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Atlantic Highly Migratory Species; Recreational Atlantic Blue and White Marlin Landings Limit; Amendments to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Fishery Management Plan for Atlantic Billfish; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600, and 635

[Docket No. 050805217-5217-01; I.D. 051603C]

RIN 0648–AQ65

Atlantic Highly Migratory Species; Recreational Atlantic Blue and White Marlin Landings Limit; Amendments to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Fishery Management Plan for Atlantic Billfish

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

ACTION: Proposed rule; availability of the Fishery Management Plan (FMP); petition for rulemaking; proposed rule withdrawal; request for comments; public hearings.

SUMMARY: NMFS proposes to consolidate the Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks and the FMP for Atlantic Billfish, to change certain FMP management measures, to adjust regulatory framework measures, and to continue the process for updating essential fish habitat. The alternatives described in this proposed rule could impact fishermen and dealers for all Atlantic highly migratory species (HMS) fisheries. The range of alternatives examined includes those to: establish mandatory workshops for fishermen and dealers; consider methods of modifying and establishing time/area closures; address rebuilding and overfishing of northern albacore tuna, finetooth sharks, and Atlantic billfish; modify bluefin tuna (BFT) General Category subperiod quotas and simplify the management process of BFT; change the fishing year for tunas, swordfish, and billfish back to a calendar year; authorize additional fishing gears; and clarify numerous existing regulations, particularly in 50 CFR part 635. This proposed rule also announces the receipt of a petition for rulemaking regarding bluefin tuna and describes the analyses conducted as part of this rulemaking, in response to the petition, to consider closure areas in the Gulf of Mexico. In this proposed rule, NMFS also formally withdraws a proposed rule published September 17, 2003, to establish an annual domestic recreational landing limit of 250 Atlantic blue and white marlin and other measures.

DATES: Comments on this proposed rule and draft FMP must be received no later than 5 p.m. on October 18, 2005.

Public hearings on this proposed rule and draft FMP will be held in September and October 2005. For specific dates and times see the **SUPPLEMENTARY INFORMATION** section of this document.

The September 17, 2003, proposed rule (68 FR 54410) is withdrawn as of August 18, 2005.

ADDRESSES: The public hearings will be held in Port Aransas, TX; New Orleans, LA; Orange Beach, AL; Panama City, Madeira Beach, Key West, Fort Lauderdale, Fort Pierce, and Atlantic Beach, FL; Charleston, SC; Manteo, NC; Virginia Beach, VA; Ocean City, MD; Cape May and Barnegat Light, NJ; Islip and Montauk, NY; Narragansett, RI; New Bedford and Gloucester, MA; Portland, ME; St. Thomas, USVI; and San Juan and Mayaguez, PR. For specific locations see the **SUPPLEMENTARY INFORMATION** of this document.

Written comments on the proposed rule and draft HMS FMP may be submitted to Karyl Brewster-Geisz, Highly Migratory Species Management Division:

- Email: *SF1.060303D@noaa.gov*. Include in the subject line the following identifier: Atlantic HMS FMP.
- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on Draft HMS FMP.''
- Fax: 301–427–2592.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*.

Copies of the draft HMS FMP and other relevant documents are available from the Highly Migratory Species Management Division website at *www.nmfs.noaa.gov/sfa/hms* or by contacting Karyl Brewster-Geisz at 301–713–2347.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, Margo Schulze-Haugen, or Heather Stirratt at 301–713–2347 or fax 301–713–1917; Russ Dunn at 727–824–5399 or fax 727–824–5398; or Mark Murray-Brown at 978–281–9260 or fax 978–281–9340.

SUPPLEMENTARY INFORMATION:

The Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The FMP for Atlantic Tunas, Swordfish, and Sharks, finalized in 1999, and the FMP for Atlantic Billfish, finalized in 1988, are implemented by regulations at 50 CFR part 635.

Since the 1999 final rule (May 28, 1999; 64 FR 29090) that consolidated Atlantic HMS regulations and implemented the 1999 Atlantic Tunas, Swordfish, and Shark FMP and Amendment 1 to the Atlantic Billfish FMP, a number of management issues have arisen that require further reconsideration or action. Many of these actions are linked to each other and are best analyzed in conjunction with other actions. This proposed rule and draft HMS FMP cover many of these issues and topics including: minimizing bycatch or bycatch mortality, rebuilding overfished fisheries, and modifying existing management strategies. Some of the alternatives proposed relate to regulations under the Magnuson-Stevens Act or the Endangered Species Act (ESA). Other proposed actions would improve the clarity and effectiveness of existing regulations or the process to be followed when taking action, consistent with the FMPs. Some of the actions proposed in this rule would amend the FMP while other actions would adjust the management measures without amending the FMP. The need for each action is described later in this document with the analyses of each alternative.

NMFS announced its intent to conduct an Environmental Impact Statement (EIS) amending the two current fishery management plans on July 9, 2003 (68 FR 40907). On April 30, 2004 (69 FR 23730), NMFS announced the availability of an Issues and Options Paper and nine scoping meetings. On May 26, 2004 (69 FR 29927), NMFS extended the comment period on the Issues and Options Paper, and announced an additional scoping meeting. During this time, NMFS also presented the Issues and Options Paper to the New England, Mid-Atlantic, and Gulf of Mexico Fishery Management Councils and the Atlantic States Marine Fisheries Commission. A summary of the major comments received during scoping was released in December 2004 and is available on the HMS Management Division website or by requesting a hard copy (see **ADDRESSES**). During scoping, NMFS referred to this project as Amendment 2 to the existing FMPs. Starting with the Predraft stage, NMFS has referred to this project as the draft HMS FMP.

In February 2005, NMFS released the combined Predraft to the Consolidated HMS FMP and annual Stock Assessment and Fishery Evaluation (SAFE) Report. NMFS presented the Predraft document to all five Atlantic Fishery Management Councils, both the Atlantic and Gulf of Mexico States Marine Fisheries Commissions, and to

the HMS and Billfish Advisory Panels. Comments received on both the Issues and Options Paper and the Predraft were considered when drafting and analyzing the ecological, economic, and social impacts of the alternatives in the proposed rule. A summary of the comments received on the Predraft was released in June 2005 and is available on the HMS Management Division website or by requesting a hard copy (see **ADDRESSES**).

This proposed rule and the accompanying draft HMS FMP are the culmination of the analyses of the comments received on the Issues and Options paper and the Predraft document. In addition, the draft HMS FMP continues the process to conduct a five-year review of essential fish habitat (EFH) consistent with the EFH guidelines (the process started with the release of the Issues and Options Paper in April 2004). At this time, NMFS is reviewing the information available for all HMS, including billfish, and will determine which species need updates to their EFH identifications. Any updates or resulting changes in management will be done in a future rulemaking.

As described below, NMFS is also taking additional actions in this proposed rule: (1) a formal withdrawal of the 2003 proposed rule to implement the ICCAT 250 fish limit (September 17, 2003; 68 FR 54410) and (2) a formal decision not to include in the draft HMS FMP the exemption to the ''no sale'' provision for the artisanal handline fishery in Puerto Rico as outlined in the 1988 Billfish FMP. NMFS has also reviewed a petition for rulemaking from Blue Ocean Institute et al. that requested NMFS look at a particular BFT spawning area in the Gulf of Mexico (copies of the petition can be requested, see **ADDRESSES**). An additional consideration was a settlement agreement related to white marlin that is awaiting court approval in the *Center for Biological Diversity* v. *NMFS*, Civ. Action No. 04–0063(D.D.C). The petition and settlement agreement are discussed further in the Time/Area Closures section below.

Consolidation of FMP for Atlantic Tunas, Swordfish, and Sharks and FMP for Atlantic Billfish

Currently, management of Atlantic HMS is accomplished through two different FMPs: the FMP for Atlantic Tunas, Swordfish, and Sharks and the FMP for Atlantic Billfish. The 1999 decision to maintain two different FMPs was based on the idea that the billfish fishery is recreational only while the tuna, swordfish, and shark fisheries are both commercial and recreational. Despite this decision, the regulations for both of these FMPs were consolidated under 50 CFR part 635 in 1999.

Since that decision, NMFS has further recognized the interrelated nature of these fisheries and the need to consider management actions collectively. For example, anglers fishing for Atlantic tunas, swordfish, sharks, or billfish must obtain an HMS Angling permit and must follow the recreational bag and size limits for all these species. Additionally, any management measures enacted for billfish recreational fishermen will likely have impacts on recreational fishermen for other HMS and vice versa. Thus, in the draft HMS FMP related to this rule, NMFS consolidates the two FMPs into one FMP, the consolidated Atlantic HMS FMP.

Consolidating the FMPs will allow NMFS to take a more ecosystem-based approach to these fisheries whose recreational fishermen often fish for tunas, swordfish, sharks, and billfish on the same trip and are required to have the same permit, and whose commercial fishermen catch billfish as bycatch while targeting other HMS. NMFS does not expect the consolidation of the FMPs to have an impact on the existing regulations because the regulations have been combined since 1999. NMFS also does not expect any impact on the priorities of the agency or on the composition of the Advisory Panels as a result of the consolidation.

Unless specifically proposed in this rule or in the HMS FMP, the draft HMS FMP, in itself, would not change existing provisions of either the 1999 Atlantic Tunas, Swordfish, and Shark FMP (and its 2003 amendment), the 1988 Billfish FMP (and its 1999 amendment), or any implementing regulations. However, the 1988 FMP for Atlantic Billfish contained a prohibition on the sale or purchase of Atlantic billfish, and simultaneously included a limited exemption from the ''no sale'' provision to accommodate a small-scale artisanal fishery in Puerto Rico that occasionally landed blue marlin. The exemption to the ''no sale'' provision was subject to a number of conditions and restrictions, including: only billfish caught on handlines having fewer than six hooks could be retained for sale; vessels retaining billfish for sale could not have a rod and reel onboard; billfish could be sold only in Puerto Rico; a maximum of 100 billfish per year could be landed and sold; if more than 100 billfish per year were landed under the exemption, the Councils would consider removing the exemption; all existing fishermen wishing to sell billfish would be required to obtain a permit; the Caribbean Fishery Management Council, in cooperation with the Government of the Commonwealth of Puerto Rico, would develop and implement a system for tracking billfish landings under the exemption; and the exemption would not be in effect until the permitting and tracking systems were operative, pending approval by the five involved Councils at that time.

The exemption from the ''no sale'' provision for the Puerto Rican artisanal handline fishery has never been implemented because the aforementioned conditions have not been met, either prior to or following transfer of the FMP to Secretarial authority. NMFS is proposing not to carry forward the exemption to the no sale provision for the Puerto Rican artisanal handline fishery into the draft HMS FMP based on the overfished status of Atlantic billfishes, non-fulfillment of the conditions necessary to implement the exemption to the no sale provision and resultant non-implementation of the provision over a period of 18 years, public comment, and the support of the involved fishery management councils (specifically the Caribbean Council, which would be most directly impacted by the potential elimination of the exemption provision).

Analyses of Alternatives

The following is a summary of the alternatives analyzed in the DEIS for the HMS FMP. These elements are arranged in the following sections: Bycatch Reduction, Rebuilding and Preventing Overfishing, Management Program Structure, and EFH Update.

1. Bycatch Reduction

Under National Standard 9 of the Magnuson-Stevens Act, NMFS is required, to the extent practicable, to minimize bycatch and, to the extent that bycatch cannot be avoided, minimize bycatch mortality. In this proposed rule, NMFS examined two strategies specifically aimed at reducing bycatch and bycatch mortality: conducting workshops to teach handling/release techniques and species identification, and examining the effectiveness of time/area closures in reducing bycatch. As described below, other sections (e.g., Section 2 regarding finetooth sharks) in this proposed rule also consider the requirement to minimize bycatch and bycatch mortality. Detailed analyses of bycatch reduction alternatives are presented in the draft HMS FMP. Only a summary of the major points addressing workshops and time/area closures are described below.

A. Workshops

NMFS is proposing at 50 CFR 635.8 two types of workshops for participants in HMS fisheries. The first type would instruct participants in the safe handling, release, and identification of protected resources. The second type would instruct participants in the correct identification of HMS, particularly Atlantic sharks. The alternatives for and discussion of these workshops is provided below. Regardless of the requirements, any fishermen, dealer, or interested party would be welcome to attend any or all protected species or HMS identification workshops.

i. Protected Species Workshops

On October 29, 2003, a Biological Opinion (BiOp) was issued in conjunction with Atlantic shark fishery management measures implemented in a final rule for Amendment 1 to the 1999 HMS FMP (December 24, 2003; 68 FR 74746). Among other requirements, the 2003 BiOp included a requirement for workshops or other training programs to disseminate information regarding protocols and equipment for safe release and disentanglement of protected species, including information specific to smalltooth sawfish and sea turtles. The 2003 BiOp specifically required that the workshops concentrate on ways to reduce the potential for serious injury or mortality should incidental capture via hooking or entanglement occur.

On June 1, 2004, a BiOp for the HMS pelagic longline fishery concluded that the continued operation of the pelagic longline fishery is likely to jeopardize the continued existence of leatherback sea turtles. In order to achieve the target post-release mortality rates for sea turtles specified in the 2004 BiOp, it is imperative that NMFS ensure all participants are aware of, and are proficient with, the safe release and disentanglement gears and protocols outlined in the BiOp. Mandatory workshops that would provide this type of training for vessel operators are required in the 2004 BiOp.

In addition to addressing safe handling and disentanglement protocols, the workshops in this proposed rule would also disseminate information specific to the identification of protected resources commonly encountered during longline and gillnet fishing activities. Providing fishermen with the skills necessary to properly identify protected resources that are encountered during fishing activities would increase the likelihood that they employ the proper release and disentanglement protocols, improve the accuracy of logbook data and extrapolated take estimates, and assist fishermen in complying with the reporting regulations in 50 CFR part 635.

The preferred alternatives for the protected resources workshops would implement one-day mandatory workshops and certification for HMS pelagic and bottom longline and shark gillnet vessel owners and operators by January 1, 2007. Mandatory vessel owner attendance would provide a link to vessel permit issuance and renewal ensuring that workshops are well attended and ensuring that vessel owners, if they are not the vessel operators, know what should be happening on their vessels. Shark and directed or incidental swordfish limited access permits would not be renewed without a copy of the certificate if logbooks indicate that longline or gillnet gear were used on at least one trip for that vessel in the preceding year or, in the case of vessels that were transferred in the preceding year, since the transfer. Mandatory operator attendance ensures that there is at least one person on board the vessel during fishing activities that is adept at the safe handling and release protocols and protected resource identification. Additionally, all owners and operators that attended and successfully completed industry certification workshops (held on April 8, 2005, in Orlando, Florida, and on June 27, 2005, in New Orleans, Louisiana), as documented by the workshop facilitators, are proposed to receive automatically valid protected species workshop certificates prior to the effective date of January 1, 2007. These workshops were attended by NMFS personnel, sponsored by industry representatives with experience in sea turtle handling and release protocols and fishing gear, and well-attended by pelagic longline fishermen.

The preferred one-day workshops are not expected to result in excessive economic impacts, as they will be scheduled at numerous locales along the Atlantic coast, including the Gulf of Mexico and Caribbean, minimizing travel and lost fishing time. Requiring HMS longline and shark gillnet owners and operators to attain recertification every three years would balance the ecological benefits of maintaining familiarity with the protocols and the economic impacts of travel costs and lost fishing opportunities due to workshop attendance.

NMFS considered a range of alternatives for these protected species workshops including voluntary workshops (no action). NMFS felt that voluntary workshops could limit the dissemination of the safe release, disentanglement, and protected resources identification information, and, therefore, would not guarantee compliance with the BiOps.

NMFS also considered mandatory workshops for the owners, operators, and the crew of all HMS longline vessels. This alternative would require the greatest number of participants to become skilled in the release protocols and protected resource identification. This alternative was not preferred due to the level of economic impacts to the longline fishery and the transient nature of vessel crew members. Under the preferred alternatives, because operators would be required to attend the workshops, the operators would be responsible for ensuring that the appropriate crew members were proficient at the release techniques and protected resource identification.

In addition to the three-year mandatory recertification for the protected species workshops, NMFS also considered mandatory recertification every two or five years. Recertification every two years may yield the most positive ecological impacts, however, this alternative would also have the greatest economic costs to the industry. Recertification every five years may allow a more extensive period of time to lapse between certification workshops than necessary to maintain proficiency and provide fishermen with updates on research and development of handling and dehooking protocols.

ii. HMS Identification Workshops

The second type of workshops would aim to improve HMS identification skills. NMFS considered these workshops due in part to comments received from the HMS Advisory Panel and members of the general public stating the need for improved identification skills of participants in HMS fisheries, especially shark dealers. The preferred alternatives would require anyone federally permitted to receive, trade, purchase, or barter sharks from a vessel (shark dealers), or a suitable proxy, to attend an HMS identification workshop for certification before January 1, 2007. If a dealer opts to send a proxy, the dealer must designate a proxy from each place of business covered by the dealer's permit. The proxy would need to be a person who is employed by a place of business covered by the dealer's permit; is a primary participant in identification, weighing, or first receipt of fish as they are offloaded from a vessel; and is involved in filling out dealer reports.

The permitted shark dealer or proxy would need to renew the certification every three years. Shark identification is challenging for dealers because they encounter many different shark species lacking fins and head (sharks that are dressed are often called ''logs''). Dealers are required to enter species data into dealer reports based on their purchase of fish from numerous fishermen. These reports are used for stock assessments and quota monitoring. Thus, incorrect species data could have ecological impacts and, in the long-term, could impact the accuracy of stock assessments. Economic and social impacts on the shark dealers would be minimized by offering workshops at several locations per region, near commercial and recreational HMS fishing ports during non-peak fishing times.

NMFS considered a range of alternatives for these identification workshops including voluntary HMS identification workshops for dealers, recreational fishermen, and all commercial vessel owners and operators (no action). From previous voluntary workshops on other topics, NMFS has found that voluntary workshops are generally not well attended and therefore are often not an efficient use of resources.

NMFS also considered mandatory identification workshops for all HMS dealers. However, requiring all HMS dealers to attend may be inappropriate as swordfish and tuna dealer permit holders generally only see a relatively limited number of HMS species and are not faced with the same identification difficulties as the shark dealers. NMFS felt that other alternatives, such as mandatory workshops for commercial longline owners and/or operators, are a lower priority because these individuals observe the fish intact, thereby facilitating a positive species-specific identification. While these fishermen may need workshops in the future, in this proposed rule and draft HMS FMP, NMFS felt requiring shark dealers, whose data are used for both quota monitoring and stock assessments and who must identify more numerous and difficult species, was a higher priority at this time. Generally, logbook data is used for stock assessment purposes and to verify dealer reports, not quota monitoring. Alternatives to expand participation to include owners and/or operators in the charter headboat, general category, and handgear/harpoon fisheries could result in extensive negative economic impacts due to travel and lost fishing time as it would involve a much larger portion of the fishery. Mandatory workshops for all HMS Angling permit holders would result in the most extensive negative economic impacts as it would affect the largest single group of permit holders.

NMFS also considered recertification every two, three, and five years. Recertification every two years has a greater economic impact to the dealers and a slightly positive impact on species identification. Since the identification of the species is not likely to change in the two years (species names do occasionally change as scientific information improves) and the dealers are interacting with the species on a regular basis, the certification renewal could take place with less frequency. Decreasing the frequency of renewal to every five years could introduce greater error in the species identification if the dealer begins to confuse similar species. Requiring the shark dealers to attain recertification every three years would balance the ecological benefits of maintaining the ability to properly identify the sharks and the economic impacts of workshop attendance due to travel costs and lost fishing opportunities.

B. Time/Area Closures

Time/area closures were first implemented for Atlantic HMS beginning in 1999 in order to reduce bycatch and bycatch mortality while minimizing the reduction in target catch. As described in the draft HMS FMP, these closures have proven to be effective at reducing bycatch. Nonetheless, several HMS such as blue and white marlin and bluefin tuna are overfished with overfishing still occurring, and protected species such as leatherback and loggerhead sea turtles continue to interact with HMS gears. As a result, NMFS considered a range of alternatives to implement additional closures and/or modify existing closures, as necessary. As reflected in the HMS FMP, NMFS conducted extensive analyses regarding the impact of closures on all bycatch, particularly white and blue marlin, sea turtles, and bluefin tuna, in developing alternatives and selecting preferred alternatives. Also, as noted earlier, the analyses took into account the BFT spawning ground petition and the white marlin settlement agreement. NMFS is proposing to implement two alternatives that would: (1) complement the Gulf of Mexico Fishery Management Council's (GMFMC) time/area closures regarding Madison-Swanson and Steamboat Lumps closed areas and (2) establish criteria to be considered when contemplating regulatory framework adjustments to implement new time/area closures or make modifications to existing time/area closures.

The first preferred alternative would implement HMS management measures in the Madison-Swanson and Steamboat Lumps closed areas, consistent with a September 2003 GMFMC request to NMFS. The proposed rule would prohibit all HMS fishing from November through April in the Madison-Swanson and Steamboat Lump closures, and allow recreational surface trolling only from May through October. If implemented, the HMS management measures would expire on June 16, 2010, consistent with GMFMC recommendations. Both of these closures are located just shoreward of the current DeSoto Canyon Closed Area for pelagic longline fishing in HMS fisheries.

These closed areas were implemented in 2000 by the GMFMC in order to provide protection for spawning aggregations of gag grouper. The GMFMC requested NMFS to close the areas to HMS fishing to eliminate a loophole and to allow the GMFMC a better opportunity to evaluate the effectiveness of the closed area as a fishery management tool. Other species, including various groupers, snappers, and porgies could benefit by the closures. Any impacts on HMS species and HMS fishermen and communities are expected to be minimal. Only three HMS commercial trips were reported in the closed areas from 1997 to 2003. Additionally, recreational and charter/headboat fishing trips for HMS in the closed areas are not likely to be significantly curtailed due to the allowance for surface trolling from May through October, which are the prime fishing months.

The second preferred alternative would establish criteria at 50 CFR 635.34(d) to be considered when implementing new time/area closures or making modifications to existing time/area closures. These criteria would provide a more definitive process for the establishment or modification of time/area closures while allowing for greater transparency and predictability in the decision-making process. Criteria that would be considered may include the following: any ESA-related issues, concerns, or requirements, including applicable Biological Opinions; bycatch rates of protected species, prohibited HMS, or non-target species both within the specified or potential closure area(s) and throughout the fishery; bycatch rates and post-release mortality rates of bycatch species associated with different gear types; new or updated landings information, bycatch, and fishing effort data; applicable research;

social and economic impacts; and the practicability of implementing new or modified closures, including consistency with the FMP, Magnuson-Stevens Act, and other applicable law. If the species is an ICCAT-managed species, NMFS would need to determine the overall effect of the United States' catch of that species before implementing time/area closures. In these cases, other factors that NMFS would consider before implementing time/area closures include gear types and the location of and timing of a closed area. NMFS would attempt to balance ecological benefits with economic and social impacts. NMFS would also consider alternatives to closed areas, such as reducing quota(s), mandatory gear modifications, or alternative fishing practices such as designated fishing days. Thus, before the implementation of a time/area closure, NMFS would determine that such a closure would be the best option for a given set of management goals, consistent with the FMP, the Magnuson-Stevens Act, and applicable laws.

