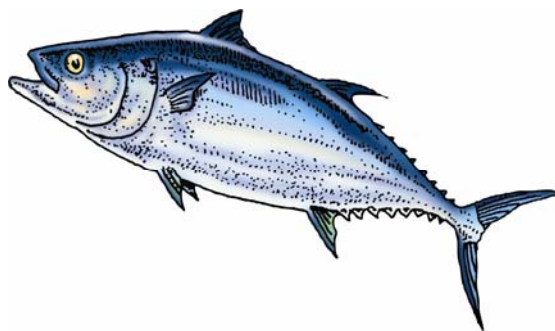


*Environmental Assessment
Regulatory Impact Review,
and
Final Regulatory Flexibility Analysis*

for a Final Rule on
**2006 Final Initial Atlantic Bluefin Tuna
Quota Specifications**

**and
Effort Controls**



United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Office of Sustainable Fisheries
Highly Migratory Species Management Division
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ABSTRACT

- Final Action:** Set 2006 fishing year BFT quotas for all domestic fishing categories and set General and Angling category effort controls.
- Type of statement:** Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA)
- Lead Agency:** National Marine Fisheries Service (NMFS): Office of Sustainable Fisheries
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- Abstract:** In April 1999, NMFS adopted the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP), that was developed to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). These final initial 2006 BFT specifications are necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) pursuant to the Atlantic Tunas Convention Act (ATCA) and to achieve domestic management objectives under the Magnuson-Stevens Act for the 2006 fishing year for Atlantic tunas (i.e., June 1, 2006 to May 31, 2007). The final initial quota specifications would allocate the total ICCAT-recommended quota among the several established fishing categories, adjust the 2006 quotas based on landing under- and overharvests from 2005, address an ICCAT eight-percent tolerance recommendation regarding school BFT, and propose General category effort controls, including time-period subquotas and restricted fishing days, and retention limits for the General and Angling categories. These measures would be consistent with the BFT rebuilding program as set forth in the 1999 FMP and implemented under the framework provisions of the 1999 FMP to achieve domestic management objectives for HMS.

FINDING OF NO SIGNIFICANT ENVIRONMENTAL IMPACT

The Highly Migratory Species (HMS) Management Division of the Office of Sustainable Fisheries submits the attached Environmental Assessment (EA) for final initial 2006 Atlantic bluefin tuna (BFT) quota specifications and General and Angling category effort controls, per the International Commission for Atlantic Tunas (ICCAT) recommendations, for Secretarial review under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act. The EA also addresses an ICCAT eight-percent tolerance recommendation regarding harvest of school BFT. This EA was developed as an integrated document that includes a Regulatory Impact Review (RIR) and a Final Regulatory Flexibility Analysis (FRFA). Copies of the EA, RIR, and FRFA are available at the following address:

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National Marine Fisheries Service
1315 East West Highway
Silver Spring, MD 20910
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or

<http://www.nmfs.noaa.gov/sfa/hmspg.html>

The final action would implement the following measures:

- 2006 fishing year BFT quotas for all domestic fishing categories
- Effort controls for the General and Angling categories, including time-period subquotas and restricted fishing days for the General category and retention limits for the General and Angling categories

This EA/RIR/FRFA considers information contained in the Environmental Impact Statement (EIS) associated with the 1999 Final Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (1999 FMP), the 2005 Stock Assessment and Fishery Evaluation (SAFE) report, and the EA/RIR/FRFA prepared for the June 7, 2005 final rule (70 FR 33033) implementing Atlantic bluefin tuna 2005 final initial specifications and General category effort controls. All information used is herein incorporated by reference.

NOAA Administrative Order 216-6 identifies criteria, in addition to the Council on Environmental Quality's (CEQ) regulations at 40 C.F.R. § 1508.27 which identify “context” and “intensity” criteria, for determining the significance of the impacts of an action:

- (1) *Can the action be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action?*

The action is not expected to jeopardize the sustainability of BFT, which are the primary target species of operations affected by this action, except for pelagic longline operations where BFT is an incidental catch. Fishing patterns and behavior are not expected to change as a result

of this action, except for a minor increase in effort relative to pre-2003 levels when a small increase in U.S. BFT quota (77.6 mt) was allocated by a 2002 ICCAT recommendation for BFT. This small increase in quota is not likely to incite an increase in participation in open-access fisheries or an increase in effort in limited access fisheries. NMFS would implement the annual BFT TAC for the United States in the western Atlantic management area of 1,489.6 mt, the eight percent tolerance on harvest of school BFT, and addition/subtraction of quota underages/overages consistent with ICCAT's 2002 recommendation. Because the recommended TAC is consistent with the western BFT rebuilding plan, the action is not expected to jeopardize the sustainability of BFT.

- (2) *Can the action be reasonably expected to jeopardize the sustainability of any non-target species?*

The action is not expected to jeopardize the sustainability of any non-target finfish species. The primary fishing gear used to target BFT (i.e. hook and line and purse seine) allow the live release of non-target species to a great degree. The slight increase in quota available under this action is not expected to be an incentive for increased permit issuance in open access fisheries or increased fishing effort in open or limited access fisheries because the quota increase is so small. Thus, this action would not alter fishing patterns and/or behavior. Although there may be a slight increase in effort relative to pre-2003 levels, this should not substantially alter non-target catches, bycatch, or bycatch mortality. Rebuilding plans, as appropriate, and fishing controls are already in place for non-target species. The goals of the 1999 FMP are to implement rebuilding plans, to reduce directed or bycatch mortality rates for overfished stocks, and to manage healthy stocks for the optimum yield. Measures established to reduce bycatch and bycatch mortality are discussed in Section 3.5 of the 1999 FMP.

- (3) *Can the action be reasonably expected to allow substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH) as defined under the Magnuson-Stevens Act and identified in FMPs?*

Although fishing effort may increase slightly relative to pre-2003 levels, this action is not expected to change BFT fishing patterns or impacts on EFH, or to allow substantial damage to ocean and coastal habitats and/or EFH. The primary fishing gears used to harvest BFT (e.g. hook and line and purse seine) are pelagic in nature and have little impact on bottom substrate. Further, the effects of this action would not apply to any sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural or historical resources. Should such structures or resources be located in the Exclusive Economic Zone (EEZ), vessels would already avoid those areas to avoid potential gear loss.

- (4) *Can the action be reasonably expected to have a substantial adverse impact on public health and safety?*

The action is not expected to have substantial adverse impacts on public health and safety. Fishing activity or behavior would not change, although fishing effort may increase slightly as a result of this action. Although fishing can be a dangerous profession, NMFS

encourages fishermen to be responsible in safety matters while at sea. Nothing in this action would increase the risks already inherent in the fishing profession.

- (5) *Can the action be reasonably expected to have an adverse impact on endangered or threatened species, marine mammals, or critical habitat of these species?*

This action is not expected to have adverse impacts on endangered or threatened species. The 2002 ICCAT recommendation increased the BFT quota by 77.6 mt in 2003, which may have resulted in a slight increase in effort which could potentially have slightly increased the number of protected species interactions. Due to current restrictions on the BFT fishery, which include a closure on directed fishing in the Gulf of Mexico and daily retention limits for open access fisheries, and more specifically the pelagic longline fishery which is limited access and only allows incidental retention of BFT, NMFS does not expect this slight increase in effort to have altered fishing patterns or changed previously analyzed endangered or threatened species, marine mammals, or critical habitat interaction rates or magnitudes, or to have substantially altered current fishing practices, or bycatch mortality rates.

- (6) *Can the action be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?*

The action is not expected to result in cumulative adverse effects that could have a substantial effect on target species or non-target species. The action implements the 2002 ICCAT recommendation for the BFT fishery, which should have positive cumulative social and economic impacts. This action would be consistent with ongoing implementation of a rebuilding plan for western Atlantic BFT plus the objectives of the 1999 FMP. Although fishing effort may increase slightly, this action is not expected to change current fishing practices relative to pre-2003 levels when the 2002 ICCAT recommendation was first implemented, or cause impacts not previously addressed in the above rebuilding plans and rulemakings. ICCAT will be assessing the stock of BFT during 2006, and may adjust the rebuilding plan, if necessary. Thus any future actions would be evaluated against an up-to-date scientific evaluation which would be specifically prepared to guide cumulative future management actions of member countries.

- (7) *Can the action be reasonably expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?*

The action is not expected to have a substantial impact on biodiversity and ecosystem function within the affected area, because the action is not expected to change fishing practices, and/or interactions with non-target and endangered or threatened species. The action would not affect unique geographic areas. In addition, this action is not expected to introduce or spread non-indigenous species.

- (8) *Are significant social or economic impacts interrelated with significant natural or physical environmental effects?*

The action is not expected to have any significant, positive or negative, social or economic impacts. The selected action is expected to have modest positive social and economic impacts, by implementing the ICCAT-recommended adjusted BFT TAC for the United States in the western Atlantic management area of 1,489.6 mt and is consistent with the ICCAT recommendation regarding the eight percent tolerance of school BFT harvest. See Section 6 for an analysis of the predicted economic impacts to the BFT fishery and small business entities.

(9) *To what degree are the effects on the quality of the human environment expected to be highly controversial?*

There are several reasons that the effects of this action on the human environment are not expected to be highly controversial. Prior to this final action, NMFS issued a proposed rule (71 FR 9507, February 24, 2006) and received public comments, none of which indicated that the action would have substantial negative ecological impacts on the environment. NMFS received many comments that opposed the proposed prohibition on retention of school BFT; however, in the final action, NMFS will allow a modest school fishery provided by a quota adjustment. This quota adjustment was based on a NMFS report released subsequent to the proposed rule, which evaluated methodologies involved in the estimates of recreational catch. In addition, the effects of this action are not expected to be highly controversial since similar past actions have not been highly controversial.

(10) *Can the final action be reasonably expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?*

No, this final action does not apply to any of the unique areas listed.

(11) *To what degree are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?*

This action does not present highly uncertain effects because it is similar to annual actions in previous years implementing annual BFT specifications since the 1999 FMP was implemented. The increased quota that was made available in the 2002 ICCAT recommendation was first implemented in 2003 and has been implemented every year since. NMFS will not change any regulations with this rule, and the only annual management adjustments are those specifically provided for under the HMS regulations at 50 C.F.R. 635.

(12) *Is the action related to other actions with individually insignificant, but cumulatively significant impacts?*

There are no significant cumulative impacts associated with this action in combination with other recent actions or foreseeable future actions. The final rule implements the 2002 ICCAT recommendation for bluefin tuna, which complements and adjusts the 1998 ICCAT bluefin tuna rebuilding plan originally implemented by NMFS in the 1999 FMP. Other recent actions have been consistent with this rebuilding plan. ICCAT is scheduled to review the status of Atlantic BFTR stocks during 2006, which may require a future domestic rulemaking if the

rebuilding plan is adjusted. Any future domestic actions taken in regard to the BFT fishery would remain within the scope of ICCAT recommendations. Likewise, all actions in this final rule are consistent with previous Biological Opinions issued under the Endangered Species Act.

(13) *Is the final action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural, or historical resources?*

No, this final action would not adversely affect any of the listed locations.

(14) *Can the final action be reasonably expected to result in the introduction or spread of a non-indigenous species?*

No, the management measures for the 2006 BFT fishery would not have any affect on the introduction or spread of any non-indigenous species.

(15) *Is the final action likely to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?*

No, the final action is not likely to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration. The issuance of BFT fishing specifications is a fairly routine procedure which occurs on an annual basis, without regulatory changes or significant effects. The HMS regulations at 50 C.F.R. 635 lay out the approach and boundaries for the action, thus the decisions involved are fairly limited and unlikely to involve principles which would effect future actions.

(16) *Can the final action be reasonably expected to threaten a violation of Federal, state, or local law or requirements imposed for the protection of the environment?*

No, NMFS has preliminarily determined that these regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states on the Atlantic including the Gulf of Mexico and Caribbean that have approved coastal zone management programs. Letters were sent to the relevant states asking for their concurrence when the proposed rule was filed with the Federal Register. This action would not implement any new impacts on State regulations, regulations outside the Exclusive Economic Zone (EEZ), or laws applicable to the EEZ.

DETERMINATION

Having reviewed the EA, I have determined that this action would not have a significant impact on the quality of the human environment, thus preparation of an Environmental Impact Statement (EIS) on the action is not required by Section 102(2)(c) of the National Environmental Policy Act or its implementing regulations.

William T. Hogarth, Ph.D.
Assistant Administrator for Fisheries, NOAA

Date

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1.0 PURPOSE AND NEED FOR ACTION

1.1 Management History

Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement recommendations of ICCAT. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). On May 28, 1999, NMFS published in the Federal Register (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). The 1999 FMP includes framework provisions for the promulgation of annual specifications for the BFT fishery, in accordance with ATCA and the Magnuson-Stevens Act, and to implement the annual recommendations of ICCAT.

In November 2002, ICCAT recommended a Total Allowable Catch (TAC) of BFT for the United States in the western Atlantic management area of 1,489.6 mt, beginning in 2003. This base allocation of 1,489.6 mt for the United States will continue for subsequent fishing years until revised by ICCAT. (ICCAT will assess the BFT stock in 2006 and may subsequently consider a revision of the TAC and rebuilding plan). The 2002 recommendation also allocated 25 mt to account for incidental catch of BFT by longline fisheries directed on other species “in the vicinity of the management boundary area” for the eastern and western BFT stocks. This area was defined in the 2003 BFT annual specifications (68 FR 56783, October 2, 2003) as the NMFS Northeast Distant statistical reporting area (NED), which is approximately the Grand Banks fishing grounds. The TAC of 1,489.6 is inclusive of the 25 mt pelagic longline allocation. In addition, the 2002 recommendation continued the limitation on harvest of school size BFT to no more than eight percent by weight of the total bluefin quota per contracting party over each four-consecutive-year quota balancing period.

A report evaluating changes to the NMFS Large Pelagics Survey (LPS) and announcing final 2002 and 2003 fishing year Angling (recreational) category landings was released at the end of 2004 (Van Voorhees *et al.* 2004). The report found that Angling category over-harvests occurred in both 2002 and 2003. The final initial 2004 BFT specifications incorporated the results of Van Voorhees *et al.* 2004 and implemented the baseline 2002 ICCAT recommended quota. In addition, the quota subcategory allocations established in the 1999 FMP were adjusted according to prior year overages or underages (NMFS 2005a).

As a method for limiting fishing mortality on juvenile BFT, in 1991, ICCAT adopted a tolerance limit which allows the annual harvest of not more than eight percent of the quota as school size (27 inches to less than 47 inches) fish. The 1998 rebuilding plan modified the tolerance to be calculated as an average over a four-year balance period, and the 2002 ICCAT recommendation includes this requirement in its implementation of the rebuilding plan. During preparation of the 2005 BFT specifications, NMFS requested public comment about how to manage the recreational fishery in order to stay within the eight percent tolerance limit of harvest of school size BFT. The 2005 fishing year was the third year in the four-year balance period,

and estimates of recreational harvest showed that the eight percent tolerance had been exceeded in annual fisheries for 2003 and 2004. In addition, NMFS was in the process of investigating Large Pelagic Survey (LPS) methodology for field BFT measurements, the results of which could require the adjustment of recent estimates of school BFT harvest. Based on the apparent uncertainty of school harvest estimates, the HMS Advisory Panel (AP) discussed this issue at the March 2005 meeting in Silver Spring, Maryland, and certain AP members recommended that NMFS provide the full allotment of school BFT for the 2005 BFT fishery, even though this approach could use all the remaining school allotment and result in the prohibition of a school fishery during the 2006 fishing year. During the 2005 fishing year, NMFS actively managed the BFT Angling category to stay within the eight percent tolerance limit. In February 2006, school BFT landings for 2005 were initially estimated at 124 mt (7 mt over the 117 mt subquota) which put estimated landings for the four-year balance period at or near the limit at the end of three years. As a result, the proposed rule for the 2006 initial BFT specifications (71 FR 9507, February 24, 2006) provided 0 mt for the school subquota. In April 2006, the final report validating LPS length measurements (NMFS 2006) was released which included several potential alternatives for action (based on differing assumptions). NMFS determined to implement the alternative to apply an adjustment factor of 4.88% to recreational BFT landings for 2002-2004 to be included in the analyses of these final initial BFT specifications.

During the 2005 fishing year, NMFS conducted one inseason quota transfer using the authority under the 1999 FMP implementing regulations at 50 CFR 635.27(a)(8) to transfer 200.0 mt of General category (commercial handgear category) quota to the Reserve category (70 FR 72724, December 7, 2005). The purpose of this action was to account for any potential overharvests that may occur in the Angling category during the 2005 fishing year, and the result of the action is indicated in Table 1a. The preliminary estimates of landings by category and under and overharvest for the 2005 fishing season are illustrated in Table 1b.

1.2 Need for Action and Objectives

The objective of this final action is to domestically implement the 2002 ICCAT recommendation, including the BFT TAC and eight percent tolerance limit on harvest of school size BFT by finalizing 2006 specifications for the BFT fishery, which allocate the TAC among domestic fishing categories and implement General and Angling category effort controls. Alternatives regarding allocation of this BFT quota among domestic fishing categories and General and Angling category effort controls need to be analyzed in order to ensure consistency with the objectives of the 1999 FMP and its implementing regulations, applicable law, the 1998 ICCAT BFT Rebuilding Plan, and 2002 ICCAT Recommendation.

2.0 SUMMARY OF THE ALTERNATIVES

This section describes the alternatives considered in this EA/RIR/FRFA for achieving the objective identified in Section 1.2. Section 2.1 describes the alternatives considered regarding allocation of BFT quota among domestic fishing categories, and Section 2.2 presents alternatives regarding General and Angling category effort controls.

2.1 Issue One: Allocation of BFT quota among domestic fishing categories

This section describes the alternatives considered by NMFS regarding allocation of BFT quota among the commercial and recreational domestic fishing categories. The amount of annual quota available is determined by the 2002 ICCAT recommendation along with consideration of overages/underages from the previous fishing year and a dead discard allowance. Three alternatives are considered. Alternatives one (no action) and two (selected) include the same considerations for 2005 overages and underages and the same dead discard allowance, but differ in base quota allocation. In addition, Alternative two is consistent with the 2002 ICCAT recommendation, ATCA, and the 1999 FMP while Alternative one is not. A third alternative using another approach for quota distribution was considered, and is consistent with the 2002 ICCAT recommendation and ATCA, but not the 1999 FMP.

Each alternative would apply the overages and underages for each category as a result of the 2005 fishing year, identified in Table 1b (Column C). NMFS has determined that the annual BFT dead discard allowance (68 mt) was potentially exceeded for 2005 (71.8 mt). Since estimates for 2005 are not available, the 2004 estimate is used as a proxy. The 2004 calendar year final estimate of U.S. dead discards, calculated from logbook tallies and adjusted as warranted when observer counts in quarterly/geographic stratum exceeded logbook reports, totaled 71.8 mt. Estimates of dead discards from other gear types and fishing sectors that do not use the pelagic longline vessel logbook are not collected, and thus, are not included in this calculation. As U.S. fishing activity is estimated to have resulted in greater dead discards than its allowance, the ICCAT recommendation and U.S. regulations state that the United States must subtract its overage for the following fishing year as indicated in Table 1b.

