

NMFS is proposing to establish a schedule of RFDs for the 2022 fishing year that would specify days on which fishing and sales will not occur. Specifically, the proposed schedule allows for two-consecutive-day periods twice each week for BFT product to move through the market while also allowing some commercial fishing activity to occur each weekend (*i.e.*, Sundays). Because this schedule of RFDs would apply to all participants equally, NMFS anticipates that this schedule would extend fishing opportunities through a greater proportion of the subquota periods in which they apply by spreading fishing effort out over time similar to the 2021 fishing season. Further, to the extent that the ex-vessel revenue for a BFT sold by a General or HMS Charter/Headboat permitted vessel (with a commercial endorsement) may be higher when a lower volume of domestically-caught BFT is on the market at one time, the use of RFDs may result in some increase in BFT price, and the value of the General category subquotas could increase similar to that of 2021. Thus, although NMFS anticipates that the same overall amount of the General category quota would be landed as well as the same amount of BFT landed per vessel, there may be some positive impacts to the General category and Charter/Headboat (commercial) BFT fishery. Using RFDs may more equitably distribute opportunities across all permitted vessels for longer durations within the subquota periods.

If NMFS does not implement a schedule, without any other changes, it is possible that the trends of increasing numbers of unsold BFT (Table 1) and decreasing ex-vessel prices (Table 2) from 2017 through 2020 could continue. Additionally, without RFDs in 2022, the General category could have fewer open days later in the fishing season when ex-vessel prices tend to be higher (Table 3) as observed in 2017 through 2020. If those trends were to continue, all active General category permit holders could experience negative economic impacts similar to 2019 and 2020 where dealers were limiting their purchases of BFT and buying no or very few BFT on certain days in order to extend the available quota.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 635

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

Dated: February 28, 2022.

Samuel D. Rauch, III,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220224-0058]

RIN 0648-BL16

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna and North Atlantic Albacore Quotas

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to modify the baseline annual U.S. quota and subquotas for Atlantic bluefin tuna and the baseline annual U.S. North Atlantic albacore (northern albacore) quota. This action is necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) adopted in 2021, as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received by April 6, 2022. NMFS will hold a public hearing via conference call and webinar for this proposed rule on March 24, 2022, from 2:30 p.m. to 4 p.m. EDT. For webinar registration information, see the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2022-0024, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter "NOAA-NMFS-2022-0024" in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

Comments sent by any other method, to any other address or individual, or received after the close of the comment period, may not be considered by NMFS. All comments received are a part

of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

NMFS will hold a public hearing via conference call and webinar on this proposed rule. For specific location, date and time, see the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of this proposed rule and supporting documents are available from the Highly Migratory Species (HMS) Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or by contacting Carrie Soltanoff at carrie.soltanoff@noaa.gov or 301-427-8503.

FOR FURTHER INFORMATION CONTACT: Carrie Soltanoff (carrie.soltanoff@noaa.gov) or Larry Redd, Jr. (larry.redd@noaa.gov) at 301-427-8503, or Steve Durkee (steve.durkee@noaa.gov) at 202-670-6637.

SUPPLEMENTARY INFORMATION: Atlantic tunas fisheries are managed under the authority of ATCA (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. bluefin tuna quota recommended by ICCAT and as implemented by the United States among domestic fishing categories and provides the annual bluefin tuna quota adjustment process. Section 635.23(e) implements the ICCAT-recommended U.S. northern albacore quota and provides the annual northern albacore quota adjustment process.

Since 1982, ICCAT has recommended a total allowable catch (TAC) of western Atlantic bluefin tuna for contracting parties fishing on the stock, and since 1991, ICCAT has recommended specific quotas within that TAC for the United States and other contracting parties. ICCAT adopted a 20-year rebuilding program for western Atlantic bluefin tuna in 1998. The rebuilding plan period was set as 1999 through 2018. In 2017, ICCAT adopted an interim conservation and management measure for western Atlantic bluefin tuna as to transition from the rebuilding program to a long-term management strategy for

the stock. Under this interim measure, ICCAT adopted a bluefin tuna TAC and associated U.S. quota, which NMFS implemented in a 2018 final rule (83 FR 51391; October 11, 2018). In 2009, ICCAT established a northern albacore rebuilding program, including a TAC and several provisions to limit catches by contracting parties (for major and minor harvesters). NMFS implemented the ICCAT-recommended U.S. northern albacore quota in the same 2018 quota rule (83 FR 51391; October 11, 2018).

Through this action, NMFS proposes to adjust the annual U.S. baseline bluefin tuna quota and subquotas and the annual U.S. baseline northern albacore quota to implement the quotas recommended by ICCAT as required by ATCA and to achieve domestic management objectives under the Magnuson-Stevens Act.

NMFS has prepared an Environmental Assessment (EA), Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA), which analyze the anticipated environmental, social, and economic impacts of several alternatives for each of the major issues contained in this proposed rule. A summary of the analyses is provided below. The full list of alternatives and their analyses are provided in the draft EA/RIR/IRFA and are not repeated here.

