Northeastern United States Closed Area are adjusted in response to a calculation error that occurred in the IRFA. The revenue calculations for all the alternatives related to the Northeastern United States Closed Area inadvertently omitted the prices for each of the target species (resulting in a default value of $1 per pound). This error resulted in the underestimate of revenue for these alternatives. Irrespective of the calculation error, the estimated changes in revenue associated with the alternatives presented in the FEIS falls within a similar range to those presented in the DEIS, when compared to the no action alternative.

Section 604(a)(1) of the RFA requires a succinct statement of the need for and objective of the rule. Please see Chapter 1 of the FEIS associated with this rulemaking for a full description of the need for and objectives of this action. Consistent with the provisions of the Magnuson-Stevens Act and ATCA, NMFS is adjusting measures put in place to manage incidental catch of bluefin in the pelagic longline fishery, namely the Northeastern United States Closed Area, the Cape Hatteras Gear Restricted Area, and the Spring Gulf of Mexico Gear Restricted Area, as well as the weak hook requirement in the Gulf of Mexico. NMFS has identified the following objectives with regard to this action: (1) Continue to minimize, to the extent practicable, bycatch and bycatch mortality of bluefin and other Atlantic HMS by pelagic longline gear consistent with the conservation and management objectives (*e.g.,* prevent or end overfishing, rebuild overfished stocks, manage Atlantic HMS fisheries for continuing optimum yield) of the 2006 Consolidated Atlantic HMS FMP, its amendments, and all applicable laws; (2) simplify and streamline Atlantic HMS management, to the extent practicable, by reducing any redundancies in regulations established to reduce bluefin tuna interactions that apply to the pelagic longline fishery; and (3) optimize the ability for the pelagic longline fishery to harvest target species quotas (*e.g.,* swordfish), to the extent practicable, while also considering fairness among permit/quota categories. This evaluation is necessary given the IBQ Program's shift in management focus towards individual vessel accountability for bluefin tuna bycatch in the pelagic longline fishery; the continued underharvest of quotas in the associated target fisheries, particularly the swordfish quota; comments from the public and the HMS Advisory Panel members indicating that certain regulations may be redundant in appropriately limiting bluefin incidental catch in the pelagic longline fishery and thus may be unnecessarily restrictive of pelagic longline fishery effort; and requests from the public and HMS Advisory Panel members to reduce regulatory burden in relation to carrying out fishery operations.

Section 604(a)(2) requires a summary of significant issues raised by public comment in response to the IRFA and 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 did not receive any comments specifically on the IRFA, however the Agency did receive some comments regarding the anticipated or perceived economic impact of the rule. These comments are summarized below. NMFS did not receive any comments from the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule or the IRFA. All of the comments and responses to the

comments are summarized in Appendix F of the FEIS.

Comment: NMFS received a comment that the reduction in the number of active pelagic longline vessels and fishing effort began before gear restricted areas were implemented, and that the gear restricted areas were not the cause of such reduction.

Response: NMFS agrees that decreases in the number of active vessels and effort, landings, and revenue began prior to the implementation of the gear restricted areas under Amendment 7 in 2015. Table 1.1 in the FEIS (which shows data from 2012 through 2018) indicates that a decrease in estimated pelagic longline revenue and effort started prior to implementation of Amendment 7 despite efforts to revitalize the U.S. swordfish fishery for a number of years. Prior to initiation of this action, NMFS received suggestions from the public to consider the regulatory burden on the pelagic longline fleet and, at minimum, to evaluate whether current regulations are still needed to achieve management objectives. While the gear restricted areas may not be the sole factor influencing recent trends in the fleet, NMFS received public comment noting that the collective regulatory burden may have had a role in decreasing the number of active vessels, effort, landings, and revenue of some target species (*e.g.,* swordfish).

Comment: NMFS received comments that reopening the closed areas and implementing a seasonal weak hook requirement would result in higher numbers of billfish interactions from pelagic longline fishing activity that could in turn reduce numbers of billfish in these areas. Such reductions in billfish would adversely affect Atlantic HMS tournaments and the jobs created by the recreational fishing industry.

Response: NMFS disagrees that implementing the actions in this final rule would increase bycatch mortality in a manner inconsistent with stock assessments or inconsistent with the requirement that NMFS minimize bycatch and bycatch mortality to the extent practicable. In the FEIS, NMFS presented an impacts analysis in Chapter 4 that discussed the potential effects of alternatives on restricted and protected species, such as marlin, spearfish, sailfish, shortfin mako, dusky shark, and sea turtles. Predicted total annual catch was, where possible, presented as a range of catch per unit effort in impact tables. NMFS also provided in the tables the annual catch from the applicable region for comparison to the No Action Alternative.

Comment: NMFS received comments that any increased bluefin landings from the pelagic longline fishery that result from having access to previously closed areas or gear restricted areas will negatively impact market prices of bluefin caught in directed fisheries.

Response: Increased landings of bluefin tuna can have localized impacts on market prices if the landings are concentrated geographically and increase dramatically over a short period of time. However, the pelagic longline fleet only lands approximately 8.7% (88.1 metric tons) of total Atlantic bluefin tuna landings of 1013 metric tons (U.S. total landings as reported in the 2019 U.S. Report to ICCAT). Often the global market for bluefin tuna has a more direct impact on the market prices for bluefin caught by the U.S. Atlantic directed fisheries than any change in U.S. Atlantic bluefin tuna incidental landings.

Comment: NMFS received comments in opposition to making regulatory changes to the Spring Gulf of Mexico Gear Restricted Area, noting that the Spring Gulf of Mexico Gear Restricted Area has not had adverse economic impacts on the pelagic longline fleet. Comments also noted that the preferred alternative was bad for fishermen due to a decrease in the estimated pelagic longline revenue as a result of implementing the preferred alternative (according to the impacts analysis presented in the DEIS).

Response: The analysis of socio-economic impacts of Spring Gulf of Mexico Gear Restricted Area alternatives in Chapter 4 of the FEIS includes quantitative estimates of average annual revenues. These analyses were updated from the DEIS with an additional year of data in the FEIS and reflect a range of potential annual revenues for Longline category permitted vessels fishing in the Gulf of Mexico generated from select target species and incidentally-caught bluefin tuna. For the No Action alternative, such annual revenue in April and May (2015–2018) averaged approximately $677,007. For Preferred Alternative C3, the estimated range of potential revenues is between $538,151 and $687,962.

NMFS acknowledges that much of this range reflects a decrease in potential revenue from the Preferred Alternative compared to the No Action alternative. We expect, however, that fishermen would operate to optimize their revenues. Access to the Spring Gulf of Mexico Monitoring Area will give fishermen the opportunity to make decisions about where to fish depending on fish availability, and the flexibility to fish in areas that optimize target catch while minimizing bycatch. If swordfish and yellowfin tuna landings in the Gulf of Mexico decrease due to shifting effort into the Monitoring Areas, then fishermen would likely continue fishing outside of the areas. Thus, we expect that revenue results would bear out at the high end of the range.