Alternative A1: No Action

Under this alternative, NMFS would take no action and not allocate the 2002 ICCAT quota recommendation among domestic fishing categories, defaulting to the quota allocated by the 1998 ICCAT recommendation, previously in effect. This alternative would be inconsistent with ATCA, the 1999 FMP, and implementing regulations. Quota and fishing levels prior to the 2002 ICCAT recommendation serve as baseline conditions for comparison and analytical purposes with the remaining alternatives and other issues. The amount of available quota would be the pre-2002 baseline of 1,387 mt plus or minus underages or overages from 2005, respectively, and the dead discard allocation.

Alternative A2: Allocation of ICCAT quota to domestic categories in accordance with the 2002 ICCAT Recommendation and 1999 FMP (Selected Alternative)

Under this alternative, the percentage allocations determined in the 1999 FMP would be applied to the 2002 ICCAT recommended BFT TAC. The 2002 ICCAT recommendation concerning conservation of western Atlantic BFT set the TAC, inclusive of dead discards, for the western Atlantic management area to 2,700 mt. In accordance with the same recommendation, several deductions (mainly for other nations) reduced the TAC by 152 mt to 2,458 mt. The United States' share of this revised TAC is 57.48% or 1,464.6 mt. In addition to this available quota, the United States is also allocated 68 mt to account for dead discards of BFT and 25 mt to account for retained bycatch of BFT by U.S. pelagic longline fisheries in the vicinity of the management boundary area (defined hereafter as the NED).

All domestic fishing categories would receive a share of the increase in quota from the 2002 levels (i.e. $1,464.6 - 1,387 = 77.6$ mt, not including the 25 mt set-aside for the pelagic longline fishery) as stipulated in the percentage allocations determined in the 1999 FMP. Dead discards would be deducted from the ICCAT dead discard allowance. Under/overharvests in each particular quota category from the 2005 fishing year would be accounted for and applied to those categories in the 2006 fishing year. Under this alternative, BFT incidentally caught by pelagic longline vessels and landed against the 25 mt set-aside in the NED would be deducted from the set-aside quota and any under/overharvests during 2005 would be "rolled-over" and added or subtracted, as appropriate, to an additional 25 mt allocation for fishing year 2006. A summary of the calculations resulting in the final initial 2006 quota specifications under this alternative is provided in Table 1b. In Table 1b, the results of the 2005 specifications and fishery are given for each category, and the resultant carryover of under/overharvest is indicated. Any adjustments are shown (e.g., dead discards for 2005 fishery) and the under/overharvest is added/subtracted from the baseline allocation for 2006, resulting in the final initial quota numbers. The intent of this option is to allocate the quota provided by ICCAT as specifically as possible to the category and area intended in the 2002 recommendation and in accordance with the 1999 FMP.

Under this alternative in the proposed rule, NMFS proposed reducing the harvestable school subquota to 0 mt to achieve ICCAT's recommended four-year average eight percent tolerance on harvest of school BFT. This reduction was proposed because the 2006 fishing year is the fourth year in the current four-year period, and preliminary recreational estimates for the last three years, including those in Van Voorhees et al. for 2003, indicated that landings of school BFT were at, or near, the four-year average eight percent tolerance limit. A study released subsequent to the proposed rule evaluated BFT length measurement procedures in the LPS used to collect BFT landings data for the recreational fishery. As a result of this study, NMFS has determined it is appropriate to adjust prior recreational landings estimates for the years 2002-2004 by a 4.88% reduction, resulting in approximately 49.2 mt available for the United States to harvest under the ICCAT four-year tolerance limit. Thus under this selected alternative, a small school subquota of 49.2 mt is available for the 2006 fishing year. Although this amount is larger than provided in the proposed rule, it is still a reduction from the usual annual allocation of 117.2 mt.

Alternative A3: Allocation of ICCAT quota to domestic categories in accordance with the 2002 ICCAT recommendation but not the 1999 FMP

Under this alternative, the percentage allocations determined in the 1999 FMP would not be applied to the TAC for all domestic fishing categories, but some other allocation scheme would be implemented. This alternative would implement the 2002 ICCAT recommendation and allocate the 1,464.4 mt BFT quota to the United States, in a manner other than what is stated in the 1999 FMP and implementing regulations.

This alternative could address issues relative to the changing nature of BFT fisheries and BFT distribution. These issues are in part characterized by the growth of a late season General category fishery, changes in recreational interests for smaller size BFT, and ongoing under-harvested quota for several commercial categories. The draft Consolidated HMS FMP (70 FR 48804, August 19, 2005) addresses several aspects of the changing BFT fishery and has proposed modification to time period subquotas and authorized gear for use in BFT fisheries, among other things. Whereas the Draft Consolidated HMS FMP and these specifications consider the changing domestic social and economic trends and the needs of the fishery, some are beyond the scope of these respective actions. The biological consequences of significant changes in management need to be considered and addressed in terms of impacts to the international rebuilding plan. Fortunately, ICCAT will be undertaking a stock assessment for BFT during the first half of 2006. The information provided by this stock assessment and international deliberations in fall 2006 should provide insight into the larger fishery issues raised by this alternative, and could result in future regulatory or FMP amendments. For the time being, modifications to domestic management of BFT outside the limitations of the 1999 FMP, current ICCAT recommendations, and ATCA, are outside the scope of this action, and are not analyzed further in this action.

2.2 Issue Two: Effort controls

The following three sets of alternatives provide options for effort control in the General and Angling categories during the 2006 fishing year. Effort controls are meant to maximize the opportunity for catching the quota and biological, social, and economic benefits while balancing relative costs. For example, certain effort controls might provide more flexibility for the fishery by increasing retention limits when fish are known to be available on the fishing grounds in certain areas, and then reducing limits at other times so that limited quota may be available to other areas at other times. Three sets of effort control alternatives are discussed below, including restricted fishing days for the General category, and retention limits for the General and Angling categories.

2.2.3 General category restricted fishing days

The following two alternatives represent the options considered by NMFS regarding the use of General category restricted fishing days (RFDs). RFDs and time-period subquotas have been used to slow down the rate of fishing in the General category for a variety of purposes including reduction of market gluts, greater temporal and spatial sampling for data collection purposes, and expansion of fishing opportunities to a broad range of participants. Subdivision of the General category into three time-period subquotas, sixty percent for June – August, thirty percent for September, and ten percent for October – January, was established in the 1999 FMP

and codified in the implementing regulations, as amended, and is therefore not addressed in the following alternatives.

Alternative B1: No Action: No Designated RFDs and publish schedule during season

Under this alternative, there would be no RFDs published with the final initial specifications. Instead, NMFS would use its inseason authority to implement RFDs should the need arise. This alternative anticipates a slow winter season, where low catch rates and a slow fishery do not warrant RFDs.

Alternative B2: Designate RFDs according to published schedule (Selected Alternative)

Under the selected alternative, the final initial specifications will announce the following schedule of RFDs for the 2006 season, for which persons aboard vessels permitted in the General category would be prohibited from fishing, including catch-and-release and tag-and-release, for BFT of all sizes: all Saturdays and Sundays from November 18, 2006 through January 31, 2007 and November 23 and December 25, 2006, inclusive, while the fishery is open. This alternative is intended to provide participants prior notice of RFDs for planning purposes, address the need to slow the pace of the winter fishery in anticipation of high catch rates during the General category's third sub-period, and provide the opportunity for fishermen to spend holidays with family.

2.2.4 General category retention limits

The following three alternatives represent the options for General category retention limits for the start of the 2006 fishing season. Retention limits in the General category are designated as the number of large medium or giant BFT (73 inches curved fork length (CFL)) which may be retained on board a vessel with a General category tuna permit. The retention limits in these alternatives would go into effect upon the effective date of publication of the final specifications in the *Federal Register*, currently anticipated for the start of the Fishing year on June 1, 2006, and would stay in place until the end of the first quota subperiod on August 31, 2006, or adjusted with an inseason action, if warranted.

Alternative C1: No Action: Initial General category retention limit of 1 fish per day/trip

The no action alternative would set the General category retention limit on opening day at one fish (73 inches or greater) per vessel per day/trip. Without an action to adjust the retention limit, the default limit under current regulations of one fish per General category vessel per day would go into effect.

Alternative C2: Establish a two fish initial General category retention limit per day/trip

Alternative C2 would establish a two fish (73 inches or greater) retention limit per day for General category vessels, starting with the effective date of these specifications until the end of the first quota subperiod on August 31, 2006, or adjusted with an inseason action, if warranted.

Alternative C3: Establish a three fish initial General category retention limit per day/trip (Selected alternative)

Alternative C3, the selected alternative, will establish a three fish (73 inches or greater) retention limit for the General category season, starting with the effective date of these specifications until the end of the first quota subperiod on August 31, 2006, or adjusted with an inseason action, if warranted. A three fish retention limit is the maximum General category retention limit allowed by Federal regulations (50 C.F.R. 635.23).

2.2.5 Angling category retention limits

Federal regulations at 50 C.F.R. 635.23 allow the establishment and adjustment of Angling category retention limits via inseason actions, and NMFS has used inseason actions in the past for this purpose. However, in these 2006 specifications, NMFS is providing alternatives for the Angling category retention limits in order to provide more opportunity for public comment with the intent to improve the ability of charter/headboat businesses and recreational anglers to plan for the season and to gather public comment on a range of alternative retention limits. Each of these alternatives and subalternatives balance the following considerations: limited overall Angling category quota compared to fleet size; the ICCAT school landings tolerance limit and limited availability of school quota for 2006; the different needs of the private angler and charter/headboat sector of the Angling category; and the varying availability of different size classes during different seasons off various sections of the U.S. Atlantic seaboard. Under each of these alternatives, the retention limit could be adjusted by way of an inseason action during the fishing year, if warranted; however, NMFS' intent is to maintain the retention limits as described in each alternative for the entire season. In addition, under these alternatives, NMFS specifically requested comments on the proposed rule regarding the best options for retention limits and seasons for the BFT recreational fishery considering the status of the school BFT subquota and took account of public comment during deliberation on this final action.

Alternative D1: No Action: Initial Angling category retention limit of one fish per vessel per day/trip from 27 inches to less than 73 inches

This alternative would implement the regulatory default retention limit of one fish per vessel per day between 27 and 73 inches. Since this alternative would allow a fishery on the school size class, and limited quota is available for the fourth year of the four-year tolerance period per the adjusted recreational landings estimates as described above, it is contrary to the 2002 ICCAT recommendation.

Alternative D2: Establish the same Angling category retention limit for private recreational and charter/headboat vessels

This alternative would not differentiate between private recreational and charter/headboats. Each of these vessel types would have the same retention limits in place during the fishing year. Several subalternative retention limits are considered below. Each

subalternative considers the minimal amount of available subquota for the school fishery and is consistent with the school tolerance provision of the ICCAT 2002 recommendations.

Subalternative D2a: Establish an Angling category retention limit of one fish (47 inches to less than 73 inches) per vessel per day/trip

This subalternative would establish the same retention limits for the charter/headboat and private sectors of the fishery of one fish (47 inches to less than 73 inches) per vessel per day/trip (i.e. similar to the No Action alternative but with a size range that excludes the school size class of 27 inches to less than 47 inches). NMFS' intent would be for these retention limits to be in effect for the entire fishing year, although adjustments could be made if warranted.

Subalternative D2b: Establish an Angling category retention limit of two fish (47 inches to less than 73 inches) per vessel per day/trip and a school size class (27 inches to less than 47 inches) for two three-week periods (Selected Alternative)

This subalternative, the selected alternative, is slightly modified from the draft and proposed rule, and would establish the same retention limits for the charter/headboat and private sectors of the fishery of two fish (47 inches to less than 73 inches) per vessel per day/trip. The selected alternative differs from the draft with a two fish retention limit rather than the three fish retention limit proposed by NMFS as the preferred alternative. The selected alternative is based on public comment which expressed a preference for a two fish retention limit with a reduced potential for early closure. NMFS' intent is for this retention limit to be in effect for the entire fishing year, although adjustments could be made if warranted.

This selected subalternative would also provide a limited fishery on school BFT per the limited subquota available under selected Alternative A2. Regional access to school BFT will be provided based on the north/south dividing line for one three-week period in each of the two (i.e., north and south) regions. A one-fish retention limit for BFT from 27 inches to less than 47 inches will be available for Angling category and Charter/headboat permit holders south of the dividing line from July 1-21, 2006, and north of the dividing line from August 25 – September 14, 2005. The north/south dividing line is located at 39° 18' N latitude (approximately Great Egg Inlet, NJ). By using the north/south line, each region would be open for only one of the two periods (i.e., the southern area is open in early July while the northern area is closed, and at the end of August the northern area will be open while the southern area is closed).

Subalternative D2c: Establish an Angling category retention limit of one fish (47 inches to less than 73 inches) per person per vessel/trip with a maximum of six fish per vessel per day/trip

This subalternative would establish the same retention limits for the charter/headboat and private sectors of the fishery of one fish per person (47 inches to less than 73 inches) up to a maximum of six fish per vessel per day/trip. NMFS' intent

would be for these retention limits to be in effect for the entire fishing year, although adjustments could be made if warranted.

Alternative D3: Establish Angling category retention limits that differentiate between private recreational vessels and charter/headboats

This alternative would differentiate between private recreational and charter/headboats. Each of these vessel types would have different retention limits in place at some point during the fishing year. The intent of differential retention limits is to provide charter/headboats with sufficient retention limits to attract clients and bookings while still providing access to a recreational fishery for private anglers with a HMS Angling permit. Several subalternative retention limits are considered below.

Subalternative D3a: Establish an Angling category private recreational vessel retention limit of two fish (47 inches to less than 73 inches) per vessel and a charter/headboat limit of one fish (47 inches to less than 73 inches) per person with a maximum of 6 fish per vessel

This subalternative differentiates between private and charter/headboat vessels by providing a private vessel retention limit of two fish (47 inches to less than 73 inches) per vessel regardless of the number of passengers on board, and limits charter/headboats to one fish (47 inches to less than 73 inches) per person with a maximum of six per vessel. NMFS' intent would be for these retention limits to be in effect for the entire fishing year, although adjustments could be made if warranted.

Subalternative D3b: Establish Angling category private recreational and charter/headboat vessel retention limits of one fish (47 inches to less than 73 inches) per vessel from with an increase to three fish per vessel for charter/headboats during June 15, 2006 through July 31, 2006 and the month of September 2006

This subalternative differentiates between private and charter/headboat vessels for certain periods of the season when fish are expected to be available in geographic locations with active charter/headboat fisheries. The private recreational limit would be one fish (47 inches to less than 73 inches) for the entire season. This same limit would be in effect for charter/headboats except for June 15 through July 31 and the month of September when the retention limit would increase to three fish per vessel. Like the other alternatives discussed for the Angling category, inseason adjustments to the retention limits can be made if warranted.

3.0 DESCRIPTION OF AFFECTED ENVIRONMENT

This section includes a brief summary of the status of the stocks, fishery participants and gear types, and affected area including habitat and protected species. For a complete description of the biology and status of BFT and the U.S. tuna fishery, including operations, catches, and discards, please see the 1999 FMP, HMS Stock Assessment and Fishery Evaluation Reports (SAFE Reports) for 2003 and 2004, and the *Draft of the Consolidated Atlantic HMS FMP for Atlantic HMS*. Also, for information on interactions and concerns with protected species and the Atlantic tuna fishery, please see the *2004 Final Supplemental Environmental Impact Statement (FSEIS) for a Final Rule to Implement Management Measures to Reduce Bycatch and Bycatch Mortality of Atlantic Sea Turtles in the Atlantic Pelagic Longline Fishery*.

3.1 Status of the Stocks

Western Atlantic BFT are considered overfished and overfishing is occurring. At the 2002 meeting of the Standing Committee on Research and Statistics (SCRS) of ICCAT, stock assessment analyses were prepared for the western and eastern Atlantic stocks of BFT. For western Atlantic BFT, two stock assessment scenarios were prepared based on assumptions regarding recruitment. Two targets are considered, including the spawning stock biomass from 1975 which could be considered a healthy stock, and biomass at maximum sustainable yield (MSY). The results of projections based on the low recruitment scenario for the western Atlantic stock indicated that a constant catch of 2,500 mt per year has a 97 percent probability of allowing rebuilding to the associated B_{MSY} level by 2018. A constant catch of 2,500 mt per year has about a 35 percent probability of allowing rebuilding to the 1975 stock size by 2018. The SCRS notes that, arguably SSB_{75} is the most appropriate target level for interpreting the implications of projections based on the high recruitment scenario. Under the high recruitment scenario, a constant catch of about 2,500 mt has about a 60 percent probability of allowing rebuilding to the 1975 stock size; a catch of 2,700 has about a 52 percent chance of reaching this stock size. The SCRS cautioned that these conclusions do not capture the full degree of uncertainty in the assessments and projections, in part, but not exclusively due to, assumptions regarding recruitment.

At the 2002 meeting, ICCAT adopted a recommendation to increase the annual quota of BFT in the western Atlantic Ocean from 2,500 mt to 2,700 mt, consistent with the rebuilding program for western Atlantic BFT established in 1998. The share allocated to the United States was set at 1,464.6 mt. In addition, ICCAT recommended this TAC remain in place for the duration of the rebuilding plan, unless amended in a future recommendation. At the 2004 ICCAT meeting it was determined that a new stock assessment will be conducted for both eastern and western stocks of BFT in 2006. After the 2006 assessment ICCAT may have new information on which to base a change, if any, to the western BFT quota, the U.S. quota share, and/or other portions of the rebuilding plan.

3.2 Fishery Participants, Gear Types, and Affected Area

Fishery participation in the Atlantic tuna fishery includes over 34,000 vessels in five permitted directed fishing categories and two permitted incidental fishing categories (Table 2). Generally, separate permits are issued for a distinct fishery category by specific gear types, and participants are restricted to the use of only those allowed gears. For directed fisheries on BFT, these gears consist of purse seine, rod and reel, harpoon, handline, and bandit gear. Pelagic longline gear is used to target other HMS species, primarily swordfish, bigeye, and yellowfin tuna. It is not an allowed gear type for directed fishing on BFT although this gear type is allocated a quota for incidentally-caught BFT. Finally, a small incidental quota (less than 2 mt) is provided for trap gear. Atlantic Tunas, HMS Charter/headboat, and HMS Angling category permits are issued over the internet, telephone or mail. Only one permit category change is allowed per year and not after a permit has already been renewed for a season. Permit category holders who accidentally obtain an incorrect permit have 10 calendar days from issuance of the permit to correct the error or wait until the next season to change to the desired permit category.

U.S. landings of BFT for the 1996-2005 period are provided in Table 3. The historical level of landings has generally been determined by quotas since 1982. Commercial fisheries are focused on large medium (73 inches to less than 81 inches) and giant (81 inches or greater) BFT, while recreational fisheries are focused on large school/small medium BFT (47 inches to less than 73 inches), with allowances for school (27 inches to less than 47 inches), large medium, and giant BFT. Since the implementation of the 1999 FMP, the BFT fishery has been managed on a fishing year basis (e.g. June 2006-May 2007) versus a calendar year basis. Commercial categories are monitored by a census of landing cards, whereas the recreational catch is monitored primarily by survey, although the states of Maryland and North Carolina have implemented recreational census BFT tagging programs as well.

The majority of BFT landings are taken by handgear fisheries in the commercial General category and recreational Angling and Charter/headboat categories. The distribution of fishing activity for BFT is generalized in Table 4, and the total number of permits issued per category in 2005 is given in Table 2. General category fisheries are focused in New England during the summer and fall, and the South Atlantic during the winter.