A copy of the draft EA/RIR/IRFA prepared for this proposed rule is available from NMFS (see **ADDRESSES**).

Bluefin Tuna Annual Quota and Subquotas

Recent ICCAT Stock Assessment and Recommendation

ICCAT sets bluefin tuna and northern albacore conservation and management measures, including TACs, following consideration of the latest stock assessment information and management advice provided by the Standing Committee on Research and Statistics (SCRS), ICCAT's scientific body. Starting in 2023, for northern albacore, three-year constant annual TACs will be set applying the harvest control rule established in the management procedure in ICCAT Recommendation 21–04.

The SCRS conducted a western bluefin tuna stock assessment in 2021. This assessment used data through 2020 and updated the modeling assumptions given scientific concerns expressed by the SCRS regarding the 2020 assessment update. The 2021 assessment results were more positive than in 2020 as detailed below.

Due to continued uncertainty regarding stock recruitment potential and the SCRS' continued inability to

resolve the divergent (*i.e.*, low vs. high) recruitment potential scenarios, the SCRS did not estimate spawning stock biomass (SSB) or determine stock status based on maximum sustainable yield (MSY) reference points. Rather than presenting two SSB series based on these two scenarios, the SCRS presented total biomass information to assess the stock, which does not depend on which of these scenarios is selected. The 2021 stock assessment estimated that the total biomass increased by 9 percent over 2017 through 2020. In the 2021 assessment, the SCRS also concluded that overfishing was not occurring. In recent years, the SCRS has focused on giving short-term management advice based on an $F_{0.1}$ reference point (taken to be a proxy for achieving F_{MSY}) assuming that near term recruitment will be similar to the recent past recruitment. The $F_{0.1}$ strategy compensates for the effect of recruitment changes on biomass by allowing higher catches when recent recruitment is higher and reducing catches when recent recruitments are lower. Fishing consistently at $F_{0.1}$ will, over the long-term, cause the stock to fluctuate around the corresponding long-term biomass ($B_{0.1}$), whatever the future recruitment potential. The 2021 report indicates that the total allowable catch (TAC) in place for 2018 through 2021 likely did not lead to overfishing relative to $F_{0.1}$, and that the stock showed clear signs of several strong subsequent recruitment years. Domestically, following the 2017 stock assessment, NMFS determined that the overfished status for bluefin tuna is unknown and that the stock is not subject to overfishing, and this status remains in effect.

Recognizing that the results of the 2021 stock assessment and projections, including the Kobe matrix, do not capture the full degree of uncertainty regarding the spawner-recruit relationship, the effects of stock mixing, and other aspects of the assessment and projections, the SCRS recommended that managers should use the scientific advice with caution. Toward that end, the SCRS recommended that a moderate increase to the TAC was allowable and provided additional advice on alternative approaches to assist in determining the level of an appropriate moderate increase in TAC. Considering this advice, ICCAT adopted a TAC of 2,726 mt at its November 2021 meeting (Rec. 21–07), which is a 16-percent increase from the prior TAC of 2,350 mt. The recommendation describes the adopted TAC as a precautionary TAC that prevents overfishing with a high

probability, prioritizes continued stock growth, including into the long-term, and ensures relative stability by avoiding a large fluctuation in catches.

Quotas and Domestic Allocations

Under ICCAT Recommendation 21–07, the annual U.S. quota is 1,316.14 mt, plus 25 mt to account for bycatch related to pelagic longline fisheries in the Northeast Distant gear restricted area (NED), resulting in a total of 1,341.14 mt. The 1,316.14-mt quota is an increase of 68.28 mt (5.5 percent) from the 1,247.86-mt level established via the 2018 quota rule. All TAC, quota, and weight information provided in this action are whole weight amounts.

This action proposes implementing the ICCAT-recommended quota of 1,341.14 mt, which would remain in effect until changed (for instance as a result of a new ICCAT bluefin tuna TAC and U.S. quota recommendation).

The ICCAT-recommended bluefin tuna quota proposed in this action would be divided among the established regulatory domestic bluefin tuna subquota categories. To calculate the subquotas under the existing regulations, 68 mt first is subtracted from the baseline annual U.S. bluefin tuna quota and allocated to the Longline category quota. Second, the remaining quota is divided among the categories according to the following percentages: General—47.1 percent; Angling—19.7 percent; Harpoon—3.9 percent; Purse Seine—18.6 percent; Longline—8.1 percent (plus the 68-mt initial allocation); Trap—0.1 percent; and Reserve—2.5 percent. The resulting subquotas would be codified at § 635.27(a) and would remain in effect until changed. Within the bluefin tuna quota proposed in this action and consistent with the ICCAT-recommended limit on the harvest of school bluefin tuna (measuring 27 to less than 47 inches curved fork length), the school bluefin tuna subquota would be 134.1 mt. The 25-mt NED allocation is in addition to these subquotas.