Besides implementing new time/area closures, NMFS may also consider modifying existing closed areas using these same criteria. The current time/area closures were implemented to meet specific management objectives relevant at that time and were intended to be reviewed and modified as appropriate, over time as those objectives were met or other management issues arose. Specifically, NMFS intended to modify existing closures, as necessary, to allow utilization of a given fishery once the objectives of the time/area closures had been met. Additionally, modifications may be needed if data showed the desired impact was not being met or oceanographic conditions changed. Additionally, because fisheries, fishing gear, fishing practices, and stock status change over time, occasionally NMFS must examine the continued need for existing time/area closures. One method of doing this would be for NMFS to conduct, fund, or support research, such as testing methods for reducing bycatch of protected, prohibited, and non-target species. Such research would need to be part of a scientifically justified research plan, identifying the rationale, objectives, methodology, and experimental design of the research, and it would be limited in scope and magnitude in terms of ecological and socio-economic impacts. Research in both open and closed areas may be warranted to collect data on the spatial and temporal relationship between target and bycatch species and to provide data for use in considering the criteria listed above. Such research could be cooperative in nature to include different stakeholders in the research process.

Ultimately, the criteria above are aimed to develop smaller, more focused time/area closures that maximize bycatch reduction while minimizing reductions in catch of target species. The criteria themselves would not be expected to have any ecological, economic, or social impacts. Rather, the appropriate use of the criteria would be expected to have overall positive ecological impacts; NMFS would minimize, to the extent practicable, economic and social impacts.

As a clarification, the primary goals of time/area closures are to maximize the reduction of bycatch of non-target and protected species while minimizing the reduction in the catch of target species and minimizing the social and economic impacts. However, closures are not the only means of addressing bycatch, and in some cases, may increase bycatch (see analyses in the HMS FMP of many of the time/area closure alternatives). Bycatch in and of itself would not necessitate implementation of a time/area closure but could if the HMS stock was either overfished and/or experiencing overfishing; the bycatch is a prohibited, threatened, or an endangered species; and no other option exists to reduce interactions in the time period required. In such cases, time/area closures could be part of a rebuilding plan for overfished species and/or serve as a method for decreasing interactions with protected species.

Besides the two preferred alternatives described above, NMFS considered a number of additional alternatives including: (1) Maintaining the existing time/area closures (no action alternative); (2) prohibiting the use of pelagic longline gear in HMS fisheries in the central portion of the Gulf of Mexico from May through November; (3) prohibiting the use of pelagic longline gear in HMS fisheries in the Northeast during the month of June; (4) prohibiting the use of pelagic longline gear in HMS fisheries in the Gulf of Mexico from April through June; (5) prohibiting the use of pelagic longline gear in HMS fisheries in the Gulf of Mexico west of 86° W. Long. year-round; (6) prohibiting the use of pelagic longline gear in HMS fisheries in an area of the Northeast to reduce sea turtle interactions; (7) modifying the existing Charleston Bump time/area closure to allow the use of pelagic longline gear in all areas seaward of the axis of the Gulf Stream; (8) modifying the existing Northeastern U.S. time/area closure to allow the use of pelagic longline gear in areas west of 72°47′ W. Long. during the month of June; (9) prohibiting the use of bottom longline gear in an area off the Florida Keys to protect endangered smalltooth sawfish; and (10) prohibiting the use of pelagic longline gear in HMS fisheries in all areas. All of the alternatives above could be implemented alone or in combination with any of the other alternatives. In the draft HMS FMP, NMFS describes the impacts of some of the most likely combinations of alternatives.

The no action alternative has been effective at reducing bycatch and bycatch mortality in HMS fisheries. However, maintaining the existing closures would not protect spawning areas of gag grouper, per the GMFMC request. The various alternatives to close portions of the Gulf of Mexico or mid-Atlantic could have some ecological benefit for some target and non-target species and protected species and negative ecological impacts for other species. Detailed analyses of each alternative are provided in the HMS FMP. As reflected in those analyses, NMFS did not find any closure or group of closures that would have positive ecological benefits for all species examined, particularly marlin, sea turtles, and BFT. Even when combining the alternatives, the ecological benefits for some species were minimal at best with increases in discards of other species. Additionally, the economic and social impacts of the additional closures considered could be substantial. Thus, NMFS is not preferring any new closures at this time, but may consider these closures again in the future if additional protections for a specific species or group of species is needed.

One of the Gulf of Mexico alternatives that NMFS considered was suggested in a petition for rulemaking from Blue Ocean Institute et al. as a means of protecting western Atlantic BFT that return to the Gulf of Mexico to spawn. This alternative would prohibit the use of pelagic longline gear in HMS fisheries in the Gulf of Mexico bluefin tuna spawning area from April through June (101,670 nm^2; 3 months). Assuming no redistribution of effort (i.e., all hooks set in the proposed closure area are removed and not set in any open areas), the logbook data indicate that this alternative would potentially reduce discards of all of the species being considered from a minimum of 0.8 percent for pelagic sharks to a maximum 21.5 percent for bluefin tuna. However, assuming that effort is redistributed to open areas (i.e., all hooks set in the proposed closure area are replaced by hooks set in remaining open areas),

bycatch is predicted to increase for all species except leatherback and other sea turtles. Even bluefin tuna discards, which showed a fairly dramatic decline without redistribution of effort, are predicted to increase by 9.8 percent with redistribution of effort. The apparent increase in predicted bluefin tuna discards with redistribution of effort is likely due to the fact that bluefin tuna are caught in months other than April through June in the Gulf of Mexico, as well as the high number of bluefin tuna discards in other areas. This is reflected in some of the other alternatives analyzed as described in the draft HMS FMP.

NMFS also considered alternatives that would modify existing closures. As with the analyses of new closures, the analyses of the modifying existing closures showed mixed results in terms of ecological benefits and economic impacts. In some cases, the modified areas would result in captures of smaller sized swordfish or in higher levels of bycatch. For these reasons, NMFS does not prefer any modifications to the existing closures at this time. However, because the ecological impacts were generally minimal, these alternatives could be considered as a means to offset any negative ecological or economic impacts resulting from any future time/area closures.

NMFS considered but is not preferring a closure of an area off Florida to protect smalltooth sawfish, at this time. While the area examined contains the largest number of smalltooth sawfish observed caught in the bottom longline fishery, only five smalltooth sawfish have been observed caught there. It is possible that closing this area could displace fishing effort into an area that has higher smalltooth sawfish catch rates or that is more critical toward the recovery of the species. A Smalltooth Sawfish Recovery Team is working to produce a recovery plan for smalltooth sawfish and to designate critical habitat. In order to better ensure positive ecological impacts on sawfish and to minimize any economic impacts on fishermen, NMFS would prefer to wait until the recovery plan is complete before taking action.

NMFS also considered prohibiting the use of pelagic longline gear in all HMS fisheries. This alternative could have some ecological benefits for any non-migratory species that remain within the U.S. EEZ. However, for species that travel outside the U.S. EEZ, such as HMS or sea turtles, this alternative could have negative ecological benefits because these species need to be internationally managed. In the case of HMS, the United States takes only a small portion of the total allowable catch (TAC). In the case of sea turtles, unlike many other countries, the United States interacts with a minimal number of turtles and releases all of those caught. If the United States reduces the amount of HMS taken commercially by a significant amount by prohibiting pelagic longline fishing, other countries likely would take the U.S. portion of the TAC and would export those fish to U.S. consumers. Many of those countries do not have the bycatch reduction measures that the United States does. Furthermore, the United States is one of the few countries that supply much of the research on HMS and other species that interact with pelagic longline gear. Additionally, prohibiting the use of pelagic longline gear would have significant negative economic impacts on fishermen, fishing communities, suppliers, and dealers in all Atlantic and Gulf of Mexico states. Thus, NMFS prefers to seek other commercial and recreational management measures that could reduce bycatch without the adverse international or economic impacts of prohibiting pelagic longline.

2. Rebuilding and Preventing Overfishing

The Magnuson-Stevens Act requires NMFS to rebuild overfished species and to prevent overfishing. The draft HMS FMP addresses alternatives for three stocks (northern Atlantic albacore tuna, finetooth sharks, and Atlantic billfish) that have been determined to be either overfished or experiencing overfishing.

A. Northern Albacore Tuna

The U.S. fishery for northern Atlantic albacore is essentially dominated by two sectors. The commercial longline sector harvests albacore tuna as incidental bycatch in the swordfish and tunas pelagic fisheries. The recreational rod and reel sector targets albacore and other tunas out of northeast coastal ports. In the October 1999 Report to Congress on the Status of U.S. Fisheries, NMFS identified the northern albacore tuna stock as overfished. International fishery management efforts are needed for northern albacore tuna as the United States actually contributes to only a small portion of northern albacore tuna mortality. It is likely that preventing all U.S. mortality would not prevent overfishing from occurring on this stock. Alternatives for developing a rebuilding plan for northern albacore were published in a proposed rule issued on May 24, 2000 (65 FR 33519), and were discussed in the EA/RIR/IRFA prepared for that proposed rule. In the final rule (December 12, 2000; 65 FR 77523), NMFS indicated that, in establishing the foundation for an international rebuilding program, it would work through ICCAT to adopt a target stock size together with a time frame for rebuilding that included flexibility. Since the final rule, the U.S delegation to ICCAT has advocated a TAC for northern albacore tuna set at a level less than the current estimate of replacement yield (34,500 mt ww). Other ICCAT members have not shared the U.S. position that immediate catch reductions were needed to rebuild the spawning stock biomass to levels that would support MSY. Consequently, ICCAT has responded by adopting a series of recommendations (annually for 2000–2003) to set a TAC at the replacement yield level of 34,500 mt through 2006, together with country specific allocations in order to control compliance. In addition, the 1998 recommendation on limiting vessel capacity for northern albacore tuna has remained in force. Irrespective of the established TAC, reported catches have been significantly below the replacement yield level in recent years. Major harvesters (European Union countries) have attributed the decline in catches to gear changes (shifting from banned gillnets to trolling) and to availability (fish concentrations further offshore under prevailing oceanographic conditions) rather than further declines in abundance. If true, the low catches in recent years may have allowed some rebuilding to occur. Depending on the results of the scheduled 2007 stock assessment, the United States will continue to seek an international northern albacore tuna rebuilding program with a target stock level, a time table, and reference points. Because the formal rebuilding plan was not included in the 1999 Atlantic Tunas, Swordfish, and Sharks FMP, it is considered here for inclusion in the FMP. NMFS considered three different alternatives: establish a foundation for an international rebuilding program (the preferred alternative), no action, and establish a unilateral rebuilding plan. No regulatory text is proposed or required for this alternative. Regulatory text would be proposed, as warranted, once a international rebuilding plan is established.

ICCAT has determined that the northern albacore tuna stock is below the biomass necessary to sustain maximum sustainable yield (MSY). Management advice from ICCAT's Standing Committee for Research and Statistics (SCRS) noted a stable stock at annual catches of 34,500 metric tons (mt) whole weight (ww), while spawning stock biomass could be

increased if catches do not exceed 31,000 mt ww. Since ICCAT's recommendation establishing a TAC was issued in 2000, the United States has annually taken less than two percent of the recorded total annual international landings, averaging 416 mt ww a year. This average is well below the United States annual TAC allocation of 607 mt ww, which has not been exceeded in any year.

The preferred alternative would seek to establish a foundation that can be used in negotiations with ICCAT to develop a rebuilding program for Atlantic northern albacore tuna, including targets for recovery, fishing mortality rate limits, and explicit interim milestones expressed in terms of measurable improvements of the stock. If successful, an Atlantic-wide revised TAC for northern albacore tuna, along with other conservation and management measures, would be adopted by ICCAT to rebuild the stock. The United States would then implement the ICCAT Rebuilding Program for albacore through appropriate measures (such as quotas, effort limitations, size and retention limits), in concert with the ICCAT recommendations, in the domestic fisheries.

The United States is responsible for only two percent of Atlantic-wide albacore landings; thus, the rebuilding plan would rely heavily on international cooperation and compliance with management measures. U.S. domestic fleets could experience short term negative economic impacts if harvest or effort restrictions become necessary; however, under current effort levels, the United States fleet would have to be restricted by more than 25 percent on average of the current TAC before an impact would be felt. If minimum size or retention limits were part of the ICCAT rebuilding plan, the United States pelagic longline fleet could be negatively impacted by having to discard a portion of the albacore catch. This may also result in an increase of dead discards if individual fish do not survive capture and release. The recreational fleet could also be impacted, as catch limitations might have a negative impact on the angler consumer surplus, but the extent is unknown, as many recreational trips targeting albacore often target other tunas or coastal pelagic species. This also may result in an increase of dead discards. The other alternatives of no action or unilateral action are not expected to rebuild northern albacore tuna. Thus, they are not preferred.

B. Finetooth Sharks

Finetooth sharks are small coastal sharks (SCS) found in shallow, inshore waters of the south Atlantic and Gulf of Mexico. The 2002 stock assessment for SCS determined that overfishing of finetooth sharks is occurring but that other species in the SCS complex were not overfished or experiencing overfishing. The next SCS stock assessment will take place in 2007. These sharks are primarily caught with gillnet, bottom longline, or recreational gear.

There are currently only five vessels that specifically target sharks with gillnet gear in the South Atlantic. These vessels contribute less than 10 percent to the overall commercial finetooth shark landings. The majority of finetooth shark landings are occurring in other commercial fisheries that are not targeting sharks but landing them incidentally to other species. These fisheries include fisheries in state waters, fisheries managed by the Regional Fishery Management Councils, Interstate Marine Fisheries Commissions, and/or fisheries that are not currently managed by either state or Federal regulations. NMFS considered four alternatives to address overfishing of finetooth sharks.

Under the preferred alternative, NMFS would identify sources of finetooth shark fishing mortality by: (1) contacting the Atlantic Fishery Management Councils, Interstate Marine Fisheries Commissions, and states to collect more data on finetooth landings outside of HMS fisheries, (2) expanding existing observer coverage in the existing directed shark gillnet fishery observer program to include all incidental and directed shark permit holders fishing with gillnet gear, and (3) ensuring that finetooth sharks are included as a select species for bycatch sampling in the shrimp trawl fishery observer program. NMFS would use this information on how and by whom finetooth sharks are caught and/or landed, in a new stock assessment and in guiding additional management measures. No regulatory text is proposed or required for this alternative at this time. Regulatory text would be proposed, as warranted, in a separate rulemaking.

The no action alternative would not result in obtaining the additional information on finetooth shark landings necessary to determine which fisheries may be contributing to fishing mortality. This alternative would result in negative ecological impacts because it would not enable NMFS to determine which fisheries are catching finetooth sharks.

NMFS also considered an alternative enacting commercial management measures including trip limits, a reduction in the SCS quota, closing the directed shark gillnet fishery, and/or gear restrictions. These measures could result in additional dead discards as finetooth sharks are susceptible to a broad range of gillnet mesh sizes, are generally dead at harvest, and appear to be caught in gillnet fisheries that are not targeting sharks and that would continue to fish for their target species while discarding finetooth sharks. Reducing the SCS quota would have limited conservation benefits as finetooth sharks only comprise 35 percent of commercial landings and the SCS quota is not fully utilized. Based on comprehensive observer data, the five vessels that use gillnet gear to target sharks are only responsible for a small portion of the finetooth shark fishing mortality. Therefore, closing this fishery would not likely prevent overfishing. Under this alternative, fishermen targeting sharks would likely experience economic impacts as a result of having to switch gear, having to spend more time traveling to and from offloading sites as a result of reduced soak times or a trip limit, or as a result of being prevented from fishing.

NMFS considered a fourth alternative that would require the use of circle hooks on recreational trips targeting SCS and/or increasing the minimum size for finetooth sharks. NMFS does not have any conclusive evidence that use of circle hooks would decrease post hooking mortality of sharks, although, they have proven effective at reducing post hooking mortality for other HMS species. Thus, NMFS is not preferring this alternative, but is encouraging recreational fishermen to use circle hooks and is considering requiring the use of circle hooks in billfish tournaments (see Section C Atlantic Billfish below). Finetooth sharks only comprise 1.5 percent of the recreational harvest of SCS, therefore, measures directed at the recreational fishery would likely have limited conservation benefits especially since the current minimum size limit is already above the total length at which finetooth sharks are sexually mature. The commercial and recreational management measures described in the non-preferred alternatives may be necessary once NMFS has determined which fisheries are contributing to finetooth shark fishing mortality and/or further information on finetooth shark status is attained.

C. Atlantic Billfish

Atlantic blue and white marlin are overfished with overfishing continuing. West Atlantic sailfish are also overfished. The most recent stock assessments for Atlantic blue and white marlin indicate that total marlin stock abundance is at approximately 40 percent and 12 percent, respectively, of biomass levels necessary to support maximum sustainable yield (B_{MSY}). The assessments further indicate that the fishing mortality rates for Atlantic blue and white marlin are estimated to be approximately 4 and 8.25 times higher, respectively, than rates which would allow achievement of the maximum sustainable yield (F_{MSY}). The most recent stock assessment for west Atlantic sailfish was unable to estimate B_{MSY} or F_{MSY}, however the assessment considered current catch levels sustainable. Current Atlantic-wide stock status of Atlantic blue and white marlin, including biomass levels and fishing mortality rates, as per the most recent population assessments, do not appear to be consistent with achieving domestic management goals of 1.3 B_{MSY} for Atlantic blue and white marlin. The United States is proposing management measures that will help in achieving this goal, and will continue to work with ICCAT on Atlantic billfish rebuilding efforts.

Given the primarily catch-and-release nature of the U.S. recreational Atlantic billfish fishery, and the resultant low level of domestic landings, it is appropriate to focus management efforts on reducing aggregate fishing mortality, including post-release mortality and mortalities associated with landings, rather than reducing landings alone. The proposed management measures are anticipated to provide further reductions in domestic billfish mortalities in the directed recreational Atlantic billfish fishery while minimizing and mitigating adverse socio-economic impacts to the extent practicable. These proposed management measures are described below under: gear restrictions and landings restrictions.

i. Gear Restrictions

NMFS considered three gear restriction alternatives, including a no action alternative. NMFS is proposing at 50 CFR 635.21(e)(2) to limit participants in Atlantic billfish tournaments to deploying only non-offset circle hooks when using natural bait or natural bait/artificial lure combinations, effective January 1, 2007, to December 31, 2011. This would mean that no person participating in an HMS fishing tournament for Atlantic billfish would be allowed to deploy a J-hook or offset circle hook in combination with natural bait or a natural bait/artificial lure arrangement.

Circle hooks have been shown to significantly reduce injuries and post-release mortality as compared to J-hooks for billfish and other species. Under certain assumptions, NMFS estimates that requiring circle hooks with natural bait or natural bait/artificial lure rigs in billfish tournaments could provide a 23–percent absolute reduction in the post-release mortality rate for white marlin released in tournaments, which equates to a 65.7–percent reduction relative to J-hooks. Again, under certain assumptions, requiring circle hooks could result in an estimated 302 Atlantic white marlin surviving a catch-and-release event during an average year, that would otherwise be expected to die after release. NMFS anticipates that this alternative would also provide unquantified positive mortality benefits for other species with which billfish tournament participants interact, including, but not limited to, sailfish, blue marlin, tunas, dolphin, and wahoo. Additional ecological benefits may also accrue outside of tournaments as anglers become proficient and comfortable with circle hooks and increase voluntary use outside of tournaments.

NMFS anticipates that socio-economic impacts of this alternative would be limited. Hooks represent a minor capital investment relative to other costs associated with participating in the billfish fishery. NMFS estimates that requiring circle hooks may result in a minor positive economic impact for billfish tournament participants as information suggests that circle hooks cost slightly less than comparable J-hooks, on average. Impacts on hook manufacturers, retailers, and anglers would also likely be limited given that J-hooks would still be permitted outside of tournaments, and within tournaments if paired with artificial lures. Further, the delay in date of effectiveness should provide anglers, hook manufacturers, and hook retailers, adequate time to utilize stocks of J-hooks that might otherwise be used by, or sold to, tournament participants.

The preferred alternative would allow Atlantic billfish tournament participants to continue to use J-hooks with artificial lures on the same trip that they are using circle hooks with natural bait. NMFS received public comment during scoping and on the predraft document that fishermen tend to target white marlin and sailfish with natural baits while either drifting or slow trolling and target blue marlin by trolling at a higher rate of speed with the fish striking at the lure. What is known about hooking mechanics, as well as fishing practices and feeding preferences for blue marlin, indicates that trolling circle hooks at high speed would likely be ineffective at capturing these striking fish. Blue marlin are more likely to be captured as they strike at a fast moving lure, as opposed to deeply ingesting a bait or lure. This is believed to result in increased rates of hooking in the mouth or jaw with less resultant damage to vital tissues or internal organs and, ultimately, lower rates of post-release mortality. Known rates of post-release mortality for Atlantic white and blue marlin captured on recreational gear using J-hooks, 35 percent and 11 percent, respectively, supports this contention. As such, NMFS is not proposing to eliminate the use of J-hooks with artificial lures.

The no action alternative would maintain existing recreational management measures such as minimum sizes, limiting allowable gear to rod and reel only, permitting requirements, and reporting requirements. As described above, these measures, in addition to those on the commercial fishery, have not been effective at to reducing fishing mortality to the appropriate levels. As such, additional actions, including international actions, are needed. Furthermore, while minimum size limits can constrain landings and associated mortalities by limiting the universe of potential fish that qualify for landing, they have little effect on post-release mortality.

NMFS also considered requiring circle hooks with natural baits for all participants in all segments of HMS recreational fisheries. While this alternative could reduce mortality rates on billfish, it was not preferred at this time because there are only limited data on the impacts of circle hooks on other HMS species, including effects on post-release mortality and catch rates. As such, the impacts of this alternative on anglers targeting species other than billfish could not be adequately analyzed at this time. As billfish anglers become more familiar with circle hooks and begin using them to target other HMS, NMFS will likely gather additional information on any potential impacts on other species. Similar to the preferred alternative, this alternative would allow anglers to continue to use J-hooks with artificial lures.

ii. Landings Restrictions

Currently, NMFS has no measures in place, other than minimum sizes, that directly limit landings of Atlantic

billfish in the Atlantic directed billfish fishery. NMFS considered six alternatives, including no action, and is preferring two alternatives that could limit landings in the directed Atlantic billfish fishery and the mortality associated with such landings, consistent with international obligations. The first preferred alternative would codify at 50 CFR 635.27 an international recommendation on recreational billfish landing limits. The second preferred alternative would allow a catch-and-release only fishery for Atlantic white marlin for five years, effective in 2007 (see proposed regulations at 50 CFR 635.20, 635.22, and 635.30).

At the 2000 ICCAT annual meeting, the United States agreed to limit recreational landings of Atlantic blue and white marlin to 250 fish, combined, on an annual basis. To codify and implement this recommendation, the first preferred alternative would provide for inseason minimum size adjustments, effective January 1, 2007. The current minimum size limits restrict marlin landings by reducing the pool of available legal-sized fish. However, increased effort or changes in angler behavior could result in increased landings and mortality. Under this alternative, NMFS could increase the minimum size of Atlantic blue and white marlin, if necessary, to between 117 - 138 inches (297 - 350.5 cm) and 70 - 79 inches (178 - 201 cm), respectively, during a fishing year to slow landings.

Allowing for inseason minimum size increases could minimize potential adverse socio-economic impacts on late season tournament operators and fishery participants by slowing landing rates and allowing landings to continue over the entire fishing year. Nevertheless, if the 250–marlin limit is achieved or projected to be achieved, despite inseason increases in size limits, no Atlantic blue or white marlin would be permitted to be taken, retained, or possessed from the date at which the limit is achieved or projected to be achieved. Minimum size limits would return to the current minimum size limits at the start of the subsequent fishing year. Possession of marlin would also be permitted at the start of the next fishing year, subject to the 250–limit adjusted for any prior overharvest. Consistent with ICCAT recommendations, NMFS would subtract any overharvest from the subsequent fishing year's landing limit and may carryover any underharvest to the subsequent fishing year.

