REGULATORY IMPACT REVIEW AND INITIAL REGULATORY FLEXIBILITY ANALYSIS FOR A PROPOSED RULE TO ADJUST INDIVIDUAL BLUEFIN QUOTA (IBQ) PROGRAM REGULATIONS; DISTRIBUTION OF INSEASON QUOTA TRANSFERS

1.0 REGULATORY IMPACT REVIEW

The Regulatory Impact Review (RIR) is conducted to comply with Executive Order 12866 (E.O. 12866) and provides analyses of the economic benefits and costs of each alternative to the nation and the fishery as a whole.

The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

> *In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits should be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.*

E.O. 12866 further requires Office of Management and Budget review of proposed regulations that are considered to be "significant." A significant regulatory action is one that is likely to:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments of communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

1.1 DESCRIPTION OF MANAGEMENT OBJECTIVES

The objective of this proposed rulemaking is to provide additional flexibility regarding the distribution of inseason Atlantic bluefin tuna (BFT) quota transfers to the Longline category. The purpose of the proposed action is to facilitate the management of Atlantic HMS resources in a manner that maximizes resource sustainability and fishing opportunity, while minimizing, to the greatest extent possible, the socioeconomic impacts on affected fisheries.

1.2 DESCRIPTION OF THE FISHERY

Atlantic pelagic longline (PLL) fishing vessels are required to have an Atlantic Tunas Longline category permit in conjunction with a swordfish (Directed or Incidental) and a shark permit. The number of Atlantic Tunas Longline category permit holders from 2008 to 2015 are provided in Table 1.1. The number of these limited access permits provides an estimate on the upper bounds of participation in this fishery. The number of valid Atlantic Tunas Longline category permits has fluctuated between 241 and 280 between 2008 and 2015.

Table 1.1 Number of Atlantic Tunas Longline Category Permits (2008-2015)

Category	2008	2009	2010	2011	2012	2013	2014	2015*
Longline	241	259	248	242	253	252	246	280

* As of October 2015. The actual number of 2015 permit holders is subject to change as individuals renew their permits or allow them to expire.

Not all vessels in possession of the Atlantic Tunas Longline category permit are active in any given year. Table 1.2 provides the annual number of active vessels, defined as reporting at least one fishing set in their logbook.

Table 1.2 Number of Active Atlantic Pelagic Longline Vessels (2008-2015)

Category	2008	2009	2010	2011	2012	2013	2014	2015
Longline	121	115	116	117	122	115	111	104

The average ex-vessel prices per pound dressed weight (dw) for key target HMS species from 2013 to 2015 are summarized in Table 1.3. Prices are reported in nominal dollars. Ex-vessel prices have declined from 2013 to 2015 and have likely impacted fishing revenues.

Table 1.3 Average Ex-vessel Prices Per Pound for Key HMS Species

Species	**2013**	**2014**	**2015**
Albacore	$1.69	$1.49	$1.46
Bigeye	$5.68	$5.79	$5.36
Skipjack	$0.84	$0.98	$0.72
Swordfish	$4.68	$4.65	$4.07
Yellowfin	$3.91	$3.96	$3.71
Bluefin Tuna	$8.58	$7.84	$6.45

Estimated annual pelagic longline revenues per species and overall have declined from 2013 to 2015 (Table 1.4). Total revenue for the fleet was approximately $42.5 million in 2013 and has

declined to $22.7 million in 2015 (Table 1.5). These revenue estimates are based on logbook data, weighout slips, and dealer data.

Table 1.4 Pelagic Longline Revenues by Species (2013-2015)

Species	2013	2014	2015
Bluefin Tuna Revenue	$732,127	$923,919	$571,200
Swordfish Revenue	$22,940,943	$13,607,286	$10,305,130
Yellowfin Tuna Revenue	$9,952,556	$9,683,096	$7,407,964
Bigeye Tuna Revenue	$5,117,181	$5,677,453	$5,048,183
Albacore Tuna Revenue	$657,122	$801,316	$584,409
Skipjack Tuna Revenue	$1,594	$2,644	$1,244
Dolphin Revenue	$1,314,413	$2,185,781	$1,944,819
Wahoo Revenue	$331,081	$370,963	$184,534
Shortfin Mako Revenue	$363,608	$415,209	$265,741
Thresher Shark Revenue	$7,861	$28,129	$8,183
Blackfin Tuna Revenue	$23,296	$18,115	$22,388
Escolar/Oilfish Revenue	$948,311	$610,100	$268,562
Shark Fin Revenue	$54,612	$93,452	$50,248
Other Species Revenue	$17,017	$10,293	$2,924
Total Revenue	$42,461,723	$34,427,757	$26,665,531

Average annual revenue per vessel over this same time period (2013-2015) has been approximately $283,000 per year with a high of $366,000 in 2013 and low of $256,000 in 2015.