NMFS disagrees that the Spring Gulf of Mexico Gear Restricted Area has not had adverse economic impacts on pelagic longline fishermen. In addition to the quantitative analyses, pelagic longline fishermen have commented during this rulemaking process that there are adverse economic impacts and regulatory burdens associated with complying with the number of regulations and restrictions on the fishery. During the effective period of the Spring Gulf of Mexico Gear Restricted Area, pelagic longline fishermen in the northern Gulf of Mexico must conduct fishing operations around the geographic patchwork of the Spring Gulf of Mexico Gear Restricted Area's two designated areas as well as the Desoto Canyon closure (See Figure 3.4 of the FEIS associated with this rulemaking). These restrictions on available fishing grounds limit operational flexibility and fishermen cannot react as quickly to changing conditions—a particularly variable factor when fishing for highly migratory species such as bluefin tuna, yellowfin tuna, and swordfish. This, in turn, means that they cannot make decisions to best increase revenue and best avoid potential costs associated with accounting for incidental bluefin tuna catch. Fishermen have also reported general operational costs of having to move to fishing grounds farther away and incurring fuel and opportunity costs given the additional time that can be needed.

Given that we have concluded that all of the measures in place are likely not needed to continue to appropriately limit incidental catch in the pelagic longline fishery as first established in Amendment 7, it is appropriate for the agency to consider this feedback in examining how to relieve regulatory burden on individuals, minimize costs, and avoid unnecessary regulatory duplication. See 16 U.S.C. 1851(a)(7) (National Standard 7). This is consistent with the guidelines, which specify that management measures should be designed ''to give fishermen the greatest possible freedom of action in conducting business and pursuing recreational opportunities that are consistent with ensuring wise use of the resources and reducing conflict in the fishery.''

Comment: NMFS received comments that a weak hook requirement from January through June would continue to severely impact the winter swordfish fishery in the eastern Gulf of Mexico. Comments indicated that there has been a large reduction in swordfish landings in the eastern Gulf of Mexico winter swordfish fishery; that there is no conservation value to maintaining this regulation in the eastern Gulf of Mexico; and that the loss of revenue is making it harder to find crew for longline boats. NMFS received comments suggesting that NMFS create a new spatially managed area in the southeastern Gulf of Mexico where weak hook use would not be required. NMFS also received comments suggesting that the monofilament on swordfish leaders that have straightened hooks are usually very opaque instead of clear, which may indicate physical stress on the line from a swordfish bill striking the leader as the escaped fish reacts to being hooked. One commenter estimated their 2017 losses at 5,000–6,000 lb of swordfish, with an estimated value of $30,000.

Response: NMFS investigated catch rates of several target species occurring in the area in the eastern Gulf of Mexico delineated by several pelagic longline fishermen during the development of the FEIS. Appendix D of the FEIS includes this data analysis. NMFS compared catch rates from the area from 2009–2011 (3 years prior to weak hook implementation; 2011 included since weak hooks were not mandatory until May) and 2015–2017 (3 years after implementation). Overall catch rates and landings of swordfish were annually variable from before and after implementation of weak hooks. Although variable from year to year, data suggested landings and catch rates have not changed in this area since implementation of weak hooks in the Gulf of Mexico.

NMFS also analyzed bluefin tuna landings and dead discard catch rates and catch numbers. Bluefin tuna catches were slightly higher in the eastern Gulf of Mexico area delineated by several pelagic longline fishermen prior to the implementation of weak hooks. Since higher catch rates were experienced prior to implementation of weak hooks, there is likely to be a continued conservation benefit to retaining a seasonal weak hook requirement in the area shown in Appendix E of the FEIS because bluefin tuna are likely to still occur in the eastern Gulf of Mexico.

Comment: NMFS received comments regarding a seasonal weak hook requirement stating that there is a substantial expense in changing gear type in labor and materials. Financial burden is not just associated with the cost of hooks. As shown in Chapter 3 of the FEIS associated with this rulemaking, Figure 3.2 and 3.3, pelagic longline gear consists of a mainline suspended in the water column, from which branch lines (which hang off the mainline and are used to suspend hooks in the water column). Monofilament line is used widely for both the mainline (the longline) and branchlines. Branchlines may incorporate a section of line (of variable length) known as a leader, with a lead weight at one end and the baited hook at the other. Commenters noted that they must purchase a different, stretchy type of leader to deploy with weak hooks that keep small swordfish from straightening the hooks. NMFS received comments that there is an impracticality to carrying double gear and/or storing the non-weak hook gear shoreside. Its takes a full crew two days to change out the gear. Additionally, because of regulations, the hooks must be corrosive and the aluminum crimps will eventually fail; extra supplies to support the deployed hook of choice are needed to be stored onboard. Few boats in the fishery have the deck capacity to carry double gear.

Response: NMFS disagrees with this comment because fishermen may fish with weak hooks in the Gulf of Mexico for the entire year if they wish to do so. The removal of the requirement for the July–December time period does not prohibit the use of weak hooks during that period. If fishermen find that using weak hooks throughout the year is less burdensome they may do so. NMFS recognizes that vessels that fish outside the Gulf of Mexico, may not be rigged with weak hooks and would need to re-rig their gear to use weak hook when the requirement is in effect. Due to little change in the catch and catch rates of swordfish in the Gulf of Mexico and the conservation benefit afforded to bluefin tuna when spawning, NMFS is at this time preferring a seasonal requirement. NMFS also notes that currently in the entire Gulf of Mexico, all vessels with pelagic longline onboard must only possess weak circle hooks 50 CFR 635.21(c)(5)(iii)(B)(*2*)(*i*) (with a limited exception when greenstick gear is also onboard).

Section 604(a)(4) of the RFA requires Agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Provision is made under the SBA regulations for an agency to develop its own industry-specific size standards after consultation with SBA Office of Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the **Federal Register**, which NMFS did on December 29, 2015 (80 FR 81194; December 29, 2015). In this final rule effective on July 1, 2016, NMFS established a small business size standard of $11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. NMFS considers all HMS permit holders to be small entities because they had average annual receipts of less than $11 million for commercial fishing. The Small Business Administration (SBA) has established size standards for all other major industry sectors in the U.S., including the scenic and sightseeing transportation (water) sector (NAICS code 487210, for-hire), which includes charter/party boat entities. The SBA has defined a small charter/party boat entity as one with average annual receipts (revenue) of less than $7.5 million.