Recreational fisheries include private vessels fishing in the Angling category and vessels for hire fishing under the Charter/headboat category. The 1999 FMP notes that Charter/headboats have been targeting school BFT off New York and New Jersey since the early 1900's. School size BFT are recreationally targeted off Virginia, Delaware, and Maryland during the summer and off New Jersey and New York and into New England as the summer progresses. Fishery landings and school availability decline in the late Fall. Recreational fishing also takes place for large medium and giant BFT in the South Atlantic winter fishery, and the 1999 FMP notes that this fishery includes an active charter/headboat fishery. Large school and small medium BFT are landed by private and charter/headboat fisheries in summer and early fall off Virginia, Delaware, Maryland, New Jersey, and Massachusetts. This size class is also available in the South Atlantic winter fishery, and overall is less accessible to New York, Connecticut and Rhode Island fisheries. In general, BFT fisheries vary from year to year since the exact availability of BFT and the demand for fishing opportunities is unpredictable.

BFT movements throughout the Atlantic are the subject of much research and affect the availability of harvest for regional fisheries. During the 2004 and 2005 fisheries, the availability of large medium and giant BFT in the New England area declined, causing large reductions in the ability of General category fishermen to harvest the first two time period subquotas and the ability of purse seiners and harpooners to harvest their respective quotas (Table 3), which are traditionally taken in the New England region. Conversely, overall catches for the Angling category in recent years have been relatively high, although time lags in receipt and analyses of survey data, and uncertainty inherent in estimation procedures, mean delayed calculation of final landings estimates.

3.3 Habitat

The area in which this action is planned has been identified as Essential Fish Habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the HMS Management Division of NMFS. Generally, the target species of the HMS fishery management units are associated with hydrographic structures of the water column, e.g., convergence zones or boundary areas between different currents. Because of the magnitude of water column structures and the processes that create them, there is little effect on habitat that can be detected from the HMS fishing activities.

3.4 Protected Species under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA)

The ESA is the primary federal legislation governing interactions between fisheries and species whose continued existence is threatened or endangered. Through a consultative process, the ESA allows federal agencies to evaluate proposed actions in light of the impacts they could have on these ESA-listed species. In the case of marine fisheries, NMFS Office of Sustainable Fisheries consults with the Office of Protected Resources to determine what impacts major fishery management actions will have on endangered populations of marine species and what actions can be taken to reduce or eliminate negative impacts. Under the consultative process, NMFS issues a Biological Opinion (BiOp) which outlines expected impacts of the proposed action and specifies terms and conditions which must be met to mitigate impacts on ESA-listed species. The primary gear types used for directed BFT fisheries are hand gear and purse seine gear, which were covered under the 2001 BiOp for HMS fisheries and are not likely to jeopardize the continued existence of endangered or threatened species, including seas turtles. A 2004 BiOp for the pelagic longline fishery, which is permitted to retain bluefin tuna incidentally but may not fish directly for BFT, was determined to likely jeopardize the continued existence of leatherback sea turtles, but not loggerhead, green, hawksbill, Kemp's ridley, or olive ridley seas turtles. See Section 4.5 for further discussion of consultations and BiOps issued for HMS Fisheries.

The MMPA is the principal Federal legislation that guides marine mammal species protection and conservation policy. Under requirements of the MMPA, NMFS produces an

annual List of Fisheries that classifies domestic commercial fisheries, by gear type, relative to their rates of incidental mortality or serious injury of marine mammals. The List of Fisheries includes three classifications:

- Category I fisheries are those with frequent serious injury or mortality to marine mammals (pelagic longline);
- Category II fisheries are those with occasional serious injury or mortality (shark gillnet); and
- Category III fisheries are those with remote likelihood of serious injury or mortality to marine mammals (rod and reel, purse seine, harpoon).

Fishermen participating in Category I or II fisheries are required to be registered under the MMPA and, if selected, to accommodate an observer aboard their vessels. Vessel owners or operators, or fishermen, in Category I, II, or III fisheries must report all incidental mortalities and injuries of marine mammals during the course of commercial fishing operations to NMFS Headquarters. There are currently no regulations requiring recreational fishermen to report takes, nor are they authorized to have incidental takes (i.e., they are illegal). NMFS does require reporting and authorizes takes by charter/headboat fishermen (considered “commercial” by the MMPA), and, no takes have been reported to NMFS to date.

The purse seine fishery and handgear fisheries are currently listed as a Category III fisheries under the MMPA. Strict control and operations of these fishing gears means these gear types are not likely to result in mortality or serious injury of marine mammals or sea turtles.

The pelagic longline fishery is listed as a Category I fishery. As mentioned above, Longlines are known to present potential dangers to listed sea turtles and marine mammals, and the activity of the fishery is regulated by the terms of the BiOp dated June 1, 2004.

4.0 ENVIRONMENTAL CONSEQUENCES OF ANALYZED ALTERNATIVES

The impacts of alternatives identified in Section 2 are discussed separately in the following subsections by issue and in the context of the relevant Magnuson-Stevens Act National Standards and the objectives of the 1999 FMP. Analyses for alternatives that were considered but not further analyzed in this document may be done in future rulemaking, including the consolidated HMS FMP currently under development. The economic impacts of each alternative are briefly summarized in the following sections, and are described more fully in Sections 6, 7 (RIR), and 8 (FRFA).

4.1 Issue One: Allocation of BFT quota among domestic fishing categories

Ecological Impacts

Under Alternative A1, the No Action alternative, NMFS would not implement the 2002 ICCAT BFT quota recommendation. The 2006 fishery would be based on the level of quota allocated from ICCAT prior to 2002 (*i.e.*, 1,387.0 mt) and overages or underages from the 2005 fishing year. Application of the net underharvest from the 2005 fishing year (1357.0 mt) to the 2006 fishing year would allow for an increase in BFT harvest for the 2006 fishing year compared to 2005 (Table 1b). This net underharvest from the previous fishing year combined with the annual baseline BFT quota allocation for the United States should not negatively affect the stock because the ICCAT recommended rebuilding plan for BFT assumes that the entire annual quota allocation is harvested, regardless of when that harvest occurs. NMFS is aware of the potential of a biological impact if carryover of a large amount of unharvested quota coincides with a particular year class. For example, the strong 1994 year class has recruited into the commercial fishery and is expected to be contributing to the current spawning stock. The recruitment of a strong year class into the spawning stock may also assist enhancing stock recovery. If the year class were harvested prior to maximizing its contribution to spawning, then stock recovery could be slowed. However, fluctuations in year class strength are to be expected, and are considered as a part of ICCAT's Standing Committee on Research and Statistics (SCRS) advice and ICCAT recommendations for rebuilding. In addition, the SCRS annually reviews international catches of Atlantic BFT, and may recommend adjustments to the rebuilding plan regarding potential impacts of the roll-over of large underharvests on year class strength, or other facets of BFT life history. No such recommendations have been made to date. The BFT stock will be fully assessed by ICCAT during the summer of 2006, and any recommended adjustments to the rebuilding plan will be implemented for the 2007 fishing year. This no action alternative would be inconsistent with the 1999 FMP, ATCA, and the 2002 ICCAT recommendation. If it was implemented, it could have slightly more positive ecological effects than Alternative A2 because the implemented quota would be 77.6 mt less than A2, and this alternative could assist in rebuilding the western Atlantic BFT stock at a slightly accelerated rate by maintaining the U.S. quota at a lower level for the 2006 fishing year.

Alternative A2, the selected alternative, would have slightly greater ecological impacts than pre-2003 fishing years, and would be consistent with the 2002 ICCAT recommendation, 1999 FMP, and ATCA. This slight increase in quota has been implemented since 2003 and is not expected to result in long term negative impacts to BFT stocks because it is consistent with

the ICCAT BFT rebuilding plan. The 2002 ICCAT recommendation and these final quota specifications comprise a step in a longer-term stock rebuilding program designed to stabilize fishing pressure and allow the stock to rebuild to higher levels. As discussed under the previous alternative, application of the net underharvest from the 2005 fishing year should not negatively affect the stock because the ICCAT recommended rebuilding plan for BFT assumes that the entire annual quota allocation is harvested regardless of when that harvest occurs. The large degree of underharvest which occurred in 2005 is unusual in the U.S. domestic fishery, and the implications of continued underharvests on stock recovery will be reviewed at the 2006 ICCAT BFT stock assessment.

The slight increase in quota available under Alternative A2 may result in a slight increase in impacts to other species as a result of a potential slight increase in fishing effort for handgear and purse seine fisheries; however, the minimal amount of increased quota is not expected to alter existing fishing patterns. NMFS does not expect that this slight increase has altered fishing patterns or effort compared to pre-2003 levels because the amount of additional quota is so small that it would not likely increase participation in open access BFT fisheries, or effort for either open or limited access BFT fishermen that are already participants.

Bycatch in HMS fisheries for both HMS and non-HMS species was analyzed in Section 3.5 of the 1999 FMP and discussed in the Draft Consolidated HMS FMP (NMFS 2005 b), and is not repeated here in detail. In summary, bycatch impacts are expected to be minimal from the harpoon fishery because the target is identified as a BFT with reasonable certainty before the harpoon is thrown. Investigations into bycatch in the purse seine fishery have found dead discards to be limited to tunas; however, ratios of discards to harvested tuna are not available. Some bycatch estimates for recreational HMS fisheries have been recorded by the Large Pelagics Survey (NMFS 1999); however, the sample size has not been large enough to expand data to annual estimates, and the data collected are from all HMS fisheries, not just BFT fisheries. That being said, the species that were discarded dead most frequently according to these data were BFT and skipjack tuna. Data for General category fisheries have not been collected, but discards are expected to be similar to recreational HMS fisheries since the same gear is employed in both fisheries. BFT are caught incidentally by the longline fishery, and are allowed to be retained if within the tolerance limits of set amounts of target catches. Bycatch of non-target species is expected to be slightly higher for Alternative A2 than Alternative A1 because of the slight increase in quota available under A2. In addition, Alternative A2 is not expected to increase adverse impacts to protected species beyond those previously analyzed in the 2001 and 2004 BiOps (see Section 4.5).

Consistent with the 2002 ICCAT recommendation, Alternative A2 would also allocate a 25 mt set-aside of BFT to the Longline North subcategory “in the vicinity of the management area boundary” (i.e., the NED). As BFT caught and landed under this quota would be caught incidentally to directed pelagic longline fisheries on other species, and otherwise likely discarded dead due to regulatory target catch requirements, there would not be any additional mortality or ecological impacts to the BFT stock from this alternative. There would be no additional impacts to other species as this alternative would not alter existing fishing patterns or effort of pelagic longline vessels. Monitoring and management of the pelagic longline fishery in this area, and the accounting of the 25 mt, would be done in concert with the ongoing Atlantic Tuna Dealer

reporting mechanisms that are already in place. This alternative would also deduct prior years landings against the set-aside quota and apply the 2005 underharvest (55.6 mt) to the 2006 specific sub-quota allocation for this NED set-aside area. If excessive rollovers of unharvested quota continue over an extended period of time, there is a potential that this sub-quota category could increase to a level that provides an incentive for pelagic longline vessels to target BFT. This could result in some possible negative ecological impacts; however, it is unlikely that this will happen because overall regulations governing the pelagic longline sector of the fishery have been developed to avoid such an incentive (e.g., no directed fishing for BFT is allowed and incidental retention allowed only in compliance with strict target catch requirements).

Adjustment of recreational landings estimates from previous years under Alternative A2 would not have any ecological impacts. The landings estimates for 2002-2004 were reduced by 4.88% due to an adjustment in length measurement procedures. These landings are accounted for under the ICCAT rebuilding plan, and this Alternative is consistent with ATCA and the 2002 ICCAT recommendation.

Neutral ecological impacts are predicted as a result of reduced landings of school size BFT in accordance with ICCAT's four-year eight percent tolerance limit. Ecological impacts of school harvest is already accounted for in the ICCAT BFT rebuilding plan. Since harvest of the school quota is figured into the rebuilding plan, there is expected to be little ecological difference whether that harvest occurs in one year or four years. If the ICCAT tolerance limit was exceeded, then the BFT rebuilding plan could be negatively impacted and negative impacts to the stock may occur. The BFT quota that will not be harvested under the school subquota has been reallocated to the large school and small medium size class subquota. Total tonnage harvested could thus remain the same, although the numbers of fish landed would be lower if the landed fish represent larger size classes. ICCAT's rebuilding plan was taken into account when quota adjustments in tonnage were provided for under the FMP. Thus, any overall ecological impacts to BFT from this adjustment in subquota are expected to be minimal. There may be some shift in effort to other species such as striped bass or bluefish. It is impossible to predict fishermen's behavior, so the extent of any potential effort shift cannot be quantified. However, the degree of effort shift is expected to be less in areas where other size classes of BFT are available and higher in areas (e.g., New York) where other size classes are not available. Any shift in effort onto other recreationally prized species such as striped bass or bluefish is not expected to negatively impact these stocks because these species are migratory in nature, will only be available to regional fisheries on a seasonal nature, and are open-access fisheries that are managed to take changes in annual fishing pressure into account.

Economic and Social Impacts

Alternative A1 would not alter current economic impacts to the United States and to local economies relative to the distribution and scale of those prior to the 2002 ICCAT recommendation, but would deny fishermen additional fishing opportunities per the 2002 ICCAT recommendation.

Alternative A2 could increase positive economic impacts to the United States and local economies compared to alternative A1 because of the slight increase in quota. Any positive economic impacts from alternative A2 because of a slight increase in quota would be distributed among the recreational and commercial sectors and are expected to mirror the distribution of the quota allocation in percentages set forth in the 1999 FMP. Potential positive impacts from this alternative will depend upon the ability of the fishery to harvest the quota. In 2005, less than 35% of the overall available quota was harvested, and an underage of 1343.1 mt will be rolled over into 2006.

Alternative A2 would also provide slight additional positive economic impacts to the pelagic longline sector of the fleet, due to the 25 mt set-aside for BFT incidentally caught pursuant to longline fishing operations in the NED. Under the selected alternative, unharvested quota from the NED set-aside would be rolled over to subsequent fishing years, and may provide positive economic impacts. Excessive rollovers may induce an incentive for pelagic longline vessel operators to target BFT in the NED. Slight positive social impacts could accrue to those vessels and their home ports, or offloading ports, as a result of this rollover as well. Finally, under the selected alternative, the set-aside and any rollover from that set-aside cannot be transferred to other quota categories. There may be small negative social and economic impacts among other fishery sectors if they are close to achieving their quota and are unable to access the limited available quota, via inseason transfers, from the NED set-aside.

The reduction of school subquota under this alternative could have negative social and economic impacts to fishermen who fish for school size class BFT, although these impacts will be less than those considered in the proposed rule, because the reduction in quota is less in this final action and provides at least a small fishery. In some regions, fishermen also have access to the large school and small medium size classes, and impacts could be mitigated by shifting effort to these larger fish. However, in certain regions (e.g., offshore New York), access to recreational size BFT other than school BFT may not be available. Negative economic impacts on charter/headboats and negative social impacts to private recreational fishermen in these regions are expected to be higher. In these regions, it may be possible for fishermen to shift effort to other species such as striped bass or bluefish for part of the fishing season. However, the degree to which shifting effort will mitigate negative economic and social impacts is unknown.

Conclusion

Alternative A2 is the selected alternative as it is consistent with the 1999 FMP, ATCA, and the 2002 ICCAT recommendation. Ecological impacts between the two analyzed alternatives are similar except that there may be a slight increase in non-longline BFT fishing effort associated with the minor increase of BFT quota in Alternative A2, which could result in slightly greater impacts to other species. Overall, economic and social impacts are positive and are similar among the alternatives. Socio-economic impacts are expected to be negative for certain sectors of the recreational fishery that rely solely on school size class BFT and that do not occur during the two available windows provided to access this quota. Under each of the alternatives considered, there may be slight differences in the level of economic and social impacts experienced by the specific individuals of the BFT fishery, as well as by participants

within a particular fishery sector. For example, social and economic impacts regarding a formalized winter General category BFT fishery off the south Atlantic coast may affect General category participants differently depending on their geographical location. Impacts associated with alternatives for the distribution of BFT quota among General category time periods are further analyzed in the Consolidated HMS FMP, and any adjustments to United States domestic management because of 2006 updates to the ICCAT BFT rebuilding plan would be addressed in a future rulemaking.

4.2 Issue Two: Effort controls

Ecological Impacts

Effort controls in the General and Angling (hand gear) categories, including RFDS and retention limits, in general, are designed to have positive economic and social impacts, and have neither positive nor negative ecological impacts since they only impact when and where BFT mortality occurs, and not the magnitude. The magnitude of mortality has been dictated by finite quotas established under a 20-year rebuilding plan for BFT, and other recommendations by ICCAT. The regulation of effort helps achieve optimum yield by considering the social and economic interests of the participants. The limited nature of these effort controls is therefore unlikely to have any differential impacts on the life history or overall biological distribution of the western Atlantic BFT stock. However, it is possible that if too many effort controls are implemented, effort may shift to other species or the pace of the fishery could be slowed to a large extent. Alternatively, if not enough effort controls are implemented, it is possible the BFT fisheries would attain their quota rapidly and close prematurely. Fishermen may then target other stocks, particularly other HMS species, with corresponding impacts to other elements of the ecosystem. Neither of these scenarios is expected to result from the alternatives considered here, because the effort controls are moderate in nature and can be adjusted during the BFT season by inseason actions.

NMFS notes that questions have been raised regarding the changing nature of the BFT fishery, particularly the growing southern area fishery, the size classes and stock origination (i.e., eastern or western Atlantic) of the fish targeted in the fishery, rollover of unharvested quota, and potential impacts on sensitive year classes. These issues are expected to be addressed at the ICCAT 2006 stock assessment for BFT, and NMFS anticipates that additional information will be available for use in evaluating future BFT fisheries.

Economic and Social Impacts

General Category Restricted Fishing Days -- Under Alternative B2, the selected alternative, NMFS would publish a schedule of RFDs for the General category in the initial BFT specifications. This alternative would implement the following RFDs: all Saturdays, and Sundays from November 18, 2006 through January 31, 2007 and November 23 and December 25, 2006, inclusive, to ensure the availability of BFT quota throughout a south Atlantic late season fishery. In the past, when catch rates have been high, this type of schedule has had positive economic consequences by avoiding oversupplying the market, extending the season, and providing predictability.

Potential negative impacts of establishing RFDs during the south Atlantic area fishery could accrue to northern area fishermen willing to travel to the southern area because their stay could be extended under RFDs. Some northern area fishermen might choose not to travel because RFDs are in place. In addition, RFDs might slow the fishery unnecessarily if landings were naturally slow during the same time period. However, some of these adverse impacts could be mitigated if the ex-vessel prices during the extended southern area fishery are kept high by avoiding oversupplying the market. Overall, extending the season as late as possible would enhance the likelihood of increasing participation by southern area fishermen and access to the fishery over a greater range of the fish migration, and is expected to provide better than average ex-vessel prices with an overall increase in gross revenues. Implementing RFDs to assist in extending a late season fishery would have an overall positive social and economic impact, particularly to south Atlantic fishermen.

The use of RFDs during a season could also provide the positive social impact of predictability for fishermen. Rather than the uncertainty of unscheduled season openings and closings as managed under in-season actions, fishermen would know ahead of time which days would be available for fishing, and would be able to plan travel to the area or engage in other fishing endeavors. This holds particularly true for charter/headboat vessels that rely on scheduling paying passengers in advance. This predictability would not apply during a slow season if RFDs were waived. In addition, the block of RFDs includes several national holidays, which will have the positive social impact of providing the opportunity for fishermen to spend holidays with family or friends, if they so desire.

