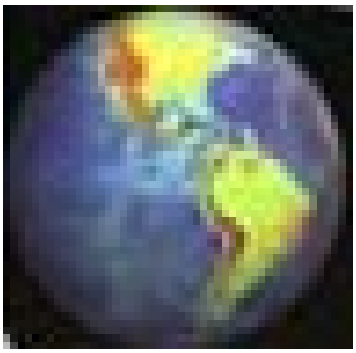
Regulatory Impact Review
and
Final Regulatory Flexibility Analysis
for a

Regulatory Amendment to

Adjust Highly Migratory Species International Trade Permitting and Reporting Requirements



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Highly Migratory Species Management Division
Office of Sustainable Fisheries
National Marine Fisheries Service
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ABSTRACT

Proposed Action:	A Regulatory Amendment to Adjust Highly Migratory Species International Trade Permitting and Reporting Requirements
Type of statement:	Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA)
Lead Agency:	National Marine Fisheries Service (NMFS): Office of Sustainable Fisheries
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Abstract:	This action modifies permitting and reporting requirements for the Highly Migratory Species (HMS) International Trade Permit (ITP) to improve program efficacy and enforceability. The rule requires that shark fin importers, exporters, and re-exporters obtain the HMS ITP for NMFS to better understand commerce of shark fins. The rule implements ICCAT recommendation 07-10, replacing the bluefin tuna statistical document program with a bluefin catch documentation program. Lastly, the rule implements the definition of "import" contained in the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act.

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1.0 PURPOSE AND NEED FOR ACTION

1.1 Management History

Trade related measures are important tools used by regional fishery management organizations (RFMOs) to support fishery management programs. Consignment documentation programs such as statistical document or catch document programs can reinforce conservation and management programs; help discourage illegal, unregulated, and unreported (IUU) fishing; and improve scientific information.

Several RFMOs, including the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Inter-American Tropical Tuna Commission (IATTC), the Indian Ocean Tuna Commission (IOTC), and the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) have instituted statistical document-based consignment tracking programs. Statistical documents are one-page consignment/shipment summaries which include information such as shipment contents and ocean area of harvest for a covered species, and are generated upon export. The document remains with the shipment until the product reaches its final destination, and copies are maintained by government officials of exporting and importing nations. Data summaries are presented to RFMOs and reviewed by member nations on a regular basis.

The United States is authorized under the Atlantic Tunas Convention Act [ATCA; 16 U.S.C. 971(d)3] and the Tuna Conventions Act [TCA, 16 U.S.C. 955] to promulgate regulations as necessary and appropriate to implement conservation and management recommendations that have been adopted by ICCAT and the IATTC, respectively. In 1995, NMFS implemented ICCAT's bluefin tuna statistical document program (60 FR 14381, March 17, 1995), and in 2004, NMFS' program and implementing regulations were expanded to cover frozen bigeye tuna, swordfish, and southern bluefin tuna (69 FR 67268, November 17, 2004). Implementation of a statistical document program for frozen bigeye tuna was based on recommendations from ICCAT, IATTC, and IOTC. The swordfish statistical document program was recommended by ICCAT, and southern bluefin was included based on a recommendation by CCSBT. Although the United States is not a party to IOTC or CCSBT, it is participating in these programs to further conservation efforts for these species, and to ensure enforceability of the ICCAT and IATTC recommended statistical document programs.

NMFS' bluefin tuna statistical document program expansion in 2004 included a permitting requirement for dealers that import, export, or re-export any of the covered species to obtain the newly instituted Highly Migratory Species (HMS) International Trade Permit (ITP) and comply with associated reporting requirements. The current HMS ITP trade tracking program is further described in Chapter 3.0.

In 2007, ICCAT broadened its bluefin tuna statistical document program into a bluefin tuna catch document (BCD) program by adopting ICCAT Recommendation 07-10. The intent of the BCD program is to further track bluefin tuna consignments, beginning at the point of harvest and including transit through farming, and then through

trade. The previous statistical document program only tracked consignments through trade. The intent of the BCD program expansion is to further reduce IUU fishing, access better catch and farming data, and better implement the recovery program for Atlantic bluefin tuna.

1.2 Need for Action and Objectives

Based on experience over the last several years since the HMS ITP program expansion in 2004, NMFS has identified several necessary program adjustments. The specific adjustments addressed by this rulemaking and subsequent alternatives considered for each issue are stated in Chapter 2. In general, regulatory and operational adjustments or clarifications are necessary to improve program efficacy and enforceability. ICCAT Recommendation 07-10, which replaces the ICCAT bluefin tuna statistical documentation program with a BCD program, is also implemented. The BCD program is scheduled for international implementation on July 1, 2008.

Two additional actions are also addressed in this rulemaking. The first updates the HMS regulations with the definition of "import" included in the Magnuson-Stevens Fishery Management and Conservation Reauthorization Act of 2006 (Magnuson-Stevens Reauthorization Act)(Public Law 109-479). The second provides access to some U.S. information on international commerce of shark fins.

Export of shark fins drives much of the Atlantic shark fishery and has contributed to the overfishing of several species and landing of prohibited species in the Atlantic and Gulf of Mexico. The Final Environmental Impact Statement (FEIS) for Draft Amendment 2 to the Consolidated HMS Fishery Management Plan (FMP) (72 FR 41392, July 27, 2007) states that dealers may receive up to $50 per pound for shark fins (dry weight). Several shark stock assessments were completed in 2005 and 2006 that determined that dusky sharks (landing of which is currently prohibited) and sandbar sharks are overfished with overfishing occurring, and that porbeagle sharks are overfished (71 FR 65086, November 7, 2006). Dusky sharks (before their landing was prohibited in 2000) and sandbar sharks have been heavily commercially exploited because of the high value of their fins. Draft Amendment 2 to the Consolidated HMS FMP proposes management measures to rebuild these overfished stocks and prevent overfishing (72 FR 41392, July 27, 2007), and NMFS has previously implemented regulations to control the shark fishery by limiting the amount of shark fins that can be landed relative to the total weight of sharks landed (67 FR 6194, February 11, 2002).

Once shark fins pass beyond the first-receiver of the shark products, it is difficult to track compliance with the shark fishery regulations or trace shark fins to their eventual export. Through this action, NMFS will identify the individuals involved in the shark fin trade to gain a better understanding of shark fin commerce, as well as assist with domestic enforcement of shark fishery regulations. Although the shark fin trade appears to primarily drive the shark fisheries in the Atlantic and Gulf of Mexico, limiting the permitting requirements only to traders of shark fins from these areas could make it easier to circumvent the regulations. This rule forecloses that possibility.

2.0 SUMMARY OF THE ALTERNATIVES

This chapter reviews all of the issues addressed in this rulemaking and the alternatives considered for each issue. The action implemented in this final rule is also identified for each issue.

2.1 Permitting

2.1.1 Importing Entity Responsible for Obtaining the HMS ITP.

One way NMFS establishes accountability for reporting requirements is by defining the party responsible for obtaining a permit. Identification of the appropriate entity (e.g., the entity with access to the required reporting information) covered under the HMS ITP program is particularly difficult since operational practices vary between importers, consignees, and customs brokers. As currently defined in the HMS ITP regulations, the importing entity responsible for obtaining the ITP is set forth as the "consignee" identified in U.S. Customs and Border Protection (CBP) entry summary import documentation. Since the HMS ITP regulations were implemented, NMFS has found that for consignments entered for consumption, the consignee may not always have easy access to the information necessary for completing the reporting requirements.

Difficulty can occur when the ITP holder does not have the responsibility for ensuring that CBP documents are completed, submitted and maintained, and thus may not have easy access to statistical documents or other information required by NMFS under the ITP program reporting regulations. In addition, import entry summaries may not be available until several days after the shipment is imported, so the party responsible for holding the permit may not be identified at the time of import. A bill of lading contains information including the name of the consignee and shipment contents, and is available at the time of entry; however, the consignee on the bill of lading does not always match the consignee on the import entry documentation. These issues have been identified as impacting both the accuracy and completeness of permit holder reporting under the ITP regulations, and can require substantial NMFS staff time following up with permit holders or documenting enforcement cases. In this rulemaking, NMFS considered several alternatives for improving reporting compliance and the operational efficiency of the ITP program.