Regarding those entities that would be directly affected by the preferred alternatives, the average annual revenue per active pelagic longline vessel is estimated to be $187,000 based on the 170 active vessels between 2006 and 2012 that produced an estimated $31.8 million in revenue annually. The maximum annual revenue for any pelagic longline vessel between 2006 and 2016 was less than $1.9 million, well below the NMFS small business size standard for commercial fishing businesses of $11 million. Other non-longline HMS commercial fishing vessels typically generally earn less revenue than pelagic longline vessels. Therefore, NMFS considers all Atlantic HMS commercial permit holders to be small entities (*i.e.,* they are engaged in the business of fish harvesting, are independently owned or operated, are not dominant in their field of operation, and have combined annual receipts not in excess of $11 million for all its affiliated operations worldwide). The preferred commercial alternatives would apply to the 280 Atlantic tunas Longline category permit holders, 221 directed shark permit holders, and 269 incidental shark permit holders. Of these 280 Atlantic tunas Longline category permit holders, 85 pelagic

longline vessels were actively fishing in 2016 based on logbook records.

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

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

Under Section 604(a)(6) of the RFA requires Agencies to describe the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. These impacts are discussed in Chapters 4 and 6 of the FEIS associated with this rulemaking.

Northeastern United States Closed Area

Alternative A1, the No Action alternative, would maintain the current regulations regarding the Northeastern United States Closed Area. The currently defined area would remain closed to all vessels using pelagic longline gear onboard from June 1 through June 30 of a given year. Average annual revenue for bluefin and target species combined during this time period in the surrounding open reference area was $178,847. Since 16 vessels operated in this area in June between 2015 and 2018, the average annual revenue per vessel during this time period was $11,178. This alternative would maintain the recent landings levels and corresponding revenues, resulting in neutral direct economic impacts to these small entities. This alternative does not balance the objective of appropriately managing and limiting bluefin bycatch in the pelagic longline fishery and the requirement to provide vessels with a reasonable opportunity to harvest available target species quotas consistent with objectives of this rulemaking and those established in Amendment 7. Retaining, or not evaluating continued need for, a closed area intended to limit bluefin discards while at the same time requiring fishery participants to individually account for their incidental bluefin catch with IBQ allocation appears to be redundant in effect. Not all of the regulations currently in place appear to be needed to appropriately limit incidental catch of bluefin in the pelagic longline fishery, and maintaining all of the restrictions may unnecessarily restrict pelagic longline fishery effort and create unnecessary regulatory burden for fishery participants. Furthermore, NMFS is required under ATCA and the Magnuson-Stevens Act to give fishing vessels a reasonable opportunity to harvest the ICCAT quotas. See 16 U.S.C. 1854(g)(1)(D). The gear restricted areas, if no longer necessary to manage bluefin incidental catch, may unnecessarily restrict the longline fleet in this regard. Therefore, this alternative is not preferred at this time.

Alternative A2 would modify the current Northeastern United States Closed Area to remove portions of the closure (*i.e.,* those areas west of 70° W longitude) that current analyses indicate: (1) Did not historically have high numbers of bluefin discards reported in the HMS logbook during the timeframe of data (1996–1997) originally analyzed for implementation of the closure in 1999, and (2) were adjacent to areas that recently (2015–2018) did not have bluefin interactions. Total average annual revenue for bluefin and target species in June of 2015 through 2018 was $178,847. The predicted range of total average annual revenue under this alternative would be $172,389. As mentioned above regarding Alternative A1, in the reference area, total average annual revenue for the 16 vessels for bluefin and target species in June of 2015 through 2018 was $$11,178 per vessel. The predicted total average annual revenue under Alternative A2 would be $10,774,528 per vessel). Under Alternative A2, revenue from most species is predicted to decrease during the month of June, particularly for swordfish. Revenue from bigeye tuna, on the other hand, could increase slightly. Some of the analyses in the DEIS predicted that, if fishing effort moved directly and proportionately from the now-open areas to the newly-opened areas, catch rates could be lower for most species, and revenue would also be lower. This analysis rests, however, on the presumption of direct movement of the same levels of effort from one area to the other. It does not account for a critical element of fishing behavior that is determinative of how and where effort changes would actually occur under this rule: Namely, fishermen selection of productive fishing grounds. In practical application, we expect that fishermen would make decisions about productive fishing grounds and move their effort responsively and accordingly, thus offsetting any impact that the change in area could otherwise produce. Fishermen will make decisions about productive fishing grounds in any given year depending on fish availability and will likely decide not to fish in the area being considered for opening if they discover it could lower their fishing revenue. Thus, fishing revenue impacts for this alternative are expected to be neutral. Given the low numbers of expected target catch in the area that could be opened under this alternative, this alternative would not provide access to the more productive areas of the modified Northeastern United States Closed Area. Also, this alternative does not provide an evaluative mechanism for the modified Northeastern United States Closed Area that would remain closed, available fishery data for this area is over 20 years old, and there are considerable differences in management strategies for the fishery. Therefore, NMFS is not preferring Alternative A2 at this time.

Alternative A3 considered converting the Northeastern United States Closed Area to the ''Northeastern United States Gear Restricted Area'', and allowing performance-based vessel access therein using the access criteria currently used for the Cape Hatteras Gear Restricted Area (currently codified at §§ 635.21(c)(3) and 635.14). Vessels would be evaluated against criteria (*i.e.,* performance metrics) evaluating a vessel's ability to avoid bluefin tuna, comply with Pelagic Observer Program requirements, and comply with HMS logbook submission requirements using the three most recent years of available data associated with a vessel. If no data are available, then NMFS would not be able to make a determination about vessel access, and such vessels would be excluded from gear restricted area access until NMFS has collected sufficient data for assessment (consistent with current procedures for the Cape Hatteras Gear Restricted Area). Those vessels that meet the criteria for performance metrics would be allowed to fish in the closed area. This measure would be evaluated after at least three years of data have been collected to determine whether it effectively achieves the management objectives of this rulemaking.

Total average annual revenue for bluefin and target species in June of 2015 through 2018 was $178,847, which is on average $11,178 per vessel for the

16 vessels fishing in that area. The predicted range of average annual revenue per vessel during this time period under this alternative would be $5,720 to $12,140. Revenue from some species is predicted to decrease during the month of June, particularly for swordfish and dolphin, because anticipated catch rates for some species in the Northeastern United States Gear Restricted Area were lower than those in the reference area. Revenue from yellowfin tuna, on the other hand, could increase substantially. Some of the analyses in the FEIS predicted that, if fishing effort moved directly and proportionately from the now-open areas to the newly-opened areas, catch rates could be lower for most species, and revenue would also be lower. This analysis rests, however, on the presumption of direct movement of the same levels of effort from one area to the other. It does not account for a critical element of fishing behavior that is determinative of how and where effort changes would actually occur under this rule: Namely, fishermen selection of productive fishing grounds. In practical application, we expect that fishermen would make decisions about productive fishing grounds and move their effort responsively and accordingly, thus offsetting any impact that the change in area could otherwise produce. Fishermen will make decisions about productive fishing grounds in any given year depending on fish availability and will likely decide not to fish in the Northeastern United States Closed Area if they qualify for access and discover it could lower their fishing revenue. Thus, fishing revenue impacts for this alternative are expected to be neutral. Implementing performance-based access would provide increased flexibility for fishermen to adapt to changing distributions and concentrations of bluefin and target catch. This alternative will also give fishermen the ability to make choices on where to fish to optimize target catch while minimizing bycatch. An unquantified short-term economic benefit of this alternative is a reduction in trip length and associated fuel cost. The Northeastern United States Gear Restricted Area would open areas for qualified pelagic longline vessels that are closer to shore than where most of the effort is currently occurring during the month of June in the adjacent open areas. The closure is approximately 320 miles wide from west to east, so allowing fishing in the area could reduce some trips by hundreds of miles. Less fuel consumption would lower the trip cost and increase the trip profit, which may influence fishermen's decisions on fishing in the Monitoring Area. In addition, shorter trip lengths could also reduce the opportunity costs for crew and captains on the vessel by reducing the number of days they are away at sea fishing.