Alternative B1, the no action alternative, would not implement any RFDs with publication of the initial specifications, but would use inseason management authority established in the 1999 FMP to close and re-open the season should catch rates warrant. This alternative is based on the assumption of a season with low catch rates and would have positive economic and social consequences if slow catch rates were to persist. Overall, the season would “regulate itself” and fishermen could choose when to fish or not based on their own preferences. If needed, RFDs could be added to slow down a late season fishery; however, this approach could have a negative socio-economic impact for northern area fishermen and dealers who travel to the southern area since they might not have the ability to sufficiently plan for the season. In addition, adding late season RFDs can be disruptive for planning purposes, particularly for charter/headboat operators but with some impact on private anglers as well. Administratively, it is more difficult for NMFS to add RFDs because doing so would further restrict fishermen, than it is for NMFS to waive previously approved RFDs, since doing so would relieve fishermen of a restriction.

General Category Retention Limits – The selected alternative (C3) is to establish a three fish retention limit at the start of the General category fishing season through the first quota subperiod, which will end August 31, 2006. This alternative is expected to result in positive socio-economic impacts by providing the best opportunity to harvest the quota while avoiding oversupplying the market. Although a three fish bag limit resulted in an oversupply of the market and depressed ex-vessel prices for product in October 2003 (Table 8), landings at the beginning of the season (i.e., June-July) are usually much lower, and oversupply is considered

unlikely. NMFS will need to monitor the landings closely and be prepared to reduce the retention limit in the chance that landings rates are higher than expected. Both the No Action alternative and alternative B2 would provide lower retention limits, which may unnecessarily restrict the General category harvest and result in negative socio-economic impacts, including reduced gross revenues.

Angling Category Retention Limits – The selected alternative for Angling category retention limits (subalternative D2b) is to establish a two fish (47” to less than 73”) retention limit per vessel per day/trip for the entire Angling category season. In addition, NMFS intends to provide two limited, regional fisheries for school size-class BFT that would allow retention of one school BFT (27” to less than 47”) per vessel per day/trip in the southern area from July 1 to 21, 2006 and in the northern area from August 25 to September 14, 2006. This alternative is expected to provide the greatest socio-economic benefit by providing some access to school BFT and by maximizing use of the Angling category quota yet avoiding overharvest. During the public comment period, recreational anglers expressed concern about the potential for overharvesting the quota or experiencing an early closure if the quota was reached before the end of the season under a three fish large school/small medium retention limit, and preferred a two fish large school/small medium retention limit. In addition, a two fish retention limit for charter/headboat vessels is expected to be sufficient to attract clients and should outweigh costs for private vessels. The alternative would provide the same retention limit for both private and charter/headboat vessels.

Many anglers and charter/headboat operators also expressed concern about the impacts associated with the proposed school fishery closure. In the final action, NMFS is providing a small amount of school subquota based on the adjustment to recent landings discussed under Alternative A2 in the previous section. NMFS determined that a likely approach for providing fishing opportunities on school size-class BFT for all areas (especially those without access to other size classes), considering the limited school subquota available, would be to provide one short season for each of the two regions. NMFS is announcing the retention limits for the entire season to generate positive socio-economic impacts for charter/headboats since operators will be able to book trips with less concern about a potential future reduction in retention limit. NMFS has the ability to adjust retention limits with an inseason action, if necessary.

Other D2 subalternatives that would provide consistent retention limits for each vessel type are also anticipated to provide a positive social benefit of equity, however subalternative D2a (one fish 47 inches to less than 73 inches per vessel per day/trip) is expected to be unnecessarily restrictive, and subalternative D2c (one fish 47 inches to less than 73 inches per person up to six per vessel per day/trip) could be overly liberal and is most likely to result in overharvesting the quota. None of these other alternatives would provide access to school BFT, which would be a negative impact to those fishermen that rely solely on access to this size class.

Alternative D3 differentiates between vessel types, and could have the negative social impact of perceived inequity between vessel type, although NMFS has regulated these different sectors differently due to the inherent business nature of charter/headboats. Subalternative D3a (two fish 47 inches to less than 73 inches for private vessels; one fish 47 inches to less than 73 inches per person up to 6 fish per vessel for charter/headboats) would probably allow sufficient

quota to be harvested that would sufficiently offset the cost of fishing trips, provide incentive for booking charters, and harvest an amount of quota that would provide a positive economic impact. Subalternative D3b (one fish per vessel for recreational and CHB increasing to 3 fish for CHB during June/July/September) is expected to result in a reduced harvest compared to the selected alternative, which would be a relative negative socio-economic impact. In addition, none of the D3 subalternatives provides access to school fish with the corresponding negative impacts as mentioned above.

Conclusion

The selected alternative for General category restricted fishing days is Alternative B1 because of the difficulty in adding RFDs late in the season, should they be needed, and the desire to provide predictability in late season scheduling and avoid oversupplying the market. To partially address economic and social concerns of southern Atlantic states, the series of blocks of RFDs include all Saturday and Sundays from November 18, 2006 through January 31, 2007, and November 23 and December 25, 2006, inclusive. Should landings be low, NMFS has the ability to waive RFDs with three days notice.

The selected alternative for the early season General category retention limit is three fish per vessel per day/trip. This retention limit is expected to provide the greatest opportunity for the General category to harvest the quota which includes a large roll-over from the 2005 season, providing positive socio-economic impacts. If catch rates increase rapidly, NMFS will be able to reduce the retention limit in order to avoid oversupplying the market and the potential for negative economic impacts. As with the other effort control alternatives considered here, this alternative is not expected to have any negative ecological impacts based on the 1998 rebuilding plan, and further information is expected to be available after ICCAT's BFT stock assessment in 2006.

The selected alternative for the Angling category retention limits for the entire season is subalternative D2b, a category-wide two fish retention limit (47 inches to less than 73 inches) with two limited regional school size class BFT seasons (July 1 to 21, 2006 in the south and August 25 to September 14, 2006 in the north). This alternative is expected to provide positive socio-economic impacts by balancing increased retention limits with avoiding an overharvest of the quota, and providing limited school fisheries for both regions. In addition, this alternative will provide the positive social impact of equivalent bag limits for the recreational and CHB sectors.

4.4 Impacts on Essential Fish Habitat

The Magnuson-Stevens Act established a program to promote the protection of EFH in the review of projects conducted by Federal agencies, or under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat. After the Secretary has identified EFH, Federal agencies are obligated to consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any EFH. In the 1999 FMP, NMFS concluded that there is no evidence that physical effects caused by fishing for HMS are adversely affecting EFH

to the extent that detrimental effects can be identified on the habitat of fisheries. As this action would not alter fishing gears or practices, it is anticipated that this action would not have any adverse impacts to EFH, and the conclusion for the 1999 FMP is still applicable so no further consultation is necessary.

4.5 Impacts on Protected Species

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under Section 7 of the ESA. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. This BiOp also concluded that the continued operation of the purse seine and handgear fisheries may adversely affect, but are not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. NMFS has implemented the reasonable and prudent alternatives (RPAs) required by this BiOp.

Subsequently, based on the management measures in several proposed rules, a new BiOp on the Atlantic pelagic longline fishery was issued on June 1, 2004. The 2004 BiOp found that the continued operation of the fishery was not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. The 2004 BiOp identified RPAs necessary to avoid jeopardizing leatherbacks, and listed the reasonable and prudent measures (RPMs) and terms and conditions necessary to authorize continued take as part of the revised incidental take statement. On July 6, 2004, NMFS published a final rule (69 FR 40734) implementing additional sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with pelagic longline gear onboard. NMFS is implementing the other RPMs in compliance with the 2004 BiOp. On August 12, 2004, NMFS published an Advance Notice of Proposed Rulemaking (69 FR 49858) to request comments on potential regulatory changes to further reduce bycatch and bycatch mortality of sea turtles, as well as comments on the feasibility of framework mechanisms to address unanticipated increases in sea turtle interactions and mortalities, should they occur. NMFS will undertake additional rulemaking and non-regulatory actions, as required, to implement any management measures that are required under the 2004 BiOp.

The measures finalized in this action are not expected to have adverse impacts on protected species. Although the 2002 ICCAT recommendation increased the BFT quota, which may have resulted in a slight increase in effort in BFT fisheries after its implementation in 2003, NMFS does not believe that this slight increase has altered fishing patterns or effort compared to pre-2003 levels because the amount of additional quota is so small that it would likely not have been an incentive for other fishermen to join the open access BFT fisheries, or for either open or limited access BFT fishermen to substantially increase fishing effort. The options to reduce mortality of school BFT are expected to have negligible ecological impacts and not adversely impact protected species. The specific action to allocate additional BFT quota to the Longline category would not alter current impacts on threatened or endangered species. The action would not modify fishing behavior or gear type, nor would it expand fishing effort because BFT are

only allowed to be retained incidentally. Thus, the selected alternatives in this EA/RIR/FRFA would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or substantially alter current fishing practices or bycatch mortality rates, and no further consultation is necessary.

4.6 Environmental Justice Concerns

Executive Order (E.O.) 12898 requires that Federal agencies address environmental justice in the decision-making process. In particular, the environmental effects of Federal actions should not have a disproportionate effect on minority and low-income communities. The actions in this document would not have any effects on human health nor are they expected to have any disproportionate social or economic effects on minority and low-income communities. Any social or economic impacts are expected to be slightly positive because the actions relieve restrictions and provide economic opportunities to the extent possible.

4.7 Coastal Zone Management Act (CZMA) Concerns

NMFS has determined that these regulations are consistent to the maximum extent practicable with the enforceable policies of those coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have approved coastal zone management programs. Letters were sent to those states requesting their concurrence.

4.8 Comparison of Alternatives

Table 6 summarizes the determinations made above regarding ecological, social and economic impacts of all the various alternatives, organized and subdivided by issue. A brief summary of the legal and administrative issues is also provided. As set forth above, no Environmental Justice (EJ) or CZMA issues were identified.

4.9 Cumulative Impacts

The 1999 FMP adopted ICCAT's 20-year stock rebuilding program for western Atlantic BFT, which included, among other things, authority for NMFS to implement ICCAT's BFT quota allocation on a yearly basis through a framework procedure. The FEIS for the 1999 FMP concluded that the cumulative long-term impact of the final actions in the 1999 FMP, which included the BFT rebuilding program and annual quota allocation process, would be to establish sustainable fisheries for Atlantic HMS. These final initial 2006 BFT specifications would be consistent with the 1999 FMP and with rulemaking completed in 2003 that modified the target catch requirements for pelagic longline vessels to retain incidentally caught BFT (68 FR 32414, May 30, 2003), and a regulatory amendment to address aspects of the commercial BFT fishery, including start and opening dates of various fishing categories, in particular extending the General category through January (68 FR 74504, December 24, 2003). This action would also be consistent with the recent publication, on July 6, 2004 (69 FR 40733), of a FSEIS for a final rule to implement management measures to reduce bycatch and bycatch mortality of Atlantic sea turtles in the Atlantic pelagic longline fishery.

On August 19, 2005, NMFS released the proposed rule for the Draft Consolidated HMS FMP (70 FR 48804). This action proposes several adjustments to BFT regulations, including changes to the General category subquota allocations to address a petition for rulemaking submitted by the North Carolina Division of Marine Fisheries, and changes to authorized gear, among other things. The Final Consolidated HMS FMP is expected to be completed in the foreseeable future. Nothing in the 2006 BFT specifications conflicts with the Draft Consolidated HMS FMP.

During the last several years, NMFS has noted relative changes in the nature of BFT fisheries and BFT distribution. These issues are in part characterized by the growth of a late season General category fishery, changes in recreational interests for smaller size BFT, and ongoing under-harvested quota for several commercial categories. In addition, ICCAT is scheduled to review the status of Atlantic BFT stocks during the first half of 2006, which could lead to recommended changes to the ICCAT BFT rebuilding plan. Either the changing BFT fishery or the results of the ICCAT stock assessment could result in another rulemaking in the foreseeable future. Any future domestic actions taken in regard to the BFT fishery would remain within the scope of ICCAT recommendations as well as established BFT TACs.

The selected alternatives considered in this EA/RIR/FRFA, regarding implementation of the 2002 ICCAT recommendation regarding quota allocations and designation of effort controls are expected to have modest positive social and economic impacts. Limited retention of school size category BFT could potentially have modest to moderate negative social and economic impacts to specific sectors of the Angling category. However, as discussed in sections 4.1, 5.1 and 8.6 of this document, some of the impacts could be mitigated with increased access to larger sized BFT and the small regional school fishery. In addition, limitation on harvest of the school size class would ensure consistency with ICCAT's international rebuilding plan. The measures in this action are not expected to change current fishing practices, and thus cause biological impacts not previously addressed in the 1999 FMP's EIS and the July 2004 FSEIS for sea turtle bycatch.

NMFS' goal for HMS management has been to provide sustainable harvests that will provide the greatest economic benefits to the largest number of individuals. While certain actions have resulted in negative socio-economic impacts, all of the past, present, and reasonably foreseeable future actions are expected to ensure the long-term sustainability and continued economic viability of U.S. Atlantic HMS fisheries consistent with applicable law. Thus, NMFS considers that this action is consistent with past and current actions, and anticipates that it also will be consistent with future actions with no substantial adverse, cumulative impacts on the environment from the selected alternatives.

5.0 MITIGATION AND UNAVOIDABLE ADVERSE IMPACTS

5.1 Mitigating Measures

With the selected alternatives, NMFS would implement the 2002 ICCAT recommendation in accordance with domestic legislation and the 1999 FMP and implementing regulations. Using its inseason management authority, NMFS will be able to monitor and make adjustments to the fishery close to “real time.” Since NMFS will continue to monitor the fishery, any unpredicted increase in effort and landings of BFT, should they occur, could be addressed within a fishing season.

Certain measures in this action, such as not explicitly addressing the request for a subquota for a winter commercial handgear fishery (as requested by a Petition for Rulemaking from the State of North Carolina), limited retention of school size class BFT, are expected to have short term negative direct, indirect, and cumulative economic and social impacts to certain sectors of the BFT fishery. Impacts to fishermen in south Atlantic winter fishery would be mitigated by implementing the selected option for an RFD schedule designed to ensure General category quota is available late into the winter season. Negative impacts to fishermen that target school size BFT should be mitigated by the provision of a small fishery in each of the north and south regions, and the multi-fish retention limit for large school and small medium BFT in the Angling category. In addition, the consolidated HMS FMP development process will consider additional changes to the 1999 FMP and Billfish FMPs that would further enhance rebuilding, prevent overfishing, improve data collection methodology, enhance enforcement of regulations, update essential fish habitat identifications, and maintain the United States’ compliance with multilateral treaties relating to HMS.

5.2 Unavoidable Adverse Impacts

Although the final rule would result in a slight increase in quota, it is consistent with the ICCAT BFT rebuilding plan, the 1999 FMP, ATCA, and the Magnuson Stevens Act. NMFS does not expect this slight increase to alter current fishing patterns or effort compared to pre-2003 levels because the amount of additional quota is so small that it would likely not have been an incentive for increased participation in open access BFT fisheries, or for current participants in either open or limited access BFT fishermen to substantially increase fishing effort. The specific action to allocate additional BFT quota to the Longline category would not alter current impacts on threatened or endangered species. The action would not modify fishing behavior or gear type, nor would it expand fishing effort because BFT are only allowed to be retained incidentally. Thus, the selected alternatives in this EA/RIR/FRFA would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or substantially alter current fishing practices or bycatch mortality rates.

5.3 Irreversible and Irrecoverable Commitment of Resources

No irreversible or irretrievable commitments of resources are expected from these initial specifications/final rule.

6.0 ECONOMIC EVALUATION

Note that all dollars have been converted to 1996 dollars using the Consumer Price Index (CPI) Conversion Factors to adjust for inflation and improve the ability to compare figures between years.

6.1 Prices and Markets

Over the past two and a half decades, the ex-vessel price of BFT in the United States has increased substantially, from roughly \$0.20 per pound up to over \$9.00 per pound round weight in the late 1990's. This increase over time is largely attributed to increased demand for fresh BFT in Japan, the principal consumer of U.S. BFT. The role of the Japanese market, and of quality and market structure considerations in the determination of BFT prices, is discussed in great detail in the 1999 FMP and Draft Consolidated HMS FMP (NMFS 2005 b); and is not repeated here. Many factors, including the yen/dollar exchange rate, market supply and demand, and fish quality may affect ex-vessel prices. Table 7 gives the average ex-vessel price of BFT per year for each category, adjusted to reflect 1996 dollars for comparison purposes.

Ex-vessel prices continued a general decline since highs in 1999-2001. Prices in 2005 were generally lower than those for 2004 for every category except the General category, and 2004 prices were lower compared to 2003 (Table 7). Average ex-vessel price has fallen fairly consistently for all categories since 2000. Prices for 2005 showed a particularly sharp drop for the Purse seine category, and sharp drops for the Harpoon and Longline categories as well. Average monthly prices for General category landings in 2005 were similar to 2004 but were mostly below comparable 2003 values (Table 8). Price reductions may be due to the appreciation of the dollar relative to the yen over the last several years, as well as market supply conditions in Japan. In addition, the rapid growth of the Mediterranean BFT farming industry could have contributed substantially to reduced ex-vessel prices by over-supplying the market.

6.2 Ex-vessel Gross Revenues

Ex-vessel gross revenues from recorded sales of BFT in all commercial categories for the last ten years (adjusted to 1996 dollars for comparison within the General category between years) are presented in Table 9. Revenues for the General and Harpoon categories for 2005 were the lowest in the ten year history. Incidental longline revenues are also low, but are expected to increase as landings continue through to May 31, 2006. The combination of reduced ex-vessel prices (Tables 7 & 8) and reduced commercial landings (Table 3) had a severe impact on ex-vessel gross revenues in 2004 and 2005. Ex-vessel gross revenues for all categories combined in each year for 2004 and 2005 were approximately half those in 2003, and have declined steadily from a high 2000. All categories have generally show declines since 2001, with the exception of the incidental Longline category which has been steadily increasing since 2001 (with the exception of 2005 landings to date).

Before drawing conclusions on trends in gross revenues, it should be emphasized that this discussion focuses on gross revenues only, and not net revenues. Given the lack of data,

particularly regarding cost information, for the past three seasons, it is difficult to draw conclusions concerning net revenues (or profits) to fishermen. Individual vessels may have experienced an increase in net revenue even with lower gross revenues reported for their fishing category. For example, an owner may have been forced to perform major repairs on a vessel in 2005, or could have landed fish in a month when market conditions were relatively poor. Thus, trends in gross revenues can only indicate the average trends in gross income and the effect on fishermen's net revenues if their costs remained relatively steady over the period examined. The section of the 1999 FMP pertaining to HMS science and research specifically highlights the need to conduct social and economic studies of HMS industries and fishing communities, such as via a logbook or survey research project, which would help calculate adequate cost information. The more frequently and thoroughly this can be conducted the better the estimates of the current net revenues.

During the development of the 1999 FMP, different cost estimates were derived for each of the permitted categories. In the 1999 FMP, average variable costs estimated for the directed commercial categories were: General category at \$516/trip, Harpoon category at \$488/trip, and Purse Seine \$1,750 per day or \$10,580 per metric ton. The 1999 FMP reports that the Longline category tuna permit only allows retention and landing of incidentally caught BFT, thus costs are essentially zero.