The table below shows the proposed quotas and subquotas that result from applying this process. These quotas would be codified at § 635.27(a) and would remain in effect until changed. The proposed rule for Amendment 13 to the 2006 Consolidated HMS FMP (86 FR 27686, May 21, 2021) proposed modifications to the category quotas specified in Table 1. NMFS is completing a Final Environmental Impact Statement and final rule for Amendment 13 and the quotas and subquotas are not affected by Amendment 13 at this time.

TABLE 1—PROPOSED ANNUAL ATLANTIC BLUEFIN TUNA QUOTAS
[In metric tons]

Category	Annual baseline quota	Subquotas		
General	587.9			
		January–March ¹	31.2	
		June–August	293.9	
		September	155.8	
		October–November	76.4	
		December	30.6	
Harpoon	48.7			
Longline	169.1			
Trap	1.2			
Purse Seine	232.2			
Angling	245.9			
		School	134.1	
		Reserve		24.8
		North of 39°18' N lat.		51.6
		South of 39°18' N lat.		57.7
		Large School/Small Medium	106.1	
		North of 39°18' N lat.		50.1
		South of 39°18' N lat.		56.0
		Trophy	5.7	
		North of 39°18' N lat.		1.9
		South of 39°18' N lat.		1.9
		Gulf of Mexico		1.9
Reserve	31.2			
U.S. Baseline Quota	² 1,316.14			
Total U.S. Quota, including 25 mt for NED (Longline)	² 1,341.14			

¹ January 1 through the effective date of a closure notice filed by NMFS announcing that the January subquota is reached or projected to be reached, or through March 31, whichever comes first.
² Totals subject to rounding error.

In addition to the proposed measures, in the EA for this action, NMFS analyzed a no action alternative that would maintain the current U.S. annual bluefin tuna quota of 1,247.86 mt and the current subquotas. The EA for this action describes the impacts of the no action alternative and the preferred alternative proposed here.

Northern Albacore Annual Quota

Recent ICCAT Stock Assessment and Recommendations

In 2020, the SCRS conducted a stock assessment using a production model and data through 2018. The stock assessment concluded that the relative abundance of northern albacore has continued to increase over the last years and that the probability of the stock being in the green quadrant of the Kobe plot (not overfished ($B \leq B_{MSY}$) and not undergoing overfishing ($F < F_{MSY}$)) is 98.4 percent. Following consideration of the 2020 stock assessment, ICCAT adopted an interim harvest control rule for northern albacore. Recommendation 20–04 established a one-year TAC of 37,801 mt for 2021, which represented a 12.5 percent increase with respect to the previous TAC established in 2017.

Application of ICCAT’s northern albacore allocations to Contracting Parties resulted in an annual U.S. quota of 711.5 mt, which was a 12.5-percent increase (79.1 mt) from the 632.4-mt quota. The recommendation called on ICCAT to review the interim harvest control rule in 2021 with a view to adopting a long-term management procedure at that point.

In 2021, ICCAT adopted Recommendation 21–04, which established a management procedure that resulted in maintaining the 2021 TAC of 37,801 mt (set using the initial harvest control rule) for 2022 and 2023, including the annual U.S. quota of 711.5 mt, which was first established in Recommendation 20–04. The management procedure establishes reference points, dictates that stock assessments shall be conducted every three years, sets a process for establishing a three-year constant annual TAC (beginning for the 2024–2026 management period) using values estimated from each stock assessment and through application of the recommendation’s harvest control rule. The parameters of the harvest control rule include the following: “the

maximum catch limit recommended is 50,000 mt in order to avoid adverse effects of potentially inaccurate stock assessments,” and the maximum change in the catch limit shall not exceed 25 percent in case of increase or 20 percent in case of decrease of the previous recommended catch limit when the current biomass is greater than or equal to the biomass threshold level. The recommendation called on the SCRS to test further harvest control rules supporting management objectives over 2022–2023. Additionally, the recommendation called on the Commission to review the management procedure established to consider if any revisions are needed taking into account any further analyses of harvest control rules in 2022 or 2023.

Domestic Quotas

Although an increase in the U.S. northern albacore quota to 711.5 mt was recommended for 2021 in ICCAT Recommendation 20–04, NMFS did not codify the quota increase at that time, due to the low level of northern albacore landings compared to the baseline quota, as described in the rule to adjust the 2021 northern albacore, swordfish,

and bluefin tuna Reserve category quotas (86 FR 54659, October 4, 2021).