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

This alternative does not present much difference in ecological or socioeconomic impacts from opening this area as a Monitoring Area (Alternative A4) or eliminating the Closed Area (Alternative A5). Depending on the access levels, this alternative may not meet the objectives of optimizing the ability of the pelagic longline fleet to harvest target species. For these reasons, NMFS does not prefer this alternative at this time.

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

—The Monitoring Area would initially remain open to pelagic longline fishing from June 1 to June 30.

—There would be an annual 150,519 pound IBQ allocation threshold for landings and dead discards of bluefin caught within the Monitoring Area.

—If the threshold is reached, or is projected to be reached, NMFS would file a closure notice for the Monitoring Area with the Office of the Federal Register.

—On and after the effective date of the notice, the Monitoring Area would be closed to pelagic longline fishing each year from June 1 through June 30, unless NMFS takes further action.

—If no closure notice is filed between June 1, 2020 and December 31, 2022, the Monitoring Area would remain open, unless and until NMFS decides to take additional action regarding the area.

The 150,519 lb threshold is based on the average annual amount of unused Atlantic IBQ allocation that is available for use by the pelagic longline fleet from June 1 through December 31. Using unused allocation as the threshold helps to ensure that opening the area to fishing would not compromise adherence to the overall bluefin quota or the ability of fishery participants to obtain enough IBQ allocation to cover bluefin landings and dead discards for the rest of the year. It should be noted that the threshold does not mean that 150,519 lb of IBQ allocation can be used *only* in the Monitoring Area. IBQ allocation is still subject to the same regulations previously applicable. The threshold is for NMFS' monitoring and evaluation purposes for the Area only. After the 2020–2022 evaluation period, NMFS will evaluate data collected from the Monitoring Area and compile a report. Based on the findings of the report, NMFS may then decide to initiate a follow-up action to implement new, longer-term management measures for the area. As discussed in Chapters 2 and 4 of the FEIS, the status of the Monitoring Area following the three-year evaluation period is dependent on whether the threshold has been reached in any of those three years.

NMFS received comment suggesting that if the ICCAT western Atlantic bluefin quota, and thus the U.S. allocation of bluefin quota, were to be adjusted upwards by ICCAT, maintaining a threshold based on a designated poundage would make the threshold disproportionately small in relation to the new quota. NMFS agrees that using a percentage as well as a specific poundage for management of the monitoring areas may be appropriate. However, given the concerns expressed by the public about the uncertain ecological effects of pelagic longline fishing in the Spring Gulf of Mexico Gear Restricted Area and the Northeastern United States Closed Area, NMFS prefers to take a more conservative approach to managing these areas and only make adjustments based on a percentage if the U.S. allocation is adjusted downwards by ICCAT. The 150,519 lb threshold is equivalent to 72 percent of the Atlantic IBQ allocation issued to the fleet in 2018. If the ICCAT quota is adjusted downward, the threshold would also be adjusted downward, to reflect a percentage of overall IBQ allocation commensurate with the current threshold (*i.e.,* 72 percent of the new Atlantic IBQ allocation disbursed to the fleet, the equivalent percentage of the current threshold in relation to the overall available IBQ allocation).

This Monitoring Area will provide increased flexibility for fishermen to adapt to changing distributions and concentrations of bluefin and target catch. This alternative will also give fishermen the ability to make choices about where to fish to optimize target

catch while minimizing bycatch. An unquantified benefit of this alternative could be a reduction in trip length and associated fuel cost. The alternative would open areas for pelagic longline fishing that are closer to shore than where most of the effort is currently occurring during the month of June in the adjacent open areas. The short-term economic impacts would be very similar to those of Alternative A3. Long-term economic impacts would depend on the result of the three-year evaluation period for this Monitoring Area. If NMFS were to decide to take action so that these areas remain open after three years, long-term impacts would be expected to be the same as short-term impacts.

This alternative is consistent with the objectives of optimizing the ability of the pelagic longline fleet to harvest target species, because it provides a carefully controlled mechanism to allow fishermen back into areas that were previously closed. This alternative also helps with the uncertainty due to lack of data from within the closed area as to whether the area is still appropriately located or needed to meet bluefin management objectives. This alternative gives fishermen more flexibility to determine where to fish to optimize target catch in the region encompassing the Northeastern United States Closed Area. This alternative would also be expected to have neutral ecological impacts on bluefin, as it provides measures to minimize bluefin bycatch via the threshold and evaluative aspects of the program. It should allow the pelagic longline fishery vessels to continue fishing from January through May, within the same levels of IBQ allocation usage (2015–2018), and have a threshold level that provides both sufficient opportunities for fishermen to target swordfish, yellowfin tuna, bigeye tuna, as well as other pelagic species, and limits catch of bluefin while the Monitoring Area is effective. The individual accountability aspects of the IBQ Program would still be relied upon to incentivize bluefin avoidance, meaning that there is still a proven means to achieve the objectives of continuing to minimize bycatch and bycatch mortality of bluefin and other Atlantic HMS. In addition, this alternative simplifies and streamlines regulations in the Atlantic intended to reduce bluefin, and is therefore consistent with that corresponding objective for this rulemaking. For these reasons this alternative is preferred at this time. Alternative A5 would eliminate all current restrictions associated with the Northeastern United States Closed Area. Since this alternative would allow access to all vessels in the month of June by removing regulations related to the Northeastern United States Closed Area, the socioeconomic impacts would be the same as presented in the preferred alternative, Alternative A4. In the long-term, overall economic impacts are expected to range between minor positive to neutral based on the increased flexibility in fishing areas, potentially shorter trips and associated lower fuel costs, and thus potentially increased profits from fishing. Elimination of the Northeastern United States Closed Area is anticipated to have similar impacts as the evaluative option (Alternative A4), and the modification of the Northeastern United States Closed Area (Alternative A3). However, NMFS is not preferring this alternative at this time, given uncertainty with the catch estimates in the analysis and inability to quickly restrict fishing if bycatch impacts to the bluefin or other species are beyond acceptable levels. This alternative also does not provide an automatic mechanism for NMFS to initiate the review of the impacts of opening the area. This alternative does not align with the objective of adequately conserving and managing the bluefin stock and minimizing bycatch and bycatch mortality of bluefin and other Atlantic HMS with the lack of NMFS ability to quickly restrict fishing if bycatch levels of any Atlantic HMS are beyond acceptable levels. This alternative is not preferred at this time.