Table 1.5 Total Fleet Revenue and Average Revenue per Vessel for the Pelagic Longline Fleet (2013-2015)

	2013	2014	2015	Average
Total Fleet Revenue	$42,461,723	$34,427,757	$26,665,531	$34,518,337
Average Revenue per vessel	$366,049	$312,980	$256,399	$282,937

NMFS has collected operating cost information from commercial permit holders via logbook reporting. Each year, 20 percent of active Atlantic HMS commercial permit holders are selected to report economic information along with their Atlantic HMS logbook or Coastal Fisheries logbook submissions. In addition, NMFS also receives voluntary submissions of the trip expense and payment section of the logbook form from non-selected vessels.

The primary expenses associated with operating an Atlantic HMS permitted PLL commercial vessel include labor, fuel, bait, ice, groceries, other gear, and light sticks on swordfish trips. Unit

costs are collected on some of the primary variable inputs associated with trips. The unit costs for fuel, bait, and light sticks are reported in Table 1.6. Fuel costs decreased over 1.5 percent from 2013 to 2014 while the cost per pound for bait decreased 5.7 percent from 2013 to 2014. The unit cost per light sticks has remained the same from 2013 to 2014.

Table 1.6 Pelagic Longline Vessel Median Unit Costs for Fuel, Bait, and Light Sticks (2007–2014)

Input Unit Costs ($)	2007	2008	2009	2010	2011	2012	2013	2014
Fuel (per gallon)	2.31	3.50	2.00	2.50	3.40	3.50	3.35	3.30
Bait (per lb)	0.85	0.81	0.81	0.90	1.31	1.50	1.59	1.50
Light sticks (per stick)	0.36	0.37	0.37	0.25	0.25	0.30	0.30	0.30

Source: Fisheries Logbook System.

Table 1.7 provides the median total cost per trip for the major variable inputs associated with Atlantic HMS trips taken by pelagic longline vessel. Fuel costs are one of the largest variable expenses. While fuel price decreased slightly in 2014, total median pelagic longline vessel fuel costs per trip increased 48 percent from 2013 to 2014 to a level similar to 2010-2012 levels.

Table 1.7 Median Input Costs for Pelagic Longline Vessel Trips (2007–2014)

Input Costs ($)	2007	2008	2009	2010	2011	2012	2013	2014
Fuel	2,200	2,905	1,800	1,120	1,306	1,500	948	1,399
Bait	1,400	1,459	1,745	1,900	3,105	3,000	3,000	2,940
Light sticks	670	595	560	500	640	725	750	740
Ice costs	540	479	500	450	600	675	585	648
Grocery expenses	800	761	880	780	900	900	900	900
Other trip costs	1,500	1,758	1,654	1,500	1,622	1,274	1,200	150

Source: Fisheries Logbook System.

Labor costs are also an important component of operating costs for HMS pelagic longline vessels. Table 1.8 lists the number of crew on a typical pelagic longline trip. The median number of crew members has been consistently three from 2007 to 2014. Most crew and captains are paid based on a lay system. According to Atlantic HMS logbook reports, owners are typically paid 50 percent of revenues. Captains receive a 24 percent share and crew in 2014 received 25 percent on average. These shares are typically paid out after costs are netted from gross revenues. Median total shared costs per trip on pelagic longline vessels have ranged from $6,000 to $9,976 from 2007 to 2014.

Table 1.8 Median Labor Inputs for Pelagic Longline Vessel Trips (2007–2014)

Labor	2007	2008	2009	2010	2011	2012	2013	2014
Number of crew	3	3	3	3	3	3	3	3
Owner share (%)	47	45	47	50	50	50	50	50

Captain share (%)	20	20	20	23	23	25	23	24
Crew share (%)	15	18	25	25	25	30	25	25
Total shared costs ($)	6,000	6,500	6,500	7,245	9,976	8,160	8,045	7,703

Source: Fisheries Logbook System.