> ***Final Action*** **(Alternative 1)** – No Action. The consignee as identified on CBP entry documentation will continue to be the entity responsible for obtaining the ITP. This alternative was chosen for enforcement purposes since the consignee would be the actual receiver of the shipment, and would have a U.S. address. It also maintains continuity within current regulations and thus reduces confusion and avoids duplicate reporting responsibilities.
>
> **Alternative 2** – Alternative 2 would require the consignee as identified on CBP entry forms and the bill of lading to be the responsible party (or parties if the

individuals differ on each form) for obtaining the HMS ITP and fulfilling NMFS reporting requirements. This alternative could result in duplicate reporting if consignees identified on CBP entry forms and the bill of lading were different entities and both were required to report.

Alternative 3 – Alternative 3 would require the importer of record identified in CBP entry documentation to obtain the HMS ITP and be responsible for fulfilling the reporting requirements. There is no evidence that suggests the importer of record would have improved access to reporting information.

2.1.2 Foreign Importer Responsible for Obtaining the HMS ITP .

Operationally, it has been unclear who is the party responsible for obtaining and holding the ITP when a foreign importer is bringing product into the United States. Currently the HMS ITP regulations at 50 CFR 300.182(a) cite CBP regulations at 19 CFR 141.18 regarding the importation of goods into the United States by foreign importers. These CBP regulations state that foreign importers must have an authorized resident agent in the state where the port of entry is located, or a resident corporate surety securing the payment of additional duties which may be found due. This CBP regulation facilitates enforcement by ensuring a U.S corporate presence is involved in the transaction and is legally accessible. However, the individual who should actually hold the permit (e.g., the foreign importer, the resident agent) has been unclear in these circumstances.

Alternative 1 – No Action. The regulations regarding the participation of foreign entities in the HMS ITP program would not be clarified.

Final Action (Alternative 2) – The final action adjusts the HMS regulations to clarify that a resident agent or a resident corporate surety provider for a foreign entity importing into or exporting from the United States must obtain the HMS ITP. In order to obtain the HMS ITP, a resident agent or resident corporate surety provider is required to have a U.S. tax identification number. This alternative was chosen because it would limit permit holders to U.S. resident companies for enforcement purposes, would provide consistency with CBP regulations, and would facilitate compliance with the Debt Collection Improvement Act.

2.1.3 Synchronization of Permit Issuance

HMS ITPs are issued by the Southeast Regional Office (SERO) of NMFS under 50 CFR 300.182 (c), which requires an ITP to be issued within 30 days of receipt of a completed application. All other SERO permits including those issued for domestic Atlantic HMS vessels and dealers require a permit applicant to *submit their application* at least 30 days before the date upon which the applicant wants to have it effective (e.g., 50 CFR 622.4 (b)). In order to synchronize regulations for the permit issuing office, NMFS

is considering adjusting the ITP regulations to mirror SERO regulations.

Alternative 1 – No Action. Under this alternative, the HMS ITP regulations would continue to require that NMFS issue an ITP no later than 30 days after a complete application is received by SERO.

Final Action (Alternative 2) – The final action synchronizes ITP regulations with SERO regulations by requiring permit holders to submit their application at least 30 days before the date upon which the applicant wants to have it effective and removes the requirement for an ITP to be issued within 30 days. This alternative was chosen because it provides consistency within NMFS regulations and gives the applicant more input over when the permit is issued.

2.1.4 Permitting of Shark Fin Traders

As discussed in Chapter 1.2, the shark fin export market drives the U.S. Atlantic and Gulf of Mexico shark fisheries, and overfishing of several species and landing of prohibited species can be attributed to the high product value of shark fins. In addition, there is a U.S. market for shark products, and such products are both imported and re-exported. NMFS considered permitting shark fin traders as a way to identify the individuals involved in this activity and gain a better understanding of the commerce of this commodity. The definition of "importer" is discussed under Chapter 2.1.1, and the definition of "exporter" would remain unchanged from current NMFS regulations at 50 CFR part 300 subpart M. Trade permitting would provide information about shark fin traders and provide access to existing records for enforcement purposes.

Alternative 1 – No Action. Under this alternative, shark fin traders are required to obtain an HMS ITP.

Final Action (Alternative *2)* – Under the final action, shark fin traders would be required to obtain an HMS ITP. This alternative was chosen to obtain information on the shark fin trade industry and support regulatory enforcement.

2.2 Reporting

2.2.1 Reporting Timeframes

HMS ITP holders are required to submit a copy of an import statistical document/re-export certificate or export statistical document/re-export certificate to NMFS within 24 hours of import or export (50 CFR 300.185), which provides enforcement access to timely trade data. Upon initial implementation of the original bluefin tuna statistical document program in 1995, 24 hour reporting was intended to prepare the agency to respond to questions from exporting or importing countries, to provide for enforcement of documentation requirements in a timely manner (not

necessarily at time of import/export), and harmonize BFT reporting requirements since domestic dealers were also required to report landings within 24 hours. Since the swordfish statistical document was incorporated in 2004, NMFS has experienced a large increase in documents received because of the large amount of swordfish imports into the United States. Original import statistical documents are ultimately submitted to NMFS along with biweekly dealer reports. Thus, NMFS reconsidered the utility of the 24 hour requirement when compared to the resultant administrative burden for both dealers and the agency in this rulemaking

Additionally in this rulemaking, NMFS is reviewing the date stamp methodology used to determine report receipt. Currently, the HMS ITP and Atlantic Tunas Dealer Permit (ATDP) regulations use a postmark date to indicate timely receipt of biweekly reports, statistical documents, and re-export certificates. However, some post office processes do not include a postmark date, depending upon how the envelope is processed. Use of a received-by date rather than a postmark date is being considered to increase enforceability and more accurately reflect operational practices. Adjustment of other HMS dealer reporting regulations at 50 CFR part 635 to reflect received-by date rather than postmark date was also analyzed in the FEIS for Amendment 2 to the Consolidated HMS FMP (72 FR 41392, July 27, 2007).

Faxing of reports is provided for by some HMS ITP regulations but not addressed in others. Operationally, many non-original reports are currently submitted via fax, which could be the preferred method, since incoming faxes are time and date stamped by the fax machine itself. This could minimize the cost of report submittal for dealers and the date stamping burden on NMFS staff. Clarifying the regulations regarding faxed reports would also provide regulatory compliance criteria, which is currently not available.

Alternative 1 - No Action. Under this alternative, statistical documents and re-export certificates would be required to be submitted to NMFS within 24 hours of trade activity, postmark dates would continue to be the date determination reference, and the use of faxes would continue to be inconsistently addressed in the regulations.

Alternative 2 - Under Alternative 2, NMFS would require that original statistical document/re-export certificates for imports be submitted with biweekly reports within 10 days of the end of a reporting period, and remove the 24 hour requirement for imports.

Final Action (Alternative 3*)* - The final action adjusts HMS ITP and ATDP biweekly reporting regulations to indicate that reports must be received by a date certain rather than postmarked by a date certain. This action was chosen because it establishes consistency within HMS regulations regarding the use of received-by date and provides for all report submission alternatives, including faxes. It also supports regulatory enforcement by continuing to require submission of import statistical documents within 24 hours of receipt.

2.2.2 Implementation of ICCAT Recommendation 07-10

At the 2007 annual ICCAT meeting, the BCD program was adopted in Recommendation 07-10. The purpose of the BCD program is to better account for landed and farmed eastern bluefin tuna, and to further reduce IUU fishing and improve implementation of the Atlantic bluefin tuna recovery plan. The BCD program replaces the bluefin tuna statistical document program, but continues the statistical document trade tracking function with added landing and farming statistical components.

The United States has a sophisticated reporting program that provides commercial Atlantic bluefin tuna landings data to NMFS within 24 hours of landing, and identifies each landed fish with a unique, non-transferable tail tag assigned to the permitted dealer who receives the fish. The operational adjustments required to implement the BCD program for commercial fisheries in the United States are expected to be relatively small, and will incorporate the U.S. tagging program currently in place.