Prior to the start of each fishing year, NMFS would file with the Office of the Federal Register an action establishing the annual landing limit for recreationally-caught Atlantic blue and white marlin. The need for inseason action and the specific action taken (minimum size increase or shift to catch-and-release) would be based upon a review of landings, time remaining until conclusion of the current fishing year, current and historical landings trends, and any other relevant factors. Inseason adjustments would be made by filing an adjustment with the Office of the Federal Register. In no case should the adjustments be effective less than five days after the date of publication.

Codification of ICCAT landing limits for Atlantic blue and white marlin, as well as the attendant compliance mechanisms and carryover procedures, are anticipated to have limited positive ecological impacts, in and of themselves, given the relatively low level of known United States landings. The United States was within the marlin landing limit for two of three reported years, and the 2002 exceedence was fully offset by carrying forward prior underharvest. These regulations may prevent otherwise unrestricted future increases in mortalities associated with known landings.

Difficulties associated with quantifying current marlin landings, uncertainty regarding the number of marlin fishermen and absolute effort, and uncertainty regarding changes in angler behavior when faced with increased minimum sizes or a catch-and-release fishery make quantifying the potential socio-economic impacts of this alternative difficult. Nevertheless, NMFS believes that the proposed measures minimize the adverse socio-economic impacts by improving the likelihood of allowing marlin landings for the entire fishing year, while complying with international obligations. Impacts associated with implementation of the ICCAT landings limits are anticipated to range from none to modest, depending on catch rates, angler responses to inseason action, and inseason management measures implemented, if any. Areas that have late season fishing activity could be impacted to a greater extent by increased minimum sizes, however, these impacts are expected to be less substantial than if a total prohibition on the landing of Atlantic blue and white marlin was required to be implemented. If the ICCAT landing limit is achieved despite inseason adjustment of the minimum sizes and a total prohibition on possession and landings is implemented until new landings are available the following season, NMFS estimates that impacts for the fishery as a whole would be minor given the catch-and-release nature of the fishery and that a landings prohibition would most likely occur late in the fishing year. However, communities that might lose tournaments as a result of a landings prohibition could experience larger, localized impacts. The delay in the date of effectiveness should allow tournament operators time to adjust to the new regulations by modifying tournament rules and formats. Thus, the delay in effective date further mitigates the potential impacts of an inseason shift to catch-and-release only.

NMFS's second preferred alternative proposes to decrease landings and the mortalities associated with landings by allowing only catch-and-release fishing for Atlantic white marlin. Under this proposed management measure, no Atlantic white marlin would be taken, retained, or possessed for five years from January 1, 2007, through December 31, 2011, inclusive.

The ecological impacts of allowing only catch-and-release fishing for Atlantic white marlin would be limited to modest on its own. Known landings of Atlantic white marlin ranged between 23 and 116 fish for the period 2001 to 2003. Mortality benefits from this alternative would be expected to accrue from elimination of landed white marlin, as this alternative would not directly impact post-release mortality. However, the ecological impacts of this alternative in combination with the other preferred alternatives in this rule would likely contribute to a noticeable decrease in domestic mortality. For example, this preferred alternative coupled with mandatory use of circle hooks when using natural baits in billfish tournaments could substantially reduce mortality by reducing landings to zero and reducing the post-release mortality rate by 23 percent overall or 65.7 percent relative to J-hooks.

The ecological benefits of this preferred alternative for other species may vary in response to angler behavior. If anglers continue catch-and-release fishing for white marlin, there would likely be little change in impacts on other species. However, anglers can shift effort to target other species, such as sailfish, blue marlin, dolphin, and wahoo, to some extent. If this occurs, interactions with those species could increase.

NMFS anticipates that any adverse socio-economic impacts stemming from this alternative would be small relative to the fishery as a whole, but would likely be heightened in localized areas. The primarily catch-and-release nature of fishing for Atlantic white marlin (approximately 90 to 99 percent of

white marlin are released), along with the availability of other billfish species for landing and the limited duration of the measure (five years), would be expected to minimize and mitigate overall adverse impacts. NMFS acknowledges that some fishery participants and operators may be unwilling to shift to a catch-and-release format, and as such, NMFS estimates that this alternative could result in the cancellation of between one and four tournaments, as well as the loss of between 69 and 1,213 charters (there are approximately 11,447 billfish charters and over 400,000 charter for all species). Losses of these magnitudes would be minor to modest for the fishery as a whole, but would likely be heightened for the local communities in which they may occur. Further, the proposed delay in effective date would likely allow tournament operators and anglers sufficient time to adjust to new requirements, thus further mitigating any adverse socio-economic impacts.

NMFS also considered: (1) A no action alternative; (2)establishing larger minimum size limits for Atlantic blue and white marlin; (3) implementing a recreational bag limit of one Atlantic billfish per vessel per trip; and (4) allowing only catch-and-release fishing for Atlantic blue marlin. The no action alternative would maintain the current recreational minimum size measures that provide some limits on fishing mortality. The no action alternative would not address post-release mortality of Atlantic billfish in the recreational fishery, which is now estimated to be significantly higher for white marlin than it was when Amendment 1 to the Atlantic Billfish FMP was published in 1999.

While providing some additional conservation benefit to these overfished species, the second alternative by itself would have limited ecological benefit because minimum size limits alone cannot directly address post-release mortality issues or directly limit effort. In addition, further reductions from the already low level of known domestic landings would provide only limited mortality benefits.

The third alternative, while potentially restricting occasional landings of more than one billfish from a single trip, would provide only limited mortality reductions because bag limits cannot directly limit post-release mortality and fishing trips landing multiple billfish are rare events.

The fourth alternative could provide some positive ecological benefits for Atlantic blue marlin, but could have noticeable adverse socio-economic impacts on fishery participants and associated shore side businesses.

The suite of preferred gear and landings alternatives to reduce billfish mortality by the directed fishery are expected to achieve the goals and objectives of this rulemaking at this time. However, the non-preferred alternatives may be considered in a future rulemaking, if necessary and appropriate.

3. Management Program Structure

NMFS considered the alternatives described below in order to clarify existing regulations and improve management of Atlantic HMS. In and of themselves, many of these actions would have few ecological, social, and/or economic impacts. However, all should improve the management of Atlantic HMS.

A. Bluefin Tuna Quota Management

The suite of management measures proposed at 50 CFR 635.27 for the management of BFT are not likely to have any ecological impacts. The quotas themselves are established by ICCAT, in accordance with the BFT 20-year rebuilding plan. All of the alternatives considered, which modify how the quota is allocated among domestic fishermen, maintain the current ICCAT-recommended quota. These proposed small orders of change, quantified in either numbers of fish or in weight (metric tons), or time and/or location of harvest, compared to overall U.S. harvest levels, equate to ecological impacts that are unlikely to be measurable in terms of variability in the data used to conduct the BFT stock assessment. The goal of these alternatives is to clarify both the regulations and NMFS' responses to the inherent variability of the fishery in order to minimize any social or economic impacts. The management measures are split into three sections: time-periods and subquotas, annual quota allocations and effort controls, and inseason management.

i. Time-periods and Subquotas

NMFS explored several possibilities for amending and/or clarifying the annual BFT subquota allocation schemes in both the General and Angling categories. Currently, using the ICCAT-recommended U.S. BFT TAC, NMFS divides the U.S. allocation into several domestic quota categories, which are then further subdivided into more finite temporal, geographic, and/or BFT size class categories to meet the objectives of the Magnuson-Stevens Act, ATCA, and the FMP. NMFS proposes to codify specific General category time-periods and associated subquotas (in percentage and whole weight) in the regulatory text. NMFS is proposing in this rule to codify the following time-periods and subquota allocations: June - August, 50 percent (345 mt); September, 26.5 percent (182.8 mt); October - November, 13 percent (89.7 mt); December, 5.2 percent (35.9 mt); and January, 5.3 percent (36.5 mt). NMFS also proposes to clarify the procedures for calculating the Angling category school size-class BFT subquota allocation. Finally, NMFS is proposing to remove the north/south Angling category dividing line and the General Category New York Bight set-aside, which are not effective management tools at this time.

These preferred alternatives enhance NMFS's ability to address the inherent variability in the BFT fishery. These alternatives also respond, in part, to the North Carolina Division of Marine Fisheries's (NCDMF) petition for rulemaking (November 18, 2002; 67 FR 69502) by proposing to allow for a General category winter BFT fishery while still recognizing the historical General category BFT allocation schemes.

In addition to these preferred alternatives, NMFS considered maintaining the current time-periods, subquota allocations, and geographic set-asides for the General and Angling categories as established in the 1999 FMP (the no action alternative). This alternative hinders NMFS' ability to adapt BFT management measures to account for variations inherent in the fishery. Additionally, the current regulations do not allow for a winter BFT fishery in the South Atlantic region. The General Category New York Bight set-aside has not been used in the past several years. This geographic set-aside tends to complicate the subquota allocation of the General Category quota and creates the misperception that geographic set-asides are an effective management tool in a dynamic fishery. The recreational north/south line creates the perception that NMFS has the ability to use this management tool to provide fair and equitable recreational fishing opportunities. However, NMFS does not currently have the necessary real-time data for this to be an effective management tool.

NMFS also considered an alternative that would establish the General category time-periods, subquotas, and geographic set-asides annually via framework action(s). This alternative would increase the administrative burden to implement the annual specifications prior to the start of the fishing year, and would not provide the

industry with the necessary stability to plan for the upcoming fishing year.

Finally, NMFS considered three different alternatives for allocating the General category time-periods and subquota allocations. None of these alternatives were selected because the allocations did not adequately balance the need to preserve historical General category BFT allocations, to the extent practicable, while providing for a formalized winter BFT fishery in the South Atlantic.

ii. Annual Quota Allocations

According to an ICCAT recommendation, if a Contracting Party exceeds the annual or biannual BFT quota, then the Contracting Party must reduce its catch to compensate for the overage. ICCAT eventually modified this recommendation to state that unused quota or an overage from the previous year shall be added or subtracted, as appropriate, to the current year's retainable catch. To maintain consistency with the ICCAT recommendations while streamlining the annual domestic BFT quota adjustment process, NMFS considered several alternatives.

Under the preferred alternative, NMFS would modify the current procedures to calculate annual under- and overharvest adjustments so that the analysis of the baseline quota and subquotas occur only when ICCAT alters the recommended U.S. BFT TAC. Additionally, NMFS proposes to establish a carryover limit for each category equaling no more than 100 percent of that category's baseline allocation for the individual quota category (i.e., no more than the baseline allocation would be allowed to roll from one year to the next), and to authorize the transfer of any category's quota that exceeds this limit to the Reserve category or another domestic quota category, while maintaining the status quo overharvest provisions. This preferred alternative would have positive ecological impacts by limiting the amount of unharvested quota that could be rolled from one year to the next. This alternative would minimize the impacts of stockpiling in any one category, and provide NMFS the flexibility to redistribute the overall quota available and to provide reasonable fishing opportunities to harvest the overall quota in the timeframe it was designated. Under these preferred alternatives, NMFS could provide the fishery with a stable baseline quota allocation on a timely basis from one year to the next; address under- and overharvests from the previous year; establish the General category effort controls and any recreational and commercial handgear daily retention limits for the upcoming season; enhance flexibility to adapt these management measure, if warranted; and streamline the annual rulemaking process. Additionally, implementing a cap on the amount of quota that can be carried over to the next fishing year would allow NMFS to manage the BFT harvest with more finite precision and minimize the occurrence of ''stockpiling'' in any one quota category.

NMFS considered two other alternatives to modify the annual BFT management measures. Under the no action alternative, NMFS would continue to conduct a full analysis of the impacts of implementing the baseline quotas every year regardless of whether ICCAT recommended any changes to the BFT TAC. NMFS also considered eliminating the carryover provisions for unharvested quota where the unharvested quota would not be transferred to another category. Rather, that portion of the quota would remain unharvested. Under this alternative, the overharvest provisions would maintain the status quo.

iii. Inseason Management

NMFS currently performs inseason management actions to adjust BFT management measures, such as daily retention limits, inseason quota transfers, and fishery closures/reopenings to the adapt to the changing conditions of each fishing season. Prior to making an inseason adjustment, NMFS must consider a set of criteria to ensure the actions comply with the objectives of the FMP. NMFS considered maintaining the existing inseason action procedures (no action alternative), which include analyzing different sets of criteria for each particular type of inseason action. Under the preferred alternative, NMFS would have a set of consistent criteria at 50 CFR 635.27(a)(8) to apply to all types of inseason actions for BFT. The proposed criteria are essentially the same as the current regulatory text at §§ 635.27(a)(7) and 635.28(a)(3) with some revision to eliminate overlapping considerations. This alternative would ensure reasonable fishing opportunities for all of the BFT fishery participants. Allowing for these opportunities is considered when establishing the baseline quota and should not have any additional ecological impacts. These criteria provide the necessary tools for meeting the draft HMS FMP's objectives in a consistent manner, while balancing the resource's needs with users' needs. Further, the criteria would allow NMFS to adapt management measures to the inherent variability in the fishery and to provide for maximum utilization of the BFT quota. The preferred alternative provides transparency and consistency in the conditions considered prior to taking action. Because there are several sets of criteria to consider before taking action, the no action alternative is not as transparent as the preferred alternative and could lead to inconsistencies in analysis between the types of inseason actions.

NMFS also considered an alternative that would eliminate BFT inseason actions. While this alternative would simplify management, eliminating inseason actions would constrain NMFS's ability to adjust management actions due to fluctuations in catch rates and to prevent premature closures or overharvest of a domestic quota category. Because this type of variability or lack of variability is considered when setting the overall TAC, this alternative is unlikely to have any ecological impacts.

B. Timeframe for Annual Management of HMS Fisheries

Many aspects of HMS management, including quota distributions and specifications, are implemented on an annual basis. This proposed rule considers three alternatives to modify the current management timeframe for HMS fisheries with the intent of simplifying the HMS management process. The no action alternative maintains the status quo, with sharks managed on a calendar year (January 1 - December 31) and tunas, swordfish, and billfish managed on a June 1 through May 31 fishing year. The preferred alternative would shift HMS management to a calendar year. A third alternative would shift all HMS fisheries to a June 1 - May 31 fishing year management cycle.

Under the preferred alternative, the Atlantic shark management timeframe would remain as it currently is (calendar year), whereas tunas, swordfish, and billfish would shift from a June 1 - May 31 fishing year to a calendar year. An abbreviated 2006 season from June 1 through December 31, 2006, would be established to transition bluefin tuna and swordfish from a fishing year to a calendar year. The specifics of the abbreviated season for bluefin tuna and swordfish would be implemented under a future fishery specification process, as appropriate.

The preferred alternative would simplify the regulatory process by managing all HMS fisheries on a calendar year. Currently, reports of U.S. landings are presented to ICCAT on a

calendar year basis while reports of quota under- and overharvests are analyzed on a fishing year basis. Thus, this alternative would simplify reports to international forums. Additionally, this alternative would strengthen our negotiating position during international compliance reviews by providing matching and transparent reports. While this alternative might cause some short-term confusion for fishermen who have adjusted to the June 1 to May 31 fishing year, in general this alternative is expected to simplify the management regime overall. When implemented in conjunction with the ICCAT landing limit for marlin, this alternative could shift potential negative impacts as a result of the ICCAT landing limit from the end of the fishing year (approximately May) to the end of the calendar year (approximately August through December). However, the likelihood of any impact is low because the ICCAT landing limit has rarely been reached.

Under the no action alternative, Atlantic tunas, swordfish, and billfish would continue to be managed on a June 1 - May 31 fishing year timeframe, and Atlantic sharks would continue on a calendar year basis. This alternative was not selected as the preferred alternative because it does not meet the intent of simplifying HMS management.

In addition, NMFS considered shifting all of the HMS fisheries to the June 1 - May 31 fishing year management timeframe. The management timeframe for Atlantic tunas, swordfish, and billfish would remain as is, whereas sharks would shift from the calendar year to the fishing year. This alternative is not preferred because it would not simplify international reporting and could cause short-term confusion in the shark fishery, which has operated on a calendar year basis since 1993.

C. Authorized Fishing Gears

The revised list of authorized fisheries (LOF) and fishing gear used in the listed fisheries became effective on December 1, 1999 (64 FR 67511). The rule applies to all U.S. marine fisheries, including Atlantic HMS. As stated in the rule, ''no person or vessel may employ fishing gear or participate in a fishery in the exclusive economic zone (EEZ) not included in this LOF without giving 90 days advance notice to the appropriate Fishery Management Council (Council) or, with respect to Atlantic HMS, the Secretary of Commerce (Secretary).'' The LOF is updated periodically and can be found at 50 CFR 600.725.

Innovative fishing gears and techniques are essential to increasing efficiency and reducing bycatch in fisheries for Atlantic HMS. As current or traditional gears are modified and new gears are developed, NMFS needs to be cognizant of these advances to gauge their potential impacts on target catch rates, bycatch rates, and protected species interactions, all of which can have important management implications. New fishing gears and techniques need to be evaluated by NMFS for qualification as authorized gear types.

In this rule, NMFS is proposing at 50 CFR 635.21(e) and (f) to authorize speargun fishing gear as a permissible gear-type in the recreational Atlantic tuna fishery, authorize green-stick fishing gear for the commercial harvest of bigeye, albacore, yellowfin, and skipjack (BAYS) tunas, authorize buoy gear in the swordfish handgear fishery, and clarify the allowance of hand-held cockpit gears.

At the public hearings on the proposed list of authorized gears in the Atlantic tuna fisheries, no comments were received from spearfishermen and the regulations were made final without listing speargun fishing gear as an authorized fishing gear. Since implementation of the final rule, NMFS has received written requests and public comment requesting that NMFS authorize the use of speargun fishing gear in the Atlantic tuna fishery. The public comments suggest that relatively few individual fishermen compared to the number of existing angling permit holders (approximately 22,000) would be expected to use this gear type, and that spearfishermen expect low encounter rates with target species. Based on public comment and anecdotal information, NMFS anticipates that between 50 and 1,000 individual U.S. fishermen may have an interest in using speargun fishing gear to target tunas. Relative to the current number of participants in the recreational Atlantic tuna fishery, and taking into account the estimated low encounter rates for target species, the additional anticipated effort from spearfishermen would likely result in minimal negative ecological impacts on Atlantic tunas.

The authorization of speargun fishing gear in the recreational Atlantic tuna fishery would likely result in minor positive economic impacts. Under the preferred alternative, tunas taken with speargun fishing gear in the Angling category would not be eligible for sale. However, for consistency purposes, vessels that possess an Atlantic HMS charter/headboat (CHB) permit would be allowed to sell their recreational Atlantic tunas, except for BFT, while on a for-hire trip, provided they do not exceed the daily recreational retention limits for any BAYS tunas and abide by sale restrictions as outlined in 50 CFR 635.31. Regardless of whether CHB fishermen are operating in a for-hire or non-for-hire manner, BFT harvested by speargun fishing gear may not be sold. The CHB sector may experience some positive economic impacts as spearfishermen may increase their use of for-hire vessels, increasing revenues to those vessels. Prohibiting the sale of BFT taken with spearfishing gear from CHB vessels could result in some perceived negative social and economic impacts. However, this activity is not currently allowed under existing regulations, therefore no additional adverse social or economic are anticipated for the CHB sector. Additionally, the authorization of spearfishing gear could increase the club-nature or camaraderie associated with spearfishing and may result in positive social impacts.

NMFS is proposing at 50 CFR 635.21(e) to authorize green-stick fishing gear for the commercial harvest of Atlantic BAYS tunas. Commercial vessels utilizing or possessing green-stick gear would be prohibited from possessing or retaining BFT. There is a potential for increases in landings of other Atlantic HMS, but NMFS cannot quantify anticipated landings for this gear, at this time, due to the limited amount of landings information available. However, because this gear has been used in the HMS fisheries for several years but classified as longline (due to the number of hooks involved) or handgear (due to the use of rod and reel), authorizing this gear type would likely not result in increased effort, landings, or landing rates. The authorization of green-stick gear may result in positive social and economic impacts for those fishermen who wish to employ the gear to target BAYS tunas commercially. This gear type is fairly selective for BAYS tunas because of the fishing technique. As such, the gear is unlikely to interact with any sea turtles or other protected species. An increase in BAYS tuna landings could provide positive economic impacts to fishermen as well as benefits for fish houses, gear supply houses, and other associated businesses. Some commercial tuna fishermen utilizing green-stick gear may experience negative social and economic impacts due to the prohibition on the possession or retention of BFT, however, since available data indicate that few BFT have been reported captured using this gear type, NMFS anticipates that any negative impacts would likely be minor.

Vessels using green-stick gear and fishing under the General category would continue to be subject to the General category regulations (such as size limits), while vessels with pelagic longline (PLL) gear onboard would be subject to all current PLL regulations, including gear restrictions (such as circle hooks) and closed areas.

NMFS is also proposing to authorize buoy gear in the commercial swordfish handgear fishery, as reflected in proposed regulatory changes to 50 CFR 600.725(v), 635.2, and 635.21(e)(4). Under current regulations, the swordfish handgear fishery may utilize individual handlines attached to free-floating buoys. This rule proposes to require that handlines used in HMS fisheries be attached to a vessel (see Regulatory Housekeeping Measures below). Further, this rule proposes to change the definition of individual free-floating buoyed lines, that are currently considered to be handlines, to ''buoy gear,'' allowing the commercial swordfish handgear fishery to continue utilizing this gear type. This rule would also limit the number of buoys that can be deployed to 35 buoys per vessel and require that each buoy have fixed monitoring equipment such as radar reflectors, beeper devices, lights, or reflective tape with a spotlight on the vessel in order to facilitate finding the gear. This preferred alternative would likely continue affording positive social and economic benefits to current fishery participants. Currently, a maximum of 282 permit holders (93 swordfish handgear and 189 swordfish directed) would be authorized to utilize this gear type to target swordfish. This alternative could result in perceived negative social impacts by recreational fishermen by continuing to allow commercial swordfish fishing in areas closed to HMS pelagic longline gear.

Additionally, NMFS is preferring an alternative to clarify the use of secondary hand-held cockpit gears at 50 CFR 635.21(b) and (e). These gears may include, but are not limited to, dart harpoons, gaffs, flying gaffs, tail ropes, etc., and are used at boat side for subduing HMS captured on authorized primary fishing gears. In recent years, NMFS has become aware of some confusion regarding the allowable use of hand-held cockpit gears. In 50 CFR 635.21(e), NMFS lists the authorized primary fishing gear types that Atlantic HMS permit holders are allowed to use, based on the species being targeted and the permit category of the particular vessel. It is NMFS' intent to authorize only the primary fishing gear types used to harvest HMS, meaning the gears used to bring an HMS to the vessel. This alternative would clarify that secondary gears could be used to subdue HMS after they are brought to the vessel using a primary gear type. Under this proposed action, cockpit gears would not be allowed to be used in any way to capture free-swimming HMS, but only to gain control of HMS brought to the vessel via an authorized primary fishing gear type.