In 2014, median reported total trip sales were $18,233. In 2013, median reported total trip sales were $14,325. After adjusting for operating costs, median net earnings per trip were $6,137 in 2013. Median net earnings per trip increased to $10,737 in 2014.

1.3 STATEMENT OF THE PROBLEM

Since the implementation of Amendment 7, there have been some industry requests to modify the eligibility criteria for IBQ shares overall. Requests for substantial changes to the IBQ Program, such as modifications to the eligibility criteria for IBQ shares (or other fundamental aspects of the catch share program), may be evaluated during the formal review, which will analyze the first three years of the catch share program. However, minor changes to the current regulations (prior to the three-year formal review) in order to continue to meet the objectives of the 2006 Consolidated HMS FMP as the fishery adapts to the Amendment 7 regulations and responds to changing fishery conditions may be considered prior to the three-year formal review.

Since January 1, 2015, NMFS has received requests (among other suggestions about the IBQ Program and management of the pelagic longline fishery) to distribute quota inseason to those vessels that are currently fishing (whether associated with IBQ shares or not) to optimize fishing opportunity and account for dead discards, rather than distributing it equally to all IBQ share recipients, some of whom end up neither using it, nor making it available to other vessel owners. In advance of and at the March 2016 HMS Advisory Panel meeting, pelagic longline fishery participants expressed concerns about the availability of IBQ allocation as implemented under Amendment 7. Longline fishery participants have stated that, while they were able to obtain sufficient IBQ allocation by leasing it under the conditions that applied in 2015, those conditions were temporary. They are concerned that, as additional requirements now apply beginning in 2016, the IBQ Program could negatively impact vessel operations and finances given the pricing of IBQ, the distribution of quota among permit holders as implemented by Amendment 7, and the behavior of some permit holders who, for example, they say hold on to IBQ for the entire season without participating in the fishery or engaging in leasing. Longline fishery participants requested that NMFS take further steps to provide more access to quota for those vessels with recent fishing activity to reduce the dependence on qualified IBQ share recipients, some of whom are not participating in the fishery or engaging in leasing.

In light of these industry requests, trends in IBQ leasing and utilization, and to provide flexibility regarding the potential recipients of inseason transfers of BFT quota to the Longline category, this proposed rule would modify the regulations to specify that the recipients of inseason quota distributions may be either qualified IBQ share recipients (the 136 share recipients identified through the Amendment 7 process provided they have associated their permit with a vessel), or permitted Atlantic Tunas Longline vessels with recent fishing activity as determined by logbook, vessel monitoring system (VMS), or electronic monitoring data indicating fishing activity in the subject and previous year. For example, for inseason transfers in 2016, NMFS would examine fishing activity data for 2015 and 2016 to determine if there was fishing activity during that period.

1.4 DESCRIPTION OF EACH ALTERNATIVE

NMFS considered three different alternatives to provide additional flexibility regarding the distribution of inseason Atlantic BFT quota transfers to the Longline category. The first alternative is a no action, or the status quo alternative. The second alternative, the preferred alternative, would provide NMFS the flexibility to allocate quota inseason to all qualified IBQ share recipients (i.e., share recipients who have associated their permit with a vessel) or only to permitted Atlantic Tunas Longline vessels with recent fishing activity, whether or not they are associated with IBQ shares. The third alternative would provide NMFS the flexibility to allocate quota inseason to qualified IBQ share recipients with recent fishing activity or qualified IBQ share recipients that leased out quota to other Atlantic Tunas Longline permit holders. The economic impacts of these three alternatives are detailed in the following paragraphs.