At its 2021 annual meeting, under Recommendation 21–04, ICCAT adopted a management procedure for northern albacore and maintained the 711.5-mt U.S. northern albacore quota for 2022 and 2023. Accordingly, this action proposes modifying the baseline annual U.S. northern albacore quota from the 632.4-mt level established in the 2018 quota rule to 711.5 mt. The associated EA also analyzes the effects of three-year quotas of up to 950 mt, where the quota is set through application of Recommendation 21–04’s harvest control rule. This level of 950 mt is derived from the maximum allowable catch limit recommended in the northern albacore management procedure. The maximum catch limit of 50,000 mt recommended in the management procedure represents an approximately 32 percent increase over the current TAC of 37,801 mt. Assuming the portion of the overall quota allocated to the United States remains the same in future years under the management procedure, such an increase would result in a maximum annual baseline U.S. quota of 950 mt. This analysis anticipates that NMFS would implement U.S. northern albacore quotas as recommended by ICCAT in accordance with the management procedure, up to the analyzed maximum baseline quota of 950 mt. The baseline quota would remain at 711.5 mt annually until changed by ICCAT. NMFS would implement any new baseline quotas through final rulemaking, assuming no new management measures are adopted or other relevant changes in circumstances occur. Additionally, consistent with current practice, NMFS annually would provide notice to the public of the baseline northern albacore quota with any annual adjustments as allowable for over- and underharvest in the **Federal Register** as appropriate. NMFS would evaluate the need for any additional environmental analyses or proposed and final rulemaking when a new quota is adopted by ICCAT and implemented by NMFS.

In addition to the proposed measures, in the EA for this action, NMFS analyzed a no action alternative that would maintain the current U.S. annual northern albacore quota of 632.4 mt, as well as an alternative that would implement the ICCAT-recommended 711.5-mt U.S. annual northern albacore quota without considering a maximum quota under the northern albacore management procedure. The EA for this action describes the impacts of these

two alternatives and the preferred alternative proposed here.

Request for Comments

NMFS is requesting comments on this proposed rule which may be submitted via www.regulations.gov or at a public conference call/webinar. NMFS solicits comments on this action by April 6, 2022 (see **DATES** and **ADDRESSES**).

During the comment period, NMFS will hold a public hearing via conference call and webinar for this proposed action. Requests for sign language interpretation or other auxiliary aids should be directed to Carrie Soltanoff at carrie.soltanoff@noaa.gov or 301–427–8503, at least 7 days prior to the meeting.

The conference call and webinar will take place on March 24, 2022, from 2:30 p.m. to 4 p.m. EDT. Information for registering and accessing the webinar can be found at <https://www.fisheries.noaa.gov/action/changes-atlantic-bluefin-tuna-and-north-atlantic-albacore-quotas-proposed>.

The public is reminded that NMFS expects participants at public conference calls and webinars to conduct themselves appropriately. At the beginning of each conference call and webinar, the moderator will explain how the conference call and webinar will be conducted and how and when participants can provide comments. NMFS representative(s) will structure the conference call and webinars so that all members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Participants are expected to respect the ground rules, and those that do not may be asked to leave the conference call and webinars.

Classification

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

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

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the

SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Section 603(b)(1) requires agencies to describe the reasons why the action is being considered. The purpose of this proposed rulemaking is, consistent with the objectives of the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, ATCA, and other applicable law, to analyze the impacts of the alternatives for implementing the ICCAT-recommended U.S. bluefin tuna and northern albacore quotas and allocating the bluefin tuna quota per the codified quota regulations.

Section 603(b)(2) of the RFA requires agencies to state the objectives of, and legal basis for, the proposed action. The objective of this proposed rulemaking is to implement ICCAT recommendations consistent with ATCA and achieve domestic management objectives under the Magnuson-Stevens Act. The legal basis for the proposed rule is the Magnuson-Stevens Act and ATCA.

Section 603(b)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. 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. The Small Business Administration (SBA) has established size standards for all other major industry sectors in the United States, including the scenic and sightseeing transportation (water) sector (NAICS code 487210), which includes for-hire (charter/party boat) fishing entities. The SBA has defined a small entity under the scenic and sightseeing transportation (water) sector as one with average annual receipts (revenue) of less than \$8.0 million.

NMFS considers all HMS permit holders, both commercial and for-hire, to be small entities because they had average annual receipts of less than their respective sector’s standard of \$11 million and \$8 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 \$202,000, based on approximately 90 active vessels that produced an estimated \$18.2 million in revenue in 2020, well below the NMFS small business size standard for commercial fishing businesses of \$11 million. No single pelagic longline vessel has exceeded \$11 million in revenue in recent years.

Other non-longline HMS commercial fishing vessels typically earn less

revenue than pelagic longline vessels and, thus, would also be considered small entities. Based on 2021 permit information, NMFS predicts that the preferred alternatives would apply to the following numbers of non-pelagic longline permit holders that fish commercially or engage in commercial activities: 2,730 General category, 4,055 Charter/Headboat, 35 Harpoon category, and 34 seafood dealers that purchase bluefin tuna and northern albacore. There are no Purse Seine category permits issued currently, however there are five historical participants in the purse seine fishery that are allocated bluefin tuna quota that may participate in the Individual Bluefin Quota (IBQ) leasing program.

NMFS has determined that the preferred alternatives 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.