The current U.S. statistical document would be replaced with a U.S. BCD, which would include all the form fields identified as "required" in the instructions accompanying the BCD, and as outlined in the ICCAT Recommendation. The document would be completed for all exports of Atlantic bluefin tuna, and since each fish is tagged, requiring the government to validate the document would be waived. Imports of Atlantic bluefin tuna would be accompanied by a completed BCD issued by the flag nation of the vessel that landed the bluefin tuna. Re-export certificates would continue to be used and would be required for each re-export. Re-exports of untagged bluefin would require additional reporting to the ICCAT Secretariat and government agency of the country of import. For Pacific bluefin tuna, BCDs would be used, but the only required fields proposed for use would contain the information relative to the area of catch and trade information (including validation). This is the same information currently collected for Pacific bluefin tuna on bluefin tuna statistical documents.

Alternative 1 – No Action. Under this alternative, the ICCAT BCD program would not be implemented. This alternative is not preferred because it would not comply with ICCAT recommendation 07-10 or ATCA.

Final Action (Alternative 2*)* – As the final action, NMFS is implementing the ICCAT BCD program for commercial U.S. Atlantic bluefin tuna fisheries and all bluefin tuna trade, including all re-exports. This alternative was chosen to keep the United States in compliance with the ICCAT Recommendation and ensure that U.S. product would be accepted for import by other ICCAT member nations.

2.2.3 Bluefin Tuna Export Reporting Requirements

Prior to implementation of the HMS ITP, the ATDP covered both businesses who purchased Atlantic bluefin tuna from vessels ("landed") and businesses who imported or exported Atlantic bluefin tuna. Some businesses performed both landing and trade transactions (i.e., landing, importing, and exporting) while others either landed or imported/exported Atlantic bluefin tuna. NMFS regulations at that time required that each ATDP holder submit a biweekly report during periods of activity. On occasions when an ATDP holder both landed and then exported a bluefin tuna, only one biweekly report was submitted. However, if an ATDP landed a bluefin tuna, and then sold it to another ATDP to export the fish, two reports were required by the regulations. When two reports were submitted, some of the information was duplicated.

Since the HMS ITP was implemented, similar issues of double-reporting occur. The ITP is required for trade of bluefin tuna, while the ATDP is required to land domestically caught Atlantic bluefin tuna. In circumstances when an Atlantic bluefin is sold by an ATDP to an ITP holder, each is required by the regulations to submit a biweekly report. In addition, in situations where a ATDP holder lands an Atlantic bluefin and then exports it, the ATDP holder is also required to obtain an HMS ITP, and submit two biweekly reports.

NMFS is clarifying reporting responsibilities. Factors that informed NMFS in resolving this issue included minimizing reporting burden, clarifying permit holder reporting responsibilities, and ensuring that accurate and timely domestic and trade data are collected.

Alternative 1 – No Action. Under this alternative, the regulations would not be adjusted.

Alternative 2 – Under Alternative 2, operational procedures would be adjusted to match regulatory requirements. For example, if an HMS ITP holder exported an Atlantic bluefin tuna that had been purchased from an ATDP holder, each would be required to submit a separate report.

Final Action (Alternative 3*)* – The final action adjusts NMFS regulations so that HMS ITP holders are not required to submit a biweekly report for bluefin tuna exports if all the required information is reported on an ATDP biweekly report. This alternative was chosen because it clarifies existing HMS regulations and ensures the reporting burden for export of domestically landed Atlantic bluefin tuna does not overlap with landing reporting requirements.

2.3 Regulatory Structure and Clarifications

2.3.1 Definition of Import

In 2008, the Magnuson-Stevens Reauthorization Act defined import differently than the definition currently included in the HMS ITP regulations. The Magnuson-

Stevens Reauthorization Act defines import as *"… to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing or introduction constitutes an importation within the meaning of the customs laws of the United States; but, (B) does not include any activity described in subparagraph (A) with respect to fish caught in the exclusive economic zone or by a vessel of the United States."* The existing definition of import given in the HMS ITP regulations at 50 CFR part 300 subpart M is "*Import, for purposes of this subpart, generally means the act of bringing or causing any goods to be brought into the customs territory of a country with the intent to unlade them. For purposes of this subpart, goods brought into the United States from a U.S. insular possession, or vice-versa, are not considered imports."*

Implementation of the new definition would impact NMFS regulations in 50 CFR part 300 subpart M in several ways. The new definition is not explicit in its geo-political boundaries, whereas the current definition specifically refers to customs territories. In addition, the new statutory definition does not include the current regulatory definition's specification that goods transiting between the United States and U.S. insular possessions are not considered imports.

Alternative 1 – No Action. Under this alternative, the definition of "import" in the NMFS regulations at 50 CFR part 300 subpart M would remain the same, and would differ from the definition of import in the Magnuson-Stevens Act.

Alternative 2 – Under this alternative, the NMFS regulations at 50 CFR part 300 subpart M would be amended simply with the import definition included in the Magnuson-Stevens Reauthorization Act.

Final Action (Alternative 3*)* – The final action amends NMFS regulations at 50 CFR part 300 subpart M with the import definition included in the Magnuson-Stevens Reauthorization Act. In addition, NMFS regulations are clarified so that movement of covered species between the United States and its insular possessions with separate customs territories does not require consignment documents, possession of an ITP, or other reporting requirements associated with trade. This action was chosen because it provides consistency with the Magnuson-Stevens Act as amended and continues to clearly articulate the applicability of HMS ITP program regulations to shipments between the United States and its insular possessions.

2.3.2 Verification of Foreign Validating Officials

The ICCAT consignment documentation programs require that consignment documents are validated by an authorized government official upon landing or export. Validation provides assurance that the consignment has been recorded with the flag country of the vessel that harvested the consignment. One criterion that can be used for

determining the validity of statistical documents is verification of the foreign validating official. ICCAT provides a password protected website that lists authorized validating officials and seals for consignment documentation programs. NMFS is considering using this information as an option for enhancing enforcement of import consignment documentation requirements.

Currently, the amount of imports covered by consignment documentation programs precludes the ability of NMFS staff to investigate the validation official for every document. Over the last few years, NMFS has received several communications from other ICCAT members regarding the import of product accompanied by statistical documents that were improperly validated. NMFS is considered holding HMS ITP holders accountable for imports of improperly validated documents. However, release of the password protected data to U.S. dealers may not be supported by foreign officials. In addition, it is unclear whether the U.S. government can delegate such a responsibility to private entities. Finally, it is unclear what the consequences might be for shipments that have already entered U.S. commerce if the validation is determined to be inappropriate.

ICCAT recommendation 07-10 emphasized use of the ICCAT website in the BCD program, although the recommendation clarifies that use of the website is voluntary.

Alternative 1 – No Action. Under this alternative, HMS ITP holders would not be required to determine whether imports were properly validated by using the ICCAT password protected website.

Alternative 2 – Under this alternative, HMS ITP holders would be provided with the password for the ICCAT validation website, and would be required to check the ICCAT website for the credentials of foreign validating officials.

Final Action (Alternative 3*)* – As the final action, NMFS will pursue international discussions to continue to improve a coordinated international approach in implementation of ICCAT consignment documentation programs, and ensure the consequences and reporting burden on U.S. importers and U.S. government agencies is appropriate, and to develop a method to ensure proper validation.

2.3.3 Use of Harmonized Tariff Schedule (HTS) Codes

The HTS is a hierarchical structure for categorizing goods in trade for the purposes of duty, quota, and statistics. This structure is based upon the international Harmonized Commodity Description and Coding System (HS), administered by the World Customs Organization in Brussels. The 4- and 6-digit HS product categories are subdivided into 8-digit unique U.S. rate lines and 10-digit non-legal statistical reporting

categories. The classification of goods in this system must be done following the General and Additional U.S. Rules of Interpretation, starting at the 4-digit heading level and then moving to the subordinate categories to find the most specific provision. The U.S. International Trade Commission maintains and publishes the HTS (in print and on-line) pursuant to the Omnibus Trade and Competitiveness Act of 1988; however, CBP is responsible for interpreting and enforcing the HTS. In February 2007, the HTS codes for swordfish were updated and modified.