1.5 ECONOMIC ANALYSIS OF EXPECTED EFFECTS OF EACH ALTERNATIVE RELATIVE TO THE BASELINE

Table 1.9 summarizes the expected effects of each alternative relative to the baseline. This analysis is based on the detailed economic impacts analysis conducted in Section 2.6 associated with the Regulatory Flexibility Act analysis. That analysis determined that a 34 mt inseason transfer of IBQ to the Longline category would result in 136 qualified IBQ share recipients receiving 551 lb per vessel of quota that traded at an average lease price of $3.34 per pound in 2015. Therefore, it was estimated that under the status quo conditions, a 34 mt quota transfer would be worth approximately $1,840 per vessel. If however that 34 mt is divided into 104 equal parts, as could be under the second alternative, the resulting 721 lb of quota per vessel would have a potential economic value that is $568 larger than under the status quo. Under the third alternative, each of the 105 IBQ share recipients that would qualify for the inseason transfer based on historical numbers (100 with recent fishing activity and 5 that leased IBQ allocation)

would receive 714 lb of quota per vessel. That 714 lb would have a potential economic value that is $545 greater than under the status quo alternative. These assumptions and calculations were used to determine the economic analysis of the expected effects of each of the alternatives in the table below.

Table 1.9 Economic Analysis of Expected Effects of Each Alternative Relative to the Baseline

Alternative	Net Economic Benefits	Net Economic Costs
Alternative 1	No change in economic benefits.	Transaction costs associated with finding and establishing leases could increase over time if more vessels become inactive and if new entrants are unable to purchase permits with IBQ shares. Some quota associated with inseason transfers may go unutilized if it is distributed to inactive IBQ share recipients uninterested in leasing out allocation to active vessels.
Alternative 2 (Preferred)	If quota is distributed to all qualified IBQ share recipients, there would be no change in economic benefits. If quota is distributed only to permitted Atlantic Tunas Longline vessels with recent fishing activity, active vessels that are associated with IBQ shares could receive 31 percent more quota than under the status quo alternative if the size of the total inseason quota transfer remains the same. This increased quota would help these active vessels to remain fishing longer under less quota constraints and reduce the transaction costs associated with finding as much additional quota. Assuming a 34 mt inseason transfer, the active vessels associated with IBQ shares would receive $59,072 more in IBQ value than under the status quo (104 active vessels times	Qualified IBQ share recipients with no fishing activity would not receive distribution of quota from inseason BFT quota transfers. Based on the value of quota that IBQ share recipients would have received from a 34 mt inseason transfer, these IBQ share recipients with no fishing activity would receive $66,240 less in quota value than under the status quo (36 IBQ share recipients with no fishing activity times $1,840). Since these IBQ share recipients with no recent fishing activity would not likely fish, the cost of this alternative would mainly be limited to the forgone ability to lease out their allocation.

Alternative	Net Economic Benefits	Net Economic Costs
	$568). Alternatively, if the active vessels associated with IBQ shares receive the same individual amount of inseason quota as they would have under the status quo, there would be more quota available for other categories (General, Harpoon, and Angling categories). This inseason transfer would help facilitate participation by these potential new entrants to the fishery by lowering their costs to obtain quota.	
Alternative 3	Qualified IBQ share recipients with recent fishing activity or IBQ leasing activity could receive 30 percent more quota than under the status quo alternative if the size of the total inseason quota transfer remains the same. This increased quota would help these active IBQ share recipients to remain fishing longer under less quota constraints and reduce the transaction costs associated with finding as much additional quota. Assuming a 34 mt inseason transfer, the active IBQ share recipients would receive $57,225 more in IBQ value than under the status quo ($545 multiplied by 100 actively fishing vessels associated with IBQ shares plus five IBQ share recipients that leased IBQ). Alternatively, if the active IBQ share recipients receive the same individual amount of inseason quota as they would have under the status quo, there would be more quota available for other categories (General, Harpoon, and Angling categories).	Fewer vessels with recent fishing activity would receive quota. Based on the value of quota that qualified IBQ share recipients with no fishing activity would have received from a 34 mt inseason transfer, these inactive IBQ share recipients that did not lease out their quota would receive $57,040 less in IBQ value than under the status quo (31 inactive IBQ share recipients with no leasing activity multiplied by $1,840). There would be no provision for providing new entrants with inseason quota.