This action would apply to all participants in the Atlantic tuna fisheries, *i.e.*, to the over 7,000 permit holders that held an Atlantic HMS Charter/Headboat or an Atlantic Tunas permit as of October 2021. This proposed rule is expected to directly affect commercial and for-hire fishing vessels that possess an Atlantic Tunas permit or Atlantic HMS Charter/Headboat permit. It is unknown what portion of HMS Charter/Headboat permit holders actively participate in the bluefin tuna and northern albacore fisheries or provide fishing services for recreational anglers. As summarized in the 2021 SAFE Report for Atlantic HMS, there were 7,104 commercial Atlantic tunas or Atlantic HMS permits in 2021, as follows: 2,730 in the Atlantic Tunas General category; 35 in the Atlantic Tunas Harpoon category; 282 in the Atlantic Tunas Longline category; 2 in the Atlantic Tunas Trap category; and 4,055 in the HMS Charter/Headboat category. The 90 active pelagic longline vessels described above are a subset of the 282 Atlantic Tunas Longline permits issued, 136 of which received IBQ shares. This constitutes the best available information regarding the universe of permits and permit holders recently analyzed. NMFS has determined that this action would not likely directly affect any small government jurisdictions defined under the RFA.

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

information, reporting, or record-keeping requirements.

Under section 603(b)(5) of the RFA, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed action. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other fishery management measures. These include, but are not limited to, the Magnuson-Stevens Act, ATCA, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. This proposed action has been determined not to duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

Under section 603(c) of the RFA, agencies must describe any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Specifically, the RFA (5 U.S.C. 603(c)(1)–(4)) lists four general categories of significant alternatives to assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule, or any part thereof, for small entities.

Regarding the first, second, and fourth categories, NMFS cannot establish differing compliance or reporting requirements for small entities or exempt small entities from coverage of the rule or parts of it, because all of the businesses impacted by this rule are considered small entities, and thus the requirements are already designed for small entities. Thus, no alternatives are discussed that fall under the first and fourth categories described above. Amendment 7 implemented criteria for determining the availability of bluefin tuna quota for Purse Seine category participants and IBQs for the Longline category. These criteria under Amendment 7 and the eligibility criteria for IBQs for the Longline category can be considered individual performance standards. NMFS has not yet found a practical means of applying individual

performance standards to the other quota categories while concurrently complying with the Magnuson-Stevens Act. Thus, there are no alternatives considered under the third category.

This rulemaking proposes to implement the recently adopted ICCAT-recommended U.S. bluefin tuna and northern albacore quotas and, for bluefin tuna, to apply the allocations for each quota category per the codified quota regulations. This action would be consistent with ATCA, under which the Secretary promulgates regulations as necessary to implement binding ICCAT recommendations.

As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationales for identifying the preferred alternatives to achieve the desired objectives. The IRFA assumes that each permit holder will have similar catch and gross revenues to show the relative impact of the proposed action on permit holders.

For bluefin tuna, NMFS analyzed a no action alternative, Alternative A1, that would maintain the current U.S. annual bluefin tuna quota of 1,247.86 mt and the current subquotas. NMFS also analyzed Alternative A2, the preferred alternative, that would increase the U.S. annual bluefin tuna quota, as described below.

NMFS has estimated the average impact that establishing the increased annual U.S. baseline bluefin tuna quota for all domestic quota categories under the preferred alternative would have on individual categories and the permit holders within those categories. As mentioned above, the 2021 bluefin tuna ICCAT recommendation increased the annual U.S. baseline bluefin tuna quota for 1,316.14 mt and continues to provide 25 mt annually for incidental catch of bluefin tuna related to directed longline fisheries in the NED. The annual U.S. baseline bluefin tuna subquotas would be adjusted consistent with the process (*i.e.*, the formulas) established in Amendment 7 and as codified in the quota regulations (as shown in Table 1), and these amounts (in mt) would be codified. The proposed rule for Amendment 13 (86 FR 27686, May 21, 2021) proposed modifications to the annual U.S. baseline bluefin tuna subquotas. NMFS is completing a Final Environmental Impact Statement and final rule for Amendment 13. Amendment 13 does not affect the proposals in this action.

To calculate the average ex-vessel bluefin tuna revenues under this action, NMFS first estimated potential category-wide revenues. The most recent ex-vessel average price per pound

information for each commercial quota category is used to estimate potential ex-vessel gross revenues under the proposed subquotas (*i.e.*, 2021 prices for the General, Harpoon, Longline/Trap categories, and 2015 prices for the Purse Seine category). The proposed baseline subquotas could result in estimated gross revenues of \$12.3 million annually, if finalized and fully utilized, broken out by quota category. Note that in recent years, the Purse Seine category has not landed any bluefin tuna and 75 percent of the Purse Seine quota has been transferred to the Reserve category, which typically is then transferred to the General category (this is a simplification for the purposes of this analysis, Reserve category quota can be transferred to any other category after consideration of regulatory criteria). The remaining 25 percent of Purse Seine category quota is available for leasing to Atlantic Tunas Longline permit holders under the IBQ Program. The following quota category amounts assume the 174.2 mt is transferred to the General category (75 percent of the purse seine quota) and 58.1 mt is available to the pelagic longline fishery (25 percent of the purse seine quota). Revenues in each category are as follows: General category: \$9.3 million (762.1 mt * \$5.55/lb); Harpoon category: \$660,289 (48.7 mt * \$6.15/lb); Purse Seine category: \$0 million (0 mt * \$3.21/lb); Longline category: \$2.3 million (227.2 mt * \$4.52/lb); and Trap category: \$10,556 (1.2 mt * \$3.99/lb).