In addition to a no action alternative, NMFS also considered alternatives to authorize speargun fishing gear as a permissible gear-type in both the commercial tuna handgear and the recreational Atlantic tuna fisheries, and to authorize buoy gear in the commercial swordfish handgear fishery and limit vessels to possessing and deploying no more than 50 buoys with each buoy having no more than 15 hooks or gangions attached. NMFS did not prefer authorizing speargun fishing gear in the commercial tuna handgear fishery because, according to feedback received from HMS Advisory Panel (AP) members and the estimated low encounter rates, NMFS does not believe the commercial handgear sector would utilize this gear type. NMFS did not prefer the authorization of buoy gear with limits of 50 buoys possessed or deployed and up to 15 hooks or gangions attached to each gear because of potential negative ecological and social impacts such as lost gear.

D. Regulatory Housekeeping Measures

The proposed actions referred to as ''regulatory housekeeping measures'' include several minor revisions to existing regulatory text and 11 substantive actions. The minor revisions include: minor and nonsubstantive clarifications to reporting, permitting, and vessel upgrading requirements; and removal of duplicative reporting requirements, obsolete cross-references, and expired regulations. Also, the title of the ''Northeast Distant closed area'' is proposed to be changed to the ''Northeast Distant gear restricted area'' to reflect recent regulatory actions. See Section 2.3.4.1 of the draft HMS FMP for a table describing these minor revisions. In addition, NMFS is proposing a change to 50 CFR 635.4(f)(1) to include a rebuttable presumption that a vessel that possesses swordfish in excess of recreational retention limits intends to sell the swordfish. This change would make § 635.4(f)(1) consistent with shark provisions at § 635.4(e)(2), and shift the burden of proof to the vessel to show compliance with applicable regulations. This change would facilitate enforcement and would not impose any additional economic impacts on fishermen. As all of the above changes are minor technical additions, corrections, or changes to existing regulations, per the NOAA Administrative Order 216–6, they are categorically excluded from the requirement to prepare and Environmental Assessment or EIS.

For the 11 more substantive proposed measures, alternatives have been developed and analyzed. Several of these alternatives would not implement new regulatory requirements and include: (1) a clarification that the sale or purchase of HMS in excess of current retention limits is prohibited; (2) a correction to a coordinate specified for the East Florida Coast closed area that would extend it 1.02 km (0.55 nm) eastward to the outer boundary of the EEZ to match with the list of coordinates given; (3) a measure to reinforce and clarify the recreational nature of the billfish fishery by prohibiting vessels issued commercial permits from possessing billfish; (4) a measure to provide an option for Atlantic tunas dealers, who engage in both domestic and international trade of HMS (see 50 CFR part 300 subpart M and 50 CFR part 635), to submit required BFT reports using the Internet once a system is designed and put in place; (5) a clarification of the deadlines for submitting ''no-fishing'' and ''cost-earnings'' reporting forms; (6) a clarification that vessel owners, not anglers, must report non-tournament recreational swordfish and billfish landings; and (7) a clarification to the procedure for specifying the annual 25 mt northeast distant (NED) BFT PLL allocation. The preferred alternatives described above are expected to produce minimal positive ecological impacts, with no significant adverse social or economic impacts. Extending the East Florida Coast closed area by 1.20 km (0.55 nm) is not expected to impact fishing effort, as vessels will likely relocate to nearby areas with similar catch rates. In summary, these alternatives are preferred over the no action alternatives because they would improve compliance by reinforcing and clarifying existing regulations and facilitate modernized reporting procedures. Unlike the above alternatives, several regulatory housekeeping measures would implement new regulations and are discussed in more detail below.

The HMS time/area closures currently in effect apply specifically to either PLL or bottom longline (BLL) gear. Therefore, it is optimal for the two gear types to be clearly differentiable to determine compliance with the applicable restrictions. NMFS has developed alternatives to amend the

definitions for pelagic and bottom longlines, or establish additional restrictions on these gears when fishing in the time/area closures. The preferred alternatives would limit the amount of floats and pelagic species that may be possessed on BLL vessels when fishing in PLL closed areas. Similarly, the preferred alternatives set a minimum number of floats and limit the amount of demersal species that PLL vessels may possess when fishing in BLL closed areas. The preferred alternatives are not expected to create significant adverse economic and social impacts. Both limits (float numbers and species composition) were chosen because they are consistent with the vast majority of commercial fishing operations. There may be some minor adverse economic impacts on vessels that deploy unusual numbers of floats or that fish for both pelagic and demersal species on the same trip, but those are expected to be rare occurrences. The preferred alternatives would improve monitoring and compliance with HMS closed area regulations. Thus, the ecological benefits associated with HMS closed areas are expected to remain intact or be strengthened. An alternative to require time/depth recorders on longlines was not preferred because it would impose larger negative social and economic impacts than the preferred alternatives, and would require precise information on longline location and water depth to determine compliance. An alternative to close areas to both types of gear would have the largest ecological benefits, not considering redistribution of effort, but it could also impose the largest adverse social and economic impacts.

Species identification of sharks can be enhanced by the presence of fins. NMFS considered alternatives to amend the regulations governing commercial shark landings to facilitate shark identification for enforcement and data collection purposes. The preferred alternative would require that the second dorsal and anal fins remain on all sharks through landing. Although this alternative could have some minor economic and social impacts, it is expected to have ecological benefits and, in the long-term, aid in rebuilding the large coastal shark population. NMFS also considered an alternative that would require these fins to remain on all sharks, except for lemon and nurse sharks, through landing. This alternative would have similar economic and social impacts as described above, but could confuse the issue of identification because fishermen could remove all fins from a shark log and, incorrectly, report the shark as a nurse or lemon shark. If fishermen were to do this, the alternative might have adverse ecological impacts compared with the no action or the preferred alternative. Another alternative was considered that would require the retention of all fins on all sharks through landing. This alternative would have the largest ecological benefits but could also have fairly large adverse economic and social impacts. Therefore, it was not preferred.

Currently, handlines are not required to be attached to, or in contact with, vessels. As a result, some vessel operators have been deploying numerous unattached handlines. This practice may circumvent the original ''concept'' of handline gear and could potentially result in an unintended increase in fishing effort. NMFS is preferring an alternative that would require that handlines be attached to, or in contact with, vessels. However, as described under Authorized Fishing Gears (above), NMFS prefers an alternative that would define unattached handlines as ''buoy gear,'' and authorize their use in the commercial swordfish handgear fishery. As a result, the preferred alternative in this section would primarily impact recreational fishermen and commercial fishermen that do not possess a directed commercial swordfish permit. There are no data indicating the prevalence of this practice, but public comment suggests that the use of unattached handlines may be increasing in the recreational sector. Therefore, this alternative could create some minor adverse social impacts on the recreational sector. Because fish caught recreationally cannot be sold, no direct adverse economic impacts are expected. However, some unquantifiable level of adverse economic impacts could be realized by charter vessels and gear suppliers. This alternative could produce ecological benefits by preventing uncontrolled expansion of the recreational handline fishery. The no action alternative was not preferred because it would not address the potential expansion of the handline fishery.

Currently, vessels fishing recreationally for sharks, swordfish, billfish, and tunas (in some states) are able to fish under state regulations while in state waters, and under Federal regulations when in Federal waters. This has been problematic for NMFS, and has caused confusion on behalf of anglers, due to the differences between state and Federal regulations and the inability to verify whether a fish was caught in state or Federal waters. Thus, NMFS is preferring an alternative that would require recreational vessels with an HMS Angling, HMS Charter/Headboat (on a for-hire trip), or Atlantic Tunas General Category (participating in a registered HMS tournament) Federal permit to abide by Federal regulations as a condition of their permit, regardless of where they are fishing, unless a state has more restrictive regulations. Such a permit condition is already in place for commercial shark and swordfish Federal permit holders under 50 CFR 635.4(a)(10). This alternative is expected to facilitate improved management of HMS and result in less confusion on behalf of fishermen and improved compliance. Compared with the no action alternative, the preferred alternative would produce greater ecological benefits with few resulting adverse social and economic impacts. However, the few HMS anglers who generally fish in states with less restrictive regulations would notice some adverse social impacts due to the more restrictive Federal regulations.

4. EFH Update

EFH guidance that published on January 17, 2002 (67 FR 2343), requires NMFS to periodically review and update the EFH provisions, as warranted, based on the best scientific information available. The EFH regulations further require NMFS to review all EFH information at least once every five years. EFH, including habitat areas of particular concern (HAPCs), for HMS were identified in the 1999 Atlantic Tunas, Swordfish, and Shark FMP (and its Amendment) and the 1999 Amendment 1 to the Billfish FMP. This draft HMS FMP continues the comprehensive five-year review of EFH for all HMS. This process began with the release of the Issues and Options Paper (April 30, 2004, 69 FR 23730). The purpose of the EFH review is to gather any new information and determine whether modifications to existing EFH descriptions and boundaries are warranted. While NMFS has presented new information relative to HMS EFH in the annual SAFE reports and Amendment 1 to the 1999 FMP, this is the first comprehensive look at all new information related to HMS EFH.

NMFS does not intend to modify any of the existing EFH descriptions or boundaries in this draft HMS FMP. Rather, NMFS is presenting new EFH information and data collected since 1999 and is requesting public comment on any additional data or information that may need to be included in the five-year review. Based on an assessment of the data collected thus far, NMFS has made a preliminary determination that modifying existing EFH for some HMS

may be warranted. Any modifications to existing EFH descriptions and boundaries would be addressed in a subsequent rulemaking. In order to consolidate EFH descriptions and maps previously provided in separate documents, all of the EFH descriptions and maps from the 1999 FMP, Amendment 1 to the 1999 FMP, and Amendment 1 to the Billfish FMP are provided in the draft HMS FMP. These maps include data acquired through the review process, and can be reviewed by the public to comment on the need for any additional information to be considered.

Additionally, NMFS is required to identify fishing and non-fishing activities that may adversely affect EFH. Each FMP must include an evaluation of the potential adverse impacts of fishing on EFH, including the effects of each fishing activity regulated under the FMP, other Federal FMPs, and non-federally managed fishing activities (i.e., state fisheries). FMPs must describe each fishing activity and review and discuss all available relevant information such as the intensity, extent, and frequency of any adverse effects on EFH; the type of habitat within EFH that may be adversely affected; and the habitat functions that may be disturbed (50 CFR 600.815(a)(2)). If adverse effects of fishing activities are identified, the Magnuson-Stevens Act requires that these effects on EFH are minimized to the extent practicable and alternative measures be identified to minimize these effects encouraging the conservation and enhancement of EFH (Magnuson-Stevens Act; 16 U.S.C. 1853 section 303(a)(7)).

NMFS completed the original analysis of fishing and non-fishing impacts in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks and the 1999 Amendment 1 to the Billfish FMP, and is presenting information gathered during the five-year review, including all fishing and non-fishing impacts, in the draft HMS FMP. A considerable amount of new information is available regarding gear impacts that have been incorporated into this review. For example, new information presented in the 2004 Gulf of Mexico Fishery Management Council final environmental impact statement for EFH suggests the bottom longline gear may have an adverse effect on coral reef habitat, which serves as EFH for certain reef fishes. As a result, NMFS has made a preliminary determination that some HMS gears, such as bottom longline, may have an adverse effect on EFH for other Federal and non-federally managed species. An assessment of such gears and an evaluation of any potential measures to minimize such impacts would be addressed in a subsequent rulemaking.

Withdrawal of Proposed Rule (68 FR 54410, September 17, 2003)

NMFS published a proposed rule (September 17, 2003, 68 FR 54410) to: establish an annual domestic recreational landing limit of 250 Atlantic blue and white marlin, combined; establish procedures to carry forward overharvest and underharvest of the Atlantic marlin between management periods; and clarify regulations specifying that the owner of a vessel participating in the Atlantic HMS Angling or CHB category be required to report recreational landings of Atlantic bluefin tuna, billfish, and swordfish. The intent of that proposed rule was to comply with ICCAT recommendations, improve the management and conservation of Atlantic HMS, and establish consistent HMS recreational reporting requirements to facilitate enforcement. The proposed rule was not finalized due to a need to review the methodology for calculating recreational marlin landings. As discussed above, the issues to be addressed in that rule are being addressed in this current action. NMFS is continuing to review various methodologies to identify the most appropriate approach for estimating recreational marlin landings. NMFS will provide updates on this review as new information becomes available.

Accordingly, for the reasons stated above, the proposed rule that was published in the **Federal Register** on September 17, 2003 (68 FR 54410)is withdrawn as of August 18, 2005.

Request for Comments

NMFS is requesting comments on any of the alternatives or analyses described in this proposed rule and in the draft HMS FMP. NMFS is also requesting comments on specific items related to those alternatives to clarify certain sections of the regulatory text or in analyzing potential impacts of the alternatives. Specifically, NMFS requests comments on the costs of outfitting a commercial vessel with green-stick gear. NMFS also requests comments on proxy designations for the HMS identification workshops. Specifically, NMFS would like to know who, if anyone, would be appropriate to act as a proxy for a shark dealer and what types of characteristics such a proxy should have. In order to better differentiate between pelagic and bottom longline gear in HMS closed areas, NMFS is proposing limitations on the number of fishing floats that may be possessed or deployed from longline vessels. Examples of such fishing floats include bullet floats, poly balls, high flyers, and lobster pot buoys. NMFS is specifically seeking comments on this list to determine if it is complete and/or accurate and if a definition of ''fishing floats'' in the final rule for this action is warranted. If a definition is warranted, NMFS is requesting comments on potential language for such a definition. NMFS is also specifically asking for comments regarding whether or not the indicator species proposed to be listed at 50 CFR part 635 in tables 2 and 3 of Appendix A are appropriate.

Finally, NMFS is interested in hearing comments from the recreational fishery specifically for the proposed billfish measures. NMFS is proposing to implement the ICCAT recommended landing limit for marlin. As such, NMFS would establish the flexibility to perform inseason actions to reduce catch rates of billfish, if warranted. NMFS is specifically asking for comments regarding whether or not a minimum of five days is an appropriate amount of time to notify billfish fishery participants about inseason changes to minimum sizes and possession limits should an inseason action be necessary. NMFS is also proposing to require circle hooks with natural and natural/artificial bait combinations at billfish tournaments while still allowing J hooks with artificial bait. NMFS heard during scoping that fishermen use J hooks to troll for blue marlin and that trolling for blue marlin with circle hooks would greatly reduce blue marlin catches. NMFS is requesting comment on this proposed requirement of circle versus J hooks in billfish tournaments, the current fishing practices, and impacts on tournaments. Additionally, NMFS is proposing the catch-and-release of white marlin from 2007 through 2011. NMFS is specifically requesting comments on the impacts of the proposed catch-and-release of white marlin provision on tournaments.

Comments may be submitted via writing, email, fax, or phone (see **ADDRESSES**). Comments may also be submitted at a public hearing (see Public Hearings and Special Accommodations below). All comments must be submitted no later than 5 p.m. on October 18, 2005.

Public Hearings and Special Accommodations

As listed in the table below, NMFS will hold 24 public hearings to receive comments from fishery participants and other members of the public regarding

this proposed rule and the draft HMS FMP. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Heather Stirratt at (301) 713–2347 at least 5 days prior to the hearing date. NMFS also tentatively anticipates holding a meeting of the HMS and Billfish Advisory Panels on October 11, 12, and 13, 2005, in Silver Spring, Maryland. The actual dates and location will be announced in a future **Federal Register** notice.

Date	Time	Location	Address
9/6/05	5:30-8:30 p.m.	New Bedford, MA	New Bedford Library, 613 Pleasant St., New Bedford, MA 02740
9/6/05	7-10 p.m.	Orange Beach, AL	Orange Beach Senior Center, 26251 Canal Rd., Orange Beach, AL 36561
9/7/05	7-10 p.m.	Narragansett, RI	Narragansett Town Hall, 25 5th Ave., Narragansett, RI 02882
9/7/05	7-10 p.m.	Port Aransas, TX	University of Texas Marine Science Institute Visitor's Center (located on Cotter St. near beach), 750 Channel View Dr., Port Aransas, TX 78373
9/8/05	7-10 p.m.	New Orleans, LA	VIET Community Center, 4655 Michoud Boulevard, Suite 17, New Orleans, LA 70129
9/8/05	7-10 p.m.	Portland, ME	Howard Johnson Plaza, 155 Riverside Street/I-95, Portland, ME, 04103
9/13/05	7-10 p.m.	West Islip, NY	West Islip Public Library, 3 Higbie Ln., West Islip, NY 11795
9/14/05	7-10 p.m.	Montauk, NY	Montauk Fire House, 12 Flamingo Avenue, Montauk, NY 11954
9/15/05	6-9 p.m.	Gloucester, MA	Gloucester Lyceum and Sawyer Free Library, 2 Dale Ave., Gloucester, MA 01930
9/20/05	7-10 p.m.	Fort Pierce, FL	Fort Pierce Library, 101 Melody Ln., Fort Pierce, FL
9/21/05	7-10 p.m.	Key West, FL	Doubletree Grand Key Resort, 3990 S. Roosevelt Blvd., Key West, FL 33040
9/22/05	7-10 p.m.	St. Thomas, USVI	Frenchman's Reef & Morning Star, St. Thomas, USVI 00801
9/26/05	7-10 p.m.	Virginia Beach, VA	Virginia Beach Pavilion Convention Center, 1000 19th Street, Virginia Beach, VA 23451-5674
9/28/05	7-10 p.m.	Charleston, SC	CCEHBR Jane's Island, 219 Fort Johnson Rd., Charleston, SC 29412
9/28/05	7-10 p.m.	Ocean City, MD	North Side Parks and Rec, 200 125th St., Ocean City, MD 21842
9/29/05	7-10 p.m.	Villas, NJ	Cape May Township Hall, 2600 Bayshore Road, Villas, NJ 082511
9/29/05	7-10 p.m.	Manteo, NC	North Carolina Aquarium Roanoke Island, PO Box 967, Airport Road, Manteo, NC 27954
10/3/05	6:30-9 p.m.	Fort Lauderdale, FL	African American Arts and Cultural Center Research Library, 2650 Sistrunk Blvd., Fort Lauderdale, FL 33311
10/3/05	7-10 p.m.	Mayaguez, PR	Mayaguez Resort and Casino, Road 104 km 0.3, Barrio Algarrobo, Mayaguez PR 00681
10/4/05	7-10 p.m.	Panama City, FL	NMFS Panama City Laboratory, 3500 Delwood Beach Rd., Panama City, FL 32408
10/4/05	5:30-8:30 p.m.	San Juan, PR	Carnegie Library (Biblioteca Carnegie), Ponce De Leon Ave. #7, San Juan, Puerto Rico 00901
10/5/05	7-10 p.m.	Madeira Beach, FL	City of Madeira Beach, 300 Municipal Dr., Madeira Beach, FL 33708
10/6/05	7-10 p.m.	Atlantic Beach, FL	City of Atlantic Beach, Atlantic Beach City Chambers, 800 Seminole Rd., Atlantic Beach, FL 32233
10/6/05	7-9 p.m.	Barnegat Light, NJ	Barnegat Light First Aid Squad, West 10th Street, Barnegat Light, NJ 08006

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* At this time, NMFS has preliminarily determined that the proposed rule and related draft HMS FMP are consistent with the national standards of the Magnuson-

Stevens Act, other provisions of the Act, and other applicable laws.

NMFS prepared a DEIS for the draft HMS FMP that discusses the impact on the environment as a result of this rule. A summary of the impacts of each alternative on the environment is provided above. A copy of the DEIS is available from NMFS (see **ADDRESSES**). The Environmental Protection Agency is expected to publish the notice of availability for this DEIS on or about the same date that this proposed rule publishes.

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

NMFS has prepared an initial regulatory flexibility analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the SUPPLEMENTARY INFORMATION section of this proposed rule. A summary of the analysis follows. A copy of the full IRFA is available (see **ADDRESSES**).

NMFS considers all permit holders to be small entities as reflected in the Small Business Administration's (SBA) size standards for fishing entities (5 U.S.C. 603(b)(3)). All permit holders are considered to be small entities because they either had gross receipts less than $3.5 million for fish-harvesting, gross receipts less than $6.0 million for charter/party boats, or 100 or fewer employees for wholesale dealers. These are the SBA size standard for defining a small versus large business entity in this industry. A full description of the fisheries affected, the categories and number of permit holders, and registered tournaments can be found in the draft HMS FMP.

The alternatives considered for requiring attendance at workshops on protected species release, disentanglement, and identification for pelagic longline, bottom longline, and gillnet owners and operators are estimated to apply to 576 vessels permitted to fish for HMS with longline gear and 20 shark gillnet vessels. The alternatives for shark identification workshops would impact approximately 230 federally permitted shark dealers. Other alternatives considered, but not preferred, for species identification could apply to up to 980 shark, swordfish, and tuna dealers; 10,022 HMS commercial vessel owners; and 21,735 HMS angling permit holders.

The preferred time/area closure alternatives to implement complementary Madison-Swanson and Steamboat Lumps closures would apply to 576 pelagic and bottom longline permitted vessels, but would likely only impact one pelagic longline and two bottom longline sets based on past observer and logbook data. This preferred alternative would also apply to 4,029 permitted HMS charter/headboat businesses and 21,735 HMS angling permit holders. However, the impacts to charter/headboat businesses and recreational fishermen are not expected to be substantial since this alternative includes a seasonal surface trolling allowance. In addition, many of these business have already been impacted by the previously implemented Madison-Swanson and Steamboat Lumps closures established by the GMFMC, and therefore are not likely to face further economic impacts as a result of the proposed complimentary HMS closure in the same area. Other non-preferred time/area closure alternatives would apply to 576 permitted pelagic and bottom longline vessels primarily. The approximate number of vessels impacted by these different alternatives varies from as few as 20 to as many as all 177 active longline vessels (See Chapters 4 and 6 of the draft HMS FMP for the specific number of vessels estimated to be impacted by each time/area closure considered).

The preferred alternative considered for northern albacore management, which would establish the foundation for developing an international rebuilding program through ICCAT, would apply to all tuna categories, a total of 31,308 permit holders. However, the proposed alternative does not have any direct impacts on small entities in the short term because it does not require any changes to direct management measures at this time.

The preferred alternative for finetooth sharks also would not have any direct impacts on small entities but could affect 20 commercial vessels and potentially some of the 21,735 HMS angling permit holders. The non-preferred commercial management alternative, however, would apply to the estimated 20 shark gillnet vessels that are permitted and could apply to all commercial shark permit holders depending on what the management measures would be. The non-preferred recreational management alternative would apply to the 21,735 HMS angling permit holders; however, a small percentage of these recreational anglers target small coastal sharks or finetooth sharks.

All the alternatives considered regarding the directed Atlantic billfish fishery would apply to 21,735 Angling, 4,029 CHB, and up to 5,267 valid General (those participating in tournaments) category permits. In addition, there are currently 215 registered HMS tournaments that would be impacted by the proposed Atlantic billfish alternatives.

The alternatives being considered for bluefin tuna management for time-periods and subquota allocations would primarily apply to the 5,267 General category tuna permit holders. However, other bluefin tuna alternatives to streamline management processes would apply to all tuna categories, a total of 31,308 permit holders.

The alternatives that consider changing the timeframe for annual management of HMS fisheries from a fishing year to a calendar year would essentially apply to all HMS permit holders and tournament registrants. Under the preferred alternative, only the shark fishery would not be impacted by the shift in annual management timeframe because it is already managed on a calendar year basis at this time.