Cape Hatteras Gear Restricted Area

Alternative B1, the No Action alternative, would maintain the current boundaries and restrictions associated with the Cape Hatteras Gear Restricted Area. Access to the area would be based on an evaluation of performance metrics. Since implementation of the program, the majority of the pelagic longline fleet has been granted access to the gear restricted area. However, the number of permit holders with data available for analysis has declined, coincident with an increase in the number of permits in ''NOVESID'' status (*i.e.,* permits are renewed but not associated with a vessel). In the first year of the program, 136 vessels (~48 percent of the 281 pelagic longline permits) were determined to have sufficient data for the analysis, while 145 permits were either in NOVESID status, were inactive during the initial analysis period, or were in an invalid status. Approximately 75 percent of active vessels were granted access to the gear restricted area. During the 2019–2020 effective period, 89 vessels (~31.7 percent) had data available for analysis. Of these, 79 percent of active vessels met criteria for access to the gear restricted area in the 2019–2020 effective period.

Since implementation of the IBQ Program in 2015, revenue in the Cape Hatteras Gear Restricted Area for highly valued target species has increased. Although still higher than the revenue estimated for sets deployed within the Cape Hatteras Gear Restricted Area during the first two years of the program, estimated set revenue decreased by 23 percent between 2017 and 2018. These patterns likely reflect fishermen adjusting business practices to the gear restricted area and IBQ Program, and annual variability in effort, landings, and market forces. During the gear restricted area's December through April effective period, from 2015 through 2018, sets made within this gear restricted area contributed approximately 8.9 percent of the revenue generated for swordfish, 4.3 percent of the revenue from yellowfin tuna, 28.5 percent of the revenue from bigeye tuna, and 21.2 percent of the revenue from bluefin.

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

Retaining a gear restricted area with performance-based access to limit bluefin interactions (which no longer restricts many active fleet participants) while at the same time requiring fishery participants to individually account for their incidental bluefin catch with IBQ allocation, is unnecessarily restrictive of pelagic longline fishery effort, particularly where overall limits on quota are established through scientifically supported quotas and subsequently enforced and monitored through a careful management regime that further divides and manages that quota at several stages, including limits on the amount of IBQ allocation available. Given this, NMFS determined that this alternative is not aligned with the objective to simplify and streamline HMS management. Because it does not meet all the objectives of the rulemaking, NMFS is not preferring the No Action alternative at this time.

Alternative B2 would remove the current gear restricted area off Cape Hatteras, North Carolina, as currently defined in § 635.2 and all associated regulatory provisions, restrictions, and prohibitions. Removing the gear restricted area is likely to have neutral to minor and beneficial economic impacts, depending on the scale of consideration. Fleet-wide effects on fishing revenue for this time period are anticipated to be neutral as the majority of the fleet had met access criteria to the area and continued to fish in it following implementation of Amendment 7 management measures. Vessels that recently did not meet criteria for access (*e.g.,* for the 2019–2020 effective period) to the gear restricted area fished in a variety of locations between 2016 and 2018. Many of these vessels did not make sets within this area either prior to implementation or after implementation when they did meet the criteria for access to the gear restricted area. Revenue for these vessels may therefore be based on factors other than access to the gear restricted area. Removing the gear restricted area may have temporary, localized and minor beneficial economic impacts to a small number of individual vessels. Removing this restriction would remove regulations that are perceived by fishery participants to be a regulatory burden and no longer necessary in tandem with the IBQ Program. It may also reduce year-to-year uncertainty associated with access decisions for fishermen that do fish in the Cape Hatteras region. These fishermen may also have more options regarding fishing locations. The gear restricted area is situated in a location where wintertime fishing activities are largely dependent on weather and wind direction. Cape Hatteras and adjacent Diamond Shoals shelter fishing grounds to the south and west from northerly and westerly winds, and to the north from southerly and westerly winds. Removing the closures could enable greater flexibility for fishermen to safely conduct fishing activities in short, favorable wintertime weather windows. Removing the Cape Hatteras Gear Restricted Area balances the objectives to optimize ability to harvest target species with continuing to minimize bycatch and bycatch mortality. It also simplifies and streamlines HMS management by reducing redundant regulations. For these reasons, this alternative is preferred at this time.

Spring Gulf of Mexico Gear Restricted Area

Alternative C1, the No Action alternative, would maintain the current regulations regarding the Spring Gulf of Mexico Gear Restricted Area (comprised of two areas). NMFS would maintain current restrictions which prohibit fishing to all vessels with pelagic longline gear onboard from April 1 through May 31 each year (vessels may transit the area if gear is properly stowed). Outside of the gear restricted area, average annual revenue for bluefin tuna and target species from April-May in 2015 through 2018 was $677,007. There were 34 pelagic longline vessels active in the Gulf of Mexico during that time period, thus each vessel generated an average of $19,912 annually between April-May. This alternative would maintain the recent landings levels and resulting revenues, resulting in neutral direct economic impacts. Although the No Action alternative could meet the objective of continuing to minimize bycatch and bycatch mortality of bluefin, it does not meet the objectives of optimizing the ability of the pelagic longline fleet to harvest target species quotas or streamlining and simplifying HMS management by reducing regulations that may be redundant in effect and pose an unnecessary regulatory burden on fishery participants. For these reasons, NMFS does not prefer this alternative at this time.