HTS Codes are used in the HMS ITP regulations to clearly identify import and export products by species and product type. Any codes referenced in the HMS ITP regulations that are modified would need to be updated in the regulations with a rulemaking. If the codes in the regulations were inaccurate, confusion among constituents could result, and enforceability and administration of the regulations could be impacted. Since the HTS codes for swordfish products were recently changed, the codes for swordfish products in the current HMS regulations are no longer accurate. This rulemaking considered alternatives to update the swordfish HTS codes, and options for avoiding the need for future rulemakings to update HTS Codes.

Alternative 1 – No Action. Under this alternative the HTS codes in the HMS ITP regulations would not be adjusted, and the new HTS codes for swordfish would not be incorporated.

Final Action (Alternative 2*)* – Under this final action, the HTS codes in the HMS ITP regulations will be updated to be consistent with the new internationally adopted HTS codes for swordfish. This alternative was chosen to update HMS ITP regulations with the new HTS codes and to clearly identify applicable product.

Alternative 3 – Under this alternative, the NMFS regulations would refer to HTS codes at a higher hierarchical level in the HTS code schema so that future regulatory text adjustments due to HTS code modifications would be less likely. The regulatory text identifying applicable product would be less clear under this alternative.

2.3.4 Clarification of Reporting Responsibilities

Currently, HMS ITP regulations throughout 50 CFR part 300 subpart M refer to the HMS ITP holder as the party responsible for fulfilling reporting requirements. However, if an individual who trades species covered by these regulations fails to obtain a permit, then the reporting requirements may not apply, since the responsible reporting party would not hold the required permit. The intent of the regulations is to hold individuals participating in trade of covered species responsible for reporting, even if they neglect to obtain an HMS ITP.

Alternative 1 – No Action. Under this alternative the HMS ITP regulations

would not be adjusted.

Final Action (Alternative 2*)* – Under this final action, the HMS ITP regulatory text is clarified to indicate that individuals who participate in the activities covered by the HMS ITP are responsible for the required reporting, regardless of their permit status. This alternative was chosen to clarify that appropriate individuals are covered by the HMS ITP regulatory program.

3.0 DESCRIPTION OF THE FISHERIES

In addition to the authorities described in Chapter 1.0, provisions of the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act) (16 U.S.C. 1801 et seq.) are applicable to HMS fisheries. NMFS manages the Atlantic swordfish, tuna, and shark fisheries under the Consolidated HMS FMP. Regulations implementing the Consolidated HMS FMP at 50 CFR part 635 were promulgated under the authorities of the Magnuson-Stevens Act in addition to ATCA.

NMFS also manages Pacific swordfish, tuna, and nine species of sharks in the Pacific Ocean under the Western Pacific Pelagics Fishery Management Plan (Pelagics FMP) that was prepared by the Western Pacific Fishery Management Council (WPFMC). The Pacific Fishery Management Council (PFMC) developed an FMP for U.S. West Coast highly migratory species (PFMP), including tunas, billfish, and sharks, which was implemented in April of 2004. Regulations implementing the Pelagics FMP and the PFMP at 50 CFR parts 300 and 660 were promulgated under the authorities of the ATCA and Tuna Conventions Act (TCA), and the Magnuson-Stevens Act, respectively. The North Pacific Fishery Management Council (NPFMC) manages shark under "other species" in the Gulf of Alaska (GOA) Groundfish FMP and the Bering Sea/Aleutian Island (BSAI) FMP. Absent a Federal FMP or other applicable Federal regulations, a state may regulate a state-registered fishing vessel outside of the boundaries of the state (e.g. in Federal waters) [16 U.S.C. 1856(a)(3)].

Other treaty and statutory authorities relevant to Pacific management include the South Pacific Tuna Act of 1988 (16 U.S.C. 973 et seq.), the High Seas Fishing Compliance Act (16 U.S.C. 5501 et seq.), and the U.S.-Canada Albacore Treaty. The Western and Central Pacific Tuna Fisheries Convention entered into force in 2004. The United States joined the Western and Central Pacific Tuna Commission (WCPFC) through ratification of the Convention in 2007. Customs requirements pertaining to the import and export of product harvested by national and international swordfish and tuna fisheries include those under 19 U.S.C. § 1 et seq. and regulations of the CBP.

3.1 Bigeye Tuna

3.1.1 Biology and Stock Status

Detailed descriptions of the life histories of bigeye tuna are given in the HMS FMP and the PFMP and are not repeated here.

Atlantic - The last stock assessment for bigeye tuna was conducted in 2007. The most recent catch information covered in the assessment was 2005. Various pieces of evidence such as a genetic study, and movements of tagged fish suggest an Atlantic-wide single stock for this species. However, the possibility of north and south stocks should not be disregarded [ICCAT Standing Committee on Research and Science (SCRS) 2007]. The current estimate of maximum sustainable yield (MSY) of bigeye is about 90,000 mt ww. The stock declined rapidly due to large catches made during the mid-1990s, and is

currently around or just below the Maximum Sustainable Yield (MSY) level. Projections indicate that catches of 85,000 t or less will permit the stock to rebuild in the future. Catches between 2004 and 2006 were approximately 65,000 mt. The SCRS noted that the current management measures in effect could allow the catch to exceed catch levels that would allow rebuilding.

Pacific - Proposals have been made for separate eastern and central/western Pacific stocks; however, a single stock hypothesis is generally accepted for this species. An updated assessment of bigeye tuna in the Western Central Pacific Ocean (WCPO) was conducted by the WCPFC's Scientific Committee in August, 2006. Results show that recruitment in all analysis is estimated to have increased since about 1980. Total biomass for the WCPO is estimated to have declined to about half of its initial level by about 1970 and have been fairly stable or subject to slight decline since then. Adult biomass has declined by about 20 percent over the last decade. The models used to predict status of the stock under equilibrium conditions indicate that the long-term average biomass would fall below that capable of producing MSY at 2001-04 average fishing mortality (F). Current biomass exceeds the biomass yielding MSY (Bcurrent/Bmsy > 1.0) with a high probability; i.e., the bigeye stock in the WCPO is not in an overfished state due to above average recruitment. The estimate of Fcurrent/Fmsy revealed that overfishing of bigeye is occurring in the WCPO with high probability.

Stock status of bigeye tuna in the Eastern Pacific Ocean (EPO) is assessed every 1–2 years by the IATTC. The latest assessment was conducted in 2007 (IATTC 2007) and is based on the assumption that there is a single stock of bigeye tuna in the EPO. The results of the stock assessment, which assumes no stock-recruitment relationship demonstrates a continuing trend seen in the previous assessments: the biomass was at a peak level of 614,898 mt in 1986, and has been in decline to a recent low level of 278,962 mt. Current biomass is below that corresponding to Average (A) MSY. There was a brief interruption in the biomass decline by above-average recruitment in 2001 and 2002. Recent catches are estimated to have been at about the AMSY level. Under current fishing mortality levels and patterns of age-specific selectivity, the level of fishing effort (F) corresponding to the AMSY is about 83 percent of the current (2004-2006) level of effort. The floating object fishery that began in 1993 catches small fish below the critical size, however the AMSY of bigeye in the EPO could be maximized if the age-specific selectivity pattern of the fishery overall were similar to that for the longline fishery which catches larger individuals. The two most recent estimates indicate that the bigeye stock in the EPO is overfished (Spawning biomass, $S < S_{AMSY}$) and that overfishing is taking place ($F > F_{AMSY}$). Based in part on the previous IATTC bigeye tuna stock assessment, NMFS determined that the bigeye tuna stocks are subject to overfishing.

3.1.2 Fishing Operations

Atlantic - The Atlantic bigeye tuna stock is harvested by many nations. Three major gears -- pelagic longline, baitboat, and purse seine--are used to harvest this species (SCRS 2007). The longline fishery lands medium to large fish (45-50 kg average

weight), the directed baitboat fishery lands fish from 20 to 30 kg, and incidental baitboat and directed fisheries land small fish (3-4 kg). Generally, the longline-caught fish are worth several times more per unit weight than those landed in other fisheries. Bigeye is a primary target species for most pelagic longline and baitboat fisheries (except Ghanaian), but is of secondary importance for purse seine fisheries and the Ghanaian baitboat fishery.