Using the above methodology, the current baseline subquotas under Alternative A1 could result in estimated gross revenues of \$11.6 million annually, if finalized and fully utilized, broken out by category. The following quota category amounts assume the 164.5 mt is transferred to the General category (75 percent of the purse seine quota) and 55 mt is available to the pelagic longline fishery (25 percent of the purse seine quota). Revenues in each category are as follows: General category: \$8.8 million (720.2 mt * \$5.55/lb); Harpoon category: \$623,690 (46 mt * \$6.15/lb); Purse Seine category: \$0 (0 mt * \$3.21/lb); Longline category: \$2.2 million (218.6 mt * \$4.52/lb); and Trap category: \$10,556 (1.2 mt * \$3.99/lb). Note that these revenues are likely an understatement for the General and Harpoon categories, which typically receive additional quota from the Reserve category (*i.e.*, from the baseline Reserve subquota, and from the up to 10 percent of the U.S. baseline quota that could be carried forward from the previous year's underharvest). These revenues are likely an overestimation

for the Longline and Trap categories, which do not typically land their entire quotas allocated for incidental bluefin tuna catch. For comparison, in 2021, gross revenues were approximately \$12.0 million, broken out by category as follows: General—\$10.5 million, Harpoon—\$755,924, Purse Seine—\$0, Longline—\$753,067, and Trap—\$0.

No affected entities would be expected to experience negative economic impacts as a result of this action. On the contrary, each of the bluefin tuna quota categories would increase relative to the baseline quotas that applied in prior years, and thus economic impacts would be expected to be positive.

To estimate the potential average ex-vessel revenues for each permit holder that could result from this action for bluefin tuna, NMFS divided the potential annual gross revenues for the General, Harpoon, Purse Seine, and Trap category by the number of permit holders. For the Longline category, NMFS divided the potential annual gross revenues by the number of permit holders that are IBQ share recipients. This is an appropriate approach for bluefin tuna fisheries, in particular, because available landings data (weight and ex-vessel value of the fish in price-per-pound) allow NMFS to calculate the gross revenue earned by a permit holder on a successful trip. The available data (particularly from non-Longline permit holders) do not, however, allow NMFS to calculate the effort and cost associated with each successful trip (*e.g.*, the cost of gas, bait, ice, etc.), so net revenue for each permit holder cannot be calculated. As a result, NMFS analyzes the average impact of the proposed alternatives among all permit holders in each category using gross revenues. The potential annual gross revenues reflect the analysis above, in which the Purse Seine category quota was divided among the General and Longline categories.

Success rates for catching and landing bluefin tuna vary widely across permit holders in each category (due to extent of vessel effort and availability of commercial-sized bluefin tuna to permit holders where they fish), but for the sake of estimating potential revenues per permit holder, category-wide revenues can be divided by the number of permits in each category. For the Longline fishery, category-wide revenue is divided by the number of permits that received IBQ shares to determine potential revenue per the 136 permit holders that are IBQ share recipients, as indicated below, and actual revenues would depend, in part, on each permit holder's IBQ in 2022. It is unknown

what portion of HMS Charter/Headboat permit holders actively participate in the bluefin tuna fishery. HMS Charter/Headboat vessels may fish commercially under the General category quota and retention limits. Therefore, NMFS is estimating potential General category ex-vessel revenue changes using the number of General category permit holders only.

Estimated potential 2022 bluefin tuna revenues on a per permit holder basis under Alternative A1, the no action alternative, considering the number of permit holders and estimated gross revenues listed above, under the current subquotas, could be \$3,228 for the General category permit holders; \$17,819 for the Harpoon category permit holders; \$0 for the Purse Seine category (no active vessels); \$16,010 for the Longline category (using 136 IBQ share recipients); and \$5,279 for the Trap category permit holders. Estimated potential 2022 bluefin tuna revenues on a per permit holder basis under the preferred alternative, considering the number of permit holders and estimated gross revenues listed above and the proposed subquotas, could be \$3,407 for the General category permit holders; \$18,865 for the Harpoon category permit holders; \$0 for the Purse Seine category (no active vessels); \$16,912 for the Longline category (using 136 IBQ share recipients); and \$5,279 for the Trap category permit holders.

As noted above, there are no active purse seine vessels landing bluefin tuna, but Purse Seine category participants do lease bluefin tuna quota to Atlantic Tunas Longline permit holders under the IBQ Program. As described in Draft Amendment 13, the recent lease price for Purse Seine category quota is \$1.25/lb. Under Alternative A1, if the full 55 mt of Purse Seine quota were leased to the Longline category, revenue for Purse Seine category participants would be \$151,568, or \$30,314 per participant (\$151,568/5 participants). Under Alternative A2, if the full 58.1 mt of Purse Seine quota were leased to the Longline category, revenue for Purse Seine category participants would be \$160,111, or \$32,022 per participant.