Alternative C2 would apply performance-based access to the Spring Gulf of Mexico Gear Restricted Area. Vessels would be evaluated against criteria (*i.e.,* performance metrics) evaluating their ability to avoid bluefin tuna, comply with Pelagic Observer Program requirements, and comply with HMS logbook submission requirements using the three most recent years of available data associated with a vessel. If no data are available, then NMFS would not be able to make a determination about vessel access, and such vessels would be excluded from gear restricted area access until NMFS has collected sufficient data for assessment (consistent with current operational Amendment 7 implementation procedures). Those vessels that meet the criteria for performance metrics would be allowed to fish in the closed area. This measure would be evaluated after at least three years of data have been collected to determine whether it effectively achieves the management objectives of this rulemaking. In the analyses of gear restricted area access for 2015 through 2019, up to 3 pelagic longline vessels associated with Gulf of Mexico IBQ shares have been excluded from the Cape Hatteras Gear Restricted Area in any given year, out of a total of 52 vessels associated with Gulf of Mexico IBQ shares. Those same vessels would also be excluded from the Spring Gulf of Mexico Gear Restricted Area under this alternative. Therefore, given these past access determinations, at least 94 percent of vessels with Gulf of Mexico IBQ allocation would be expected to have access to the Spring Gulf of Mexico Gear Restricted Area under this alternative. As noted under Alternative C1, average annual revenue per vessel for bluefin tuna and target species in April-May of 2015 through 2018 was $19,912. The predicted range of average annual revenue per vessel under this alternative would be $15,828 to $20,234. Revenue from some species is predicted to decrease during these two months, particularly for swordfish, because anticipated catch rates for some species in the Spring Gulf of Mexico Gear Restricted Area with performance access were lower than those in the open portions of the Gulf of Mexico. Revenue from bigeye tuna, on the other hand, is predicted to remain the same or increase. Some of the analyses in the DEIS predicted that, if fishing effort moved directly and proportionately from the now-open areas to the newly-opened areas, catch rates could be lower for most species, and revenue would also be lower. This analysis rests, however, on the presumption of direct movement of the same levels of effort from one area to the other. It does not account for a critical element of fishing behavior that is determinative of how and where effort changes would actually occur under this rule: Namely, fishermen selection of productive fishing grounds. In practical application, we expect that fishermen would make decisions about productive fishing grounds and move their effort responsively and accordingly, thus offsetting any impact that the change in area could otherwise produce. Fishermen will make decisions about productive fishing grounds in any given year depending on fish availability. Access to the gear restricted areas will provide increased flexibility for fishermen to adapt to changing distributions and concentrations of bluefin tuna and target catch. This alternative will also give fishermen the ability to make choices on where to fish to optimize target catch while minimizing bycatch. Thus, fishing revenue impacts for this alternative are expected to be neutral.

Long-term impacts on these species would depend on future trends in performance-based access to the Spring Gulf of Mexico Gear Restricted Area. If the number of vessels allowed access to

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

Since the majority of vessels fishing in the Gulf of Mexico would be expected to have access to the Spring Gulf of Mexico Gear Restricted Area under this alternative, any benefit to applying performance-based access would likely be minimal. This alternative does not present much difference in ecological or socioeconomic impacts from opening these areas as Monitoring Areas (Alternative C3) or eliminating the Spring Gulf of Mexico Gear Restricted Area (Alternative C4). In order to meet the objective of optimizing the ability of the fleet to harvest target species, this alternative would add additional, somewhat complicated regulations to the area instead of streamlining and simplifying regulations. Therefore, this alternative is not strongly aligned with the objective to streamline and simplify HMS regulations. For these reasons, NMFS does not prefer this alternative at this time.

Alternative C3, the preferred alternative, would convert the ''Spring Gulf of Mexico Gear Restricted Area'' to a ''Spring Gulf of Mexico Pelagic Longline Monitoring Area'' (which will continue to be comprised of two areas) (''Monitoring Area''). This area has been closed to pelagic longline fishing during the months of April and May since 2015. This alternative would have a three-year evaluation period (January 1, 2010 through December 31, 2022) for the Monitoring Area, which would be managed as follows:

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

The area would be closely monitored by NMFS under a process that would prohibit fishing if the fleet were to use Gulf of Mexico IBQ allocation in exceedance of an established annual threshold to account for bluefin landings or dead discards caught within the boundaries of the Monitoring Area. The 63,150 lb threshold is based on the amount of IBQ annual allocation distributed to vessels that fished in the region while the closures were effective between 2015 and 2017. NMFS decided that this was an appropriate threshold because it will accommodate data collection in the area while keeping landings and dead discards in the fishery within the science based Longline category sub-quota. This threshold would limit the amount of IBQ allocation that could be used to account for bluefin landings and dead discards in the monitoring area to the amount of IBQ allocation that could be used by the portion of the fleet that was recently (2015 through 2017) active during these months in the Gulf of Mexico. The intent of this threshold design is to discourage a level of fishing beyond what has recently occurred in the Gulf of Mexico. Basing the threshold for closure on the annual allocation of active vessels from 2015 to 2017 would allow pelagic longline vessels to continue fishing in the same manner as they have in the past three years, and have a threshold level that provides sufficient opportunities for fishermen to target swordfish and yellowfin and bigeye tunas while the Monitoring Area are effective. It should be noted that the threshold does not mean that 63,150 lb of Gulf of Mexico IBQ allocation can be used only in the Monitoring Area. IBQ allocation is still subject to the same regulations previously applicable. The threshold is for NMFS' monitoring and evaluation purposes of the Monitoring Area only. The 63,150 lb threshold is approximately 55 percent of the adjusted total Gulf of Mexico IBQ allocation currently distributed to the fleet. In the event that the western Atlantic bluefin quota later is reduced at ICCAT and the U.S. allocation of bluefin quota is adjusted downward as a result, the threshold would also be adjusted. Such adjustment would make the threshold 55 percent of the total Gulf of Mexico IBQ allocation disbursed to the fleet as a result of the lower U.S allocation. After the 2020–2022 evaluation period, NMFS will evaluate data collected from the Monitoring Area and compile a report. Based on the findings of the report, NMFS may then decide to initiate a follow-up action to implement new, longer-term management measures for the area.

As noted under Alternative C1, average annual revenue per vessel for bluefin and target species in April-May of 2015 through 2018 was $19,912. The predicted range of average annual revenue per vessel under this alternative would be $15,828 to $20,234. Revenue from some species is predicted to decrease during these two months, particularly for swordfish, because anticipated catch rates for some species in the Spring Gulf of Mexico Pelagic Longline Monitoring Area were lower than those in the open portions of the Gulf of Mexico. Revenue from bigeye tuna, on the other hand, is predicted to remain the same or increase. Some of the analyses in the DEIS predicted that, if fishing effort moved directly and proportionately from the now-open areas to the newly-opened areas, catch rates could be lower for most species, and revenue would also be lower. This analysis rests, however, on the presumption of direct movement of the same levels of effort from one area to the other. It does not account for a critical element of fishing behavior that is determinative of how and where effort changes would actually occur under this rule: Namely, fishermen selection of productive fishing grounds. In practical application, we expect that fishermen would make decisions about productive fishing grounds and move their effort responsively and accordingly, thus offsetting any impact that the change in area could otherwise produce. Fishermen will make decisions about productive fishing grounds in any given year depending on fish availability and will likely decide not to fish in the Spring Gulf of Mexico Pelagic Longline Monitoring Area if they discover it could lower their fishing revenue. The Monitoring Area will provide increased flexibility for fishermen to adapt to changing distributions and concentrations of bluefin and target catch. This alternative will also give fishermen the ability to make choices on where to fish to optimize target catch while minimizing bycatch. Thus, fishing revenue impacts for this alternative are expected to be neutral.

Long-term economic impacts would depend on the result of the three-year evaluation period for this Monitoring Area. If NMFS decides to take action to

keep these areas open after three years, long-term impacts would be expected to be the same as short-term impacts.

This alternative would give fishermen the flexibility to determine where in the Gulf of Mexico they choose to fish to optimize target catch. The individual accountability aspects of the IBQ Program would still be relied upon to incentivize bluefin avoidance, meaning that there is still a proven means to achieve the objectives of continuing to minimize bycatch and bycatch mortality of bluefin and other Atlantic HMS. In addition, this alternative simplifies and streamlines regulations in the Gulf of Mexico intended to reduce bluefin, and is therefore consistent with that corresponding objective for this rulemaking. For these reasons, NMFS prefers this alternative at this time.