Alternative	Net Economic Benefits	Net Economic Costs

1.6 CONCLUSIONS

As noted above under E.O. 12866, a regulation is a "significant regulatory action" if it is likely to: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; and (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the legal mandates, the President's priorities, or the principles set forth in the Executive Order; or, (4) raise novel legal or policy issues arising out of legal mandates, the president's priorities, or the principles set forth in this Executive Order. The preferred alternative described in this document does not meet the above criteria. The preferred alternative would have an annual effect on the economy less than $100 million and would not adversely affect the aforementioned parameters. The preferred alternative would also not create an inconsistency or interfere with an action taken by another agency. Furthermore, the preferred alternative would not materially alter the budgetary impact of entitlements, grants, user fees, the President's priorities, or the principles set forth in E.O. 12866. Nor would the proposed regulations raise any unique legal or policy issues. The Secretary, through NMFS, has managed Atlantic HMS since 1990. In addition, NMFS has participated in international efforts to develop management measures for stocks affected by multiple nations. The preferred alternative and other alternatives do not materially depart from this management approach. Therefore, under E.O. 12866, the preferred alternative described in this document has been determined to be not significant for the purposes of E.O. 12866. The Office of Management and Budget (OMB) concurred with this determination provided in the listing memo for this proposed rule.

2.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS

The Initial Regulatory Flexibility Analysis (IRFA) is conducted to comply with the Regulatory Flexibility Act (5 USC 603 et. seq.) (RFA). The goal of the RFA is to minimize the economic burden of federal regulations on small entities. To that end, the RFA directs federal agencies to assess whether the proposed regulation is likely to result in significant economic impacts to a substantial number of small entities, and identify and analyze any significant alternatives to the proposed rule that accomplish the objectives of applicable statutes and minimizes any significant effects on small entities.

2.1 DESCRIPTION OF THE REASONS WHY ACTION IS BEING CONSIDERED

In compliance with section 603(b)(1) of the RFA, the purpose of this proposed rulemaking is, consistent with the 2006 Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable law, to provide NMFS the flexibility to distribute quota inseason to all qualified IBQ share recipients (those who have associated their share with a vessel) or to permitted Atlantic Tunas Longline vessels with recent fishing activity whether or not they are associated with IBQ shares.

Since January 1, 2015, NMFS has received requests (among other suggestions about the IBQ Program and management of the pelagic longline fishery) to distribute quota inseason to those vessels that are currently fishing (whether associated with IBQ shares or not) to optimize fishing opportunity and account for dead discards, rather than distributing it equally to all IBQ share recipients, some of whom end up neither using it, nor making it available to other vessel owners. In advance of and at the March 2016 HMS Advisory Panel meeting, pelagic longline fishery participants expressed concerns about the availability of IBQ allocation as implemented under Amendment 7. Longline fishery participants have stated that, while they were able to obtain sufficient IBQ allocation by leasing it under the conditions that applied in 2015, those conditions were temporary. They are concerned that, as additional requirements now apply beginning in 2016, the IBQ Program could negatively impact vessel operations and finances given the pricing of IBQ, the distribution of quota among permit holders as implemented by Amendment 7, and the behavior of some permit holders who, for example, they say hold on to IBQ for the entire season without participating in the fishery or engaging in leasing. Longline fishery participants requested that NMFS take further steps to provide more access to quota for those vessels with recent fishing activity to reduce the dependence on qualified IBQ share recipients, some of whom are not participating in the fishery or engaging in leasing.

After looking at the issues raised by the fishery participants and at trends in IBQ leasing and utilization for 2015, it is apparent that additional flexibility is needed regarding the distribution of inseason transfers of BFT quota within the Longline category to assist NMFS in providing reasonable opportunities to fish for target species under the limits imposed by the IBQ Program and optimize distribution of BFT quota transferred inseason to the Longline category. NMFS is considering this action to provide flexibility in the quota system and maintain flexibility of the regulations to account for the highly variable nature of the BFT fishery.

2.2 STATEMENT OF THE OBJECTIVES OF, AND LEGAL BASIS FOR, THE PROPOSED RULE

In compliance with section 603(b)(2) of the RFA, the objective of this proposed rulemaking is to provide additional flexibility regarding the distribution of inseason Atlantic bluefin tuna (BFT) quota transfers to the Longline category. The purpose of the proposed action is to facilitate the

manage the Atlantic HMS resources in a manner that maximizes resource sustainability and fishing opportunity, while minimizing, to the greatest extent possible, the socioeconomic impacts on affected fisheries.