Because the directed commercial categories have underharvested their subquotas in recent years, the potential increases in ex-vessel revenues under both alternatives likely overestimate the probable economic impacts to permit holders in those categories relative to recent conditions. Additionally, there has been substantial interannual variability in ex-vessel revenues in each category in recent years, due to recent changes in bluefin tuna availability and other factors. Overall, because the U.S.

quota has not been fully harvested in recent years and because the increase in quota under Alternative A2 is relatively minor, the expected economic impacts on individual permit holders as a result of this action is minor.

For northern albacore, NMFS analyzed three alternatives. Alternative B1, the no action alternative, would maintain the current U.S. baseline northern albacore quota of 632.4 mt. Alternative B2 would implement the 2021 northern albacore ICCAT recommendation that increased the annual U.S. baseline northern albacore quota to 711.5 mt. Alternative B3 would implement the 2021 ICCAT recommendation for northern albacore by establishing an annual baseline quota of 711.5 mt (the same level as in Alternative B2 for 2022) and would analyze and anticipate implementation of subsequent quotas set consistent with the management procedure's harvest control rule, with a maximum of 950 mt, consistent with the process set out in Recommendation 21–04. This quota would be adjusted annually for overharvest and underharvest consistent with existing regulations and ICCAT recommendations.

NMFS does not subdivide the U.S. northern albacore quota into category subquotas. The most recent ex-vessel average price per pound information is used to estimate potential ex-vessel gross revenues. Potential annual gross revenues are divided by the total number of Atlantic tunas or Atlantic HMS permit holders that are authorized to retain and sell northern albacore, however, note that not all permit holders will sell northern albacore each year. As described for bluefin tuna, this analysis excludes HMS Charter/Headboat permit holders and includes the 136 Atlantic Tunas Longline permit holders that received IBQ shares. In addition, trap category permit holders cannot retain northern albacore. The total number of permit holders that would potentially land northern albacore is 2,901 (2,730 in the Atlantic Tunas General category; 35 in the Atlantic Tunas Harpoon category; 136 in the Atlantic Tunas Longline category (IBQ share recipients)). If the entire quota is harvested under Alternative B1, the no action alternative, estimated annual gross revenues would be \$1.75 million (632.4 mt ww/1.25 * \$1.57/lb dw) and average annual revenue across all permit holders would be \$604 (\$1.75 million/2,901 permit holders). If the entire quota is harvested under Alternative B2, estimated annual gross revenues would be \$1.97 million (711.5 mt ww/1.25 * \$1.57/lb dw) and average annual revenue across all permit

holders would be \$679 (\$1.97 million/2,901 permit holders). If the entire maximum quota is harvested under Alternative B3, the preferred alternative, estimated annual gross revenues would be \$2.63 million (950 mt ww/1.25 * \$1.57/lb dw) and average annual revenue across all permit holders would be \$907 (\$2.63 million/2,901 permit holders). In the short-term, Alternative B3 would set the same quota and produce the same estimated revenue as Alternative B2.

Because the directed commercial fishery has underharvested the quota in recent years, the potential increases in ex-vessel revenues under the three analyzed alternatives likely overestimate the probable economic impacts relative to recent conditions. Additionally, there has been substantial interannual variability in ex-vessel revenues in recent years, due to recent changes in northern albacore availability and other factors. Overall, because the U.S. quota has not been fully harvested in recent years and because the increase in quota under Alternative B3 is relatively minor, the expected economic impacts on individual permit holders as a result of this action is minor.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 635

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

Dated: February 28, 2022.

Samuel D. Rauch, III,

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

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

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

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

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

■ 2. In § 635.27, revise paragraphs (a) introductory text, (a)(1)(i), (a)(2), (a)(3), (a)(4)(i), (a)(5), (a)(7)(i), (a)(7)(ii), and (e)(1) to read as follows:

§ 635.27 Quotas.

(a) *Bluefin tuna.* Consistent with ICCAT recommendations, and with paragraph (a)(10)(iv) of this section, NMFS may subtract the most recent,

complete, and available estimate of dead discards from the annual U.S. bluefin tuna quota, and make the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. bluefin tuna quota will be allocated among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories, as described in this section. Bluefin tuna quotas are specified in whole weight. The baseline annual U.S. bluefin tuna quota is 1,316.14 mt, not including an additional annual 25-mt allocation provided in paragraph (a)(3) of this section. The bluefin quota for the quota categories is calculated through the following process. First, 68 mt is subtracted from the baseline annual U.S. bluefin tuna quota and allocated to the Longline category quota. Second, the remaining quota is divided among the categories according to the following percentages: General—47.1 percent (587.9 mt); Angling—19.7 percent (245.9 mt), which includes the school bluefin tuna held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon—3.9 percent (48.7 mt); Purse Seine—18.6 percent (232.2 mt); Longline—8.1 percent (101.1) plus the 68-mt allocation (*i.e.*, 169.1 mt total not including the 25-mt allocation from paragraph (a)(3)); Trap—0.1 percent (1.2 mt); and Reserve—2.5 percent (31.2 mt). NMFS may make inseason and annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section, including quota adjustments as a result of the annual reallocation of Purse Seine quota described under paragraph (a)(4)(v) of this section.