Total bigeye landings increased gradually through the mid-1970's to about 60,000 mt ww, and fluctuated between 45,000 and 84,000 mt ww for the next 15 years. In 1991, landings passed 95,000 mt ww, and continued to increase to a historic high of 132,000 mt ww in 1994. Since then, landings have declined with some fluctuation, and these declines have been seen in all of the three major fisheries; although landings have increased in some countries. There has been a general declining trend in total catch of this species after a high peak (121,000 mt) in 1999. Total annual catch went down to less than 85,000 mt ww since 2002. The decline of the longline catch was nearly 50% between 1999 and 2005, and this 2005 low longline catch (35,000 mt ww) was not recorded since 1983. Among the longline countries/entities, Chinese Taipei reduced its catch in 2005 by the largest amount followed by Japan. It was reported that the number of Chinese Taipei boats decreased during the later half of 2005. Purse seine and baitboat catches also decreased by similar percentages. The number of boats for purse seine and baitboat operating in equatorial waters also indicated a large decline. For detailed information on U.S. bigeye tuna landings in the North and South Atlantic Ocean, please see the most recent annual Atlantic HMS Stock Assessment and Fishery Evaluation (SAFE) Report.

Pacific - In the Pacific Ocean, the fisheries for bigeye tuna include Korean, Japanese, Chinese Taipei and China distant-water longline fleets as well as smaller, local longliners from Pacific Island and coastal South American nations. Overall, the catches in both the EPO and WCPO have increased but with considerable fluctuation. The catches in the EPO reached 105,000 mt in 1986, and have fluctuated between about 74,000 mt and 147,000 mt since then, with the greatest reported catch in 2000. In the WCPO the catches of bigeye increased to more than 77,000 mt ww during the late 1970s, decreased during the 1980s, and then increased, with lesser fluctuations, until 1999, when the catches reached more than 116,000 mt ww. Catches of bigeye in the WCPO increased significantly in 2004 and 2005, to 145,000 mt ww and 158,000 mt ww, respectively.

There has been an increase in purse seine catches of juvenile bigeye tuna as a result of the use of fish aggregating devices, in both the EPO and to a lesser extent, the WCPO. In the EPO, catches have increased from annual levels of less than 10,000 mt ww prior to 1994 to a record high of 94,083 mt ww in 2000. A preliminary estimate of the retained catch in the EPO in 2006 is 71,000 mt ww. Catch of bigeye tuna by U.S. West Coast fisheries constitutes less than one percent of the Eastern Pacific-wide catch. These fish are mainly harvested by purse seiners, with some incidental catch in the swordfish/shark drift net fishery and the albacore surface fishery. Bigeye tuna are also taken in the US EEZ by recreational fishermen. Of the record high, 38,095 mt ww catch in the WCPO in 1997, the U. S. fleet harvested approximately 17,403 mt ww. The

number of U.S. vessels participating in WCPO tuna purse seine fisheries ranged from a low of 18 in 2007 to a high of 40 in 1994.

3.1.3 Current Domestic Trade Monitoring Requirements

Dealer permitting and reporting requirements for Atlantic HMS are found in 50 CFR sec. 635.4 and 635.5, respectively. Pacific HMS requirements are found in 50 CFR part 300. Dealers who import, export, or re-export frozen bigeye tuna are required to obtain an HMS ITP which is issued by SERO, and provide reports for biweekly periods of activity. Statistical documents must accompany trade of frozen bigeye tuna, and must be submitted to NMFS within 24 hours of import/export/re-export. Statistical documents for export of frozen bigeye tuna must be validated.

Atlantic - Any Atlantic or Gulf of Mexico (GOM) coast dealer that purchases a federally managed Atlantic tuna (bluefin, albacore, yellowfin, bigeye, and skipjack) from a vessel is required to obtain an ATDP, which is issued by the NMFS Northeast Regional Office (NERO).

Atlantic dealers in the states of Maine south through Virginia are required to report bigeye, albacore, yellowfin, and skipjack tuna (BAYS) landings to local port agents who transmit this information to NER unless they also hold another northeast permit for northeast managed species in which case they are required to report BAYS electronically. The remaining Atlantic and Gulf coast dealers, (i.e., dealers located in the states of North Carolina south through Texas) are required to report BAYS landings to SERO.

Pacific - A permit is not required for dealers to purchase bigeye tuna on the Pacific coast.

3.2 Bluefin Tuna

3.2.1 Biology and Stock Status

Detailed descriptions of the life histories of bluefin tuna are given in the Consolidated HMS FMP and the PFMP and are not repeated here. It should be noted that Atlantic bluefin tuna and Pacific bluefin tuna were formerly considered to be a single species (Thunnus thynnus); however Pacific bluefin tuna has recently been reclassified as a separate species (Thunnus orientalis). Southern bluefin tuna is a distinct species (Thunnus maccoyii). Bluefin tuna species are virtually indistinguishable by external examination.

Atlantic - Bluefin tuna in the Atlantic Ocean are managed as an eastern stock and a western stock. The western bluefin stock was assessed by the SCRS in 2006. The assessment incorporated data through 2004, since 2005 data were not fully available. This assessment is consistent with previous analyses in that spawning stock biomass

(SSB) declined rapidly in the early 1970s followed by a more gradual decline in SSB through the early 1990s to about 21% of the 1975 level. During the period from 1994-1998, it appears that SSB recovered somewhat to about 28% of the 1975 level in 1998. However the SCRS assessment indicates a gradual decline since then to about 19% of the 1975 level by the year 2004. Conversely, after the large decline in recruitment in the early 1970s, recruitment since then has varied from year to year without trend. While the large decline in SSB since the early 1970s is clear, the potential for rebuilding is less clear. The SCRS remains uncertain as to the causes of the relatively poor recruitment since 1976 and, therefore, they are less certain about the outlook for future recruitment. The 2006 SCRS assessment of the eastern bluefin stock, which used data from 1970-2004, indicated that the SSB continues to decline while fishing mortality is increasing rapidly, especially for large fish. The next assessment is due in summer 2008.

Pacific – Tagging studies have shown that there is exchange of Pacific bluefin between the eastern and western Pacific Ocean. Larval, postlarval, and early juvenile bluefin have been caught in the WCPO but not the EPO, so it is likely that there is a single stock of bluefin in the Pacific Ocean. Stock status of Pacific bluefin is reviewed at one to two year intervals by the Bluefin Working Group of the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean (ISC). The latest assessment was conducted in January 2006 (ISC 2006), but the results were not sufficient to determine stock status without high uncertainty. Nevertheless, results from the multiple models provided some common conclusions: (1) biomass had local peaks in the late 1970s and late 1990s, with a decline after the second peak; (2) recruitment in recent decades has varied considerably, and the 2001 year class appears to be strong; and (3) there is no evidence of recruitment failure in recent years (ISC 2006). The latest assessment, consistent with the 2004 assessment, demonstrates that current fishing mortality rates likely exceed F_{max}. Noting the uncertainty in the assessments, the ISC Plenary recommended that bluefin tuna fishing mortality not be increased above recent levels as a precautionary measure. Like Atlantic bluefin, the next assessment is due in summer 2008.

North Pacific bluefin probably constitute a single north Pacific-wide stock with trans-Pacific migratory patterns. Most of the Pacific-wide catch occurs in the Western Pacific. The U.S. West Coast catch is taken primarily by purse-seiners operating off Southern California and Baja California, Mexico, mainly between spring and fall and within 100 mi of shore. In the Eastern Pacific, bluefin taken are nearly always immature (ages 1–2) (PFMC 2007, Appendix A). Catch by U.S. West Coast fisheries constitutes 2–3 percent of the Pacific-wide catch.

Southern - The Commission for the Conservation of Southern Bluefin Tuna (CCSBT) reviewed Southern Bluefin Tuna (SBT) stock status indicators at the 11th meeting of the Scientific Committee in 2006. The indicators continue to support previous evidence for poor recruitment in the 2000 and 2001 year class, and ongoing recruitment below the 1994-1998 levels. The Scientific Committee determined that future total catches of 14,925t (the 2006 TAC) would result, on average, in a short-term decline followed by generally stable but not recovering spawning biomass. Any continued catch

over 14,925t poses very serious threats to the stock. Rebuilding the spawning biomass requires catch reductions to below 14,925t under all scenarios considered.