The legal basis for this proposed rule stems from the dual authority of the Magnuson-Stevens Act and ATCA. Under the Magnuson-Stevens Act, the National Marine Fisheries Service (NMFS) must, consistent with ten National Standards, manage fisheries to maintain optimum yield (OY) by rebuilding overfished fisheries and preventing overfishing. Under ATCA, NMFS is authorized to promulgate regulations, as may be necessary and appropriate to carry out binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Additionally, any management measures must be consistent with other domestic laws including, but not limited to, the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Coastal Zone Management Act (CZMA).

2.3 DESCRIPTION AND ESTIMATE OF THE NUMBER OF SMALL ENTITIES TO WHICH THE PROPOSED RULE WOULD APPLY

Section 603(b)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with 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 (FR), 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 Atlantic Tunas Longline permit holders (280 as of October 2015) to be small entities because these vessels have reported annual gross receipts of less than $11 million for commercial fishing. The average annual gross revenue per active pelagic longline vessel was 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 2015 was $1.9 million, well below the NMFS small business size threshold of $11 million in gross receipts for commercial fishing. Therefore, NMFS considers all Atlantic Tunas Longline permit holders to be small entities.

NMFS has determined that this proposed rule would apply to the small businesses associated with the136 Atlantic Tunas Longline permits with IBQ shares and the additional permitted Atlantic Tunas Longline vessels that fish with quota leased through the IBQ Program. NMFS has determined that this action would not likely directly affect any small organizations or small government jurisdictions defined under the RFA.

2.4 DESCRIPTION OF THE PROJECTED REPORTING, RECORD-KEEPING, AND OTHER COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING AN ESTIMATE OF THE CLASSES OF SMALL ENTITIES WHICH WOULD BE SUBJECT TO THE REQUIREMENTS OF THE REPORT OR RECORD

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.

2.5 IDENTIFICATION OF ALL RELEVANT FEDERAL RULES WHICH MAY DUPLICATE, OVERLAP, OR CONFLICT WITH THE PROPOSED RULE

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

2.6 DESCRIPTION OF ANY SIGNIFICANT ALTERNATIVES TO THE PROPOSED RULE THAT ACCOMPLISH THE STATED OBJECTIVES OF THE APPLICABLE STATUTES AND THAT MINIMIZE ANY SIGNIFICANT ECONOMIC IMPACT OF THE PROPOSED RULE ON SMALL ENTITIES

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below. Additionally, the RFA (5 U.S.C. § 603 (c)(1)-(4)) lists four general

categories of "significant" alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

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

In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act and ATCA, NMFS cannot establish differing compliance requirements for small entities or exempt small entities from compliance requirements. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. The IBQ Program is a performance standard rule and thus modifications to the IBQ Program are simply adjustments to this performance standard. 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 first alternative is a no action, or the status quo alternative. The second alternative, the preferred alternative, would provide NMFS the flexibility to allocate quota inseason to qualified IBQ share recipients (those who have associated their share with a vessel) or to permitted Atlantic Tunas Longline vessels with recent fishing activity whether or not they are associated with IBQ shares. The third alternative would provide NMFS the flexibility to allocate quota inseason to qualified IBQ share recipients with recent fishing activity or IBQ leasing activity. The economic impacts of these three alternatives are detailed in the following paragraphs.

Under any of the alternatives, NMFS would continue to consider the regulatory determination criteria for inseason or annual adjustments under §635.27(a)(8) as required, and if NMFS decided that inseason allocation to the Longline category was warranted to increase the amount of quota available to pelagic longline vessels NMFS would allocate additional quota. The difference among the alternatives is the specific Atlantic Tunas Longline permit holders that would receive distribution of inseason BFT quota.

Under the no action alternative, NMFS would distribute the transferred quota in equal amounts to all 136 qualified IBQ share recipients, which includes vessels actively fishing and those not actively fishing. NMFS conducted two past inseason transfers from the Reserve to the Longline category in July 2015 and January 2016 (80 FR 45098, July 29, 2015; 81 FR 19, January 4, 2016). For each of these 34 mt quota transfers, 0.25 mt (551 lb) of IBQ were distributed equally to each of the 136 qualified IBQ share recipients under Amendment 7. IBQ allocation was distributed via the electronic IBQ system to the vessel accounts with permits with IBQ shares associated with a vessel. For those permits with IBQ shares that were not associated with a

vessel at the time of the quota transfer, the IBQ is not usable by the permit holder (i.e., may not be leased or used to account for BFT) until the permit is associated with a vessel. Based on the average 2015 IBQ lease price of $3.34 per pound, the economic value of such an inseason transfers of 551 lb per vessel would be approximately $1,840 per vessel owner under the no action alternative.