In a common property fishery, commercial fishermen individually act to maximize profits. Without clearly defined and enforceable property rights for fish in the sea, fishing effort levels expand until the rents (net revenue in excess of a normal return) generated by the fishery are dissipated. That is, fishermen enter the fishery until the last fisherman is just earning a normal return. This open-access equilibrium results in excess fishing effort directed at the fish stock. Stock sizes may well decline below the optimal level, and biological as well as economic overfishing may occur.

The imposition of a TAC may maintain harvest at levels below that which is sustainable by the BFT stock. If the TAC is designed to rebuild the stock and is not exceeded, the stock size increases. This increase in stock size causes catch per unit effort to increase. Total net revenues in the fishery increase and positive economic rents are generated. Without limited access, these rents will attract new entrants and the length of the fishing season will decline. In short, a race for fish or "derby" is continued. In the derby fishery, the most productive gear types will harvest the greater percentage of the TAC. For BFT, setting quotas by gear type eliminates the cross-gear race for the fish, although derby fishing conditions continue within the gear category.

Even if stocks improve as a result of restrictive quotas and rebuilding plans, derby fishery conditions continue. Society bears the costs of increased capital investment in the BFT fishery, increased idle capacity, and possibly a poorer quality product. In addition, short run supply overages in local markets can result in declines in ex-vessel price as dealers reach the limits of their storage capacity. Also, in the case of BFT which receives higher prices when marketed fresh on the Japanese market, further declines in ex-vessel prices may result because fresh inventory cannot be diverted to a frozen market without decreases in quality and price. To the extent that dealers might have to handle sudden increases in supply due to seasonal availability of BFT, processors may have to invest in refrigeration equipment to store supplies until markets

can absorb the excess. After the season ends, this excess storage capacity should remain unused. Processors may also have to hire additional labor during the season which are laid off after the landings season ends. This seasonal employment may have to be augmented by unemployment compensation and social welfare programs. However, insufficient information exists with which to estimate the magnitude of this problem.

Alternative management measures could improve net benefits in the BFT fishery. A control date was implemented on September 1, 1994, and limited access workshops were commenced to consider management regulations that create quasi-property rights in the fishery. The 1996 final rule established freely transferable purse seine quota, in whole or in part, among the seiners. Future HMS FMP amendments may consider individual transferable quotas for the General category fishery. Even without additional limited access management in the U.S. fishery, restrictive quotas set internationally by ICCAT, as part of the ICCAT Rebuilding Plan recommended in 1998, should conserve the BFT stock and allow for its recovery.

6.3 Angling and Charter Boat Revenues

NMFS has taken several steps to define and distinguish commercial, recreational, and Charter/Headboat fishermen. In 1992, a final rule went into effect prohibiting the sale of BFT under 73 inches (57 FR 32905, July 24, 1992). A separate rulemaking (62 FR 30741, June 5, 1997) prohibited persons aboard vessels permitted in the General category from retaining BFT less than the large medium size class. Until 2002, anglers in the General category were allowed to land and sell a BFT 73 inches or above and recreationally fish on other HMS species. In fact, the large number of permit holders in the General category used to be explained by the purchase of permits by recreational anglers "in case" they land a commercial size BFT. However, in December 2002, a final rule required recreational vessels that do not sell their catch to obtain an HMS Angling category permit (67 FR 77434, December 18, 2002). A minor exemption was made in a final rule published on December 24, 2003 (68 FR 74504), which allows vessels that are permitted in the General category to participate in recreational HMS fisheries, so long as they are a participant in a registered HMS tournament, thus acknowledging their historical participation in HMS tournaments. These actions effectively separated the commercial and recreational fisheries and left the HMS Charter/headboat category as the one permit under which both recreational and commercial HMS activities could take place, at any time, given the inherent dual nature of charter/headboat vessels' operations. The same final rule that separated the commercial and recreational handgear operations in the tuna fishery also clarified and defined when HMS Charter/headboat operations would be considered to be fishing under commercial and/or recreational regulations.

Given the prohibition on the sale of BFT under 73 inches in length, any direct income associated with the Angling category is limited to charter/headboat vessel operations. As with the commercial fishing categories, the ideal analysis would include calculation of costs and revenues to charter vessels such that producer surplus could be estimated. The economic importance of the recreational fisheries for Atlantic tunas is not limited to charter vessel producer surplus, however, nor does it necessarily depend upon the value of the landings which are sold, but rather the participants' willingness to pay for recreational fishing. These non-market values are difficult to estimate, and are collected via either direct questioning (contingent

valuation) or indirect survey techniques such as the travel cost method, as a basis for estimating demand (and thus consumer surplus) for recreational fishing.

Indirect income is also an important factor in understanding the economic impact of recreational fisheries to the economy. This type of income could include shoreside facilities, marinas, gas, and fishing tackle expenditures. The economic value of the recreational Atlantic tuna fisheries, including non-market benefits, should thus be kept in mind when examining the gross revenue figures from other categories, despite the difficulty in attaching a dollar value to recreational fisheries.

The 1999 FMP estimated that in 1997 there were approximately 6,612 charterboat trips targeting BFT from Maine to North Carolina. Of these trips, 2,527 targeted commercial-sized BFT. The 1999 FMP estimated that charterboats charge about \$800 per day; however, a survey of daily charter rates advertised by Atlantic HMS Charter/Headboat permit holders which was included in the Draft Consolidated HMS FMP (NMFS 2005 b) estimated that the average rate for an all day trip in 2004 was \$1053. Assuming that the total number of trips in 2004 were the same as 1997, and applying the 2004 average to the total number of trips from 1997 results in a rough estimate of gross revenues for BFT charters in 2004 of about \$7.0 million. These estimated direct revenues exceeded the total gross revenues of all other commercial BFT categories combined for 2005 (Table 9), and could be an underestimate of revenues accruing to charterboats because some of the BFT landed are probably sold (only large mediums and giants after the 1992 rule). Additionally, tips which are typically given to the mate (about \$100 per trip) are not included. The producer surplus component of the value of the recreational fishery would thus be these gross revenues minus costs incurred in providing the charterboat services. In the 1999 FMP, variable costs were estimated at \$392 per trip resulting in a producer surplus for operations targeting BFT of \$408 / trip (800 - 392).

According to the 1999 FMP, preliminary estimates of angler consumer surplus in the private BFT fishery are \$1,132 per fishing trip. It should be emphasized that these net revenues would be only a part of the value of the recreational fishery, since angler consumer surplus is another important component as well. Angler consumer surplus is generated from charter/headboat vessel services as well as from private vessel participation in the recreational fisheries.

6.4 Bluefin Tuna Fishery Participation

A complete description of participation rates in the BFT fishery is provided in the 1999 FMP and 2005 SAFE Report and is not repeated here. However, Table 4 provides a summary of patterns of fishing activities and Table 2 indicates the current number of permits by category in the BFT fishery.

6.5 Bluefin Tuna Processing and Export

The 1999 FMP and 2005 SAFE Report include a detailed discussion regarding the export, import, and re-export trade program and market for BFT. As noted above, total landings of BFT and U.S. ex-vessel prices for all categories except the incidental Longline category have

declined in the last three years, with a subsequent decline in gross revenues. The majority of domestically harvested BFT are exported, and there was a corresponding decrease in the amount of exports of BFT from 2002 to 2004 (NMFS 2005 b). The reduction in amount of exports and decrease in the ex-vessel value of landings for this time period indicates a corresponding decrease in the value of exports, although these figures are not available for only Atlantic product (NMFS 2005 b).

6.6 Expected Economic Impacts of the Alternatives

Below is a brief summary of the expected economic impact of each alternative grouped by issue as set forth in Sections 2 and 4 above.

6.6.1 Allocation of BFT Among Domestic Fishing Categories

Under the No Action alternative, fishery participants would experience positive economic impacts on a scale similar to 2002 or years prior if all other factors remain constant (e.g., number of participants, ex-vessel values, catch rates, etc.). Potentially, overall gross revenues to the fishery could be approximately \$20,500,000 as occurred in 2001 (Table 9). However, there is variability in quota each fishing year due to the rollover provisions from the previous fishing year, therefore the amount of available quota would likely not remain consistent with the level of a previous specific fishing year. The alternative would not significantly alter ex-vessel prices or costs or change economic benefits accrued at a level from 2002 or prior years.

The selected alternative, in accordance with the 1999 FMP and 2002 ICCAT recommendation, would distribute an additional tonnage of 77.6 mt throughout the fishery and an additional 25 mt to the Longline North subcategory. Depending on the overall harvest, average ex-vessel value and average size of the fish caught per category, economic benefits in addition to the potential \$20,500,000 gross revenues of 2001 identified under the No Action alternative would accrue to each category as a result of this slight quota increase. Although the increase in quota from the 2002 recommendation was also available in 2003 through 2005, there were anomalies in these fishing years, including under-estimated recreational overages (as discussed in Section 1.4) and unavailability of fish in the New England region (as discussed in Section 3.2) which preclude the use of these years for comparison of expected economic impacts. Therefore, pre-2002 gross revenues (*i.e.* \$20,500,00 from 2001) are used as a baseline for comparison purposes, with the potential additional economic benefits estimated below.

The General category is allocated 47.1 percent of the annual BFT TAC. Based on the 2002 ICCAT recommendation, the General category would receive a quota increase, over pre-2002 ICCAT recommendation levels, of 36.5 mt (80, 468 lbs) for the 2006 fishing year. Using the average ex-vessel price per pound in round weight for the 2005 fishing year of \$5.90 (Table 7), this would provide an increase of \$439,355 to the ex-vessel gross revenues for the category as a whole. The Harpoon category is allocated 3.9 percent of the annual BFT TAC. Based on the 2002 ICCAT recommendation, the Harpoon category would receive a quota increase, over pre-2002 ICCAT recommendation levels, of 3 mt (66,131 lbs) for the 2006 fishing year. Using the average ex-vessel price per pound in round weight for the 2005 fishing year of \$4.42 (Table 7),

this would provide an increase of \$29,229 to the ex-vessel gross revenues for the category as a whole. The Incidental Longline category is allocated 8.1 percent of the annual BFT TAC. Based on the 2002 ICCAT recommendation, the Incidental Longline category would receive a quota increase, over pre-2002 ICCAT recommendation levels, of 6.3 mt for the 2006 fishing year. In addition to the 6.3 mt, ICCAT recommended an additional set-aside quota of 25 mt to account for incidental BFT catch in the vicinity of the management area boundary, thus making the total increase 31.3 mt (69,004 lbs). Using the average ex-vessel price per pound in round weight for the 2005 fishing year of \$3.13, this would provide a potential increase of \$215,982 to the ex-vessel gross revenues for the category as a whole. The Purse seine category is allocated 18.6 percent of the annual BFT TAC. Based on the 2002 ICCAT recommendation, the Purse seine category would receive a quota increase, over pre-2002 ICCAT recommendation levels, of 14.4 mt (31,746 lbs) for the 2006 fishing year. Using the average ex-vessel price per pound in round weight for the 2005 fishing year of \$2.18, this would provide an increase of \$69,206 to the ex-vessel gross revenues for the category as a whole.

The recreational Angling category would also receive an increase in BFT quota as a result of the 2002 ICCAT recommendation. The Angling category is allocated 19.7 percent of the annual BFT TAC. Based on the 2002 ICCAT recommendation, the Angling category would receive an increase of 15.4 mt for the 2006 fishing year. Although NMFS believes that recreational fisheries have a large influence on the economies of coastal communities, NMFS has little current information on the costs and expenditures of anglers or the businesses that rely on them. Negative economic impacts because of the prohibition of school landings are expected to be greatest for regions which rely on school BFT for their fisheries (e.g. New York, Mid-Atlantic/DELMARVA). In some regions, fishermen have access to the large school and small medium size classes, and impacts could be mitigated by shifting effort to these larger fish. In regions dependent upon school BFT, shifting effort to other pelagic species (e.g. striped bass, bluefish) may be possible; however, the degree to which shifting effort might mitigate negative economic impacts is unknown. This alternative would also provide 49.2 mt for the recreational school size-class fishery. Although this amount is less than the 117.2 mt usually allocated per fishing year, and would have some negative economic consequences, it is greater than the amount in the proposed rule, and provides at least a small fishery, which would have more positive economic impacts than the proposed rule.

6.6.2 Effort Controls

The economic value of effort controls are difficult to quantify and even more difficult to predict because of the unpredictable nature of fish availability and angler behavior. In addition, the economic value of effort controls may vary depending upon whether the fishery is commercial, recreational, or charter/headboat in nature. Despite the lack of quantitative economic data, particularly for recreational fisheries, effort controls are considered to be generally useful in achieving positive economic benefits for the BFT fishery.

One economic benefit of effort controls which regulate the pace of commercial fishing activity (e.g. General category) is to maximize product price by avoiding over-supplying the market. Another benefit could result from focusing fisheries seasonally when BFT are of the best quality. Maximizing these benefits must be balanced with other economic considerations

such as providing economic benefits to all regions of the fishery, and the effect of fishing expenses such as gas and dockage fees on net revenues.

For recreational fisheries, economic benefits provided by effort controls include avoiding quota overharvest, which could disrupt future fisheries, while providing sufficient access to the fishery for the benefits of participating in the fishery to outweigh costs, including opportunity costs (e.g. the enjoyment of the fishing experience must outweigh the economic and social costs of the fishing experience). Like commercial fisheries, maximizing economic benefits for recreational fisheries in specific areas must be balanced with the consideration of providing economic benefits over the entire regional range of the fishery.

The economics of effort controls for charter/headboat fisheries are a hybrid of those for recreational and commercial fisheries, and include the considerations discussed above. In addition, the ability to plan is an important part of the charter/headboat business, since booking clients for charters may be affected by the ability of a charter/headboat business to advertise assurance of specific effort controls such as open seasons and adequate retention limits in advance of the fishery. Demand for charter/headboat trips could fall without assurance of adequate retention limits.

General Category Restricted Fishing Days

A major intended outcome of regulating the pace of General category fishing activity with RFDs is to avoid over-supplying the market, with the intended result of an increase in the average price per fish. The selected alternative, to add a series of blocks of RFDs through the late season from November through January, is intended to have positive economic impacts to fishermen participating in the southern Atlantic fishery. The selected alternative would implement the following series of RFDs: all Saturdays and Sundays from November 18, 2006 through January 31, 2007 and November 23 and December 25, 2006, inclusive, while the fishery is open, with the intent of pacing the late season fishery and ensuring the availability of BFT quota for an extended south Atlantic fishery.

Prior to 2000, almost all General category quota had been harvested by November 15 (Table 5). Since 2000, active inseason management and a change in BFT availability has made an average of 16 percent of the total General category quota available for a late season south Atlantic General category BFT fishery. Using the average price per pound for November 2004 through January 2005 (\$7.14) and the landings after November 15, 2004 (92.4 mt), the estimated ex-vessel gross revenue for the 2004 late season fishery was \$1,454,468. Late season BFT fisheries often earn higher average monthly prices due to the higher average quality of the fish and the low supply of BFT on the market (Table 8). Preliminary results from extending the General category into January for both 2004 and 2005 show that prices generally remained consistent with, or were above, prices for the November through December timeframe (Table 8). The potential for oversupplying the late season market exists if very high catch rates occur, and caution needs to be used when regulating this last part of the fishing year.

The selected alternative is intended to extend the late General category quota throughout the late season during an active General category fishery. If the fishery is slow, then these RFDs

would be waived in order to provide General category fishermen a reasonable opportunity to harvest the quota. The pace of the General category fishery over the last several years has been extremely slow, and resulted in the waiver of the majority of RFDs that were implemented for the fishing year. RFDs in conjunction with a slow fishery could potentially deny fishermen fishing opportunities to catch the available quota with a corresponding negative impact to overall gross revenues.

The selected alternative may have some negative economic impacts to northern area fishermen who choose to travel to the southern area during the late season fishery. Travel and lodging costs may be greater if the season were extended over a greater period of time as established under the selected alternative. Those additional costs could be mitigated if the ex-vessel price of BFT stays high, as is intended under this alternative. Without RFDs, travel costs may be less because of a shorter season; however, the market could be oversupplied and ex-vessel prices could fall. Overall, extending the season as late as possible would enhance the likelihood of increasing participation by southern area fishermen, increase access to the fishery over a greater range of the fish migration, and is expected to provide better than average ex-vessel prices with an overall increase in gross revenues.

General Category Retention Limits

Alternatives for retention limits of one, two, and three fish per vessel per day were proposed for the first General category subperiod from the start of the season through August 31, 2006. Regardless of the alternative chosen, the retention limit could be adjusted during the fishing year with an inseason action if warranted. Situations which could warrant an inseason adjustment of retention limit could include slow landings rates which could warrant an increase in retention limit in order to increase gross revenues, or high landings rates which could warrant a reduction in retention limit in order to reduce oversupplying the market.

Both the No Action alternative and Alternative B2, which would establish initial retention limits of one and two fish per vessel per day, respectively, could unnecessarily restrain the General category harvest in the early part of the season and result in a negative economic impact. The final 2006 General category quota includes a large amount of underharvest from 2005, which may be difficult for the General category to land during one fishing year, particularly given the annual landings in this category over the last several years. Landings in the late season have been increasing over the last several years, while landings in the early part of the season have been decreasing (Table 5). Because of slow early season landings in previous years, the retention limit for the General category was increased from one to two fish in early 2005 (70 FR 33040, June 7, 2005), 2004 (69 FR 43535, July 21, 2004), 2003 (68 FR 35822, June 17, 2003) and 2002 (67 FR 47470, July 19, 2002). The negative economic impact of limiting the General category early in the season could be reduced gross revenues for the 2006 fishing year, particularly for the New England fishery where this early season fishery traditionally occurs.

The selected alternative of an initial three fish retention limit for the General category is expected to result in positive economic benefits for the General category fishery by maximizing gross revenues during the early part of the season. As noted previously, early season retention limit adjustments have occurred over the last several years and this alternative would be

consistent with the historical approach. Providing a retention limit of three fish per vessel, which is the highest retention limit allowed under Federal regulations, is expected to increase the economic benefits that would accrue to the General category and maximize the opportunity for the General category to harvest the available quota during the 2006 fishing year.

There is some concern that a three fish retention limit could oversupply the market should landings suddenly increase. For example, the only time a three fish retention limit was provided to the General category previously was in October 2003 (68 FR 56212, September 30, 2003) which appeared to result in a decrease in ex-vessel prices (Table 8). This situation is not expected to occur during the early season of 2006 because BFT landings in the early season have not recently been as extensive as in the fall. However, considering the experience of October 2003, it will be especially important for NMFS to monitor landings closely during the early season and be prepared to adjust the retention limit if oversupply of the market appears imminent.

Angling Category Retention Limits

All of the analyzed alternatives (not including Alternative D1 which includes a school fishery) are expected to have some negative economic impacts on the Angling category fisheries which rely solely on school BFT (e.g. New York and other regions). Subalternative D2b, the selected alternative, authorizes a limited regionally based fishery for the school size class, and reduces these potential negative impacts. The reduction in the school fishery is necessary to comply with the 2002 ICCAT recommendation and ATCA. In addition, the future consequences of overharvesting the school size class raise biological concerns over potential negative impacts to the rebuilding plan. For most Angling category fisheries, these negative economic impacts will also be mitigated by the selected alternative which provides moderately liberal retention limits of large school and small medium size BFT.