3.2.2 Fishing Operations

Atlantic - Present fisheries for Atlantic bluefin tuna are distributed from the Gulf of Mexico to Newfoundland in the West Atlantic, from roughly the Canary Islands to south of Iceland in the East Atlantic, and throughout the Mediterranean Sea. In 1982, ICCAT established a line for separating the eastern and western Atlantic management units based on discontinuities in the distribution of catches at that time. The reported total catches (landings and discards exclusive of estimated unreported catch) of western Atlantic bluefin tuna in 2002 were estimated to be 3,319 mt which was the highest total catch since 1981. The United States, Canada, and Japan are the primary fishing nations and their fleets primarily utilize pelagic longline, purse seine, rod and reel, and harpoon fishing gear. Catches for 2003-2005 have been lower, primarily due to an underharvest of the U.S. quota each year since 2004. The reason for this underharvest is unknown, but the SCRS notes that it is a reason for concern. The TAC for the western Atlantic bluefin was reduced to 2,100 mt ww in 2006.

The eastern Atlantic bluefin fisheries (including the Mediterranean) are characterized by a variety of vessel types and fishing gears with landing sites located in many countries. Therefore, the landing statistics are difficult to obtain, particularly for the Mediterranean. Certain fisheries, such as those using traps, go back to ancient times. Other fisheries, such as the Mediterranean purse seine fishery mainly emerged in the 1960s. Based on estimates of 1995-2000 catches, the most important catches were from: pelagic longline, traps and baitboat for the East Atlantic; and from purse seine and longline for the Mediterranean. The purse seine fleet accounts for 60-80% of the Mediterranean catch. Catch limits have been in place for the eastern Atlantic and Mediterranean management unit since 1998. In 2002, ICCAT fixed the TAC for the eastern Atlantic and Mediterranean bluefin tuna at 32,000 mt ww for the years 2003-2006. The SCRS estimates that landings for recent years are close to the levels reported in the mid-1990s, i.e., about 50,000 mt ww in the East Atlantic and Mediterranean.

Pacific - Most of the catches of bluefin in the EPO are taken by purse seine. Nearly all of the purse seine catch is made west of Baja California and California, within about 100 nautical miles of the coast. In recent years a considerable portion of the purse seine catch of bluefin has been transported to holding pens, where the fish are held for fattening and later sale to sashimi markets. During 1991-2005 the annual retained catch of bluefin from the EPO by purse seine and pole-and-line vessels has averaged 3,000 mt ww. The preliminary estimate of the retained catch of bluefin in the EPO in 2006, 10,000 mt ww, is 7,000 mt ww greater than the average for 1991-2005. In the WCPO bluefin are caught by trolling, purse seine, traps, gillnets and longline gear. The average annual catch in the WCPO between 1991-2005 was 12,890 mt ww.

Southern - Except for Australian fisheries, southern bluefin tuna are caught

primarily by pelagic longline gear. The Australian fishery uses purse seine gear and the fish are stored in a pen for several months to fatten them up prior to being shipped to the fish market. Korea and Taiwan primarily use longline and purse seine gear to harvest SBT. The three original members of the CCSBT – Australia, Japan and New Zealand -- agreed to several management measures being introduced with a general aim of rebuilding parental stocks to 1980 levels, by the year 2020. At its 13th meeting the CCSBT agreed to a TAC for 2007-2009 of 11,810 mt, which is a reduction of 3,115 mt. The TAC was allocated amongst Members, Cooperating Non-Members and Observers. Japan's allocation of 3,000 mt is fixed until 2001. The following Members have a TAC that is fixed until 2009, Australia, 5,265 mt, Korea 1,140 mt, Taiwan, 1,140 mt and New Zealand, 420 mt. To contribute to the recovery of the SBT stock, Taiwan and Korea undertook to maintain their actual catch below 1,000 mt for a minimum of three years. This will result in an actual catch level below 11,530 mt for a three year period.

3.2.3 Current Domestic Trade Monitoring Requirements

The United States implemented a bluefin tuna statistical document program in 1995, as a requirement for lawful entry and export of bluefin tuna into and from the customs territory of the United States. In addition, a bluefin tuna tagging program and a government accredited institution validation system for Pacific bluefin tuna exports and bluefin tuna re-exports, has been employed. Taken together, these data collection and reporting systems track the import and export of bluefin tuna and comply with ICCAT recommendations regarding the statistical document program. Complementary systems are in place for Atlantic and Pacific bluefin tuna, and information on both subspecies is reported to ICCAT on a semi-annual basis. In 2005, re-export certificates were added to the statistical document program, and the HMS ITP was created and is required for all traders of bluefin tuna.

Atlantic - Up to three reporting forms are required if Atlantic or GOM coast dealers purchase from a vessel, import, and/or export/re-export a bluefin tuna. Upon purchasing a bluefin tuna from a vessel, a dealer must place a uniquely numbered tag, provided by NMFS, upon the fish. This unique number must be recorded on a landing card, which also includes the dealer's ATDP number, and other information about the fish and where it was captured and landed. This form must then be faxed immediately to NMFS. The original of this form must be mailed to NMFS within 24 hours of landing. Portions of this information must also be recorded on the Biweekly Report (biweekly). The biweekly summarizes information for each bluefin tuna landed or imported by a dealer over a two-week reporting period, and must be mailed to NMFS within 10 days after a two week period with activity closes.

In addition, dealers exporting a bluefin tuna must prepare an original United States Bluefin Statistical Document and attach it to the shipment on route to its final destination. This regulation is based on an ICCAT requirement that a statistical document accompany any bluefin tuna that is exported from one country to another. Copies of the statistical documents for an exported fish that was domestically landed

must be postmarked and mailed or faxed by the dealer to NMFS within 24 hours after export. Dealers importing bluefin tuna with the United States as the final destination must postmark and mail the original statistical document from the foreign country to NMFS within 24 hours of import. Dealers re-exporting (exporting a bluefin tuna after it was imported from another country) must attach the original statistical document form the foreign country with the shipment on route to its final destination. A re-export certificate must be completed and attached when a shipment is subdivided or consolidated with another shipment. Copies of the statistical document and re-export certificate (when necessary) must be postmarked and mailed or faxed to NMFS within 24 hours of re-export.

Pacific – Pacific bluefin tuna are also subject to statistical document reporting requirements, as described in the paragraph above for imports/exports/re-exports.

Southern - The CCSBT implemented a Trade Information Scheme (TIS) on June 1, 2000 to collect more accurate and comprehensive data on SBT fishing through monitoring trade. The core of the TIS is the provision for all Members and Cooperating Non-Members of the CCSBT to maintain requirements for all imports of SBT to be accompanied by a completed CCSBT Statistical Document. The document must be endorsed by an authorized competent authority in the exporting country and includes extensive details of the shipment such as name of fishing vessel, gear type, area of catch, dates, etc. Shipments not accompanied by this form must be denied entry by the Member country. The TIS program requires the document to include the country of destination and to set minimum standards for completion of TIS documents. The requirement to include destination country was made in the light of markets for SBT developing outside CCSBT Members. The CCSBT is also seeking the cooperation of Non-Member importing countries to assist in meeting the goals of the TIS program. In support of this program and the NMFS bluefin tuna statistical document program, NMFS implemented statistical document requirements for import/export/re-export of southern bluefin tuna in 2005.

3.3 Swordfish

3.3.1 Biology and Stock Status

Detailed descriptions of the life histories of swordfish are given in the HMS FMP and the PFMP and are not repeated here.

Atlantic – A new assessment for Atlantic swordfish was conducted in 2006. ICCAT divides swordfish management units in the Atlantic into north and south sectors at 5° N latitude. The 2006 assessment indicated that North Atlantic swordfish biomass had improved possibly due to strong recruitment in the late 1990s, combined with reductions in reported catch since then, especially compared to the peak catch levels of 1987. The estimate of MSY from production model analyses is about 14,000 mt ww. The biomass at the beginning of 2006 was estimated to be about 99% of the biomass needed to produce MSY and the 2005 fishing mortality rate was estimated to be about

14% below the fishing mortality rate at MSY. The replacement yield for the year of 2006 (14,438 mt ww) was estimated to be slightly more than the MSY level. As the TAC for North Atlantic swordfish for 2005 was 14,000 mt ww (about equal to MSY), it was considered likely that biomass would continue to approach or attain the Bmsy level under those catch levels.