Under the preferred alternative, NMFS would have the flexibility to allocate quota inseason either to each of the 136 qualified IBQ share recipients or to all permitted Atlantic Tunas Longline vessels with recent fishing activity (as defined above). In 2015, there were 104 active pelagic longline vessels (based on logbook data). If NMFS assumes, for example, a future inseason transfer of 34 mt distributed equally among vessels with recent fishing activity, each of those 104 active vessels would receive 0.327 mt (721 lb) under the preferred alternative. Based on the average 2015 IBQ lease price of $3.34 per pound, the economic value of such an inseason transfers of 721 lb per vessel would be approximately $2,408 per vessel owner under the preferred alternative. Active vessel owners would receive $568 more in value (31 percent more quota) than under the status quo alternative.

This increased allocation would help these active vessels to remain fishing longer under fewer quota constraints and reduce the transaction costs associated with finding as much additional quota. The qualified IBQ share recipients with no fishing activity (36 in 2015), would not receive the 551 lb of IBQ worth approximately $1,840 per vessel that they could have received under the status quo alternative *if* they were to lease their quota to other permit holders. Thus, the cost of this alternative would mainly be limited to the forgone ability to lease out allocation that they otherwise would have received. Under Amendment 7 to the 2006 Consolidated HMS FMP, the purpose of leasing is to accommodate various levels of unintended catch of BFT and to facilitate directed fishing for Atlantic swordfish, other tunas, and other pelagic species. The few Atlantic Tunas Longline vessels that fished that were not associated with IBQ shares but leased allocation from qualified IBQ share recipients (four in 2015) would receive quota under the preferred alternative worth approximately $2,408 per vessel. Such an inseason transfer would help facilitate participation by new entrants to the fishery by lowering their costs to obtain quota.

Under the third alternative, NMFS would have the flexibility to allocate quota inseason to qualified IBQ share recipients with recent fishing activity or qualified IBQ share recipients that leased out quota to other Atlantic Tunas Longline permit holders. This differs from the preferred alternative in two key ways. First, under the third alternative, only Atlantic Tunas Longline permit holders with recent activity would receive an inseason transfer versus all permitted Atlantic Tunas Longline vessels with recent activity under the preferred alternative. Secondly, under the third alternative, activity would also include IBQ leasing activity in addition to the recent fishing activity required under the preferred alternative. In 2015, of the 104 pelagic longline vessels with recent fishing activity, there were 100 vessels associated with IBQ shares that had recent fishing activity (four vessels were not associated with IBQ shares in 2015) and there were 5 vessels associated with IBQ shares that did not fish but did lease their allocation to

other vessels. If NMFS assumes a future inseason transfer of 34 mt, each of those 105 vessels associated with IBQ shares (100 with recent fishing activity and 5 that leased IBQ allocation) would receive 0.324 mt (714 lb) under the third alternative. Based on the average 2015 IBQ lease price of $3.34 per pound, the economic value of such an inseason transfers of 714 lb per vessel would be approximately $2,385 per vessel owner under the third alternative. Under the third alternative, vessels associated with IBQ shares with recent fishing activity or IBQ leasing activity would receive $545 more in value (30 percent more quota) than under the status quo alternative. This is $23 less per vessel than under the preferred alternative. In addition, under the third alternative fewer vessels with recent fishing activity would receive quota and there would be no provision for providing new entrants with quota. Given these reasons, NMFS does not currently prefer the third alternative.

3.0 REFERENCES

NMFS, 2014. Final Environmental Impact Statement (FEIS) for Amendment 7 to the Consolidated Atlantic HMS FMP, August 2014 NMFS Office of Sustainable Fisheries, Silver Spring, MD.

NMFS. 2015. Stock Assessment and Fishery Evaluation (SAFE) Report for Atlantic Highly Migratory Species, 2015. NMFS Office of Sustainable Fisheries, Silver Spring, MD.