Alternative C4 would remove the Spring Gulf of Mexico Gear Restricted Area. Since this alternative would allow access to all vessels by removing regulations related to the Spring Gulf of Mexico Gear Restricted Area, the short-term socioeconomic impacts would be the same as presented in the preferred Alternative C3. As noted under Alternative C1, average annual revenue per vessel for bluefin and target species in April-May of 2015 through 2017 was $19,912. The predicted range of average annual revenue per vessel under this alternative would be $15,828 to $20,234. Revenue from some species is predicted to decrease during these two months, particularly for swordfish, because anticipated catch rates for some species in the Spring Gulf of Mexico Gear Restricted Area were lower than those in the open portions of the Gulf of Mexico. Revenue from bigeye tuna, on the other hand, is predicted to remain the same or increase. Overall economic impacts for this alternative are expected to be neutral in the short-term, despite the predicted decrease in overall revenue. Fishermen will make decisions about where to fish in any given year depending on fish availability. This alternative will also give fishermen the ability to make choices on where to fish to optimize target catch while minimizing bycatch. Long-term economic impacts would be expected to be the same as short-term impacts. Although this alternative gives fishermen the most flexibility to determine where in the Gulf of Mexico they choose to fish to optimize target catch and minimize bycatch under the IBQ Program, and although this alternative would be expected to have neutral ecological impacts on bluefin, this alternative does not have the agency control provided by performance access in Alternative C2 or by the monitoring aspects of the evaluation process in Alternative C3, resulting in more uncertainty in the long-term. For these reasons, NMFS does not prefer this alternative at this time.

Weak Hooks

Under Alternative D1, NMFS would maintain the current regulations at 50 CFR 635.21(c)(5)(iii)(B)(*2*)(*i*) requiring vessels fishing in the Gulf of Mexico, that have pelagic longline gear on board, and that have been issued, or are required to have been issued, a swordfish, shark, or Atlantic Tunas Longline category LAP for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, to use weak hooks year-round when operating in the Gulf of Mexico. Because this alternative does not change current regulations, economic impacts on small entities would be neutral. However, this alternative would not address the higher bycatch of other species, such as white marlin, that occurs in the second half of the year on weak hooks. It also would not address comments NMFS has received from pelagic longline fishermen expressing concern about their perception that swordfish catches have been reduced with weak hooks. Under this alternative, fishermen would not have any additional flexibility to choose a stronger circle hook (that also meets other existing requirements for hook size and type) that they feel may work better for their fishing operations. Weak hook research conducted by NMFS from 2008–2012 indicated that there was no significant difference in the catch rates of any targeted species when compared to previously allowed stronger circle hooks, even though the catch rates of legally sized swordfish did in fact decrease with weak hooks. This alternative is not consistent with the objective of continuing to minimize bycatch of all Atlantic HMS; because this alternative would not mitigate the adverse impacts to white marlin and roundscale spearfish when they are present in the Gulf of Mexico. NMFS does not prefer Alternative D1 at this time.

Alternative D2, the preferred alternative, would modify the regulations described under Alternative D1 to only require use weak hooks from January through June. This time period is when spawning bluefin are highest in abundance in the Gulf of Mexico, and it includes the April through June bluefin tuna spawning season. Fishermen may voluntarily choose to continue to use weak hooks when they are not required. This alternative would likely result in short- and long-term minor beneficial economic impacts since it would give fishermen more flexibility in choosing how to fish. During the months without the weak hook requirement, fishermen could choose whether to use the gear based on their knowledge of bluefin tuna presence and distribution. Furthermore, weak hooks can help fishermen manage their IBQ allocation by reducing the number of captured bluefin tuna that would be counted against their IBQ allocation. NMFS prefers this alternative at this time because it increases fishermen's flexibility and helps fishermen manage their IBQ allocation by reducing the number of captured bluefin tuna that would be counted against their IBQ allocation. There may be potential economic benefits for recreational fishermen that fish for white marlin or roundscale spearfish as a result of the anticipated decrease in commercial bycatch rates and associated fishing mortality and potential improvements to stock health and status. This alternative is expected to strike the best balance between the objectives of continuing to minimize, to the extent practicable, bycatch and bycatch mortality of bluefin and optimize the ability for the pelagic longline fishery to harvest target species quotas. This alternative provides increased flexibility with respect to hook requirements in the second half of the year (provided basic circle hook requirements are still met). This alternative also balances the objective of reducing potentially redundant regulations against continuing to minimize bluefin mortality by removing weak hook requirements in the second half of the year when weak hooks are not expected provide an ecological benefit in relation to spawning bluefin. For these reasons, NMFS is preferring this alternative at this time.

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

still find their use beneficial in conserving their IBQ allocation, and would still have the option to deploy weak hooks under this alternative. For example, pelagic longline fishermen that plan to fish in areas with high rates of bluefin tuna interactions may wish to deploy weak hooks to reduce interactions and conserve their IBQ allocation. There could be some risk that not requiring weak hooks from January through June could result in an increased risk for high bluefin tuna interactions for pelagic longline vessels that fish during those months but decide not to use weak hooks, and therefore, those vessels could face a higher risk in depleting their IBQ allocation for the year. Under Alternative D3, NMFS would encourage the voluntary use of weak hooks and leave the decision up to individual fishermen based on their experience and on-the-water knowledge. Any potentially risky fishing practices leading to elevated interactions with Gulf of Mexico bluefin tuna would still be dis-incentivized under the IBQ Program. There may be potential economic benefits for recreational fishermen that fish for white marlin or roundscale spearfish as a result of the anticipated decrease in commercial bycatch rates and associated fishing mortality and potential improvements to stock health and status. Removing the weak hook requirement entirely does not align as closely as other alternatives with the objective to continue to minimize, to the extent practicable, bycatch and bycatch mortality of bluefin especially if fishermen do not elect to use weak hooks during spawning season when the risk of encountering spawning bluefin is higher. Although the current IBQ Program likely provides adequate protection for the bluefin stock in the Gulf of Mexico by limiting fishing mortality in the absence of weak hooks (as described in Chapter 1 and in the Three-Year Review of the IBQ Program), the required use of weak hooks may help fishermen manage their IBQ allocation by reducing each fisherman's catch of bluefin. The IBQ Program likely provides sufficient biological protection but weak hooks may provide socioeconomic benefits for fishermen by extending their IBQ allocation, allowing them to fish for a longer period each year. Additionally, during scoping NMFS received more support for retaining a seasonal weak hook requirement (Alternative D2) than removing weak hooks (this alternative) from multiple constituent groups including recreational fishermen, environmental non-government organizations, and commercial (pelagic longline and directed categories) fishermen. Overall, Alternative D2 is considered as the alternative that would achieve a better balance between ecological needs of the resource and socioeconomic needs of the fishery over Alternative D3. Therefore, Alternative D3 is not preferred at this time.