Several alternatives allowing or defining authorized fishing gears would apply to small entities. The proposed authorization of recreational speargun fishing for Atlantic tunas would apply to an unknown number of speargun users. This preferred alternative may also positively impact the 4,029 CHB permit holders by potentially increasing charter revenues, and it may negatively impact the current 21,735 Angling category permit holders due to potential increases in competition for the BFT Angling category quota. The non-preferred alternative to allow speargun in both recreational and commercial tuna fisheries would also apply directly to the 5,267 General category and 4,029 CHB permit holders. In addition, the preferred alternative that authorizes green-stick gear for the commercial harvest of Atlantic BAYS tunas would apply to the Atlantic Tunas Longline, General, and CHB (on non for-hire trips) category vessels, approximately 221, 5,267, and 4,029 vessels respectively. The alternatives that address the utilization of handlines would apply to 282 permit holders (93 swordfish handgear and 189 swordfish directed). The preferred alternative clarifying the authorized use of secondary cockpit gears would apply to all HMS permit holders.

Finally, a variety of regulatory housekeeping proposals would apply to small entities. Specifically, the preferred changes to the definitions of pelagic and bottom longline would apply to the 576 permitted pelagic and bottom longline vessels. The preferred alternative

requiring smaller second dorsal and anal fins would need to remain attached to the shark would apply to the 229 directed shark and 321 incident shark permit holders. The proposed HMS retention limit requirements would apply to the 540 permitted shark and swordfish dealers and the 365 permitted Atlantic tuna dealers. The change in the definition of the East Florida Coast Closed Area is unlikely to directly impact any small entities but could affect any commercial permit holders fishing in that area. The preferred alternative prohibiting the retention of Atlantic billfish by vessels issued commercial permits or outside of a tournament would apply to General category, bottom longline, and shark gillnet vessels utilizing rod and real gear, but it is unlikely that many would be impacted by this proposed regulation. The preferred alternative to amend the HMS regulations to provide an option for Atlantic tunas dealers to submit required BFT reports using the Internet would apply to the 364 Atlantic tuna permit dealer holders. The preferred alternative requiring vessel owners to report non-tournament recreational landings of North Atlantic swordfish and Atlantic billfish would apply to 4,029 CHB permit holders and 21,735 Angling permit holders, but it is not expected that this proposal would impact many entities. Finally, the preferred alternative requiring recreational vessels with a Federal permit to abide by Federal regulations, regardless of where they are fishing, would potentially apply to 21,735 Angling, 4,029 CHB, and up to 5,267 valid General (those participating in tournaments) category permits.

Other sectors of the HMS fisheries such as dealers, processors, bait houses, and gear manufacturers, some of which are considered small entities, might be indirectly affected by the proposed alternatives, particularly time/area closures, Atlantic billfish, and authorized fishing gear alternatives. However, the proposed rule does not apply directly to them, unless otherwise noted above. Rather, it applies only to permit holders and fishermen.

None of the preferred alternatives in this document would result in additional reporting, recordkeeping, and compliance requirements that would require new Paperwork Reduction Act filings. However, some of the preferred alternatives could modify existing reporting and recordkeeping requirements (5 U.S.C. 603(b)(4)). These include workshops, coordination efforts directed at gathering additional information about finetooth shark mortality, and bluefin tuna dealer reporting.

The preferred alternatives for workshops would require recordkeeping by NMFS to record attendance at workshops and the certification status of pelagic and bottom longline vessel owners and operators, as well as shark gillnet owners and operators. Small entities would need to keep their own certificates and may decide also to keep copies of certificates for their own records. Attending workshops would also be a change in compliance.

In addition, the finetooth shark preferred alternative may expand the coverage of the current HMS observer programs. In addition, this preferred alternative would result in efforts to expand data that are currently collected by NMFS observers on shrimp trawl vessels to include finetooth shark and other HMS species of interest. Fishermen themselves would not need to change reporting.

Finally, under regulatory housekeeping, the preferred alternative to allow bluefin tuna dealers the option to report electronically once a system is developed and is made available would modify current reporting requirement, but would not result in additional reporting or burden. In fact, this option may reduce the potential need to report the same data on multiple reports for those some small entities that chose this option.

In addition to the reporting and recordkeeping requirements of the preferred alternatives, there are also proposed compliance requirements associated with the preferred alternatives. These compliance requirement include limiting billfish tournament participants to using only non-offset circle hooks when using natural baits or natural bait/artificial lure combinations, requiring the retention of shark second dorsal and anal fins, and establishing the minimum and maximum number of floats for bottom longline and pelagic longline gear definitions.

The other preferred alternatives would change quota allocations, timeframes, authorized fishing gear types, definitions, and other management measures, but would not likely change reporting or compliance in the fishery.

Fishermen, charter/headboat operators, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, other FMPs, and Take Reduction Plans (TRPs). Other FMPs could include Dolphin-Wahoo, Coastal Migratory Pelagics, and Snapper-Grouper Reef Fish. Domestic laws include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. TRPs affecting the HMS Fisheries include Atlantic Large Whale, Bottlenose Dolphin, and Pelagic Longline plans. NMFS strives to ensure consistency among the regulations with fishery management councils and other relevant agencies. NMFS does not believe that the new regulations proposed to be implemented would conflict with any relevant regulations, Federal or otherwise (5 U.S.C. 603(b)(5)).

The proposed HMS Madison-Swanson and Steamboat Lumps time/area closure overlaps with the geographic area covered by the GMFMC regulations that also implement a time/area closure in this area. However, the GMFMC's regulations do not cover HMS permitted gear types. Therefore, the proposed HMS Madison-Swanson time/area closure regulation that affects vessels utilizing HMS gear types complements the GMFMC regulation and would help with compliance and enforcement of this time/area closure by backstopping the GMFMC's regulations to cover all federally regulated gear types.

The proposed Federal HMS permit condition requiring Federal permit holders participating in recreational trips to abide by Federal regulations in state waters, unless the state has more restrictive regulations, could overlap and/or duplicate State regulations. However, this proposed regulation would not overlap, duplicate, and/or conflict with any other Federal regulations and may reduce conflict with state regulations.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in Chapters 4 and 6 of the draft HMS FMP. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c)(1)-(4)) lists four general categories of ''significant'' alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) Clarification, consolidation, or simplification of compliance and reporting requirements under the rule

for such small entities; (3) Use of performance rather than design standards; and (4) Exemptions from coverage of the rule for small entities.

As noted earlier, NMFS considers all permit holders to be small entities. In order to meet the objectives of this proposed FMP and the statutes (i.e., Magnuson-Stevens Act, ATCA, ESA) as well as address the management concerns at hand, NMFS cannot exempt small entities or change the reporting requirements for small entities. Among other things, this proposed FMP would set quotas for the fishing season, retention limits for the recreational fishery, and gear restrictions, all of which would not be as effective with differing compliance and reporting requirements. Thus, there are no alternatives discussed which fall under the first and fourth categories described above. Alternatives under the second and third categories are discussed below with the alternatives that were considered but not preferred.

As described below, NMFS considered a number of alternatives that could minimize the economic impact on small entities, particularly those pertaining to workshops, time/area closures, northern albacore tuna, finetooth sharks, Atlantic billfish, bluefin tuna quota management, timeframe for annual management, authorized fishing gears, and regulatory housekeeping measures.

The preferred alternatives for longline release, disentanglement and identification workshops, which require mandatory workshops and certification on a three-year renewal timeline for all owners and operators of HMS vessels that use longline and gillnet gear, were designed to minimize the economic impacts on fishermen, while simultaneously complying with 2003 BiOp and the post-release mortality targets for protected resources established in the June 2004 BiOp. Requiring vessel owners to attend the workshops is estimated to have an economic impact to each bottom and pelagic longline vessel owner of up to $565 and $504 in potentially lost revenue share based on 2003 logbook data, as well as unquantified travel costs to attend a workshop. The aggregate economic impact is estimated to be between $290,304 and $325,440 in the first year. Longline vessel operators would also be impacted by the preferred alternative, but it might not impact the economic well-being of the small business for which they work. In addition, the estimated twenty owners of vessels that use gillnet gear and have a Federal shark permit would each have an economic impact of up to $508 in lost revenue share based on 2003 logbook data, as well as unquantified travel costs to attend a workshop.

Specifically, under these alternatives, NMFS would strive to host a number of workshops in regional fishing hubs in order to minimize travel and lost fishing time. Besides the costs of travel and lost time, there would be no additional costs for workshop participants. NMFS would attempt to hold workshops during periods when the fishery is typically inactive, effectively minimizing lost fishing time. To minimize the overall economic cost of these workshops, the preferred alternatives would limit required participation in these workshops to owners and operators. It is likely that owners and operators would pass information and appropriate direction to their crew concerning release, disentanglement, and identification of protected resources. NMFS would also select a recertification period that would allow for sufficient retraining to maintain proficiency and update fishermen on new research and development related to the subject matter while not placing an excessive economic burden on the participants due to lost fishing time and travel resulting from attending a recertification workshop in person. Two, three, and five year recertification period are being considered, with a three-year period currently being preferred. In addition, to lower the costs of recertification, NMFS is considering the use of alternative sources of media including CD-ROM, DVDs, or web-based media that would not result in travel costs or lost fishing time, as well as allowing private certified trainers to provide training at tailored times and locations to minimize any costs.

Other alternatives considered were voluntary workshops for longline fishermen and mandatory workshops that would include crew in addition to owners and operators. Several alternatives would have less onerous economic impacts to small businesses relative to the preferred alternatives. These include: the no action alternative and mandatory workshops for only owners or only operators. These alternatives would not satisfy reasonable and prudent alternative under the June 2004 BiOp issued pursuant to ESA.

The preferred alternative for identification workshops, which would require mandatory workshops for all federally permitted shark dealers, is preferred because species-specific identification of offloaded shark carcasses is much more difficult than other HMS as evidenced by the large proportion of ''unclassified'' sharks listed on shark dealer logbooks. The Agency would attempt to minimize economic impacts to shark dealers by holding workshops at fishing ports to minimize travel costs and during non-peak fishing times to minimize perturbations to business activity, to the extent possible. Similar measures as those being considered for disentanglement and identification recertification are being considered for the identification workshops for shark dealers in order to minimize the economic impacts caused by this measure.

Other alternatives in addition to the no action alternative were voluntary HMS identification workshops, mandatory identification workshops for swordfish and tuna dealers, mandatory identification workshops for all commercial longline vessel owners and operators, mandatory identification workshops for all commercial vessel (longline, CHB, General category, and handgear/harpoon) owners and operators, and mandatory identification workshops for all HMS Angling permit holders. The economic impacts of these alternatives are detailed in the draft HMS FMP. The no action and voluntary HMS identification workshop alternatives would have less onerous economic impacts relative to the preferred alternative. However, these alternatives would not address the persistent problems with species-specific shark identification in dealer reports.

In addition to the type of workshops, NMFS considered two additional renewal timetables of two and five years. A renewal timetable of five years would have a less adverse impact than the proposed timetable of three years. However, recertification every five years for bycatch release and disentanglement workshops would allow a more extensive period of time to lapse between certification workshops than necessary to maintain proficiency and provide updates on research and development of handling and dehooking protocols. In a similar fashion, recertification every five years for HMS identification workshops would also allow a more extensive period of time to lapse between certification workshops than necessary to maintain proficiency in species identification.

The preferred alternatives for time/area closures, which would implement complementary measures in Madison-Swanson and Steamboat Lumps closures and establish criteria to be considered when implementing new time/area closures or making modifications to existing time/area closures, were designed to minimize

economic impacts incurred by fishermen, while simultaneously reducing the bycatch of non-target HMS and protected species such as sea turtles in Atlantic HMS fisheries. Complementary HMS regulations in the Madison-Swanson and Steamboat Lumps closures would have minimal economic impacts as from 1997 to 2003, only one pelagic longline set and two bottom longline sets were reported in these areas. All three sets occurred in the Madison-Swanson site. Four swordfish were kept on the pelagic longline set, and eight swordfish were discarded. There were no reported HMS caught on the two bottom longline sets. Recreational and charter/headboat fishing trips for HMS in the proposed marine reserves are not likely to be significantly curtailed due to the allowance for surface trolling from May through October, which are the prime fishing months. Creating these complementary HMS regulations would consolidate and simplify requirements for fishermen, and therefore simplify compliance. This alternative would also implement compatible regulations that would provide for a seasonal allowance (May - October) for surface trolling to partially alleviate any negative economic impacts associated with the closures or the HMS recreational and charter/headboat sector.

Other alternatives considered in addition to the no action alternative were a closure of 11,191 nm^2 in the central Gulf of Mexico to pelagic longline gear, a closure of 2,251 nm^2 in the Northeast to pelagic longline gear, a closure of 101,670 nm^2 in the Gulf of Mexico, a closure west of 86° W. Longitude in the Gulf of Mexico to pelagic longline gear, a closure of 46,956 nm^2 in the Northeast to pelagic longline gear, a prohibition on the use of bottom longline gear in an area off the Florida Keys to protect endangered smalltooth sawfish, and a prohibition on the use of pelagic longline gear in HMS fisheries in all areas. These closure alternatives were not preferred due to large economic impacts with conflicting ecological benefits between species. Without redistribution of effort, potential economic impacts ranged from a decline in gross fishery revenues of $299,120 to $25.8 million annually. With redistribution of effort, gross fishery revenues ranged from a decline of $820,132 to an increase of $6.0 million annually. These estimates of gross revenues lost or gained did not take into account additional costs that may be incurred as a result of relocating to new fishing grounds. The details of the economic impacts associated with these other alternatives are detailed in the draft HMS FMP. In addition to the closure alternatives, modifications to existing closures were also considered for the Charleston Bump closure and the Northeastern U.S. closure that provided some economic relief but did not meet ecological needs.

The preferred alternative to establish criteria would guide future decision-making regarding implementation or modification of time/area closures. This would provide enhanced transparency, predictability, and understanding of HMS management decisions. The time/area closure criteria would not have immediate impacts. Any ecological, social, or economic impacts of a specific closure or modified closure would be analyzed in the future when that specific action is proposed.

The alternative based on the petition from Blue Ocean Institute et al. would potentially impact a total of 75 vessels that fished in the area from 2001 - 2003. Without redistribution of effort, this alternative would potentially result in a 13.4 percent decrease in fishing effort, and reductions in landings ranging from a minimum of 0.2 percent for bigeye tuna (kept) to a maximum of 29.0 percent for incidentally caught bluefin tuna (kept). The total loss in revenue for this alternative, assuming no redistribution of effort, would be approximately $3,136,229 annually, or $49,003 per vessel annually. With redistribution of fishing effort, the alternative is predicted to result in a decrease in bluefin and yellowfin tuna landings of 18.3 and 11.0 percent, respectively, for estimated losses of approximately $166,040 and $1,382,042 annually. However, overall, there could be a net gain in revenues for this alternative with redistribution of effort of approximately $1,651,023 annually, or $25,797 per vessel annually, primarily due to a predicted increase in swordfish landings as a result of effort being displaced into the Atlantic. Bigeye tuna landings are also predicted to increase as a result of displaced effort. The actual ecological and social impacts of the alternative would likely be in between the redistribution and no redistribution models. Due to the potential negative ecological impacts, negative economic impacts, and the increase in bluefin tuna discards, NMFS is not preferring this alternative at this time.

The preferred alternative for northern albacore tuna management, which would establish the foundation for developing an international rebuilding program, was designed to address rebuilding of the northern albacore tuna fishery while simultaneously minimizing economic impacts incurred by fishermen. This alternative would have minimal economic impacts, because it is not proposing additional restrictions at this time. Even under an international plan, the United States is a small participant in this fishery and only has a small allocation that it does not even fully harvest at this time.

Other alternatives considered were no action and taking unilateral proportional reductions in northern albacore tuna harvest. Taking unilateral action to address northern albacore tuna on the part of the United States would likely not be effective in rebuilding the stock because the United States is a small participant in this fishery, and would have larger economic impacts than the preferred alternative because the rebuilding onus would fall on U.S. fishermen rather than being spread among all fishermen catching northern Albacore tuna.

The no action alternative would have the same economic impacts as the preferred alternative because NMFS has been promoting an international rebuilding plan at ICCAT. In a prior rulemaking, NMFS addressed the same northern albacore tuna alternatives but did not incorporate them into the HMS FMP. The no action alternative is rejected, because it would not include the rebuilding strategy in the FMP.

The preferred alternative for finetooth shark management was designed to address overfishing while minimizing economic impacts incurred by fishermen. This alternative would be expected to have minimal to no economic impacts, because no new restrictions are being proposed at this time. However, fishermen would be required to provide information to the observers. Long-term, the alternative would have positive ecological impacts by addressing finetooth mortality in HMS and other fisheries and positive economic impacts if the fishery is sustained.

Other alternatives considered were no action, a range of commercial management measures, and a range of recreational management measures. The range of commercial management measures could potentially include any combination of: a directed trip limit for SCS, gillnet gear restrictions, prohibiting the use of gillnet gear for landing sharks, reduced soak time for gillnets, and reducing the overall SCS quota. The range of recreational management measures could potentially include requiring the use of circle hooks when targeting SCS and/or increasing the minimum size for retention of finetooth sharks. Only the no action alternative would have less economic

impact relative to the preferred alternative. However, this alternative was not preferred because it would not facilitate efforts to address overfishing of finetooth sharks.

The preferred alternatives for Atlantic billfish management, which include requiring the use of non-offset circle hooks when using natural baits in tournaments, implementing the ICCAT marlin landings limits, and allowing only catch-and-release fishing for Atlantic white marlin from 2007–2011 were designed to minimize economic impacts incurred by recreational fishing sector, while simultaneously enhancing the management of the directed Atlantic billfish fishery. Specifically, requiring circle hooks would likely have a minimal economic impact, since it would not affect all billfish recreational anglers, only tournament participants. Therefore, the impacts on hook manufactures, retailers, and anglers would likely be limited given that J-hooks would continue to be permitted outside of tournaments and within tournaments with artificial lures. In addition, delayed implementation to 2007 would help lower any potential economic impacts due to supply and demand changes. Impacts on tournaments would also likely be minimal, given the increase in the number of tournaments that provide special award categories or additional points for billfish captured and released on circle hooks. This alternative would also likely have high compliance rates given the self-policing that is likely to occur among tournament participants competing for prizes, as well as the increasing use of tournament observers.

Several measures were also considered to minimize the economic impacts of implementing the ICCAT landing limit. The use of three separate levels of management measures based upon marlin landing thresholds diminishes the economic impacts of this alternative. When it is not expected that marlin landings will approach the threshold for action, then no in-season actions would occur and there would not be any economic impacts. If the threshold for action were achieved, minimum size requirements for Atlantic marlins would increase to a level sufficient to curtail landings. Finally, if the ICCAT landing limits were achieved in any one year, the fishery would shift to a catch-and-release only fishery for the remainder of that year. This last scenario would be unlikely given historical landings and minimum size requirements that would occur at the action threshold. This alternative would allow the response to be tailored to the needs of a given fishing year to ensure maximum utilization of the ICCAT landing limit. Under the calendar year management alternative that is currently preferred, implementing the ICCAT landing limit also would help reduce any disproportionate economic impacts to CHB operators, tournaments, and anglers who fish for marlin late in the fishing year or in late season tournaments by providing anglers the greatest opportunity to land marlin over the entire length of the fishing year. This alternative is estimated to potentially result in $1.3 to $2.7 million in economic impacts as compared to the $13.4 to $20.0 million in impacts for catch-and-release only for Atlantic blue and white marlin resulting in an estimated one to two tournament cancellations and unquantified impacts on CHB businesses.

Catch-and-release of white marlin could result in some potential economic impacts. Any negative impacts would likely be reduced if vessels targeting white marlin already practice catch-and-release fishing and participate in catch-and-release tournaments. To mitigate negative socioeconomic impacts, NMFS would delay implementation of catch-and-release-only fishing requirements to allow the fishery time to adjust to new measures, and includes a sunset provision five years from implementation of catch-and-release requirements. NMFS estimates that this alternative could result in between $70 thousand and $1.2 million in lost revenues to CHB vessels and $1.3 to $5.5 million in negative economic impacts (in comparison to $13.4 to $18.8 million for an alternative of catch-and-release only for Atlantic blue marlin) resulting from potentially cancelled HMS tournament cancellations.

Other alternatives considered were no action, limiting all participants in the Atlantic HMS recreational fishery to using only non-offset circle hooks when using natural baits or natural bait/artificial lure combinations in all HMS fisheries, increasing the minimum size limit for Atlantic white and/or blue marlin, implementing recreational bag limits of one Atlantic billfish per vessel per trip, and allowing only catch-and-release fishing for Atlantic blue marlin. Only the no action alternative would have less onerous economic impacts relative to the preferred alternatives. However, the no action alternative would not satisfy the requirements and goals of implementing the ICCAT recommendations under ATCA and furthering rebuilding of Atlantic blue and white marlin under the Magnuson-Stevens Act, or the objectives of the FMP.

The preferred alternatives for bluefin tuna quota management include revised General category time-periods and subquotas to allow for a formalized winter fishery, clarified procedures for calculating the Angling category school size-class subquota allocation, modification of the bluefin tuna specification process and streamlining annual under/overharvest procedures, an individual quota category carryover limit and authorization of the transfer of quota exceeding limit, and revised and consolidated criteria that would be considered prior to performing a BFT inseason action. These preferred alternatives were designed to minimize economic impacts incurred by fishermen, while simultaneously enhancing and clarifying bluefin tuna quota management and inseason actions.

Revising the General category time-periods and subquotas would strike a balance between providing consistent quota allocations and having the flexibility to amend them in a timely fashion. This alternative would slightly reduce General category quota from early time periods, thereby allowing for a formal winter General category bluefin tuna fishery to take place during the months of December and January, and therefore would increase regional access. By shifting the allocated quota from the June through August time-period, which has an overall higher allocation, to a later time-period any adverse impacts would be mitigated by the increased revenue generated in the later time-period. In addition, the fishermen from the Northeast are not precluded from fishing in southern areas during winter bluefin tuna season.

Clarifying the procedures that NMFS uses in calculating the ICCAT recommendation regarding the eight percent tolerance for BFT under 115 cm would simplify the regulations; this alternative would also remove the north/south dividing line that separates the Angling category. Due to the lack of real-time data currently, the north/south dividing line has not been effective in recent years, and therefore it would be removed under this preferred alternative. This alternative is not likely to have an economic impact.

Eliminating the need to allocate each domestic quota categories' baseline allocation each year would have positive economic impacts to the domestic BFT fishery as a whole by allowing BFT fishery participants, either commercial or recreational in nature, to make better informed decisions on how to best establish a business plan for the upcoming season.

Limiting the annual carryover for each category would have some economic impacts as a result of limiting the amount of underharvest of the bluefin tuna quota that could be rolled over from one year to the next within a category. However, this alternative was designed to mitigate any impacts by allowing NMFS to redistribute quota exceeding the proposed 100 percent rollover cap to the Reserve or to other domestic quota categories, provided the redistributions are consistent with ICCAT recommendations and the redistribution criteria.

Consolidating the criteria to make inseason actions would result in slightly more positive economic impacts as the regulations would be consistent regardless of what type of inseason action is being considered. This would minimize confusion and provide additional transparency to the management process.

Other alternatives considered in addition to the no action alternatives were establishing General category time-periods, subquotas, and geographic set asides annually via framework actions; establishing monthly General category time-periods and subquotas; revising the General category time-periods and subquotas to allow for a formalized winter fishery with different time-period allocations; eliminating the underharvest quota carryover provisions, and eliminating the BFT inseason actions. These additional alternatives would not likely reduce overall impacts to the fishery as a whole further relative to the preferred alternatives.