If available catch per unit effort (CPUE) information is used in a simple production model, two different conclusions are reached about the status of the southern Atlantic swordfish. Using bycatch fishery data leads to overly-pessimistic results, while using target fishery data leads to optimistic results. Therefore the base case analysis was based on a Composite CPUE pattern that was constructed from both the bycatch CPUE data and the Target pattern CPUE data. Recognizing that further research is required in order to make better use of the available data, the results obtained indicate that the stock is in good condition. The current estimated fishing mortality rate is likely below that which would produce MSY, and the current biomass is likely above that which would result from fishing at Fmsy in the long term. The estimated MSY (about 17,000 mt ww) is 33% higher than current reported landings.

Pacific – Swordfish occur throughout the Pacific Ocean between about 50° N latitude and 50° S latitude. They are caught mostly by the longline fisheries of Far East and Western Hemisphere nations. Lesser amounts are caught by gillnet and harpoon fisheries and are caught infrequently by recreational fishermen. The stock structure of swordfish is not well known in the Pacific. There are indications that there is only a limited exchange of swordfish between the EPO and the central and western Pacific Ocean. There are generally considered to be northern and southern stocks of swordfish in the EPO, with the boundary between the stock distributions occurring at 5° S latitude, and there may at times be some mixing of stocks from the central Pacific with the northeastern stock. The northeastern stock appears to be centered off California and Baja California, Mexico, recognizing that there may be movement of a northwestern Pacific stock of swordfish into the EPO at various times.

The lack of contrast in the standardized catch and effort series in the northern and southern regions of the EPO suggests that the fisheries that have been taking swordfish in these regions have not been of a magnitude sufficient to cause significant responses in the populations. In addition, catches in the region have been fairly stable since 1989, averaging about 3,700 mt in the northern region and 8,400 mt in the southern region annually.

Recent ISC analyses of swordfish stocks in the North Pacific (north of 10° N latitude and west of 130° W longitude), based on CPUE indices from Japanese longline vessels, show declining trends. These trends are mainly driven by declines in the northwest portion of the study area (north of 10° N latitude and west of 170° E longitude) and their cause is not known at present (e.g., changes in stock abundance, environmental variability, and/or fishing practices).

3.3.2 Fishing Operations

Atlantic - Swordfish are harvested throughout the Atlantic Ocean in tuna and swordfish longline fisheries. Within the North Atlantic, major harvesting nations include Japan, Spain, the United States, Canada, and Portugal. The total Atlantic estimated catch of swordfish in 2005 was 24,624 mt ww. For the past decade, the North Atlantic swordfish estimated catch has averaged about 11,900 mt and the 2005 landings plus discards were 12,143 mt ww. In 2005, there was a 40% decrease in estimated catches since the 1987 peak in North Atlantic landings (20,236 mt ww).

In the South Atlantic, vessels fishing for swordfish are primarily from Brazil, Spain, Japan, and Uruguay. The historical trend of catch (landings plus discards) can be divided in tow periods: before and after 1980. The first one is characterized by relatively low catches, generally less than 5,000 mt ww. After 1980, landings increased continuously up to a peak of 21,780 mt ww in 1995, levels that match the peak of North Atlantic harvest (20,236 mt ww). The reduction in catch following the peak in 1995 resulted in from regulations and is due in part to a shift to other oceans and target species. In 2004, the 12,902 mt ww reported catches were about 40% lower than the 1995 reported level. The reported 2005 catch is 12,687 mt ww, and should be considered provisional.

NMFS published a final rule on October 5, 2007 (72 FR 56929) establishing the 2007 and 2008 baseline quotas for North and South Atlantic swordfish. The baseline quota for the North Atlantic would be 2,937.6 mt dw and 75.2 mt dw for the South Atlantic. For detailed information on U.S. swordfish landings in the North and South Atlantic Ocean, please see the most recent annual Atlantic HMS SAFE Report.

Pacific - Major Pacific Ocean fishing areas for swordfish are off Japan, north of Hawaii in the area known as the North Pacific Transition Zone, and along the west coasts of the United States (California), Mexico, Ecuador, Peru, Chile, and off Australia and New Zealand (PFMC 2007). Swordfish are caught in the EPO with large-scale and artisanal longline gear, gillnets, harpoons, and occasionally with recreational gear. The average annual longline catch of swordfish in the EPO during 1991-2005 was 13,000 mt ww but during 2001 was about 17,000 mt ww. There have been indications of increasing efficiency at targeting of swordfish in the southern EPO, which has resulted in increased harvest of this stock.

Hawaii-based longliners targeting swordfish were a primary producer of swordfish from 1990 - 1999. However, conservation measures to protect sea turtles phased out the swordfish segment of the longline fishery (WPRFMC 2002). A regulatory amendment to the Pelagics FMP, effective April 15, 2005, reopened the swordfish shallow-set longline fishery in Hawaii. The amendment requires vessels targeting swordfish to use mackerel type bait and 18/0 circle hooks. It also set an effort limit of 2,120 sets per year and hard caps on loggerhead and leatherback turtle takes. If the hard caps that were put into place are met the fishery would close for the remainder of the year.

Annual landings of longline caught swordfish (from outside the EEZ) in California and ex-vessel revenues have been declining since 2000 when landings and ex-vessel revenue totaled 1,885 mt and $8.1 million, respectively (PFMC 2007(a)). Swordfish are also harvested by a U.S. mainland based drift gillnet (DRN) fishery off California and Oregon. In 2006, 38 vessels participated in the DGN and landed 438 mt of swordfish. There is also a harpoon fishery operating within the southern California bight from May to December, and in 2006, 23 harpoon vessels landed 47 mt of swordfish.

3.3.3 Current Domestic Trade Monitoring Requirements

All dealers who import/export/re-export swordfish must obtain a HMS ITP from SERO. A statistical document (and re-export certificate when necessary) must be accompanied by each consignment of swordfish imported into or exported from the United States. This document certifies that shipments of Atlantic swordfish were harvested following the required ICCAT management regime. Biweekly reports for periods with activity are required, and statistical documents (and re-export certificates when necessary) must be submitted within 24 hours of swordfish import/export/re-export.

Atlantic - A swordfish dealer permit is required for dealers purchasing Atlantic swordfish from a U.S. flag vessel. All of these purchases must be reported. Dealers located in the states of Virginia south through Texas are required to report vessel purchased swordfish to the Southeast Fisheries Science Center (SEFSC) in Key Biscayne, FL. Reports must be submitted biweekly, and even if no purchases are made during the reporting period (negative reporting). Dealers located in the states of Virginia north to Maine file biweekly reports for swordfish purchased from U.S. flag vessels electronically or with the local NMFS NERO port agent.

Pacific - On the Pacific coast, the only relevant dealer permit requirement is for internationally traded swordfish, as described above. Special dealer permits are not required for swordfish landed by U.S. vessels on the west coast.

3.4 Sharks

3.4.1 Biology and Status of Stocks

Detailed descriptions of the life histories of sharks are given in the HMS FMP, PFMP and the Pelagics FMP and are not repeated here.

Atlantic - The latest 2005/2006 stock assessments for large coastal sharks (LCS) in the Gulf of Mexico and Atlantic Ocean were recently completed in 2005/2006. Unlike past assessments, the 2005/2006 LCS stock assessment determined that it is inappropriate to assess the LCS complex as a whole due to the variation in life history parameters, different intrinsic rates of increase, and different catch and abundance data among all species included in the LCS complex. Based on these results, NMFS changed the status of the LCS complex in its entirety from overfished to unknown and is continuing to

examine viable options to assess shark populations (November 7, 2006; 71 FR 65086). According to this stock assessment, sandbar sharks (*Carcharhinus plumbeus*) are overfished ($SSF_{2004}/SSF_{MSY} = 0.72$; SSF is spawning stock fecundity and was used a proxy for biomass), and overfishing is occurring ($F_{2004} / F_{MSY} = 3.72$). The assessment recommends that rebuilding could be achieved with 70 percent probability by 2070 with a total allowable catch across all fisheries of 220 metric tons (mt) whole weight (ww) each year and fishing pressure (F) between 0.0009 and 0.011. The 2005/2006 stock assessment assessed blacktip sharks for the first time as two separate populations: Gulf of Mexico and Atlantic. The results indicate that the Gulf of Mexico stock is not overfished and overfishing is not taking place there. This assessment also indicated that the current status of the blacktip shark population in the South Atlantic region is unknown. The 2006 dusky shark stock assessment used data through 2003 and indicates that dusky sharks (*Carcharhinus obscurus*) are overfished ($B_{2003}/B_{MSY} = 0.15 – 0.47$) with overfishing occurring ($F_{2004}/F_{MSY} = 1.68 – 1810$). The most recent stock assessment for small coastal sharks (SCS) was completed in August 2007. This assessment follows the SEDAR process. A completed assessment and the results will be released by NMFS.