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. As part of this rulemaking process, NMFS has prepared a listserv notice summarizing fishery information and regulations for the pelagic longline fishery. This listserv notice also serves as the small entity compliance guide. Copies of the compliance guide are available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 635

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

Dated: March 30, 2020.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

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

■ 2. Amend § 635.2 as follows:
■ a. Remove the definitions of ''Cape Hatteras gear restricted area'' and ''Northeastern United States closed area'';
■ b. Add in alphabetical order a definition for ''Northeastern United States Pelagic Longline Monitoring Area''; and
■ c. Remove the definition of ''Spring Gulf of Mexico gear restricted area'' remove the words ''Spring Gulf of Mexico gear restricted area''; and
■ d. Add in alphabetical order a definition for ''Spring Gulf of Mexico Pelagic Longline Monitoring Area''.

The additions read as follows:

§ 635.2 Definitions.

* * * * *

Northeastern United States Pelagic Longline Monitoring Area means the area bounded by straight lines connecting the following coordinates in the order stated: 40°00′ N lat., 74°00′ W long.; 40°00′ N lat., 68°00′ W long.; 39°00′ N lat., 68°00′ W long.; and 39°00′ N lat., 74°00′ W long.

* * * * *

Spring Gulf of Mexico Pelagic Longline Monitoring 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.

* * * * *

§ 635.14 [Removed and Reserved]

■ 3. Remove and reserve § 635.14.

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

§ 635.15 Individual bluefin tuna quotas.

* * * * *

(c) * * *

(3) * * *

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

* * * * *

■ 5. In § 635.21:
■ a. Revise paragraphs (b)(2), (c)(1)(i), (c)(2) introductory text, and (c)(2)(i) through (iii);
■ b. Remove paragraphs (c)(2)(iv) through (vi) and redesignate paragraph (c)(2)(vii) as paragraph (c)(2)(iv);
■ c. In newly redesignated paragraph (c)(2)(iv)(D), remove ''(c)(2)(vii)(E)'' and add in its place ''(c)(2)(iv)(E)'' in its place;
■ d. In newly redesignated paragraph (c)(2)(vii)(E), remove ''(c)(2)(vii)(D)'' and (c)(2)(vii)(C)'' and add ''(c)(2)(iv)(D)'' and ''(c)(2)(iv)(C) in their places, respectively;
■ e. In newly redesignated paragraph (c)(2)(vii)(F), remove ''(c)(2)(vii)(D)'' in four places and remove ''(c)(2)(vii)(C)''

and add ''(c)(2)(iv)(D)'' and ''(c)(2)(iv)(C) in their places, respectively;

■ f. In newly redesignated paragraph (c)(2)(vii)(g), remove ''(c)(2)(vii)(D)'' in four places and remove ''(c)(2)(vii)(C)'' in two places and add ''(c)(2)(iv)(D)'' and ''(c)(2)(iv)(C) in their places, respectively;

■ g. Revise paragraph (c)(3);

■ h. In paragraph (c)(5)(ii)(C)(1), remove ''(c)(2)(vii)(D)'' and add ''(c)(2)(iv)(D)'' in its place;

■ i. Revise paragraph (c)(5)(iii)(B); and

■ j. Add paragraph (c)(5)(iii)(C).

The revisions and additions read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(b) * * *

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

* * * * *

(c) * * *

(1) * * *

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

* * * * *

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

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

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

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

* * * * *

(3) From April 2, 2020 to December 31, 2022, a vessel issued or required to be issued a LAP under this part may fish with pelagic longline gear in the Northeastern United States Pelagic Longline Monitoring Area during the month of June or in the Spring Gulf of Mexico Pelagic Longline Monitoring Area during the months of April and May until the annual IBQ allocation threshold for the monitoring area has been reached or is projected to be reached. The annual IBQ allocation threshold is 150,519 lb for the Northeastern United States Pelagic Longline Monitoring Area, and 63,150 lb for the Spring Gulf of Mexico Pelagic Longline Monitoring Area. If between April 2, 2020 and December 31, 2022, the U.S. allocation of ICCAT bluefin tuna quota codified at § 635.27(a) is reduced, and the BFT Longline category quota established at § 635.26 (a)(3) is subsequently reduced, the annual IBQ allocation thresholds for each monitoring area will be modified as follows: The Gulf of Mexico threshold will be 55 percent of the Gulf of Mexico regional designation as defined at § 635.15 (b)(2) and 72 percent of the Atlantic regional designation as defined at § 635.15 (b)(2). When the relevant threshold is reached, or is projected to be reached, NMFS will file for publication with the Office of the Federal Register a closure for that monitoring area, which will be effective no fewer than five days from date of filing. From the effective date and time of the closure forward, vessels issued or required to be issued a LAP under this part and that have pelagic longline gear on board are prohibited from deploying pelagic longline gear within the boundaries of the relevant monitoring area during the months specified for that area in this paragraph above. After December 31, 2022, if no closure of a particular monitoring area has been implemented under the provisions of this paragraph, vessels with pelagic longline gear on board may continue to deploy pelagic longline gear in that area; if a closure has been issued for a particular monitoring area under the provisions of this paragraph, vessels with pelagic longline gear on board will continue to be prohibited from deploying pelagic longline gear in that area.

* * * * *

(5) * * *

(iii) * * *

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

(C) *Hook size and type.* Vessels fishing outside of the Northeast Distant gear restricted area, as defined at § 635.2, that have pelagic longline gear on board, and that have been issued or are required to be issued a LAP under this part are limited, at all times, to possessing on board and/or using only 16/0 or larger non-offset circle hooks or 18/0 or larger circle hooks with an offset not to exceed 10°. These hooks must meet the criteria listed in paragraphs (c)(5)(iii)(C)(*1*) through (*3*) of this section. A limited exception for the possession and use of J hooks when green-stick gear is on board is described in paragraph (c)(5)(iii)(C)(*4*) of this section.

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

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

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

(*4*) If green-stick gear, as defined at § 635.2, is also on board, a vessel that has pelagic longline gear on board, may possess up to 20 J-hooks. J-hooks may be used only with green-stick gear, and no more than 10 hooks may be used at one time with each green-stick gear. J-hooks used with green-stick gear may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook.

* * * * *

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

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(31) Deploy or fish with any fishing gear from a vessel with a pelagic longline on board in any closed or gear restricted areas during the time periods specified at § 635.21(c)(2).

* * * * *

(54) Possess, use, or deploy, in the Gulf of Mexico, with pelagic longline gear on board, any circle hook that is constructed of round wire stock that is larger than 3.65 mm in diameter during the months of January through June of any calendar year as specified in § 635.21(c)(5)(iii).

* * * * *

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

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

* * * * *

(b) * * *

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

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

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

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

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

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