The preferred alternative for the timeframe for annual management of HMS fisheries, which would shift the time frame to a calendar year (January 1 to December 31), was designed to minimize economic impacts on HMS fisheries and simplify HMS fishery management and reporting to ICCAT. This alternative would not impact the shark fishery, since that fishery is already operating under a calendar year. The shift in the other HMS fisheries' timeframe for annual management would establish consistent timing between U.S. domestic and international management programs, reducing the complexity of U.S. reports to ICCAT and creating more transparent analyses in the U.S. National Report. Setting an annual quota and other fishery specifications on a multi-year basis for bluefin tuna as discussed above could mitigate any potential negative impacts associated with reduced business planning periods that may result from a calendar year timeframe. The flexibility established in the preferred alternatives for billfish could partially mitigate any negative regional economic impacts to marlin tournaments, charters, and other related recreational fishing businesses. To facilitate the transition to a calendar year management timeframe for bluefin tuna and swordfish, the 2006 fishing year would be abbreviated from June 1, 2006, through December 31, 2006, which could provide slightly higher quotas during that time period and slight positive impacts for fishermen. The specifics of this abbreviated season would be implemented under a separate action.

Other alternatives considered were to maintain the current fishing year and to shift the fishing year to June 1 - May 31 for all HMS species. These alternatives are not likely to result in economic impacts substantially different than the preferred alternative; however, they would not meet the objectives of this action.

The preferred alternatives for authorized fishing gears, which would authorize speargun fishing in the recreational Atlantic tuna fishery, authorize green-stick gear for the commercial harvest of Atlantic BAYS tunas, authorize buoy gear for the commercial swordfish fishery, and clarify the allowance of hand-held cockpit gear, were designed to reduce the economic impacts to fishermen and even enhance economic opportunities in recreational and commercial fishing. Specifically, allowing speargun gear would enhance economic opportunities in the tuna recreational fishery by including a new authorized class of recreational fishing, speargun fishing.

Specifically authorizing green-stick gear would clarify current requirements. This gear is currently being utilized, however, there is uncertainty under current regulations as to whether this gear type is authorized. The preferred alternative would eliminate this uncertainty and enhance economic opportunities by authorizing this gear type.

The swordfish handgear fishery may currently utilize individual handlines attached to free-floating buoys, however, a preferred alternative would require that handlines used in HMS fisheries be attached to a vessel. This alternative would change the definition of individual free-floating buoyed lines, that are currently considered to be handlines, to ''buoy gear,'' allowing the commercial swordfish handgear fishery to continue utilizing this gear type. This alternative would explicitly authorize buoy gear but limit vessels to possessing and deploying no more than 35 individual buoys with each having no more than two hooks or gangions attached. The economic impact of this alternative would likely be minimal, since the upper limit on the number of buoys is based on information obtained about the fishery though public comment, and based on what NMFS has identified as the manageable upper limit for the commercial sector.

Finally, NMFS is also preferring an alternative that would likely reduce confusion over the allowable use of secondary cockpit gears to subdue HMS captured on authorized fishing gears. The use of these secondary gears might result in positive economic benefits from anticipated increases in retention rates.

Other alternatives considered in addition to no action were to authorize speargun in both the commercial tuna handgear and recreational tuna fisheries and authorizing buoy gear in the commercial swordfish handgear fishery with 50 buoys with 14 hooks each. None of the non-preferred alternatives would have less economic impacts than the preferred alternatives.

The preferred alternatives for regulatory housekeeping items were designed to minimize economic impacts, while also clarifying regulatory definitions and requirements, facilitating species identification, and enhancing regulatory compliance.

The preferred alternatives that differentiate between BLL and PLL gear by using the number of floats and the species composition of catch landed would more clearly define the difference between BLL and PLL gear using a combination of gear configuration and performance standards based on the composition of catch landed. This would clarify the difference between these two gear types and enhance compliance with time/area closures that place restrictions on these two gear types. There could be some, but likely limited, economic impacts to vessels that may currently fish in gear restricted time/areas closures that do not conform to the proposed BLL and PLL gear specifications and performance standards. This performance based standard could adversely impact those longline vessels that regularly target both demersal and pelagic species on the same trip. Other alternatives considered in addition to the no action alternative were to require time/depth recorders on all HMS longlines and base closures on all longline vessels. Only the no action alternative could have less onerous economic impacts relative to the preferred alternatives. However, the no action alternative would not address NMFS' concerns with differentiating

between bottom and pelagic longline gear.

The preferred alternative for shark identification, which would require that the second dorsal fin and anal fin remain attached on all sharks, addresses issues associated with shark species identification, but would be flexible enough to still allow fishermen to remove the most valuable fins in order to minimize the economic impacts of this alternative. Fishermen could experience, in the short-term, some adverse economic impacts associated with lower revenues associated with keeping the second dorsal and anal fins on sharks. Other alternatives considered in addition to the no action alternative were to require the dorsal and anal fin on all sharks except lemon and nurse sharks and to require all fins on all sharks be retained. Some alternatives could have less economic impacts relative to the preferred alternative. These include the no action alternative and the alternative requiring the dorsal and anal fin on all sharks except lemon and nurse sharks. These alternatives, however, would not satisfy enforcement and species identification needs.

The preferred alternatives that prohibit the purchase or sale of HMS from vessels in excess of retention limits would enhance compliance with current regulations by consolidating the requirement for both vessels and dealers. These alternatives would have minimal economic impact on dealers and vessels following the current retention limits. The only additional alternative considered was no action, which would have less economic impact than the preferred alternatives but would not satisfy the enforcement or monitoring objectives.

The preferred alternative that would amend the Florida East Coast closed area would clarify the regulations regarding this closed area and make them consistent with the boundary of the EEZ. The only additional alternative considered was no action. Neither alternative is expected to have any economic impact since fishing activity is likely to be limited in this small area.

The preferred alternative that would amend the definition of handline gear to require that they be attached to a vessel, would clarify the definition of handline. The economic impact of this new definition would be minimal since unattached handline gear would be defined as ''buoy gear.'' Other alternatives considered were no action and to require handlines be attached to recreational vessels only. These two alternatives could have less economic impacts relative to the preferred alternative, but they would not meet the ecological objectives of this document.

The preferred alternative that prohibits commercial vessels from retaining billfish would not have any economic impacts because current regulations do not allow these vessels to sell the billfish that are landed. This alternative would clarify and consolidate the requirements for commercial vessels to make them consistent with the regulations prohibiting vessel with pelagic longline gear from retaining billfish. The only other alternative considered was no action, which could have less social impacts than the preferred alternative but it would not satisfy ecological needs of rebuilding billfish stocks.

The preferred alternative that allows Atlantic tuna dealers to submit reports using the Internet, would simplify reporting and potentially reduce costs. The other alternatives considered were no action and providing BFT dealers the option to report online (with specific exceptions) would not result in less economic burden than the preferred alternative.

The preferred alternatives that require the submission of no fishing and cost-earnings reporting forms would clarify current regulations and potentially enhance compliance. The other alternative considered was no action; that alternative would not meet NMFS' objectives to collect quality data to manage the fishery. Neither alternative is expected to have any economic impacts.

The preferred alternative that requires vessel owners to report non-tournament recreational landings would clarify and simplify the reporting process by codifying the current prevalent practice of recreational landings being reported by vessel owners versus individual anglers. The other alternative considered, no action, might result in less economic burden to small businesses but would not satisfy the goal of improving reporting or other objectives of the FMP.

NMFS also prefers and alternative that clarifies current regulatory language regarding the roll-over of unharvested quota from the NED pursuant to an ICCAT recommendation. Other alternatives considered include no action and further discussions at ICCAT. There could be potential economic impacts associated with these two alternatives, if current regulatory text is misinterpreted as capping the set aside quota at 25 metric tons versus allocating 25 metric tons of BFT each year per the ICCAT recommendation. Retaining the current regulatory text under either alternative would not reflect the intent of the ICCAT recommendation.

Finally, the preferred alternative that requires recreational vessels with a Federal permit to abide by Federal regulations regardless of where they are fishing would standardize compliance with HMS regulations for vessels possessing a federal HMS permit. This would likely simplify compliance with regulations, except in cases where a state has more restrictive regulations. The other alternative considered was no action, which could have marginally less economic impact than the preferred alternative, but it would not result in simplified compliance with regulations, and therefore would not meet the objectives of the FMP.

There are currently three BiOps issued under the ESA for HMS fisheries: a June 2001 BiOp for the non-pelagic longline and non-shark HMS fisheries; an October 2003 BiOp for the HMS shark fisheries; and a June 2004 BiOp for the HMS pelagic longline fishery. As described in the draft HMS FMP, none of the preferred alternatives are expected to alter fishing practices, techniques, or effort in any way that would increase interactions with protected species or marine mammals. The preferred workshop alternatives implement requirements of both the October 2003 and June 2004 BiOps, and should reduce the post-release mortality of any protected species that are caught. The time/area closure preferred alternatives would provide a framework to consider impacts on protected species before implementing or modifying any time/area closures. Implementing the closed areas, consistent with the GMFMC regulations, is not expected to alter HMS fishing effort or practices because the areas are so small and are of minor importance to HMS fishermen. The preferred alternatives for finetooth and northern albacore tuna are not expected to have any impact at this time would not impose new requirements of changes, at this time, to the fishery. To some extent, the use of circle hooks in billfish tournaments may reduce sea turtle interactions and mortalities in the recreational fishery; however, because the recreational fishery interacts with so few sea turtles, this alternative is not expected to have a significant impact. Similarly, the other preferred alternatives for reducing billfish fishing mortality for the directed recreational fishery are not expected to have any impact on protected species. The preferred alternatives for BFT management provide NMFS with additional flexibility to manage the BFT fishery. To the extent individual category quotas would be limited under

the preferred alternative (there is no limit under the no action alternative), the BFT preferred alternatives could have some minimal positive impact on protected species. The preferred alternative for the fishing year is not expected to alter fishing effort or practices because the fisheries themselves already operate year-round. If the 250–marlin landing limit is approached and the minimize size on marlin is increased, tournaments scheduled for later in the fishing year could be impacted in terms of effort. However, this is unlikely to impact protected species given the small number of interactions with recreational gear. The preferred alternatives for authorized gear could change some fishing practices by allowing fishermen to use spearguns, green-stick, and buoy gear. However, it is unlikely that a speargun fisherman would mistake a sea turtle or other protected species for a tuna. Thus, NMFS does not expect that gear type to increase protected species or marine mammal interactions. In addition, both green-stick and buoy gear have been used in HMS fisheries (incorrectly classified as handline, handgear, or longline); this proposed rule would merely clarify the use of the gear and establish additional restrictions and regulations. In the case of buoy gear, this rule essentially renames an existing gear type (handline) for the commercial swordfish fishery. Furthermore, NMFS is proposing to require handlines to be attached to the vessel. While this may not reduce interactions with protected species (interactions in the handline fishery currently are minimal), it would reduce any mortality and prevent expansion of the fishery. Thus, NMFS does not expect protected species or marine mammal interactions to increase as a result of these changes to fishing gears. NMFS is changing the coordinates of the Florida East Coast closed area to ensure it matches the U.S. EEZ coordinates. Because the change is minor (approximately 1 km), NMFS does not expect this to change the number of protected species interactions. NMFS is also proposing a number of clarifications to the regulations; these clarifications are mainly administrative in nature and should not impact fishing effort or practices.

List of Subjects

50 CFR Part 300

Fisheries, Foreign relations, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 600

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

50 CFR Part 635

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

Dated: August 5, 2005.

James W. Balsiger,

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

For the reasons set out in the preamble, 50 CFR parts 300, 600, and 635 are proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart M—International Trade Documentation and Tracking Programs for Highly Migratory Species

1. The authority citation for subpart M continues to read as follows:

Authority: 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 300.182, paragraph (d) is revised to read as follows:

§ 300.182 HMS international trade permit.

* * * * *

(d) *Duration.* Any permit issued under this section is valid for the period specified on it, unless suspended or revoked.

* * * * *

3. In § 300.185, paragraphs (b)(3) and (c)(3) are revised to read as follows:

§ 300.185 Documentation, reporting and recordkeeping requirements for statistical documents and re-export certificates.

* * * * *

(b) * * *

(3) *Reporting requirements.* A permit holder must ensure that the original statistical document, as completed under paragraph (b)(2) of this section, accompanies the export of such products to their export destination. A copy of the statistical document must be postmarked and mailed by said permit holder to NMFS, at an address designated by NMFS, within 24 hours of the time the fish product was exported from the United States or a U.S. insular possession. Once a system is available, permit holders will also be able to submit the forms electronically via the Internet.

(c) * * *

(3) *Reporting requirements.* For each re-export, when required under this paragraph (c), a permit holder must submit the original of the completed re-export certificate and the original or a copy of the original statistical document completed as specified under paragraph (c)(2) of this section, to accompany the shipment of such products to their re-export destination. A copy of the completed statistical document and re-export certificate, when required under this paragraph (c), must be postmarked and mailed by said permit holder to NMFS, at an address designated by NMFS, within 24 hours of the time the shipment was re-exported from the United States. Once a system is available, permit holders will also be able to submit the forms electronically via the Internet.

* * * * *

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

4. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

5. In § 600.725, paragraph (v), table entries 1.A., 1.H., and 1.I. under section IX. Secretary of Commerce are revised to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

Fishery	Authorized gear types
* * * * * * *	
IX. SECRETARY OF COMMERCE	
1. Atlantic Tunas Swordfish and Sharks Fisheries (FMP):	
A. Swordfish handgear fishery.	A. Rod and reel, harpoon, handline, bandit gear, buoy gear.
* * * * * * *	
H. Tuna recreational fishery.	H. Rod and reel, handline, speargun gear.
I. Tuna handgear fishery.	I. Rod and reel, harpoon, handline, bandit gear, green-stick gear.
* * * * * * *	

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

6. The authority citation for 50 CFR part 635 continues to read as follows:

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

PART 635 [AMENDED]

7. In part 635, remove the phrase ''Northeast Distant closed area'' wherever it appears and add in its place ''Northeast Distant gear restricted area''.

8. In § 635.2, the definitions of ''East Florida Coast closed area'', ''Fishing year'', ''Handgear'', ''Handline'', and

''Shark'' are revised; paragraph (5) under the definition of ''Management unit'' is revised; the definition of ''ILAP'' is removed; and new definitions for ''Atlantic HMS identification workshop certificate'', ''Buoy gear'', ''Green-stick gear'', ''Madison-Swanson closed area'', ''Protected species workshop certificate'', ''Speargun gear'', and ''Steamboat Lumps closed area'' are added in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

Atlantic HMS identification workshop certificate means the document issued by NMFS indicating that the person issued the certificate successfully completed the HMS identification workshop.

* * * * *

Buoy gear means fishing gear that is released and retrieved by hand, consisting of a single buoy supporting a single mainline to which no more than two hooks or gangions are attached, and to which gear monitoring equipment is affixed. Gear monitoring equipment includes, but is not limited to, radar reflectors, beeper devices, lights, or reflective tape. Buoy gear must be constructed and deployed so that the mainline remains vertical in the water column.

* * * * *

East Florida Coast closed area means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 31°00′ N. lat. near Jekyll Island, GA, and proceeding due east to connect by straight lines the following coordinates in the order stated: 31°00′ N. lat., 78°00′ W. long.; 28°17′10″ N. lat., 79°11′24″ W. long.; then proceeding along the outer boundary of the EEZ to the intersection of the EEZ with 24°00′ N. lat.; then proceeding due west to 24°00′ N. lat., 81°47′ W. long.; and then proceeding due north to intersect the inner boundary of the U.S. EEZ at 81°47′ W. long. near Key West, FL.

* * * * *

Fishing year means January 1 through December 31.

* * * * *

Green-stick gear means a line that is elevated, or suspended, above the water's surface from which no more than 10 hooks or gangions may be hung. The gear must be actively trolled and configured so that the baits are fished on or above the surface of the water. The suspended line, attached gangions, and catch may be retrieved collectively by hand or by mechanical means.

Handgear means handline, harpoon, rod and reel, bandit gear, buoy gear, speargun gear, or green-stick gear.

Handline means fishing gear that is attached to, or in contact with, a vessel; that consists of a mainline to which no more than two hooks or gangions may be attached; and that is released and retrieved by hand rather than by mechanical means.

* * * * *

Madison-Swanson closed area means a rectangular-shaped area in the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 29°17′ N. lat., 85°50′ W. long.; 29°17′ N. lat., 85°38′ W. long.; 29°06′ N. lat., 85°38′ W. long.; 29°06′ N. lat., 85°50′ W. long.; 29°17′ N. lat., 85°50′ W. long.

Management unit means in this part:

* * * * *

(5) For sharks, means all fish of the species listed in Table 1 of Appendix A to this part, in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea.

* * * * *

Protected species workshop certificate means the document issued by NMFS indicating that the certificate holder has successfully completed the Atlantic HMS protected species release, disentanglement, and identification workshop.

* * * * *

Shark means one of the oceanic species, or a part thereof, listed in Table 1 of Appendix A to this part.

* * * * *

Speargun gear means a muscle-powered speargun equipped with a trigger mechanism, a spear with a tip designed to penetrate and retain fish, and terminal gear. Terminal gear may include, but is not limited to, trailing lines, reels, and floats. The term ''muscle-powered spearguns'' for the purposes of this part means those spearguns that store potential energy provided from the operator's muscles, and that release only the amount of energy that the operator has provided to it from his or her own muscles. Common energy storing methods for muscle-powered spearguns include compressing air and springs, and the stretching of rubber bands.

Steamboat Lumps closed area means a rectangular-shaped area in the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 28°14′ N. lat., 84°48′ W. long.; 28°14′ N. lat., 84°37′ W. long.; 28°03′ N. lat., 84°37′ W. long.; 28°03′ N. lat., 84°48′ W. long.; 28°14′ N. lat., 84°48′ W. long.

* * * * *

9. In § 635.4, paragraphs (a)(10), (c)(2), (d)(4), (e)(1), (e)(2), (f)(1), (f)(2), (h)(2), (l)(2)(i), (l)(2)(ii)(B), (l)(2)(ii)(C), (l)(2)(viii), (l)(2)(ix), (m)(1), and (m)(2) are revised to read as follows:

§ 635.4 Permits and fees.

* * * * *

(a) * * *

(10) *Permit condition.* An owner issued a swordfish, shark, HMS Angling, or HMS Charter/Headboat permit pursuant to this part must agree, as a condition of such permit, that the vessel's HMS fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the EEZ, or outside the EEZ, and without regard to where such HMS, or gear are possessed, taken, or landed. However, when a vessel fishes within the waters of a state that has more restrictive regulations on HMS fishing, persons aboard the vessel must abide by the state's more restrictive regulations.

* * * * *

(c) * * *

(2) A vessel issued an Atlantic Tunas General category permit under paragraph (d) of this section may fish in a recreational HMS fishing tournament if the vessel has registered for, paid an entry fee to, and is fishing under the rules of a tournament that has registered with NMFS' HMS Management Division as required under § 635.5(d). When a vessel issued an Atlantic Tunas General category permit is fishing in such a tournament, such vessel must comply with HMS Angling category regulations, except as provided in 635.4(c)(3).

* * * * *

(d) * * *

(4) A person can obtain a limited access Atlantic Tunas Longline category permit for a vessel only if the vessel has been issued both a limited access permit for shark and a limited access permit, other than handgear, for swordfish. Limited access Atlantic Tunas Longline category permits may only be obtained through transfer from current owners consistent with the provisions under paragraph (l)(2) of this section.

* * * * *

(e) * * *

(1) The only valid Federal commercial vessel permits for sharks are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.

(2) The owner of each vessel used to fish for or take Atlantic sharks or on which Atlantic sharks are retained, possessed with an intention to sell, or

sold must obtain, in addition to any other required permits, only one of two types of commercial limited access shark permits: Shark directed limited access permit or shark incidental limited access permit. It is a rebuttable presumption that the owner or operator of a vessel on which sharks are possessed in excess of the recreational retention limits intends to sell the sharks.

* * * * *

(f) * * *

(1) The owner of each vessel used to fish for or take Atlantic swordfish or on which Atlantic swordfish are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of three types of commercial limited access swordfish permits: Swordfish directed limited access permit, swordfish incidental limited access permit, or swordfish handgear limited access permit. It is a rebuttable presumption that the owner or operator of a vessel on which swordfish are possessed in excess of the recreational retention limits intends to sell the swordfish.

(2) The only valid commercial Federal vessel permits for swordfish are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.

* * * * *

(h) * * *

(2) *Limited access permits for swordfish and shark.* See paragraph (l) of this section for transfers of LAPs for shark and swordfish. See paragraph (m) of this section for renewals of LAPs for shark and swordfish.

* * * * *

(l) * * *

(2) * * *

(i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraph (l)(2)(ii) of this section and to the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section, an owner may transfer a shark or swordfish LAP or an Atlantic Tunas Longline category permit to another vessel that he or she owns or to another person. Directed handgear LAPs for swordfish may be transferred to another vessel but only for use with handgear and subject to the upgrading restrictions in paragraph (l)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section. Incidental catch LAPs are not subject to the requirements specified in paragraphs (l)(2)(ii) and (l)(2)(iii) of this section.

(ii) * * *

(B) Subsequent to the issuance of a limited access permit, the vessel's horsepower may be increased only once, relative to the baseline specifications of the vessel originally issued the LAP, whether through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the baseline specifications of the vessel originally issued the LAP.

(C) Subsequent to the issuance of a limited access permit, the vessel's length overall, gross registered tonnage, and net tonnage may be increased only once, relative to the baseline specifications of the vessel originally issued the LAP, whether through refitting, replacement, or transfer. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the baseline specifications of the vessel originally issued the LAP. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

* * * * *

(viii) As specified in paragraph (f)(4) of this section, a directed or incidental LAP for swordfish, a directed or an incidental catch LAP for shark, and an Atlantic Tunas Longline category permit are required to retain swordfish. Accordingly, a LAP for swordfish obtained by transfer without either a directed or incidental catch shark LAP or an Atlantic tunas Longline category permit will not entitle an owner or operator to use a vessel to fish in the swordfish fishery.

(ix) As specified in paragraph (d)(4) of this section, a directed or incidental LAP for swordfish, a directed or an incidental catch LAP for shark, and an Atlantic Tunas Longline category permit are required to retain Atlantic tunas taken by pelagic longline gear. Accordingly, an Atlantic Tunas Longline category permit obtained by transfer without either a directed or incidental catch swordfish or shark LAP will not entitle an owner or operator to use the permitted vessel to fish in the Atlantic tunas fishery with pelagic longline gear.

(m) * * *

(1) *General.* Persons must apply annually for a dealer permit for Atlantic tunas, sharks, and swordfish, and for an Atlantic HMS Angling, HMS Charter/Headboat, tunas, shark, or swordfish vessel permit. Except as specified in the instructions for automated renewals, a renewal application must be submitted to NMFS, along with a copy of a valid workshop certificate, if required pursuant to § 635.8, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit provided that the specific requirements for the requested permit are met, including those described in paragraph (l)(2) of this section, all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in § 635.5, the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section, and the workshop requirements specified in § 635.8 are met.

(2) *Shark, swordfish, and tuna longline LAPs.* The owner of a vessel of the United States that fishes for, possesses, lands or sells shark or swordfish from the management unit, or takes or possesses such shark or swordfish as incidental catch or that fishes for Atlantic tunas with longline gear must have the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section. Only persons holding a non-expired limited access permit(s) in the preceding year are eligible for renewal of a limited access permit(s). Limited access permits that have been transferred according to the procedures of paragraph (l) of this section are not eligible for renewal by the transferor.