(1) * * *

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). Pursuant to paragraph (a) of this section, the amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold under the General category quota is 587.9 mt, and is apportioned as follows, unless modified as described under paragraph (a)(1)(ii) of this section:

(A) January 1 through the effective date of a closure notice filed by NMFS announcing that the January subquota is reached, or projected to be reached under § 635.28(a)(1), or through March 31, whichever comes first—5.3 percent (31.2 mt);

(B) June 1 through August 31—50 percent (293.9 mt);

- (C) September 1 through September 30—26.5 percent (155.8 mt);
- (D) October 1 through November 30—13 percent (76.4 mt); and
- (E) December 1 through December 31—5.2 percent (30.6 mt).

* * * * *

(2) *Angling category quota.* In accordance with the framework procedures of the Consolidated HMS FMP, prior to each fishing year, or as early as feasible, NMFS will establish the Angling category daily retention limits. In accordance with paragraph (a) of this section, the total amount of bluefin tuna that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 245.9 mt. No more than 2.3 percent (5.7 mt) of the annual Angling category quota may be large medium or giant bluefin tuna. In addition, no more than 10 percent of the annual U.S. bluefin tuna quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school bluefin tuna (*i.e.*, 134.1 mt). The Angling category quota includes the amount of school bluefin tuna held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for bluefin tuna are further subdivided as follows:

(i) After adjustment for the school bluefin tuna quota held in reserve (under paragraph (a)(7)(ii) of this section), 52.8 percent (57.7 mt) of the school bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18' N lat. The remaining school bluefin tuna Angling category quota (51.6 mt) may be caught, retained, possessed or landed north of 39°18' N lat.

(ii) An amount equal to 52.8 percent (56 mt) of the large school/small medium bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining large school/small medium bluefin tuna Angling category quota (50.1 mt) may be caught, retained, possessed or landed north of 39°18' N lat.

(iii) One third (1.9 mt) of the large medium and giant bluefin tuna Angling category quota may be caught retained,

possessed, or landed, in each of the three following geographic areas: North of 39°18' N lat.; south of 39°18' N lat., and outside of the Gulf of Mexico; and in the Gulf of Mexico. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(3) *Longline category quota.* Pursuant to paragraph (a) of this section, the total amount of large medium and giant bluefin tuna that may be caught, discarded dead, or retained, possessed, or landed by vessels that possess Atlantic Tunas Longline category permits is 169.1 mt. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area, and subject to the restrictions under § 635.15(b)(8).

(4) * * *

(i) *Baseline Purse Seine quota.* Pursuant to paragraph (a) of this section, the baseline amount of large medium and giant bluefin tuna that may be caught, retained, possessed, or landed by vessels that possess Atlantic Tunas Purse Seine category permits is 232.2 mt, unless adjusted as a result of inseason and/or annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section; or adjusted (prior to allocation to individual participants) based on the previous year's catch as described under paragraph (a)(4)(v) of this section. Annually, NMFS will make a determination when the Purse Seine fishery will start, based on variations in seasonal distribution, abundance or migration patterns of bluefin tuna, cumulative and projected landings in other commercial fishing categories, the potential for gear conflicts on the fishing grounds, or market impacts due to oversupply. NMFS will start the bluefin tuna purse seine season between June 1 and August 15, by filing an action with the Office of the Federal Register, and notifying the public. The Purse Seine category fishery closes on December 31 of each year.

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(5) *Harpoon category quota.* The total amount of large medium and giant

bluefin tuna that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 48.7 mt. The Harpoon category fishery commences on June 1 of each year, and closes on November 15 of each year.

* * * * *

(7) * * *

(i) The total amount of bluefin tuna that is held in reserve for inseason or annual adjustments and research using quota or subquotas is 31.2 mt, which may be augmented by allowable underharvest from the previous year, or annual reallocation of Purse Seine category quota as described under paragraph (a)(4)(v) of this section. Consistent with paragraphs (a)(8) through (10) of this section, NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota.

(ii) The total amount of school bluefin tuna that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (24.8 mt) of the total school bluefin tuna Angling category quota as described under paragraph (a)(2) of this section. This amount is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school bluefin tuna Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

* * * * *

(e) * * *

(1) Annual quota. Consistent with ICCAT recommendations, the ICCAT northern albacore management procedure, and domestic management objectives, the baseline annual quota, before any adjustments, is 711.5 mt. The total quota, after any adjustments made per paragraph (e)(2) of this section, is the fishing year's total amount of northern albacore tuna that may be landed by persons and vessels subject to U.S. jurisdiction.

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