Angling category retention limits were considered that would either be consistent for all vessel types fishing under this category, or that would differentiate between private recreational vessels and charter/headboats. The retention limits that would not differentiate between the vessel types include low (one fish per vessel), moderate (up to three fish per vessel), and high (up to six fish per vessel) retention limit options. The limits that would differentiate by vessel type include year round, fairly liberal differential limits, and more restrictive limits that only vary during certain parts of the year. As discussed under the General category, regardless of which alternative is chosen, retention limits could be adjusted with an inseason action if warranted. However, NMFS' intent is to increase economic benefits by providing a reliable schedule of retention limits prior to the start of the season.

It is very difficult to predict economic impacts of Angling category retention limits for several reasons. First, as with the previous effort controls discussed, it is difficult to predict the availability of fish and the reaction of the fishery. In addition, very little information is available on the economics of the recreational and charter/headboat BFT fisheries.

From a simplistic qualitative perspective, it is assumed that the retention limit alternative that provides a consistent fishery including the most amount of fish to the fishery without going

over the quota would have the most positive economic impact for recreational fisheries. Remaining within the quota is economically important since ICCAT requires that quota overages be repaid with an additional penalty, and loss of quota in future years could be a negative impact to the recreational fishery. Economic factors that must be balanced with maximizing landings within the quota include distributing economic benefits across all regions of the fishery, the lowest retention limit for which an Angling category vessel is willing to make a fishing trip, and the need for predictability that is expected to be particularly important for maximizing demand for charter/headboat fisheries. NMFS does not have any data which analyzes the degree of access to the BFT fishery in terms of retention limits that are necessary so that the benefits of participating in the fishery outweigh the costs, including opportunity costs. However, multiple fish retention limits have been requested by Angling category permit holders in the past.

The potential differences between charter/headboat and recreational fisheries are outlined in the introduction to this section which discusses the economic effects of effort controls. These differences include the commercial aspect of the BFT charter/headboat fishery, which is addressed under General category effort controls, since fishermen with HMS charter/headboat permits must abide by General category regulations when fishing commercially. Thus the only additional economic consideration for charter/headboats other than the economic considerations for private recreational fishermen is the need for business planning and potential need to attract clients with assured seasons and adequate retention limits. All of the proposed alternatives are intended to provide a reliable schedule of retention limits for the fishing year in order to facilitate planning for vessels fishing under the Angling category and to distribute economic benefits across the entire range of the fishery.

Subalternative D2a (1 fish retention limit per vessel) would be most likely to overly restrict Angling category landings which would be a negative economic impact since the quota might be underharvested and access to the fishery would be less likely to outweigh costs. Likewise, alternative D3b could overly restrict private recreational vessels by limiting them to a one fish retention limit during the season, although it increases the retention limit for charter/headboats for portions of the season for active charter/headboat fisheries in the mid-Atlantic. Conversely, subalternatives D2c and D3a would be most likely to result in negative economic impacts of allowing an overharvest of the Angling category quota since these subalternatives provide the most liberal retention limits for Angling category vessels.

The selected alternative (subalternative D2b) would establish a two fish retention limit for both types of Angling category vessels throughout the season. This subalternative appears to balance the considerations of maximizing the opportunity to harvest the quota without overharvesting, which is expected to provide the greatest economic benefits. Some public comment expressed concern that the three fish retention limit originally proposed under this alternative could result in quota overages or a premature closure of the Angling Category season. In this final action, NMFS reduced the retention limit to two fish per day/trip. This alternative is also considered to likely provide a sufficient retention limit to outweigh costs per trip for Angling category vessels. Thus, this alternative would also have positive benefits to charter/headboat businesses and is expected to be most reliable in distributing maximum economic benefits throughout the range of the fishery. Lastly, NMFS is able to provide a limited

school fishery under this alternative, which is intended in part to reduce negative impacts to anglers in areas that do not have access to the large school/small medium size class.

7.0 REGULATORY IMPACT REVIEW

This section assesses the economic impacts of the alternatives presented in this document. The RIR is conducted to comply with E.O. 12866 and provides analyses of the economic benefits and costs of each alternative to the nation and the fishery as a whole. Certain elements required in an RIR are also required as part of an EA. Thus, this section should be considered only part of the RIR, the rest of the RIR can be found throughout this document.

7.1 Description of the Management Objectives

Please see Section 1 for a description of the objectives of this rulemaking.

7.2 Description of the Fishery

Please see Section 3 for a description of fishery and environment that could be affected by this rulemaking.

7.3 Statement of the Problem

Please see Section 1 for a description of the problem and need for this rulemaking.

7.4 Description of Each Alternative

Please see Section 2 for a summary of each alternative and Section 4 for a complete description of each alternative and its expected ecological, social, and economic impacts.

7.5 Economic Analysis of Expected Effects of Each Alternative Relative to the Baseline

NMFS does not foresee that the national net benefits and costs would change significantly in the long term as a result of implementation of the final actions. The total amount of BFT landed and available for sale under the selected alternatives is expected to provide modest net positive economic impacts. Table 10 indicates the possible net economic benefits and costs of each alternative.

7.6 Conclusion

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; 3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights, and obligation of recipients thereof; or 4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The final actions described in this EA/RIR/FRFA and rulemaking do not meet the above criteria, for example, the economic impacts as reflected in this final rule are under the \$100 million

threshold. This action raises no novel or legal policy issues as it sets fishing year BFT quotas for all domestic fishing categories consistent with international and domestic law and policy and establishes General and Angling category effort controls in accordance with the processes established in the 1999 FMP, and is not expected to result in any inconsistency with other agency actions. Therefore, under E.O. 12866, the actions described in this document have been determined to be not significant for the purposes of E.O. 12866. A summary of the expected net economic benefits and costs of each alternative can be found in Table 10.

8.0 FINAL REGULATORY FLEXIBILITY ANALYSIS

8.1 Description of the Reasons Why Action is Being Considered

See Section 1 for a description of the reasons why this action is being considered.

8.2 Statement of the Objectives of, and Legal Basis for, the Final Rule

See Section 1 for a statement of the objectives and legal basis for the final rule.

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

This final action would apply to all participants in the Atlantic BFT fishery, all of which are considered small entities. As shown in Table 2, there are over 30,000 vessels that obtained an Atlantic HMS Charter/Headboat, Atlantic HMS Angling, or an Atlantic tunas permit as of January 2006. These permitted vessels consist of commercial, recreational, and charter vessels as well as headboats.

8.4 Description of the Projected Reporting, Record-Keeping, and other Compliance Requirements of the Final Rule, Including an Estimate of the Classes of Small Entities which will be Subject to the Requirements of the Report or Record

The selected alternatives do not contain any new collection of information, reporting, record keeping, or other compliance requirements.

8.5 Identification of all Relevant Federal Rules which may Duplicate, Overlap, or Conflict with the Final Rule

This final rule must be consistent 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, Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. NMFS strives to ensure consistency among the regulations with Fishery Management Councils and other relevant agencies. NMFS does not believe that the selected alternatives would conflict with any relevant regulations, federal or otherwise. Once the rule is finalized and made effective, fishermen participating in the affected fisheries must comply with the final rule.

8.6 Description of any Significant Alternatives to the Final Rule that Accomplish the Stated Objectives of Applicable Statutes and that Minimize any Significant Economic Impact of the Final Rule on Small Entities

NMFS has prepared this FRFA to analyze the impacts on small entities of the alternatives for establishing 2006 fishing year BFT quotas for all domestic fishing categories and General and Angling category effort controls.

In the analysis for the FRFA, NMFS assesses the impacts of the various alternatives on the vessels that participate in the BFT fisheries. All of those vessels are considered small entities under the Office of Management and Budget guidelines. NMFS estimated the average impact that the alternative to establish the 2006 BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories. As mentioned above, the 2002 ICCAT recommendation increased the BFT quota allocation to 1,489.6 mt, which is distributed to the domestic fishing categories based on the allocation percentages established in the 1999 FMP. This quota allocation includes a set-aside quota of 25 mt to account for incidental catch of BFT related to directed longline swordfish and non-BFT tuna fisheries in the NED. Both these quota modifications were established in the 2003, 2004, and 2005 specifications.

In 2005, the annual gross revenues from the commercial BFT fishery were approximately \$4.3 million. The BFT fishery comprises approximately 8,511 vessels that are permitted to land and sell BFT under four commercial BFT quota categories (including charter/headboat vessels). The commercial categories and their 2005 gross revenues are General (\$2.9 million), Harpoon (\$0.2 million), Purse seine (\$0.9 million), and Longline (\$0.2 million). NMFS approximates that each vessel within a category will have similar catch and gross revenues to show the relative impact of the various selected alternatives on vessels.

For the allocation of BFT quota among domestic fishing categories, NMFS analyzed a no action alternative and alternative two (selected alternative) which would implement the 2002 ICCAT recommendation. NMFS considered a third alternative to address issues regarding the changing nature of the BFT fisheries. The third alternative would have allocated the 2002 ICCAT recommendation by providing specific set-asides and allocations for fishing groups which are not currently considered in the 1999 FMP. However, since the third alternative could have resulted in a defacto sub-period quota reallocation, an FMP amendment would be necessary for its implementation, and NMFS did not further analyze it here. Instead, NMFS has proposed changes to BFT subquota allocations, among other things, in the Draft Consolidated HMS FMP (70 FR 48804, August 19, 2005).

As noted above, alternative two would implement the 2002 ICCAT recommendation in accordance with the 1999 FMP and the ATCA. Under the ATCA, the United States is obligated to implement ICCAT-approved quota recommendations. The selected alternative would apply this quota and have positive impacts for fishermen by providing a slight increase in quota. The no action alternative would keep the quota at pre-2002 ICCAT recommendation levels (i.e., 77.6 mt less) and would not be consistent with the purpose and need for this action and the 1999 FMP. Implementing the no action alternative would maintain economic impacts to the United States and to local economies at a distribution and scale similar to 2002 or recent prior years, but would deny fishermen additional fishing opportunities as recommended by the 2002 ICCAT recommendation and as mandated by the ATCA.

The selected alternative would also implement the provision of the 2002 ICCAT recommendation that limits tolerance for school BFT landings to eight percent of the domestic quota, calculated on a 4-year average. Because of high landings in the previous three years, resulting in near full utilization of the 4-year tolerance limit, a NMFS is including a 49.2-mt limit

on school landings. This limit could have negative economic impacts to fishermen who fish for school BFT, particularly those who rely exclusively on the school size class for BFT harvest. NMFS received several comments during the public comment period expressing this concern. In some regions, access to large school and small medium BFT will mitigate these impacts. In areas where school size BFT are primarily available, NMFS will provide a limited fishery, and fishermen may be able to shift their efforts to other pelagic species (e.g., striped bass or bluefish) to mitigate impacts. NMFS does not know whether shifting effort for either of these user groups will mitigate negative economic impacts.

Two alternatives were considered for effort control using RFDs in the General category. The no action alternative would not implement any RFDs with publication of the initial specifications but rather would use inseason management authority established in the 1999 FMP to implement RFDs during the season, if required. This alternative could be most beneficial during a season of low catch rates and could have positive economic consequences if slow catch rates were to persist during the late season fishery. During a slow season, fishermen could choose when to fish or not based on their own preferences. However, it is impossible to predict in advance whether the season will have low or high catch rates based on availability of BFT, weather, and fisherman behavior, among other things.

The selected alternative would designate RFDs according to a schedule published in the initial BFT specifications. When catch rates were high, NMFS used RFDs (selected alternative) with positive economic consequences by avoiding oversupplying the market and extending the season as late as possible. In addition, NMFS provides better planning opportunities by establishing RFDs at the season onset than implementing RFDs during the season. For example, charter/headboat businesses could book trips and recreational and commercial fishermen could make plans ahead of time rather than waiting until the last minute to see if an RFD is going to be implemented. However, NMFS is aware of public concern that implementing RFDs to extend the late season may have some negative economic impacts to northern area fishermen who choose to travel to the southern area during the late season fishery. Moreover, travel and lodging costs may be greater if the season were extended over a greater period of time under the selected alternative. Those additional costs could be mitigated if the ex-vessel price of BFT stays high. NMFS notes that without RFDs, travel costs may be less because of a shorter season; however, the market could be oversupplied and ex-vessel prices could fall. NMFS believes that extending the season as late as possible and establishing formalized RFDs at the season onset will enhance the likelihood of increasing participation by southern area fishermen, increase access to the fishery over a greater range of the fish migration, provide a reliable mechanism for slowing a fishery that has an ability to generate extremely high catch rates, and provide better than average ex-vessel prices with an overall increase in gross revenues.

A three-fish retention limit (73 inches (185 cm) or above) is the selected alternative for the opening retention limit for the General category, which would be in effect through August 31, 2006. This alternative is expected to result in the most positive socio-economic impacts by providing the best opportunity to harvest the quota while avoiding oversupplying the market, thus maximizing gross revenues. NMFS considered other alternatives including the no action alternative (one BFT 73 inches (185 cm) or above per vessel per day/trip) and an alternative with a retention limit of two BFT (73 inches (185 cm) or above per vessel per day/trip). NMFS

expects that both these alternatives are too restrictive given the large amount of quota available for the General category during the 2006 fishing year and could result in the negative economic impact of lower gross revenues. Although early season landings seldom occur at a rate that could oversupply the market, NMFS will monitor landings closely to assure that the increased retention limit does not contribute to an oversupply.

Six alternatives were considered for Angling category retention limits for the 2006 fishing year. The no action alternative was rejected since it would allow substantial landings of school size class BFT. This alternative is contrary to the 1999 FMP, 2002 ICCAT recommendation and the ATCA, given the status of school landings over the first three years of the four-year balance period. The selected alternative is a two BFT (from 47 inches to less than 73 inches (119 cm to less than 185 cm) per vessel per day/trip) retention limit for all sectors of the Angling category for the entire 2006 fishing year. The selected alternative also includes two limited regional fisheries for school BFT, which would allow retention of one school BFT (27 inches to less than 73 inches, 69 cm to less than 185 cm) per vessel per day/trip from July 1 to 21, 2004, in the southern management area and the same limit in the northern areas from August 25 to September 14, 2006. During the public comment period, NMFS received many comments regarding the negative economic impacts of the proposed prohibition on school landings included in the proposed rule. The selected alternative would reduce negative economic impacts to recreational fishermen by providing a limited school fishery.

In addition to the selected alternative, two other alternatives were considered that would provide the same retention limits for both private recreational and charter/headboats. One alternative (one BFT from 47 inches to less than 73 inches (119 cm to less than 185 cm) per vessel per day/trip) was not selected because it could unnecessarily restrict the amount of Angling category landings which could result in an underharvest of the BFT quota and a negative economic impact. The other alternative would allow one BFT per person up to a maximum of six BFT per vessel (from 47 inches to less than 73 inches (119 cm to less than 185 cm) and is the alternative most likely to result in an overharvest of the BFT quota with negative economic consequences.

Two other alternatives were considered which provided differential retention limits between the Angling category sectors, all for BFT from 47 inches to less than 73 inches (119 cm to less than 185 cm). The first would provide a private vessel retention limit of two fish per vessel per day/trip and a charter/headboat limit of one fish per person with a maximum of six per vessel per day/trip. The second alternative would provide one fish for each vessel per day/trip for the season, with an increase to three fish per vessel for charter/headboats during June 15, 2006, through July 31, 2006, and the month of September 2006. The second alternative was considered to be unnecessarily restrictive with a greater potential for negative economic impacts associated with not harvesting the entire quota. The first alternative was not selected since it could result in perceived inequities between the two sectors of the Angling category fishery.

9.0 COMMUNITY PROFILES

Section 102(2)(a) of the National Environmental Policy Act (NEPA) requires Federal agencies to consider the interactions of natural and human environments by using “a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences . . . in planning and decision-making.” Federal agencies should address the aesthetic, historic, cultural, economic, social, or health effects which may be direct, indirect, or cumulative. The Magnuson-Stevens Act also requires, among other matters, consideration of social impacts. Consideration of the social impacts associated with fishery management measures is a growing concern as fisheries experience variable participation and/or declines in stocks.

Profiles for the following communities were included in Chapter 9 of the 1999 FMP and updated in the Draft Consolidated HMS FMP (NMFS 2005 b). These communities are analyzed for social impacts in this action due to the importance of BFT fishing to the community: Gloucester, MA; New Bedford, MA; Barnegat Light, NJ; Brielle/Point Pleasant, NJ; Hatteras, NC; Wanchese, NC; Dulac, LA; and Venice, LA.

The impacts of the final actions will be minor in all of these communities. The action to provide the 2002 ICCAT recommended quota levels would provide for positive social impacts by providing some increased fishing opportunities compared to quota levels prior to the 2002 ICCAT recommendation. The final pattern of RFDs would allow fishermen to plan for fishing activities throughout the late season fishery and maximize ex-vessel prices. The retention limits for the General and Angling categories would allow reasonable opportunities for harvest of these quotas, and providing the alternatives for consideration would allow increased public participation in the management process.

10.0 OTHER CONSIDERATIONS

10.1 Magnuson-Stevens Act

The analyses in this document are consistent with the National Standards (NS) under the Magnuson Stevens Act and as set forth in the 50 C.F.R. part 600 NS Guidelines.

This action is consistent with NS 1 in that it would prevent the overfishing of BFT and maintain the western Atlantic BFT rebuilding schedule recommended by ICCAT. Because the selected alternative is based on the results of the 2002 ICCAT recommendation, the action is based on the best scientific information available (NS 2), including stock assessment data which provide for the management of these species throughout their ranges (NS 3).

This action does not discriminate against fishermen in any state (NS 4) nor does it alter the efficiency in utilizing the resource (NS 5). With regard to NS 6, the action takes into account any variations that may occur in the fishery and the fishery resources. Additionally, NMFS considered the costs and benefits of these management measures economically and socially under NSs 7 and 8 in Sections 4, 5, and 6 of this document. The action would minimize BFT bycatch to the extent practicable by reducing dead discards and accounting for incidentally caught BFT in the NED against an ICCAT allowance quota (NS 9). Finally, the action would not require fishermen to fish in an unsafe manner (NS 10).

10.2 Paperwork Reduction Act

The final quota specifications and effort controls contain no new collection-of-information requirements subject to the Paperwork Reduction Act.

10.3 E. O. 13132

This action does not contain regulatory provisions with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 13132.

11.0 LIST OF PREPARERS

This EA/RIR/FRFA was prepared by Dianne Stephan, Brad McHale, Mark Murray-Brown, and Margo Schulze-Haugen from the HMS Management Division, Office of Sustainable Fisheries. Please contact the HMS Management Division, Northeast Regional Office, for a complete copy of current regulations for the Atlantic tunas fisheries.

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12.0 LIST OF AGENCIES AND PERSONS CONSULTED

Discussions relevant to the formulation of the selected alternatives and the analyses for this EA/RIR/FRFA involved input from several NMFS components and constituent groups, including: NMFS Southeast Fisheries Science Center, NMFS Northeast Regional Office, NMFS Enforcement, and the members of the HMS and Billfish APs (includes representatives from the commercial and recreational fishing industries, environmental and academic organizations, state representatives, and fishery management councils). NMFS has also received numerous comments from individual fishermen and interested parties.

13.0 REFERENCES

- NMFS. 1999. Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks. Highly Migratory Species Management Division, Silver Spring, MD.
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14.0 TABLES

Table 1a. Adjustments to the final 2005 bluefin tuna quota as a result of inseason actions during the 2005 fishing year as of April 23, 2006 (all figures in metric tons (mt)). The negative entry for the Angling category in Column C is based on a revised estimate of 2004 landings and the positive entries are landings which occurred or were reported after the 2005 Initial specifications were finalized. Column D indicates a quota transfer from the General category to the Reserve category.