10. In § 635.5, paragraph (a)(4) is removed; paragraphs (a)(5) and (a)(6) are redesignated as paragraphs (a)(4) and (a)(5), respectively; and paragraphs (a)(1), (b)(2)(i)(A), (b)(2)(i)(B), (b)(3), (c)(2) and (d) are revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(1) If an owner of an HMS Charter/Headboat, an Atlantic Tunas, a shark, or a swordfish vessel, for which a permit has been issued under § 635.4(b), (d), (e), or (f), is selected for logbook reporting in writing by NMFS, he or she must maintain and submit a fishing record on a logbook form specified by NMFS. Entries are required regarding the vessel's fishing effort and the number of fish landed and discarded. Entries on a day's fishing activities must be entered on the logbook form within 48 hours of completing that day's activities or before offloading, whichever is sooner. The owner or operator of the vessel must submit the logbook form(s) postmarked within 7 days of offloading all Atlantic HMS. If no fishing occurred during a calendar month, a no-fishing form so stating must be submitted postmarked no later than 7 days after the end of that month. If an

owner of an HMS Charter/Headboat, an Atlantic Tunas, a shark, or a swordfish vessel, for which a permit has been issued under § 635.4(b), (d), (e), or (f), is selected in writing by NMFS to complete the cost-earnings portion of the logbook(s), the owner or operator must maintain and submit the cost-earnings portion of the logbook postmarked no later than 30 days after completing the offloading for each trip fishing for Atlantic HMS during that calendar year, and submit the annual cost-earnings form(s) postmarked no later than January 31 of the following year.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) *Landing reports.* Each dealer issued an Atlantic tunas permit under § 635.4 must submit a completed landing report on a form available from NMFS for each BFT received from a U.S. fishing vessel. Such report must be submitted by electronic facsimile (fax) or, once available, via the Internet, to a number or a web address designated by NMFS not later than 24 hours after receipt of the BFT. A landing report must indicate the name and permit number of the vessel that landed the BFT and must be signed by the permitted vessel's owner or operator immediately upon transfer of the BFT. The dealer must inspect the vessel's permit to verify that the required vessel name and vessel permit number as listed on the permit are correctly recorded on the landing report and to verify that the vessel permit has not expired.

(B) *Bi-weekly reports.* Each dealer issued an Atlantic tunas permit under § 635.4 must submit a bi-weekly report on forms available from NMFS for BFT received from U.S. vessels. For BFT received from U.S. vessels on the 1st through the 15th of each month, the dealer must submit the bi-weekly report form to NMFS postmarked or , once available, electronically submitted via the Internet not later than the 25th of that month. Reports of BFT received on the 16th through the last day of each month must be postmarked or, once available, electronically submitted via the Internet not later than the 10th of the following month.

* * * * *

(3) *Recordkeeping.* Dealers must retain at their place of business a copy of each report required under paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2)(i) of this section for a period of 2 years from the date on which each report was required to be submitted.

(c) * * *

(2) *Billfish and North Atlantic swordfish.* The owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all non-tournament landings of Atlantic blue marlin, Atlantic white marlin, and Atlantic sailfish, and all non-tournament and non-commercial landings North Atlantic swordfish to NMFS by calling a number designated by NMFS within 24 hours of the landing. No white marlin from the management unit may be taken, retained, or possessed from January 1, 2007, through December 31, 2011, inclusive, as specified in § 635.22(b). For telephone reports, a contact phone number must be provided so that a NMFS designee can call the vessel owner back for follow up questions and to provide a confirmation of the reported landing. The telephone landing report has not been completed unless the vessel owner has received a confirmation number from a NMFS designee.

* * * * *

(d) *Tournament operators.* A tournament operator must register with the NMFS' HMS Management Division all tournaments that are conducted from a port in an Atlantic coastal state, including the U.S. Virgin Islands and Puerto Rico, at least 4 weeks prior to commencement of the tournament by indicating the purpose, dates, and location of the tournament. Tournament registration is not considered complete unless the operator has received a confirmation number from the NMFS' HMS Management Division. NMFS will notify a tournament operator in writing when his or her tournament has been selected for reporting. Tournament operators that are selected to report must maintain and submit to NMFS a record of catch and effort on forms available from NMFS. Tournament operators must submit the completed forms to NMFS, at an address designated by NMFS, postmarked no later than the 7th day after the conclusion of the tournament, and must attach a copy of the tournament rules.

* * * * *

11. Add § 635.8 under subpart A to read as follows:

§ 635.8 Workshops.

(a) *Protected species release, disentanglement, and identification workshops.* (1) As of January 1, 2007, both owners and operators of vessels that have been issued or are required to have, Atlantic Tuna Longline Category, shark, or swordfish limited access vessel permits, pursuant to § 635.4(d)(4), (e), and (f), and that fish with longline or gillnet gear, must be certified by NMFS as having completed a workshop on the release, disentanglement, and identification of protected species. For the purposes of this section, it is a rebuttable presumption that vessel owners and/or operators fish with longline or gillnet gear if: longline or gillnet gear is onboard the vessel; logbook reports indicate that longline or gillnet gear was used on at least one trip in the preceding year; or in the case of a permit transfer to new owners that occurred less than a year ago, logbook reports indicate that longline or gillnet gear was used on at least one trip since the permit transfer.

(2) NMFS will issue a protected species workshop certificate to any permitted entity or person who has completed the workshop.

(3) The owner of a vessel, that fishes with longline or gillnet gear as specified in paragraph (a)(1) of this section, is required to maintain, and possess on board the vessel, a valid protected species workshop certificate issued to that vessel owner. A copy of a valid protected species workshop certificate issued to the vessel owner for a vessel that fishes with longline or gillnet gear must be included in the application package to renew or obtain an Atlantic Tuna Longline Category, shark, or swordfish limited access permit. An owner who owns multiple vessels will be issued, upon successful completion of one workshop, multiple certificates to cover each vessel that he or she owns. An owner who is also an operator will be issued multiple certificates, one for the vessel and one for the operator.

(4) An operator that fishes with longline or gillnet gear as specified in paragraph (a)(1) of this section must possess on board the vessel a valid protected species workshop certificate issued to that operator, in addition to a certificate issued to the vessel owner.

(5) All owners and operators that, as documented by workshop facilitators, attended and successfully completed industry certification workshops, held on April 8, 2005, in Orlando, FL, and on June 27, 2005, in New Orleans, LA, will automatically receive valid protected species workshop certificates issued by NMFS no later than December 31, 2006.

(b) *Atlantic HMS identification workshops.* (1) As of January 1, 2007, all Federal Atlantic shark dealers permitted or required to be permitted pursuant to § 635.4(g)(2), or a proxy as specified in paragraph (b)(4), must be certified by NMFS as having completed a workshop on the identification of HMS.

(2) NMFS will issue an Atlantic HMS identification workshop certificate to any permitted entity or a proxy who has completed a workshop.

(3) Dealers who own multiple businesses and who attend and successfully complete the workshop themselves will be issued multiple certificates to cover each place of business that he or she owns.

(4) Dealers may send a proxy to the workshops. If a dealer opts to send a proxy, the dealer must designate a proxy from each place of business covered by the dealer's permit issued pursuant to § 635.4(g)(2). The proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, or first receipt of fish as they are offloaded from a vessel; and is involved in filling out dealer reports as required under § 635.5. Only one certificate will be issued to each proxy. If a proxy leaves the employment of a place of business covered by the dealer's permit, the dealer or another proxy must be certified as having completed a workshop pursuant to this section.

(5) A Federal Atlantic shark dealer issued or required to be issued a shark dealer permit pursuant to § 635.4(g)(2) must maintain and make available for inspection, at each place of business, a valid Atlantic HMS identification workshop certificate. A copy of this certificate issued to the dealer or proxy must be included in the dealer's application package to obtain or renew a shark dealer permit.

(c) *Terms and conditions.* (1) Certificates, as described in paragraphs (a) and (b) of this section, are valid for three calendar years from the date of issuance. All certificates must be renewed every three years.

(2) If a vessel fishes with longline or gillnet gear as described in paragraph (a), the vessel's owner cannot renew his or her Atlantic tunas Longline Category, shark, or swordfish limited access permit issued pursuant to § 635.4(d)(4), (e), or (f) without a valid protected species workshop certificate.

(3) An operator of a vessel that fishes with longline or gillnet gear as described in paragraph (a) and that has been or should be issued a limited access permit pursuant to § 635.4(d)(4), (e), or (f), cannot fish without valid protected species workshop certificates issued to both the owner of that vessel and operator on board that vessel.

(4) An Atlantic shark dealer cannot receive, purchase, trade, or barter for Atlantic shark without a valid Atlantic HMS identification workshop certificate on the premises of each business location. An Atlantic shark dealer cannot renew a Federal dealer permit issued pursuant to § 635.4(g)(2) without a valid Atlantic HMS identification workshop certificate.

(5) A vessel owner, operator, shark dealer, or proxy for a shark dealer who is issued either a protected species workshop certificate or an Atlantic HMS identification workshop certificate cannot transfer that certificate to another person.

(6) Vessel owners issued a valid protected species workshop certificate can request, in the application for permit transfer per § 635.4(l)(2), additional protected species workshop certificates for additional vessels that they own. Shark dealers can request from NMFS additional Atlantic HMS identification workshop certificates for additional places of business that they own provided that they, and not a proxy, were issued the certificate. Any additional certificates will expire three years after the workshop was attended and successfully completed, not three years after the request for an additional certificate.

12. In § 635.20, paragraph (d)(2) is revised; and paragraph (d)(4) is added to read as follows:

§ 635.20 Size limits.

* * * * *

(d) * * *

(2) No person shall take, retain or possess a white marlin taken from its management unit that is less than 66 inches (168 cm), LJFL. No white marlin from the management unit may be taken, retained or possessed from January 1, 2007, through December 31, 2011, inclusive, as specified in § 635.22(b).

* * * * *

(4) The Atlantic blue and white marlin minimum size limits, specified in paragraphs (d)(1) and (d)(2) of this section, may be adjusted to sizes between 117 and 138 inches and 70 and 79 inches, respectively, to achieve, but not exceed, the annual Atlantic marlin landing limit specified in § 635.27(d). No white marlin from the management unit may be taken, retained, or possessed from January 1, 2007, through December 31, 2011, inclusive, as specified in § 635.22(b). Minimum size limit increases will be based upon a review of landings, the period of time remaining until conclusion of the current fishing year, current and historical landing trends, and any other relevant factors. NMFS will adjust the minimum size limits specified in this section by filing an adjustment with the Office of the Federal Register for publication. In no case shall the adjustments be effective less than 5 days after the date of publication. The adjusted minimum size limits will remain in effect through the end of the applicable fishing year or until otherwise adjusted.

* * * * *

13. In § 635.21, paragraphs (a)(2), (a)(4), (b), (c)(1), (c)(2)(ii), (c)(2)(iii), (c)(2)(iv), (c)(2)(v) introductory text, (e)(1) introductory text, (e)(1)(i), (e)(1)(ii), (e)(1)(iii), (e)(2)(i), (e)(2)(ii), and (e)(4)(iii) are revised; and paragraphs (d)(4), (e)(2)(iii), and (f) are added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

(a) * * *

(2) If a billfish is caught by a hook and not retained, the fish must be released by cutting the line near the hook or by using a dehooking device, in either case without removing the fish from the water.

* * * * *

(4) *Area closures for all Atlantic HMS fishing gears.* (i) No person may fish for, catch, possess, or retain any Atlantic highly migratory species or anchor a fishing vessel that has been issued a permit or is required to be permitted under this part, in the areas designated at § 622.34(d) of this chapter.

(ii) From November through April of each year until June 16, 2010, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson closed area or the Steamboat Lumps closed area, as defined in § 635.2.

(iii) From May through October of each year until June 16, 2010, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson or the Steamboat Lumps closed areas except for surface trolling.

(iv) For the purposes of this paragraph, surface trolling is defined as fishing with lines trailing behind a vessel which is in constant motion at speeds in excess of four knots with a visible wake. Such trolling may not involve the use of down riggers, wire lines, planers, or similar devices.

(b) *General.* No person may fish for, catch, possess, or retain any Atlantic HMS other than with the primary gears, which are the gears specifically authorized in this part. Consistent with paragraphs (a)(1) and (a)(2) of this section, secondary gears may be used to aid and assist in subduing, or bringing on board a vessel, Atlantic HMS that have first been caught or captured using primary gears. For purposes of this part,

secondary gears include, but are not limited to, dart harpoons, gaffs, flying gaffs, tail ropes, etc. Secondary gears may not be used on free-swimming HMS. A vessel using or having onboard in the Atlantic Ocean any unauthorized gear may not have an Atlantic HMS on board.

(c) * * *

(1) If a vessel issued or required to be issued a permit under this part is in a closed area designated under paragraph (c)(2) of this section and has a bottom longline onboard, the vessel may not, at any time:

(i) Possess or land any pelagic species listed in Table 2 of Appendix A to this part in excess of 5 percent, by weight, of the weight of demersal species possessed or landed, that are listed in Table 3 of Appendix A to this part; and

(ii) Possess or deploy more than 70 fishing floats.

(2) * * *

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

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

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

(v) In the Northeast Distant gear restricted area at any time, unless persons onboard the vessel comply with the following:

* * * * *

(d) * * *

(4) If a vessel issued or required to be issued a permit under this part is in a closed area designated under paragraph (d)(1) of this section and has a pelagic longline onboard, the vessel may not, at any time:

(i) Possess or land any demersal species listed in Table 3 of Appendix A to this part in excess of 5 percent, by weight, of the weight of pelagic species possessed or landed, that are listed in Table 2 of Appendix A to this part; and

(ii) Possess or deploy less than 71 fishing floats.

(e) * * *

(1) *Atlantic tunas.* A person that fishes for, retains, or possesses an Atlantic bluefin tuna may not have on board a vessel, use on board the vessel, or deploy green-stick gear or any primary gear other than those authorized for the category for which the Atlantic tunas or HMS permit has been issued for such vessel. Primary gears are the gears specifically authorized in this section. When fishing for Atlantic tunas other than BFT, primary fishing gear authorized for any Atlantic Tunas permit category may be used, except that purse seine gear may be used only on board vessels permitted in the Purse Seine category and pelagic longline gear may be used only on board vessels issued an Atlantic Tunas Longline category tuna permit, a LAP other than handgear for swordfish, and a LAP for sharks.

(i) *Angling.* Rod and reel (including downriggers), handline, and speargun gear.

(ii) *Charter/Headboat.* Rod and reel (including downriggers), bandit gear, handline, speargun gear, and green-stick gear (on non for-hire trips).

(iii) *General.* Rod and reel (including downriggers), handline, harpoon, bandit gear, and green-stick gear.

* * * * *

(2) * * *

(i) Only persons who have been issued an HMS Angling or a Charter/Headboat permit, or who have been issued an Atlantic Tunas General category permit and are participating in a tournament as provided in § 635.4(c) of this part, may possess a blue marlin or white marlin in, or take a blue marlin or a white marlin from, its management unit. Blue marlin or white marlin may only be harvested by rod and reel. No white marlin from the management unit may be taken, retained, or possessed from January 1, 2007, through December 31, 2011, inclusive.

(ii) Only persons who have been issued an HMS Angling or a Charter/Headboat permit, or who have been issued an Atlantic Tunas General category permit and are participating in a tournament as provided in § 635.4(c) of this part, may possess or take a sailfish shoreward of the outer boundary of the Atlantic EEZ. Sailfish may only be harvested by rod and reel.

(iii) Persons who have been issued or are required to be issued a permit under this part and who are participating in a tournament, as defined in § 635.2, for Atlantic billfish must deploy only non-offset circle hooks when using natural bait or natural bait/artificial lure combinations, and may not deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination.

* * * * *

(4) * * *

(iii) A person aboard a vessel issued or required to be issued a directed handgear LAP for Atlantic swordfish may not fish for swordfish with any gear other than handgear. Vessels that have been issued or that are required to have been issued a directed or handgear swordfish limited access permit under this part and that are utilizing buoy gear may not possess or deploy more than 35 individual buoys per vessel. All deployed buoy gear must have monitoring equipment affixed to it including, but not limited to, radar reflectors, beeper devices, lights, or reflective tape. If only reflective tape is affixed, the vessel deploying the buoy gear must possess an operable spotlight capable of illuminating deployed buoys. A swordfish will be deemed to have been harvested by longline when the fish is on board or offloaded from a vessel using or having on board longline gear.

* * * * *

(f) *Speargun gear.* Persons authorized to fish for Atlantic tunas using speargun gear, as specified in paragraph (e)(1) of this section, must be physically in the water when the speargun is fired, and may freedive, use SCUBA or other underwater breathing devices. Only free-swimming fish, not those restricted by fishing lines or other means may be taken by speargun gear. Powerheads, as defined at § 600.10 of this part, are not allowed to be used to harvest or fish for tunas with speargun gear.

14. In § 635.22, paragraphs (b) and (c) are revised to read as follows:

§ 635.22 Recreational retention limits.

* * * * *

(b) *Billfish.* No longbill spearfish from the management unit may be taken, retained, or possessed shoreward of the outer boundary of the EEZ. No white marlin from the management unit may be taken, retained, or possessed from January 1, 2007, through December 31, 2011, inclusive.

(c) *Sharks.* One shark from either the large coastal, small coastal, or pelagic group may be retained per vessel per trip, subject to the size limits described in § 635.20(e), and, in addition, one Atlantic sharpnose shark and one bonnethead shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark and one bonnethead shark per person may be possessed on board a vessel. No prohibited sharks, including parts or pieces of prohibited sharks, from the management unit, which are listed in Table 1 of Appendix A to this part under prohibited sharks, may be retained. The recreational retention limit for sharks applies to any person who fishes in any manner, except to a person aboard a vessel which has been issued an Atlantic shark LAP under § 635.4. If an Atlantic shark quota is closed under § 635.28, the recreational retention limit for sharks may be applied to persons aboard a vessel issued an Atlantic shark LAP under § 635.4, only if that vessel has also been issued an HMS Charter/

Headboat permit issued under § 635.4 and is engaged in a for-hire fishing trip.

* * * * *

15. In § 635.23, paragraphs (a)(4), (b)(3), and (f)(3) are revised to read as follows:

§ 635.23 Retention limits for BFT.

* * * * *

(a) * * *

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel. Such increase or decrease will be based on the criteria provided under § 635.28(a)(8). NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing an adjustment with the Office of the Federal Register for publication. In no case shall such adjustment be effective less than 3 calendar days after the date of filing with the Office of the Federal Register, except that previously designated RFDs may be waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT under § 635.26.

(b) * * *

(3) *Changes to retention limits.* To provide for maximum utilization of the quota for BFT, over the longest period of time, NMFS may increase or decrease the retention limit for any size class BFT, or change a vessel trip limit to an angler trip limit and vice versa. Such increase or decrease in retention limit will be based on the criteria provided under § 635.28 (a)(8). Such adjustments to the retention limits may be applied separately for persons aboard a specific vessel type, such as private vessels, headboats, or charter boats. NMFS will adjust the daily retention limit specified in paragraph (b)(2) of this section by filing an adjustment with the Office of the Federal Register for publication. In no case shall such adjustment be effective less than 3 calendar days after the date of filing with the Office of the Federal Register.

* * * * *

(f) * * *

(3) For pelagic longline vessels fishing in the Northeast Distant gear restricted area, under the exemption specified at § 635.21(c)(2)(v), all BFT taken incidental to fishing for other species while in that area may be retained up to the available quota as specified in § 635.27(a), notwithstanding the retention limits and target catch requirements specified in paragraph (f)(1) of this section. Once the available quota as specified in § 635.27(a) has been attained, the target catch requirements specified in paragraph (f)(1) of this section apply.

* * * * *

16. In § 635.24, paragraphs (a)(1), (a)(2), (b)(1), and the first sentence in paragraph (b)(2) are revised; and paragraph (a)(3) is added to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

* * * * *

(a) * * *

(1) Persons who own or operate a vessel that has been issued a directed LAP for shark may retain, possess or land no more than 4,000 lb (1,814 kg) dw of LCS per trip.

(2) Persons who own or operate a vessel that has been issued an incidental catch LAP for sharks may retain, possess or land no more than 5 LCS and 16 SCS and pelagic sharks, combined, per trip.

(3) Persons who own or operate a vessel that has been issued an incidental or directed LAP for sharks may not retain, possess, land, sell, or purchase a prohibited shark, including parts or pieces of prohibited sharks, which are listed in Table 1 of Appendix A to this part under prohibited sharks.

(b) * * *

(1) Persons aboard a vessel that has been issued an incidental LAP for swordfish may retain, possess, or land no more than two swordfish per trip in or from the Atlantic Ocean north of 5° N. lat.

(2) Persons aboard a vessel in the squid trawl fishery that has been issued an incidental LAP for swordfish may retain, possess, or land no more than five swordfish per trip in or from the Atlantic Ocean north of 5° N. lat. * * *

17. In § 635.27, paragraphs (a) introductory text, (a)(1) introductory text, (a)(1)(i), (a)(1)(iii), (a)(2), (a)(3), (a)(4)(i), (a)(4)(iii), (a)(5), (a)(6), (a)(7)(i), (a)(7)(ii), (a)(8), (a)(9), (b)(1) introductory text, (c)(1)(i)(A), (c)(1)(i)(C), (c)(1)(ii), (c)(2)(i), (c)(2)(iv), and (c)(3) are revised; paragraph (a)(7)(iii) is removed; and paragraphs (a)(10) and (d) are added to read as follows:

§ 635.27 Quotas.

(a) *BFT.* Consistent with ICCAT recommendations, NMFS will subtract any allowance for dead discards from the fishing year's total U.S. quota for BFT that can be caught, and allocate the remainder to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The total landing quota will be divided among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories. Consistent with these allocations and other applicable restrictions of this part, BFT may be taken by persons aboard vessels issued Atlantic Tunas permits, HMS Angling permits, or HMS Charter/Headboat permits. The BFT baseline annual landings quota is 1,464.6 mt, not inclusive of an additional, annual 25 mt allocation provided in paragraph (a)(3) of this section. Allocations of this baseline annual landings quota will be made according to the following percentages: General - 47.1 percent (689.8 mt); Angling - 19.7 percent (288.6 mt), which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent (57.1 mt); Purse Seine - 18.6 percent (272.4 mt); Longline - 8.1 percent (118.6 mt), which does not include the additional annual 25 mt allocation provided in paragraph (a)(3) this section; and Trap - 0.1 percent (1.5 mt). The remaining 2.5 percent (36.6 mt) of the baseline annual landings quota will be held in reserve for inseason or annual adjustments based on the criteria in paragraph (a)(8) of this section. NMFS may apportion a landings quota allocated to any category to specified fishing periods or to geographic areas and will make annual adjustments to quotas, as specified in paragraph (a)(10) of this section. BFT landings quotas are specified in whole weight.

(1) *General category landings quota.* Consistent with the Administrative Procedure Act and in accordance with the framework procedures of the HMS FMP, NMFS will publish in the **Federal Register**, prior to the beginning of each fishing year or as early as feasible, the General category effort control schedule, including daily retention limits and restricted-fishing days.

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category landings quota. See § 635.23(c)(3) regarding landings by vessels with an HMS Charter/Headboat permit that are counted against the baseline General category landings quota. The amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the baseline General category landings quota is 47.1 percent (689.8 mt) of the overall baseline annual BFT landings quota, and is apportioned as follows:

(A) June 1 through August 31 - 50 percent (344.9 mt);

(B) September 1 through September 30 - 26.5 percent (182.8 mt);

(C) October 1 through November 30 - 13 percent (89.7 mt);

(D) December 1 through December 31 - 5.2 percent (35.9 mt); and

(E) January 1 through January 31 - 5.3 percent (36.5 mt).

* * * * *

(iii) When the coastwide General category fishery has been closed in any quota period specified under paragraph (a)(1)(i) of this section, NMFS will publish a closure action as specified in § 635.28. The subsequent time-period subquota will automatically open in accordance with the dates specified under paragraph (a)(1)(i) of this section.

(2) *Angling category landings quota.* Consistent with the Administrative Procedure Act and in accordance with the framework procedures of the HMS FMP, prior to each fishing year or as early as feasible, NMFS will set the Angling category daily retention limits. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 19.7 percent (288.6 mt) of the overall annual U.S. BFT baseline landings quota. No more than 2.3 percent (6.6 mt) of the annual Angling category landings quota may be large medium or giant BFT and, over each 4–consecutive-year period (starting in 1999, inclusive), no more than 8 percent of the overall U.S. BFT baseline landings quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school BFT. The Angling category landings quota includes the amount of school BFT held in reserve as specified under paragraph (a)(7)(ii) of this section.

(3) *Longline category quota.* The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels for which Longline category Atlantic Tunas permits have been issued is 8.1 percent (118.6 mt) of the overall U.S. BFT quota. No more than 60.0 percent of the Longline category quota may be allocated for landing in the area south of 31°00′; N. lat. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area as specified at § 635.23(f)(3).

(4) * * *

(i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Purse Seine category Atlantic Tunas permits have been issued is 18.6 percent (272.4 mt) of the overall U.S. BFT baseline landings quota. The directed purse seine fishery for BFT commences on July 15 of each year unless NMFS takes action to delay the season start date. Based on cumulative and projected landings in other commercial fishing categories, and the potential for gear conflicts on the fishing grounds or market impacts due to oversupply, NMFS may delay the BFT purse seine season start date from July 15 to no later than August 15 by filing an adjustment with the Office of the Federal Register for publication. In no case shall such adjustment be filed less than 14 calendar days prior to July 15.

* * * * *

(iii) On or about May 1 of each year, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel permit holders so requesting, adjusted as necessary to account for underharvest or overharvest by each participating vessel or the vessel it replaces from the previous fishing year, consistent with paragraph (a)(10)(i) of this section. Such allocations are freely transferable, in whole or in part, among vessels that have Purse Seine category Atlantic Tunas permits. Any purse seine vessel permit holder intending to land bluefin tuna under an allocation transferred from another purse seine vessel permit holder must provide written notice of such intent to NMFS, at an address designated by NMFS, 3 days before landing any such bluefin tuna. Such notification must include the transfer date, amount (in metric tons) transferred, and the permit numbers of vessels involved in the transfer. Trip or seasonal catch limits otherwise applicable under § 635.23(e) are not altered by transfers of bluefin tuna allocation. Purse seine vessel permit holders who, through landing and/or transfer, have no remaining bluefin tuna allocation may not use their permitted vessels in any fishery in which Atlantic bluefin tuna might be caught, regardless of whether bluefin tuna are retained.

* * * * *

(5) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels for which Harpoon category Atlantic Tunas permits have been issued is 3.9 percent (57.1 mt) of the overall U.S. BFT baseline quota. The Harpoon category fishery closes on November 15 each year.

(6) *Trap category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Trap category Atlantic Tunas permits have been issued is 0.1 percent (1.5 mt) of the overall U.S. BFT baseline quota.

(7) * * *

(i) The total amount of BFT that is held in reserve for inseason or annual adjustments and fishery-independent research using quotas or subquotas is 2.5 percent (36.6 mt) of the overall U.S. BFT baseline quota. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of this reserve for inseason or annual adjustments to any category quota in the fishery.

(ii) The total amount of school BFT that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (36.6 mt) of the total school BFT quota for the Angling category as described under paragraph (a)(2) of this section, which is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school BFT held in reserve for inseason or annual adjustments to the Angling category.

(8) *Determination criteria.* NMFS will file with the Office of the Federal Register for publication notification of any inseason or annual adjustments. Before making any such adjustment, NMFS will consider the following criteria and other relevant factors:

(i) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock.

(ii) The catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made.

(iii) The projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year.

(iv) The estimated amounts by which quotas for other gear categories of the fishery might be exceeded.

(v) Effects of the adjustment on BFT rebuilding and overfishing.

(vi) Effects of the adjustment on accomplishing the objectives of the Fishery Management Plan.

(vii) Variations in seasonal distribution, abundance, or migration patterns of BFT.

(viii) Effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota.

(ix) Review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

(9) *Inseason adjustments.* Within a fishing year, NMFS may transfer quotas among categories or, as appropriate, subcategories, based on the criteria in

paragraph (a)(8) of this section. NMFS may transfer inseason any portion of the remaining quota of a fishing category to any other fishing category or to the reserve as specified in paragraph (a)(7) of this section.

(10) *Annual adjustments.* (i) If NMFS determines, based on landings statistics and other available information, that a BFT quota for any category or, as appropriate, subcategory has been exceeded or has not been reached, with the exception of the Purse Seine category, NMFS shall subtract the overharvest from, or add the underharvest to, that quota category for the following fishing year. These adjustments would be made provided that the underharvest being carried forward does not exceed 100 percent of the each category's baseline allocation specified in paragraph (a) of this section, and the total of the adjusted category quotas and the reserve are consistent with ICCAT recommendations. For the Purse Seine category, if NMFS determines, based on landings statistics and other available information, that a purse seine vessel's allocation, as adjusted, has been exceeded or has not been reached, NMFS shall subtract the overharvest from, or add the underharvest to, that vessel's allocation for the following fishing year. Purse seine vessel adjustments would take place provided that the underharvest being carried forward does not exceed 100 percent of the purse seine category baseline allocation. Any of the above unharvested quota amounts being carried forward that exceed the 100 percent limit will be transferred to the reserve, or another domestic quota category provided the transfers are consistent with paragraph (a)(8) of this section.

(ii) NMFS may allocate any quota remaining in the reserve at the end of a fishing year to any fishing category, provided such allocation is consistent with the criteria specified in paragraph (a)(8) of this section.

(iii) Regardless of the estimated landings in any year, NMFS may adjust the annual school BFT quota to ensure that the average take of school BFT over each 4–consecutive-year period beginning in the 1999 fishing year does not exceed 8 percent by weight of the total U.S. BFT baseline quota for that period.

(iv) If NMFS determines that the annual dead discard allowance has been exceeded in one fishing year, NMFS shall subtract the amount in excess of the allowance from the amount of BFT that can be landed in the subsequent fishing year by those categories accounting for the dead discards. If NMFS determines that the annual dead discard allowance has not been reached, NMFS may add one-half of the remainder to the amount of BFT that can be landed in the subsequent fishing year. Such amount may be allocated to individual fishing categories or to the reserve.

(v) NMFS will file any annual adjustment with the Office of the Federal Register for publication and specify the basis for any quota reductions or increases made pursuant to this paragraph (a)(10).

(b) * * *

(1) *Commercial quotas.* The commercial quotas for sharks specified in paragraphs (b)(1)(i) through (b)(1)(vi) of this section apply to sharks harvested from the management unit, regardless of where harvested. Commercial quotas are specified for each of the management groups of large coastal sharks, small coastal sharks, and pelagic sharks. No prohibited sharks, including parts or pieces of prohibited sharks, which are listed in Section D. of Table 1 of appendix A to this part, may be retained except as authorized under § 635.32.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) A swordfish from the North Atlantic swordfish stock caught prior to the directed fishery closure by a vessel for which a directed or handgear swordfish limited access permit has been issued is counted against the directed fishery quota. The annual fishery quota, not adjusted for over-or underharvests, is 2,937.6 mt dw. The annual quota is subdivided into two equal semiannual quotas: one for January 1 through June 30, and the other for July 1 through December 31.

* * * * *

(C) All swordfish discarded dead from U.S. fishing vessels, regardless of whether such vessels are permitted under this part, shall be counted against the annual directed fishing quota.

* * * * *

(ii) *South Atlantic swordfish.* The annual directed fishery quota for the South Atlantic swordfish stock for the 2005 fishing year is 75.2 mt dw. For the 2006 fishing year and thereafter, the annual directed fishery quota for south Atlantic swordfish is 90.2 mt dw. The entire quota for the South Atlantic swordfish stock is reserved for vessels with pelagic longline gear onboard and for which a directed fishery permit for swordfish has been issued; retention of swordfish caught incidental to other fishing activities or with other fishing gear is prohibited in the Atlantic Ocean south of 5 degrees North latitude.

(2) * * *

(i) NMFS may adjust the July 1 through December 31 semiannual directed fishery quota or, as applicable, the reserve category, to reflect actual directed fishery and incidental fishing category catches during the January 1 through June 30 semiannual period.

* * * * *

(iv) NMFS will file with the Office of the Federal Register for publication any inseason swordfish quota adjustment and its apportionment to fishing categories or to the reserve made under paragraph (c)(2) of this section.

(3) *Annual adjustments.* (i) Except for the carryover provisions of paragraphs (c)(3)(ii) and (iii) of this section, NMFS will file with the Office of the Federal Register for publication any adjustment to the annual quota necessary to meet the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks. Consistent with the APA, NMFS will provide an opportunity for public comment.

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota shall be subtracted from, or added to, the following year's quota for that area. As necessary to meet management objectives, such carryover adjustments may be apportioned to fishing categories and/or to the reserve. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons. NMFS will file with the Office of the Federal Register for publication any adjustment or apportionment made under this paragraph (c)(3)(ii).

(iii) The dressed weight equivalent of the amount by which dead discards exceed the allowance specified at paragraph (c)(1)(i)(C) of this section shall be subtracted from the landings quota in the following fishing year or from the reserve category. NMFS will file with the Office of the Federal Register for publication any adjustment made under this paragraph (c)(3)(iii).

(d) *Atlantic blue and white marlin.* (1) Effective January 1, 2007, and consistent with ICCAT recommendations and domestic management objectives, NMFS will establish the annual landing limit of Atlantic blue and white marlin to be taken, retained, or possessed by persons and vessels subject to U.S. jurisdiction. For the year 2007 and thereafter, this annual landing limit is 250 Atlantic blue and white marlin, combined.

(2) Consistent with ICCAT recommendations and domestic

management objectives, and based on landings statistics, catch rate information, amount of time left in the fishing year, and any other relevant information, if NMFS determines that aggregate landings of Atlantic blue and white marlin exceeded the annual landing limit for a given fishing year, as established in paragraph (d)(1) of this section, NMFS will subtract any overharvest from the landing limit for the following fishing year. If NMFS determines that aggregate landings of Atlantic blue and white marlin were below the annual landing limit for a given fishing year, as established in paragraph (d)(1) of this section, NMFS may add any underharvest to the landing limit for the following fishing year.

(3) Prior to the start of each fishing year or as early as possible, NMFS will file with the Office of the Federal Register for publication the annual recreational marlin landing limit specified in paragraph (d)(1) of this section, adjusted for any overharvest or underharvest, as specified in paragraph (d)(2) of this section.

(4) When the annual marlin landing limit specified in paragraph (d)(3) of this section is reached or projected to be reached, NMFS will file for publication with the Office of the Federal Register an action restricting fishing for Atlantic blue and white marlin to catch-and-release fishing only. In no case shall such adjustment be effective less than 5 days after the date of publication. From the effective date and time of such action until additional landings become available, no blue or white marlin from the management unit may be taken, retained, or possessed.

18. In § 635.28, paragraphs (a)(1) and (a)(3) are revised to read as follows:

§ 635.28 Closures.

(a) * * *

(1) When a BFT quota, other than the Purse Seine category quota specified in § 635.27(a)(4), is reached, or is projected to be reached, NMFS will file a closure action with the Office of the Federal Register for publication. On and after the effective date and time of such action, for the remainder of the fishing year or for a specified period as indicated in the action, fishing for, retaining, possessing, or landing BFT under that quota is prohibited until the opening of the subsequent quota period or until such date as specified in the action.

* * * * *

(3) If NMFS determines that variations in seasonal distribution, abundance, or migration patterns of BFT, or the catch rate in one area, precludes participants in another area from a reasonable opportunity to harvest any allocated domestic category quota, as stated in § 635.27(a), NMFS may close all or part of the fishery under that category. NMFS may reopen it at a later date if NMFS determines that reasonable fishing opportunities are available, i.e., BFT have migrated into the area or weather is conducive for fishing, etc. In determining the need for any such interim closure or area closure, NMFS will also take into consideration the criteria specified in § 635.27(a)(8).

* * * * *

19. In § 635.30, paragraphs (b) and (c)(2) are revised to read as follows:

§ 635.30 Possession at sea and landing.

* * * * *

(b) *Billfish.* Any person that possesses a blue marlin or a white marlin taken from its management unit or a sailfish taken shoreward of the outer boundary of the EEZ or lands a blue marlin or a white marlin in an Atlantic coastal port must maintain such billfish with its head, fins, and bill intact through offloading. Persons may eviscerate such billfish, but it must otherwise be maintained whole. No white marlin from the management unit may be taken, retained, or possessed from January 1, 2007, through December 31, 2011, inclusive, as specified in § 635.22(b).

(c) * * *

(2) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark limited access permit may not fillet a shark at sea. A person may eviscerate and remove the head and fins, except for the second dorsal and anal fin, but must retain the fins with the dressed carcasses. The second dorsal and anal fin must remain on the shark until the shark is offloaded. While on board and when offloaded, wet shark fins may not exceed 5 percent of the dressed weight of the carcasses, in accordance with the regulations at part 600, subpart N, of this chapter.

* * * * *

20. In § 635.31, paragraph (a)(1) is revised to read as follows:

§ 635.31 Restrictions on sale and purchase.

(a) * * *

(1) Persons that own or operate a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit, or a General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic Tunas issued under this part. However, no person shall sell a BFT smaller than the large medium size class. No large medium or giant BFT taken with speargun fishing gear or green-stick gear, shall be sold. Also, no large medium or giant BFT taken by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, shall be sold (see § 635.23(c)). Persons shall sell Atlantic tunas only to a dealer that has a valid permit for purchasing Atlantic tunas issued under this part.

* * * * *

21. In § 635.34, paragraphs (a) and (b) are revised; and paragraph (d) is added to read as follows:

§ 635.34 Adjustment of management measures.

(a) NMFS may adjust the catch limits for BFT, as specified in § 635.23; the quotas for BFT, shark and swordfish, as specified in § 635.27; the marlin landing limit, as specified in § 635.27(d); and the minimum sizes for Atlantic blue and white marlin, as specified in § 635.20.

(b) In accordance with the framework procedures in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Fishery Management Plan for Atlantic Billfishes, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: maximum sustainable yield or optimum yield levels based on the latest stock assessment or updates in the SAFE report; domestic quotas; recreational and commercial retention limits, including target catch requirements; size limits; fishing years or fishing seasons; shark fishing regions or regional quotas; species in the management unit and the specification of the species groups to which they belong; species in the prohibited shark species group; classification system within shark species groups; permitting and reporting requirements; workshop requirements; Atlantic tunas Purse Seine category cap on bluefin tuna quota; time/area restrictions; allocations among user groups; gear prohibitions, modifications, or use restriction; effort restrictions; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

* * * * *

(d) When considering a framework adjustment to add, change, or modify time/area closures, NMFS will consider, consistent with the FMP, the Magnuson-Stevens Act, and other applicable law, the following: any ESA-related issues, concerns, or requirements, including applicable Biological Opinions; bycatch

rates of protected species, prohibited HMS, or non-target species both within the specified or potential closure area(s) and throughout the fishery; bycatch rates and post-release mortality rates of bycatch species associated with different gear types; new or updated landings, bycatch, and fishing effort data; applicable research; social and economic impacts; and the practicability of implementing new or modified closures compared to other bycatch reduction options. If the species is an ICCAT managed species, NMFS will also consider the overall effect of the United States' catch on that species before implementing time/area closures.

22. In § 635.71, paragraphs (a)(7), (a)(8), (a)(23), (a)(37), (a)(41), (a)(42), (a)(43), (a)(44), (b)(6), (b)(22), (c)(1), (c)(6), (d)(10), (d)(11), (e)(11), and (e)(15) are revised; and paragraphs (a)(48) through (a)(53), (b)(30), (c)(7) through (c)(9), and (d)(14) are added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(7) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 635.5(e) and (f) or § 635.32.

(8) Fail to make available for inspection an Atlantic HMS or its area of custody, as specified in § 635.5(e) and (f).

* * * * *

(23) Fail to comply with the restrictions on use of pelagic longline, bottom longline, gillnet, buoy gear, or speargun gear as specified in § 635.21(c), (d), (e)(3), (e)(4), or (f).

* * * * *

(37) Fail to report to NMFS, at the number designated by NMFS, the incidental capture of listed whales with shark gillnet gear as required by § 635.5.

* * * * *

(41) Fail to immediately notify NMFS upon the termination of a chartering arrangement as specified in § 635.5(a)(5).

(42) Count chartering arrangement catches against quotas other than those defined as the Contracting Party of which the chartering foreign entity is a member as specified in § 635.5(a)(5).

(43) Fail to submit catch information regarding fishing activities conducted under a chartering arrangement with a foreign entity, as specified in § 635.5(a)(5).

(44) Offload charter arrangement catch in ports other than ports of the chartering Contracting Party of which the foreign entity is a member or offload catch without the direct supervision of the chartering foreign entity as specified in § 635.5(a)(5).

* * * * *

(48) Purchase any HMS that was offloaded from an individual vessel in excess of the retention limits specified in §§ 635.23 and 635.24.

(49) Sell any HMS that was offloaded from an individual vessel in excess of the retention limits specified in §§ 635.23 and 635.24.

(50) Fail to be certified for completion of a NMFS protected species workshop, as required in § 635.8(a).

(51) Fail to have on board a vessel the valid protected species workshop certificates issued to the vessel owner and vessel operator as required in § 635.8(a).

(52) Transfer or falsify a NMFS protected species workshop certificate or a NMFS Atlantic HMS identification workshop certificate as specified at § 635.8.

(53) Fish for, catch, possess, retain, or land an Atlantic HMS using, or captured on, buoy gear, as defined at § 635.2, unless the vessel owner has been issued a swordfish directed limited permit or a swordfish handgear limited access permit in accordance with § 635.4(f).

(b) * * *

(6) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a BFT, as specified in § 635.5(c)(1) or (c)(3).

* * * * *

(22) As the owner or operator of a purse seine vessel, fail to comply with the requirement for possession at sea and landing of BFT under § 635.30(a).

* * * * *

(30) Harvest or fish for tunas using spearguns with powerheads, as specified in § 635.21(f).

(c) * * *

(1) As specified in § 635.21(e)(2), retain a billfish harvested by gear other than rod and reel, or retain a billfish on board a vessel unless that vessel has been issued an Atlantic HMS Angling or Charter/Headboat permit or has been issued an Atlantic Tunas General category permit and is participating in a tournament in compliance with § 635.4(c).

* * * * *

(6) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a billfish, as specified in § 635.5(c)(2) or (c)(3).

(7) Deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination when participating in a tournament for Atlantic billfish, as specified in § 635.21(e)(2).

(8) Take, retain, or possess an Atlantic blue or white marlin when the fishery for these species is closed, as specified in § 635.27(d).

(9) Take, retain, or possess an Atlantic white marlin from January 1, 2007, through December 31, 2011, inclusive, as specified in § 635.22(b).

(d) * * *

(10) Retain, possess, sell, or purchase a prohibited shark, including parts or pieces of prohibited sharks, as specified under §§ 635.22(c), 635.24(a)(3), and 635.27(b)(1), or fail to disengage any hooked or entangled prohibited shark with the least harm possible to the animal as specified at § 635.21(d)(3).

(11) Receive, purchase, trade for, or barter for Atlantic shark and fail to be certified for completion of a NMFS Atlantic HMS identification workshop in violation of § 635.8(b).

* * * * *

(14) Receive, purchase, trade for, or barter for Atlantic shark without making available for inspection, at each of the dealer's places of business, a valid Atlantic HMS identification workshop certificate issued by NMFS in violation of § 635.8(b).

(e) * * *

(11) As the owner of a vessel permitted, or required to be permitted, in the swordfish directed or a swordfish handgear limited access permit category, possess or deploy more than 35 individual buoy gears per vessel, or deploy buoy gear without affixed monitoring equipment, as specified at § 635.21(e)(4)(iii).

* * * * *

(15) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a North Atlantic swordfish, as specified in § 635.5(c)(2) or (c)(3).

23. In Appendix A to Part 635, revise Table 2 and add Table 3 to read as follows:

Appendix A to Part 635—Species Tables

* * * * *

TABLE 2 OF APPENDIX A TO PART 635—PELAGIC SPECIES

Albacore tuna, *Thunnus alalunga*
Bigeye tuna, *Thunnus obesus*
Blue shark, *Prionace glauca*
Bluefin tuna, *Thunnus thynnus*
Dolphin fish, *Coryphaena hippurus*
Oceanic whitetip shark, *Carcharhinus longimanus*
Porbeagle shark, *Lamna nasus*
Shortfin mako shark, *Isurus oxyrinchus*
Skipjack tuna, *Katsuwonus pelamis*
Swordfish, *Xiphias gladius*
Thresher shark, *Alopias vulpinus*
Wahoo, *Acanthocybium solandri*
Yellowfin tuna, *Thunnus albacares*

TABLE 3 OF APPENDIX A TO PART 635—DEMERSAL SPECIES

Atlantic sharpnose shark, *Rhizoprionodon terraenovae*
Black grouper, *Mycteroperca bonaci*
Blackfin snapper, *Lutjanus buccanella*
Blacknose shark, *Carcharhinus acronotus*
Blacktip shark, *Carcharhinus limbatus*
Bonnethead shark, *Sphyrna tiburo*
Bull shark, *Carcharhinus leucas*
Cubera snapper, *Lutjanus cyanopterus*
Dog snapper, *Lutjanus jocu*
Finetooth shark, *Carcharhinus isodon*
Gag grouper, *Mycteroperca microlepis*
Great hammerhead shark, *Sphyrna mokarran*
Lane snapper, *Lutjanus synagris*
Lemon shark, *Negaprion brevirostris*
Mangrove snapper, *Lutjanus griseus*
Marbled grouper, *Dermatolepis inermis*
Misty grouper, *Epinephelus mystacinus*
Mutton snapper, *Lutjanus analis*
Nurse shark, *Ginglymostoma cirratum*
Queen snapper, *Etelis oculatus*
Red grouper, *Epinephelus morio*
Red hind, *Epinephelus guttatus*
Red snapper, *Lutjanus campechanus*
Rock hind, *Epinephelus adscensionis*
Sandbar shark, *Carcharhinus plumbeus*
Scalloped hammerhead shark, *Sphyrna lewini*
Schoolmaster snapper, *Lutjanus apodus*
Silk snapper, *Lutjanus vivanus*
Silky shark, *Carcharhinus falciformis*
Smooth hammerhead shark, *Sphyrna zygaena*
Snowy grouper, *Epinephelus niveatus*
Speckled hind, *Epinephelus drummondhayi*
Spinner shark, *Carcharhinus brevipinna*
Tiger shark, *Galeocerdo cuvieri*
Vermilion snapper, *Rhomboplites aurorubens*
Warsaw grouper, *Epinephelus nigritus*
Yellowedge grouper, *Epinephelus flavolimbatus*
Yellowfin grouper, *Mycteroperca venenosa*
Yellowtail snapper, *Ocyurus chrysurus*

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