Column A Category	Column B Final Initial Specs 2005 Quota	Column C Change in 2004 Landings¹ reported in 2005 Final Initial Specs	Column D Inseason Action (70 FR 72724; 12/07/05)	Column E Adjusted 2005 FY Quota (Column A in Table 1b)
Angling	288.6	-0.8	0.0	289.4
General	908.3	1.0	-200.0	707.3
Harpoon	90.0	0.0	0.0	90.0
Purse seine	530.0	0.0	0.0	530.0
Longline	188.4	13.6	0.0	174.8
North	51.6	0.3		51.3
NED	64.7	1.1		63.6
South	72.1	12.2		59.9
Trap	3.8	0.0	0.0	3.8
Reserve	45.9	0.0	200.0	245.9
Total	2055.0	13.8	0.0	2041.2

¹Changes may be due to corrections in data or additional reported landings since publication of the Final Initial 2005 BFT Specifications

Table 1b. Calculations to determine Final Initial BFT quotas for 2006 fishing year (all figures in metric tons).

Category	A	B	C	D	E	F	G	H
	Adjusted '05 FY Quota (from Table 1a)	2005 Fishing Yr. Landings ¹ (as of 4/23/06)	2005 Fishing Yr. under or over (-) harvest (A-B)	Adjustments to/from Reserve	Dead Discard Allowance (DDA) from 2005 fishery	Applied Adjustments to '05 FY Quotas, (C+D+E)	Baseline allocation for 2006 FY (modified for Angling cat) ⁵	Final initial 2006 Fishing Year Quota (F+G)
Angling: <u>SUBQUOTAS:</u>								380.1
School	289.4 117.2	197.1 106.5	91.5 10.7	0.0	0.0	91.5 10.7	288.6 38.5	School 49.2 TOTAL North 23.2 South 26.0 Reserve 0.0
Lg sch/Small Med	165.6	89.9	74.9			74.9	243.5	Lg sch/Small Med 318.4 TOTAL North 150.3 South 168.1
Trophy	6.6	0.7	5.9			5.9	6.6	Trophy 12.5 TOTAL North 4.2 South 8.3
General	707.3	233.8	473.5	0.0	0.0	473.5	689.8	<u>SUBQUOTAS:</u> 1,163.3 01 JUN – 31 AUG 692.0 01 SEP – 30 SEP 346.0 01 OCT – 31 JAN 115.3 NY Bight 10.0
Harpoon	90.0	23.1	66.9	0.0	0.0	66.9	57.1	124.0
Purse Seine	530.0	178.3	351.7 ³	0.0	0.0	351.7	272.4	624.1
Longline	174.8	46.4	128.4	0.0	-3.8	124.6	143.6	268.2
North (- NED)	51.3	26.0	25.3		-2.2	23.1	47.4	70.5
NED	63.6	8.0	55.6		-0.7	54.9	25.0 ⁴	79.9
South	59.9	12.4	47.5		-0.9	46.6	71.2	117.8
Trap	3.8	0	3.8	0.0	0.0	3.8	1.5	5.3
Reserve	245.9	0.2 ²	245.7	0.0	0.0	245.7	36.6	282.3
Total	2041.2	678.9	1361.5	N/A	-3.8	N/A	1489.6	2847.3

¹2005 Fishing year landings figures are preliminary and subject to change; 2005 Fishing year Angling and Longline categories are open through May 31, 2006. Landings for the Angling category were estimated using Maryland and North Carolina tagging figures and LPS data, and adjusted based on a recent report (NMFS 2006) validating length measurement methodology in the LPS; commercial landings were derived from the NERO BFT dealer report database.

²Landings counting towards Reserve are projections based on current ongoing scientific research projects (e.g., archival tagging off North Carolina and in the

Gulf of Mexico).

³To be added to the individual vessels that did not fill their quota.

⁴25 mt to account for bycatch of BFT in directed longline fisheries in the vicinity of the management area boundary, per 2002 ICCAT Recommendation.

⁵The school subquota of the Angling category baseline allocation was modified to be in compliance with the ICCAT 8% tolerance limit for school landings over four years. Subsequent to the proposed rule, NMFS finalized a report analyzing methodologies used to measure BFT in the Large Pelagics Survey (LPS) which is an angler survey used to estimate recreational harvest. Based on this report, NMFS determined that an adjustment to Angling category landings in 2002-2004 of -4.88 percent was appropriate. The final rule includes a 40.9 mt increase in overall Angling category quota from the proposed rule, reflecting this adjustment. In addition, this adjustment increases the school size class (27 inches to less than 47 inches) subquota by 43.5 mt. The subquota for the trophy size class (73 inches and above) was also increased by 4.8 mt due to a mathematical error, and the large school/small medium (47 inches to less than 73 inches) was decreased by 7.4 mt due to a combination of the 4.88 percent adjustment and increase in the school subquota.

Table 2: 2005 Fishing Year (June 1, 2005 - May 31, 2006) Atlantic HMS and Atlantic tunas permits as of April 23, 2006.

Category	Number of Permits
General	4,932
Harpoon	40
Purse Seine	5
Incidental Longline/Trap	222
HMS Angling (Recreational)	26,091
HMS Charter/Headboat	4,247
Total	35,545

*Data Source: Atlantic HMS/Tunas Permit Database

Table 3: BFT landings by year and category (metric tons), 1996 to 2005 (fishing year landings as of April 23, 2006).

Category	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
General	575	679	706	714	725	933	898	595	344	234
Harpoon	58	53	60	59	53	68	41	53	30	23
Purse Seine	245	250	248	247	275	196	208	265	32	174
No. Longline	21	20	23	17	12	8	8	25	34	26
So. Longline	43	27	24	51	51	28	48	69	58	12
Trap	1	2	1	0	0	0	0	0	0	0
Angling	362	299	184	100	50	241	651	410	364	216
Total	1305	1330	1246	1188	1166	1484	1834	1417	862	698

2005 Fishing year landings figures are calculated as of 4/23/06, and are preliminary and subject to change. For the Angling category, landings were estimated using revised preliminary LPS numbers and Maryland and North Carolina tagging figures. For commercial landings, figures are derived from NERO dealer report database. Note: Starting with the implementation of the 1999 FMP in 1999, BFT are managed on a fishing year basis versus a calendar year basis.

Table 4: Summary of patterns of fishing activities directed at BFT in the United States

Gear	Area	Size of fish	Season
Handline, Harpoon, and Rod and Reel	Cape Cod Bay and Gulf of Maine	Giant	<i>June-November</i>
		Medium	<i>August-October</i>
		School	<i>Summer (unpredictable)</i>
	Cape Lookout to Cape Cod	School	<i>June-October</i>
		Medium	<i>June-October</i>
		Large Medium and Giant	<i>December-March</i>
	Gulf of Mexico	Giant	<i>January-June</i>
Purse Seine	Cape Hatteras to Cape Cod	Large Medium and Giant	<i>July-October</i>
	Cape Cod Bay	Large Medium and Giant	<i>July-October</i>

Table 5: General category landings of BFT before and after November 15, 1996-2005 (fishing year data as of April 23, 2006).

Year	Before November 15		November 15 and After	
	Metric Tons	Percentage of Total	Metric Tons	Percentage of Total
2005	166.1	71	67.7	29
2004	251.0	73	92.4	27
2003	486.9	82	108.1	18
2002	825.2	92	73.1	8
2001	894.8	96	38	4
2000	677.5	93	47.3	7
1999	714.4	100	0	0
1998	706.2	100	0	0
1997	679.9	100	0	0
1996	574.7	99	4.7	1
Total Average	597.7	90.6	43.2	9.4

Starting with the implementation of the 1999 FMP, BFT are managed on a fishing year basis versus a calendar year basis.
 Data Source: 1996-2005 BFT Dealer Report Database

Table 6: Comparison of Impacts of Alternatives

Alternative	Ecological Impacts BFT	Ecological Impacts other fish species	Protected Species	Economic Impacts	Social Impacts	Administrative/ Legal/EJ/CZMA Considerations
Issue 1: BFT QUOTA ALLOCATION						
A1. No Action	Distributes quota according to 1998 ICCAT Rebuilding plan	No change in fishing patterns and no increase in effort	No change in fishing patterns and no increase in effort	Positive	Overall negative. Denial of additional fishing opportunities per ICCAT 2002 Rec.	Inconsistent with ATCA. (i.e., additional quota not allocated)
A2. Implement ICCAT recommendation, including 25 mt for longline: SELECTED	Consistent with BFT rebuilding plan; slightly less than A1 as allocates 77.6 mt more quota towards fishing mortality of BFT.	Fishing patterns remain consistent, minor increase in effort	Fishing patterns remain consistent, minor increase in effort	Slightly more positive than A1, i.e. additional fishing opportunities	Overall positive. Provide additional fishing opportunities	Consistent with ATCA, ICCAT 2002 Rec. and 1999 FMP
A3	Not Analyzed	Not Analyzed	Not Analyzed	Not Analyzed	Not Analyzed	Not Analyzed
Issue 2: EFFORT CONTROLS						
RESTRICTED FISHING DAYS						
B1. RFD schedule published in initial BFT specifications SELECTED	Neutral	Neutral	Neutral	Overall positive. Facilitates planning, minimizes market gluts and extends season as long as possible.	Overall positive. Facilitates planning, minimizes market gluts and extends season as long as possible.	Can use inseason authority to waive and cancel if necessary
B2. No Action: No RFDs, publish in initial BFT specifications; adjustments via inseason actions	Neutral	Neutral	Neutral	Mixed. Can be positive or negative depending on catch rates.	Marginal positive. Depends on outreach and avoiding confusion.	Requires at least 3 day notice to implement.
GENERAL CATEGORY RETENTION LIMIT						
C1. No Action: Initial General category retention limit of one BFT (73 inches or greater) per vessel	Neutral	Neutral	Neutral	Negative . Lowest gross revenues	Overall negative because of economic impacts;	Can use inseason authority to change retention limits
C2. Establish a two BFT (73 inches or greater) initial General category retention limit	Neutral	Neutral	Neutral	More positive than C1; Would increase gross revenues	More positive than C1 because of economic impacts;	Can use inseason authority to reduce retention limit and avoid oversupplying the market if necessary

C3. Establish a three BFT (73 inches or greater) initial General category retention limit - SELECTED	Neutral	Neutral	Neutral	Most positive: best alternative to maximize gross revenues	Most positive because of economic benefits	Can use inseason authority to reduce retention limit and avoid oversupplying the market if necessary
ANGLING CATEGORY RETENTION LIMIT						
D1. No Action: Initial Angling category retention limit of one fish per day/trip (from 27 inches to less than 73 inches)	Not Analyzed	Not Analyzed	Not Analyzed	Not Analyzed	Not Analyzed	Inconsistent with FMP, ATCA, and 2002 ICCAT requirements
D2a Establish an Angling category retention limit of one fish per vessel per day/trip (47 inches to less than 73 inches)	Neutral	Neutral	Neutral	Negative; potential for underharvest of quota	Negative; because of economic impacts; facilitates planning and no perceived inequity	Can change retention limits if necessary via inseason actions
D2b Establish an Angling category retention limit of two fish per vessel per day/trip (47 inches to less than 73 inches) and two 3-week school fisheries- SELECTED	Neutral	Neutral	Neutral	Positive; provides best opportunity to harvest quota and sufficient retention limit to offset costs; provides small school fishery to reduce negative economic impacts	Positive; no perceived inequities; facilitates planning; positive economic benefits	Can change retention limits if necessary via inseason actions
D2c Establish an Angling category retention limit of one fish (47 inches to less than 73 inches) per person per day/trip up to a maximum of 6 fish per vessel	Neutral	Neutral	Neutral	Negative; greatest potential to overharvest quota.	Negative because of economic costs; but no perceived inequity between vessel types and facilitates planning	Can change retention limits if necessary via inseason actions
D3a Establish an Angling category private recreational vessel retention limit of two fish (47 inches to less than 73 inches) per vessel per day/trip & a charter/headboat limit of one fish (47 inches to less than 73 inches) per person up to a maximum of 6 fish per vessel per day/trip	Neutral	Neutral	Neutral	Negative; potential to overharvest quota	Negative; economic costs; perceived inequity between vessel type, but facilitates planning	Can change retention limits if necessary via inseason actions

D3b Establish Angling category retention limit of one fish per vessel per day/trip and raise the charter/headboat limit to 3 fish per vessel per day/trip for June 15-July 31 and September 2006.	Neutral	Neutral	Neutral	Negative for private recreational vessels	Negative; perceived inequity but facilitates planning	Can change retention limits if necessary via inseason actions
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Table 7: Ex-vessel average price (per pound, round weight) for BFT by commercial fishing category, 1996-2005 (fishing year data as of April 23, 2006).

Category	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
General	\$8.71	\$7.23	\$5.20	\$6.93	\$9.46	\$7.65	\$7.02	\$6.06	\$5.77	\$5.90
Harpoon	\$7.69	\$8.09	\$5.92	\$9.10	\$7.05	\$7.42	\$6.82	\$6.89	\$5.02	\$4.42
Incidental	\$4.79	\$4.94	\$5.06	\$5.47	\$5.89	\$5.74	\$5.05	\$5.29	\$3.47	\$3.13
Purse Seine	\$8.61	\$8.32	\$6.01	\$6.75	\$7.22	\$6.97	\$6.64	\$4.68	\$3.93	\$2.18

Starting with the implementation of the 1999 FMP, BFT are managed on a fishing year basis versus a calendar year basis. All dollars have been converted to 1996 dollars using the Consumer Price Index (CPI) Conversion Factors

Data Source: 1996-2005 BFT Dealer Report Database

Table 8: Average monthly prices (per pound, round weight) for Atlantic bluefin tuna in the General Category, 1996-2005 (2005 fishing year data as of April 23, 2006).

Calendar Year	June	July	August	September	October	November	December	January
2005	\$3.83	\$5.04	\$5.37	\$5.05	\$5.42	\$6.03	\$6.89	\$8.10
2004	\$5.04	\$4.72	\$4.15	\$5.31	\$5.27	\$6.65	\$6.55	\$8.08
2003	\$5.11	\$7.77	\$7.82	\$7.19	\$4.65	\$8.40	\$7.22	
2002	\$6.70	\$7.50	\$7.78	\$5.55	\$7.86	\$5.35	\$7.48	--
2001	\$5.49	\$8.13	\$7.53	\$8.12	\$7.71	\$6.22	--	--
2000	\$9.27	\$13.36	\$9.22	\$9.14	\$8.74	\$8.82	\$11.69	--
1999	\$5.84	\$8.55	\$6.66	\$6.79	\$6.50	--	--	--
1998	\$7.31	\$4.99	\$4.80	\$4.94	\$6.09	\$10.38	--	--
1997	\$7.16	\$6.83	\$7.79	\$7.04	\$8.09	--	--	--
1996	\$7.81	\$7.86	\$8.55	\$8.33	\$9.97	\$15.26	--	--

Starting with the implementation of the 1999 FMP, BFT are managed on a fishing year basis versus a calendar year basis. All dollars have been converted to 1996 dollars using the Consumer Price Index (CPI) Conversion Factors

Data Source: 1996-2005 BFT Dealer Report Database

Table 9: Ex-vessel gross revenues in the U.S. Atlantic bluefin tuna fishery by commercial fishing category, 1996-2005 (as of April 23, 2006)

Fishing Year	General	Harpoon	Inc./LL	P.S.	Total
2005	\$2,998,105	\$215,858	\$255,762	\$902,495	\$4,372,220
2004	\$4,351,423	\$316,938	\$682,314	\$401,011	\$5,751,686
2003	\$7,476,461	\$772,810	\$635,498	\$2,546,236	\$11,431,005
2002	\$13,948,190	\$588,884	\$558,352	\$3,066,034	\$18,161,460
2001	\$15,883,631	\$1,089,423	\$449,794	\$3,011,046	\$20,433,894
2000	\$15,027,728	\$824,636	\$803,012	\$4,383,679	\$21,039,055
1999	\$10,470,014	\$1,185,947	\$805,687	\$3,671,460	\$16,133,108
1998	\$7,763,996	\$743,666	\$482,858	\$3,285,014	\$12,275,534
1997	\$10,808,589	\$939,322	\$531,208	\$4,579,361	\$16,858,480
1996	\$10,781,387	\$919,717	\$671,528	\$4,445,852	\$16,818,484
AVERAGE	\$9,950,952	\$759,720	\$587,601	\$3,029,219	\$14,327,493

Note: Starting with the implementation of the 1999 FMP, BFT are managed on a fishing year basis versus a calendar year basis. All dollars have been converted to 1996 dollars using the Consumer Price Index (CPI) Conversion Factors

Data Source: 1996-2005 BFT Dealer Report Database

Table 10: Summary of expected net economic benefits and costs of alternatives.

Alternative	Net Economic Benefits	Net Economic Costs
Issue 1: BFT QUOTA ALLOCATION		
A1. No Action	Positive economic impacts on a scale similar to 2002.	Opportunity cost of revenue foregone from not implementing 2002 ICCAT recommendation.
A2. Implement ICCAT recommendation, including 25 mt for longline: SELECTED	Slightly greater positive economic benefit than No Action as allocates additional quota and greater fishing opportunities.	None
Issue 2: EFFORT CONTROLS		
RESTRICTED FISHING DAYS		
B1. RFD schedule published in initial BFT specifications SELECTED	Positive IF catch rates high at end of season as will space product on market; positive for charter/headboat charter scheduling.	IF catch rates are low, may unduly limit catch further; if catch rates are very high, may be insufficient and require additional measures.
B2. No Action: No RFDs, publish in season	Marginal positive by providing greatest degree of flexibility IF catch rates are low; None if catch rates are high.	IF catch rates are high, may need to add RFDs inseason which could have negative impacts due to time required to implement and late scheduling changes for charter-headboats.
GENERAL CATEGORY RETENTION LIMITS		
C1. No Action: Initial General category retention limit of one BFT (73 inches or greater) per vessel	Marginally positive if early season catch rates are very high; would avoid oversupplying market	Negative if catch rates are similar to those of recent early seasons; would restrain ex-vessel revenues
C2. Establish a two BFT (73 inches or greater) initial General category retention limit	Positive by increasing ex-vessel gross revenues	Negative if catch rates oversupply market without NMFS action to reduce retention limit
C3. Establish a three BFT (73 inches or greater) initial General category retention limit – SELECTED	Most positive by increasing ex-vessel gross revenues	Negative if catch rates oversupply market without NMFS action to reduce retention limit
ANGLING CATEGORY RETENTION LIMITS		
D1. No Action: Initial Angling category retention limit of one fish per day/trip (from 27 inches to less than 73 inches)	Not Analyzed	Not Analyzed
D2a Establish an Angling category retention limit of one fish per vessel per day/trip (47 inches to less than 73 inches)	Slightly positive by avoiding overharvest of quota	Negative with greater potential to underharvest quota
D2b Establish an Angling category retention limit of three fish per vessel per day/trip (47 inches to less than 73 inches) and two 3-week school fisheries - SELECTED	Positive by maximizing landings with less potential of overharvesting and providing sufficient retention limits to outweigh costs of trip; provides small school fishery to reduce negative economic impacts	Negative if quota is over or underharvested which is less likely with this alternative

D2c Establish an Angling category retention limit of one fish (47 inches to less than 73 inches) per person per day/trip up to a maximum of 6 fish per vessel	Slight positive by providing the best opportunity to catch the quota and sufficient retention limits to outweigh costs of trip	Negative because of greatest potential to overharvest quota
D3a Establish an Angling category private recreational vessel retention limit of two fish (47 inches to less than 73 inches) per vessel per day/trip & a charter/headboat limit of one fish (47 inches to less than 73 inches) per person up to a maximum of 6 fish per vessel per day/trip	Positive by maximizing landings with less potential to overharvest quota and sufficient retention limit to outweigh cost of trip.	Negative if quota is overharvested.
D3b Establish an Angling category retention limit of one fish (47 inches to less than 73 inches) per vessel per day/trip with an increase for charter/headboats to three fish (47 inches to less than 73 inches) per vessel per day/trip from June 15, 2006 – July 31, 2006 and for September 2006.	Slight positive by avoiding overharvest of quota	Negative because of greater potential to underharvest quota and not offset cost of trip

15.0 PUBLIC COMMENT AND AGENCY RESPONSES

Comment 1: Several commenters expressed concern over the accuracy of NMFS' estimates of recreational landings. Several commenters requested an analysis of the effect of measurement procedures in the Large Pelagics Survey (LPS) and a review of the length:weight conversions used by NMFS because they believed that school landings had been overestimated, while some commenters thought that recreational landings had been underestimated. Several commenters stated that the Maryland catch card data should be used in generating recreational estimates, and a commenter noted that Maryland catch card data was consistently lower than LPS estimates for the state of Maryland. Several commenters suggested that catch cards be implemented for all states and a commenter noted that NMFS should invest in improved recreational monitoring because of the numbers of fish that could be landed in the recreational fishery and the potential impact on the stock. A commenter stated that the current regulations are a disincentive for reporting recreational catches because of the severe restrictions that have been proposed this year.

Response: NMFS collects recreational landings data for HMS through the following three programs: (1) Large Pelagics Survey (LPS), (2) Automated Landing Reporting System (ALRS), and (3) comprehensive tagging of recreationally landed BFT in the states of Maryland and North Carolina. Although none of these programs provide real-time data on a coastwide basis, they provide the best data available for managing the recreational BFT fishery. NMFS considers improving recreational landings data for HMS to be a high priority, and continues to investigate options for improving the reliability and utility of these data. Specifically, NMFS formed an ad hoc committee of NMFS scientists to review the 2002 and 2003 methods and estimates of U.S. recreational fishery landing of BFT, white marlin, and blue marlin reported by NMFS to ICCAT to verify that the reported estimates were the most accurate that NMFS could make with available data. In December 2004, NMFS released a report stating the Committee's findings. NMFS will further analyze methods of fish measurement and length:weight conversions based on the findings of this report, and consultations with the contractor that performs the LPS. In a peer-reviewed report released in April 2006, NMFS analyzed the potential impacts of the procedures used to measure BFT lengths in the LPS. This report states that under certain assumptions, the LPS may have overestimated landings from 2002-2004, and an adjustment factor of 4.88 percent could be applied. This final rule implements revised quota specifications for the Angling category as a result of applying this adjustment factor to previous recreational landings estimates. NMFS is conducting a scientific review of length:weight conversions for BFT.

In addition, NMFS is working with the State of Maryland to further refine the use of Maryland catch cards in estimates of coastwide recreational landings. Proposals to implement an Atlantic-wide tail-tag monitoring program remain under limited discussion among coastal states and within NMFS and include issues regarding specifics of logistics, implementation, and establishment of partnerships with coastal states.

Comment 2: NMFS received many comments in response to the proposed recreational minimum size limit of 47 inches (119 cm); a few commenters favored the limit, while most commenters expressed concern or opposed it. Commenters stated the limit would have negative economic impacts for coastal areas such as New Jersey, Long Island, Maryland, Delaware, and the northeast coast including Rhode Island and Massachusetts, and one commenter stated that

impacts to New York and New Jersey had been underestimated by NMFS. Commenters stated that fuel prices are expected to be at an unprecedented height this season and that there would be a severe negative impact on an already suffering charter/headboat industry. Commenters stated that there had been an abundance of school-size fish on nearshore fishing grounds in these areas over the last several years which had stimulated the fishery, and that fish above the proposed minimum size limit would be located further offshore and unavailable to fishermen with smaller vessels or would be too expensive to pursue for some individuals, which was unfair. A commenter noted that flyrodders and spinning tackle anglers would not be able to pursue larger fish with their gear. Some commenters stated that fish above the proposed minimum size limit were not available in their region at all. Commenters also stated that catching inshore tuna was thrilling, and that shifting effort to other inshore species was unrealistic because of the need to re-outfit gear and unsatisfying because of the difference in the fishing experience. Several commenters suggested size and/or retention limits other than those that were considered in the proposed rule, ranging from providing some kind of school fishery even if it was for a short period of time to providing a 200-mt quota of school size fish to closing the entire BFT fishery if the school fishery was closed. Many commenters stated that a prohibition on retention of school size fish would increase dead discards and post release mortality because so many school sized fish would be released.

Response: The 2002 ICCAT recommendation that establishes the annual baseline domestic quota for the United States includes a provision designed to limit mortality of school BFT to an average of eight percent of overall quota allocation, calculated on a four-year basis. Estimates of recreational harvest showed that the eight-percent tolerance limit (calculated on an annual basis) had been exceeded by U.S. recreational fisheries in years one and two (2003 and 2004) of the 4-year balance period. In March 2005, NMFS consulted with the HMS Advisory Panel (AP) about the proposed initial BFT specifications for 2005 (70 FR 14630, March 23, 2005) to identify alternatives for the 2005 school BFT fishery. Since NMFS was reviewing methodology for measuring BFT in the Large Pelagics Survey (LPS), which could result in a decrease in previous school BFT harvest estimates, some members of the AP recommended that all of the available school quota be provided for the 2005 fishing year, even though such an approach could severely reduce the amount of quota available for the 2006 fishing year. In February, 2006, estimates of the 2005 school harvest showed that landings were at, or near, the four-year eight percent tolerance limit after only three years.

As indicated in the response to Comment 1 above, NMFS' findings in the report on length measurements will be implemented to provide an increase in the school subquota to 49.2 mt. NMFS analyzed available recreational catch records to identify time periods which would provide some access to all user groups but avoid overharvesting the limited quota available. This final rule provides harvest opportunities for school BFT during the following three-week windows: July 1 to 21, 2006, in the southern area and August 25 to September 14, 2006, in the northern area. The north/south dividing line is at 39° 18' N. lat., located approximately at Great Egg Inlet, NJ. During these windows, the Angling category retention limits for BFT will be one BFT between 27 inches and less than 47 inches (69 cm to less than 119 cm), and two BFT from 47 inches to less than 73 inches (119 cm to less than 185 cm). NMFS is also aware that the nature of BFT recreational fisheries has changed with increased numbers of recreational participants and fishing effort for smaller size BFT. The ICCAT BFT stock assessment is scheduled for June 2006, and negotiations at the annual Fall ICCAT meeting may provide an opportunity to address the changing needs of U.S. recreational fisheries.

Comment 3: Several individuals commented on international aspects of the BFT fishery. Commenters stated that the United States should champion an increase in BFT size limit internationally and make compliance with current recommendations including submission of accurate catch data a higher priority at ICCAT. Commenters stated that fishermen in the western Atlantic were negatively impacted by more liberal regulations in the eastern Atlantic, and that the United States deserves a higher quota since it is a leader in BFT conservation. Another commenter questioned whether U.S. measures were disadvantaging U.S. fishermen relative to foreign counterparts, which is contrary to ATCA, and stated that over-restricting U.S. fishermen would not benefit international stocks. A commenter asked for an increase in school quota from ICCAT, and several other commenters stated that it would be difficult to request additional BFT quota with the current underharvest in the United States. A commenter stated that additional BFT quota was needed to expand the south Atlantic winter fishery.

Response: This final rule implements the 2002 recommendation from ICCAT regarding the domestic allocation of the United States' internationally provided quota. While NMFS appreciates the comments provided on issues regarding the United States' participation and approach at ICCAT, NMFS recognizes that they recommend changes to the fishery that are beyond the scope of this rulemaking. NMFS recommends that the public provide input on these issues to the ICCAT Advisory Committee, which seeks such input for ICCAT-related activities. The ICCAT Advisory Committee provides public input for ICCAT-related activities.

Comment 4: Several individuals noted concern about the status of BFT stocks and the need for additional conservation. One individual requested a minimum size increase to 74 inches (188 cm) because of the poor status of the BFT stock and another commenter suggested that breeding size fish be excluded from the fishery. A commenter suggested any underharvested allocation of giant size class BFT not be rolled over into the next fishing year as a conservation measure. Another commenter requested an emergency seasonal closure in the Gulf of Mexico to protect spawning BFT and further minimize dead discards. The commenter stated that BFT "fit the legal definition of endangered under the Endangered Species Act, and are designated critically endangered on the World Conservation Union's Red List."

Response: NMFS and the U.S. Department of State continue to work through ICCAT to implement an international rebuilding plan, monitor the status of BFT stocks, and adjust the rebuilding plan as necessary. An ICCAT BFT stock assessment is planned for June 2006, and these results will be discussed and rebuilding plan adjustments could be made at the November 2006 ICCAT meeting. In addition, the United States has supported development of an integrated approach to management of eastern and western stocks of BFT, which is actively being discussed at ICCAT.

International management of highly migratory species is complex and difficult, and domestic management including unilateral action by one nation may or may not have the intended results on an international scale. For example, although the United States could adjust the domestic fate of underharvest roll-over for conservation purposes, this approach might not be supported internationally and the underharvest could be re-allocated to another country. In domestic management, NMFS works to balance socio-economic impacts to U.S. fishermen, ecological impacts to BFT stocks and other ecosystem components, and impacts of domestic management on international rebuilding and negotiations.

NMFS prohibits directed fishing for BFT in the Gulf of Mexico to limit mortality on spawning BFT and reduce dead discards. NMFS is considering adjustments to time/area closures for management of HMS under the Draft Consolidated HMS FMP, including an

alternative for a BFT spawning area closure in the Gulf of Mexico. The comment period for the proposed rule to implement various FMP measures closed on March 1, 2006, and the final rule is in preparation. The analyses for the time/area closure alternatives can be viewed in the draft Environmental Impact Statement at the following website:

http://www.nmfs.noaa.gov/sfa/hms/hmsdocument_files/FMPs.htm.

Comment 5: NMFS received several comments regarding the recreational fishery in addition to comments on the school fishery. Many commenters suggested that the proposed limit of three fish per vessel (47 inches to less than 73 inches, 119 cm to less than 185 cm) be reduced in order to extend the fishery throughout the entire year, because fish that size are available off southern New Jersey and Maryland, and that regional fishery could harvest a significant portion of the quota. Many individuals supported the three fish retention limit, and having the same size and retention limits in effect for both private vessels and charter/headboats. Several commenters stated that many recreational fishermen off Long Island were not familiar with the need for an HMS permit and expressed concern about enforcement, especially with a school prohibition in place. A commenter stated that HMS angling permit holders should be better informed of regulations associated with the permit. A commenter stated that an economic analysis of recreational fisheries is needed.

Response: In the final rule, NMFS reduced the retention limit to two fish (47 inches to less than 73 inches, 119 cm to less than 185 cm) per vessel per day, to ensure that a recreational fishery is available throughout the entire season. NMFS may raise or lower this retention limit during the season, if warranted, based on criteria including the status of landings and availability of BFT on the fishing grounds. An overview of the potential socio-economic impact of the final rule is included in the EA/RIR/FRFA. A more detailed analysis is included in the 1999 FMP, and the draft EIS for the Consolidated HMS FMP.

The HMS Angling category permit, which applies to fishing vessels pursuing BFT recreationally, has been in effect since 2003 and, prior to that, a recreational tuna permit was required. Recreational permits have been available for purchase on the internet since 1999, along with instructional information regarding permit requirements and other HMS regulations. NMFS also provides outreach mailings to permit holders, press releases, and a FAX information network, among other things, to help keep the public informed about regulatory requirements. NMFS law enforcement works closely with other Federal, state, and local enforcement agencies to educate fishermen and enforce NMFS regulations including prohibitions. However, it is each angler's responsibility to be informed about applicable regulations.

Comment 6: Many commenters characterized differences in the management of recreational and commercial BFT fisheries as unfair. One commenter stated that comparable permitting, reporting, monitoring, and enforcement was needed across all domestic HMS fisheries. Several commenters stated that the recreational fishery has less of an impact on the stocks than the commercial sector because of the amount of quota allocated to the commercial sector, while other commenters said that the recreational fishery has more of an impact because of the greater number of fish that are harvested (per ton) compared to the commercial sector. Another commenter requested that recreational fishermen be allowed to sell their catch.

Response: The Magnuson-Stevens Act, 1999 FMP, and implementing regulations all conserve and manage both commercial and recreational fisheries. This final rule is consistent with all applicable law including the Magnuson-Stevens Act, the 1999 FMP, and ICCAT's BFT stock rebuilding plan. Through this rule, NMFS manages the commercial and recreational sectors of the BFT fishery under different objectives, as indicated in the 1999 FMP. In addition,

NMFS bases different requirements regarding permitting and reporting on the impacts of different fisheries and the objectives under which they are managed. Subject to these objectives, recreational anglers are prohibited from selling BFT. Adjusting the HMS regulations to allow recreational fishermen to sell fish is outside the scope of this rulemaking and contradicts these management objectives. Implementing regulations at 50 CFR 635.4(d)(2) prohibit the sale of Atlantic HMS caught on board vessels holding an HMS Angling category permit. The General category fishery is an open-access commercial fishery, and permits in this category are available to any fisherman that submits a complete application package.

Comment 7: Many individuals commented on the General category quota and effort controls. Comments on the retention limit ranged from support for the three-fish bag limit to reducing the retention limit to one, and several commenters suggested keeping the three-fish limit for other subperiods except the winter fishery.

Comments on the proposed RFDs ranged from full support to removing them entirely and included increasing NMFS' responsiveness in waiving RFDs during the season and/or waiving RFDs at the beginning of the last subperiod if there is substantial quota left. Several individuals noted that the RFDs could increase economic costs to out-of-town fishermen traveling to the south Atlantic to fish in the winter fishery and the RFDs affect the ability of fishermen to plan in advance, while others noted that the fish landed during the winter fishery brought the best price per pound.

A number of individuals stated that the RFDs contributed to the underharvest in the General category in 2005, and several commenters expressed concern about the amount of underharvest and its potential impacts on negotiations at ICCAT. One commenter stated that underages should be applied to the overall baseline quota rather than rolled into individual quota categories, while another commenter stated that it was appropriate to apply them to specific categories.

An individual asked whether a winter fishery would be guaranteed if catch rates are high in the early season.

Response: This final rule implements the General category effort controls as proposed in the proposed rule, including a three-fish retention limit for the first subperiod. NMFS may adjust the retention limit for the remaining subperiods if warranted based on the criteria outlined in the HMS regulations at 50 CFR 635.23(4). This final rule also implements the proposed RFDs on Saturdays and Sundays after November 18, and November 23, and December 25. NMFS modified the RFD schedule based on experience from the 2005 season, and did not include Fridays since it was difficult to waive Fridays on several occasions. NMFS created RFDs to achieve optimum yield, and to extend the late season General category fishery. NMFS recognizes that two day consecutive RFDs could negatively impact non-resident fishermen. NMFS configured the RFDs is to separate the commercial and recreational fisheries temporally (i.e. General category fishes Monday through Friday, Angling category fishes Saturday and Sunday) to improve conditions on the fishing grounds for both fisheries. NMFS expects market value of BFT to increase as a result of spreading the fishery out over the late season. This could also mitigate any potential extra costs of non-resident fishermen for boat dockage and overnight fees. NMFS recognizes that the weather is unpredictable during this time period of the fishery and may limit participation without the need for additional RFDs during this part of the season. Should BFT landings and catch rates during the late season fishery merit the waiving of RFDs, under 50 CFR 635.23(a)(4), NMFS may adjust the daily retention limits with a minimum three day notification to fishermen via a notice in the FEDERAL REGISTER. While NMFS created

RFDs to provide a reasonable opportunity to harvest the available quota while avoiding overharvesting, the unpredictability of both weather patterns and the availability of fish on the fishing grounds may affect their utility and will be considered during inseason management. NMFS must, under 50 CFR 635.27(a)(9), roll over- or underharvests into the same quota category for the following year.

NMFS is aware of the interests of Southern area fishermen, particularly off North Carolina, for a fixed General category quota allocation. NMFS is considering several alternatives for restructuring General category subquotas in the Draft Consolidated HMS FMP (70 FR 48804, August 19, 2005) currently under development, to provide a long-term solution to quota allocation for the December to January timeframe.

Comment 8: Several miscellaneous comments were provided on issues that are outside the scope of this rulemaking. Several commenters stated that NMFS should explore ways to harvest unused quota and offered suggestions such as extending the General category fishing year into February, March, or May, increasing the allowable retention limit for the General category from a maximum of three, allowing sale of fish between the sizes of 47 inches and 73 inches (119 cm and 185 cm), and relaxing incidental catch requirements in the longline category.

A commenter stated that the trap fishery no longer harvests BFT and that the quota allocation should be shifted to another fishery that has incidental BFT catch such as a midwater trawl fishery. Several commenters suggested adding a division to the recreational fishery in addition to the current north/south line. A commenter requested that NMFS relax the “tails-on” requirement.

Several individuals commented on post-release mortality, including dead discards in hand gear and longline fisheries, and suggested alternative approaches to reduce dead discards and eliminate high-grading such as prohibiting recreational catch and release fishing altogether, providing some tolerance to size limits in hand gear fisheries, and increasing incidental catch limits in the pelagic longline fishery. Another commenter supported the ICCAT allocation for incidental catch “in the vicinity of the management area boundary” and stated that the availability of this quota has reduced unnecessary dead discards and has resulted in a more accurate depiction of U.S. longline interactions with BFT in the northeast distant area.

Several commenters stated that the purse seine fishery was unfair because such a large quota was restricted to a few individuals. Others commented that this fishery violated the Magnuson-Stevens Act, and that the fishery should carry observers.

Several individuals stated that harvest of forage fish in other fisheries such as the herring midwater trawl fishery was affecting the ability of BFT fishermen to harvest the quota. Several other commenters stated concerns about the switch from a calendar year to a fishing year that is being considered in the consolidated HMS FMP, and how it might affect the winter BFT fishery off the south Atlantic.

Response: This final rule is designed to provide for the fair and efficient harvest of the BFT quota that is allocated to the United States by ICCAT and is consistent with ATCA and the Magnuson-Stevens Act. This action establishes BFT quotas based on a 2002 ICCAT recommendation, which includes a dead discard allowance, subdivided among the U.S. domestic fishing fleet categories according to percentages established by the 1999 FMP and implemented in NMFS regulations at 50 CFR 635.27(a). The requested actions under this comment are all outside the scope of this action and may require changes to the 1999 FMP, implementing regulations, and/or ICCAT recommendations.

The New England Fishery Management Council has the lead for managing the

herring fishery, and has recently adopted an amendment to the herring FMP that would implement a seasonal closure to address the potential impacts of herring fishing in certain New England areas on the BFT fishery. This amendment is expected to be implemented in Fall 2006. The comment period for the Draft Consolidated HMS FMP closed on March 1, 2006, and the final regulations to implement various measures in the FMP are being prepared. The comment regarding potential impacts of a shift to calendar year fisheries was received during the comment period for the consolidated HMS FMP (70 FR 48804, August 19, 2005), and will be addressed in the final rule for that rulemaking.