Pacific – The PFMC's PFMP includes several sharks species as part of the management unit, including, blue sharks, shortfin mako, common thresher, bigeye and pacific thresher. There are currently three species on the prohibited list, great white sharks, megamouth and basking sharks.

In the eastern Pacific, blue sharks range from the Gulf of Alaska down to Chile, migrating to higher latitudes during the summer and lower latitudes during the winter. For the North Pacific blue shark population, a range of examples of what might be considered "plausible" MSY were calculated in 2001 (Kleiber, *et al*. 2001). The data on which the analysis were based consisted of catch, effort, and size composition data collected during the period 1971–98 from commercial fisheries operating in the North Pacific west of 130° W longitude, primarily the Japan and Hawaii-based pelagic longline fisheries, which catch significant numbers of blue sharks. The results indicated that the blue shark stock, under the fishing regime present at that time in the North Pacific, appeared to be in no danger of collapse. An updated analysis covering the same spatial area and which included data through 2003 was recently completed and produced results similar to the previous assessment, namely that blue sharks in the North Pacific are neither suffering overfishing nor approaching an overfished state (Sibert, *et al*. 2006).

The shortfin mako is widely distributed in pelagic waters, and the population fished off the West Coast is likely part of a stock that extends considerably to the south and west. Because basic population dynamic parameters for this species of shark are unknown, it is being managed under the PFMP with a precautionary harvest guideline of 150 mt. Catch statistics from the CA/OR drift gillnet (DGN) fishery suggest that the shortfin mako was not overexploited through the 1990's however CPUE rates indicated a possible overall decrease (PFMC 2007). Clear effects of exploitation have not been shown, and it is tentatively assumed that overfishing of the local stock is not occurring.

The common thresher shark is a pelagic species inhabiting both coastal and

oceanic waters throughout the tropical and temperate Pacific. Common thresher populations off Baja California are thought to be of the same population as those fished off the U.S. West Coast (Hanan, *et al*. 1993). With state-imposed time and area restrictions in place for the DGN fishery since 1990, the population appears to be in recovery; however, because this stock is also harvested by the adjacent Mexican fishery, total annual landings are not well understood for this species. A regional harvest guideline of 340 mt is in place under the PFMP.

The NPFMC manages sharks under the other species category in the Gulf of Alaska (GOA) Groundfish FMP and the Bering Sea Aleutian Island (BSAI) Groundfish FMP. Seven shark species have been identified during fishery surveys or observed during groundfish fishing in Alaskan waters. The most recent estimates of incidental catch of sharks in the GOA and BSAI are from 2006. There is no evidence to suggest that over fishing is occurring for any shark species in the BSAI or GOA. There are currently no directed commercial fisheries for shark species in federally or state managed waters of the BSAI and GOA, and most incidentally captured sharks are not retained.

In 2000, the WPFMC prepared an amendment to the FMP for Pelagic Fisheries of the Western Pacific Region (Pelagics FMP) to conserve and manage sharks. There are nine species of sharks in the pelagic management unit including, blue shark, shortfin mako, longfin mako, oceanic whitetip, common, bigeye and pacific threshers, silky, and salmon shark. There are five species of coastal shark listed as harvested in the Coral Reef FMP.

3.4.2 Fishing Operations

Atlantic - Commercial shark fishing effort is generally concentrated in the southeastern United States and Gulf of Mexico. During 1997 – 2003, 92 – 98 percent of LCS, 38 – 49 percent of pelagic sharks, and nearly all SCS (80 – 100 percent) came from the southeast region (Cortes, pers. comm.). Consistent with other HMS fisheries, some shark fishery participants move from their homeports to other fishing areas as the seasons change and fish stocks move. The Atlantic BLL fishery targets both LCS and SCS. Bottom longline is the primary commercial gear employed in the LCS and SCS fisheries in all regions. Gear characteristics vary by region, but in general, an approximately ten-mile long BLL, containing about 600 hooks is fished overnight. Skates, sharks, or various finfishes are used as bait. The southeast shark gillnet fishery is comprised of several vessels based primarily out of ports in northern Florida (South Atlantic Region). This fishery is currently prohibited in the state waters off South Carolina, Georgia, and Florida, thereby forcing some of these vessels to operate in deeper waters under Federal jurisdiction, where gillnets are less effective. Recent catch and landings information for the Atlantic shark fishery can be found in FEIS for Amendment 2 to the Consolidated HMS FMP (NMFS 2008) and is not repeated here.

Pacific - The PFMP implemented precautionary annual harvest guidelines for common thresher and shortfin mako sharks to prevent localized depletion, which could take decades to correct given the biological characteristics of the species. Within the U.S. West Coast EEZ, blue sharks are entangled in pelagic DGN gear, but rarely caught

by other commercial HMS gears. On the high-seas, blue sharks are caught with longline gear in the Hawaii-based SSLL fishery and the California-based SSLL fishery prior to its closure. In addition, blue sharks are caught in the deeper set tuna longline fisheries. Shortfin mako constitutes an important incidental catch whose market quality and ex-vessel value make it an important component of the landed catch of the DGN fishery (Casey and Kohler 1992; Holts and Bedford 1993). Shortfin mako is also an important component of California's ocean recreational fishery. The majority are caught by anglers fishing with rod-and-reel gear from private vessels in the Southern California Bight from June through October, with a peak in August. Most West Coast commercial landings of common thresher are presently taken in the DGN fishery, but some are also caught by set nets and the small-mesh drift nets. Common thresher sharks are also harvested in California's recreational fishery, but are a relatively minor component of the overall total catch. Private boaters catch thresher sharks as they migrate from Baja California, Mexico, to Oregon and Washington in the spring and early summer months. Average annual commercial catch levels for the common thresher shark during the time period 2001–2005 averaged 254 mt.

The NPFMC recommends Total Allowable Catch (TAC) levels for "other species" in the BSAI. In the GOA, because assessments for the "other species" category have not been regularly conducted, the GOA Plan Team does not recommend overfishing levels and allowable biological catch amounts for this category. At present, the annual TAC for the "other species" category in the GOA is set at or less than 5 percent of the sum of all other TACs established for assessed species or 13,856 mt in 2006. State of Alaska regulations prohibit directed commercial fishing of sharks statewide except for a spiny dogfish permit fishery (5 AAC 28.379) adopted by the Alaska Board of Fisheries for the Cook Inlet area in 2005. Sharks taken incidentally to commercial groundfish and salmon fisheries may be retained and sold provided that the fish are fully utilized as described in 5 AAC 28.084.

The longline fisheries in the Western Pacific, in Hawaii and American Samoa, were responsible for the vast majority of the sharks landed. Shark landings (estimated whole weight) by the Hawaii-based longline fisheries peaked at about 2,870 mt in 1999, due largely to the finning of blue sharks. A State of Hawaii law prohibiting landing shark fins without an associated carcass passed in mid-2000 (Hawaii Revised Statues 188.40-5). This law apparently decreased shark landings by almost 50 percent in 2000. With the subsequent enactment of federal Shark Finning Prohibition Act in 2001, shark landings from 2001 to 2005 were down by more the 93 percent from their peak. Today, sharks are marketed as fresh shark fillets and steaks in Hawaii supermarkets and restaurants, as well as exported to the U.S. mainland. The American Samoa longline fishery landed a small amount of sharks relative to Hawaii's longline fishery. The pattern of shark landings by the American Samoa longline fishery was similar to shark landings by the Hawaii-based longline fishery. These increased from 1 mt in 1995 to 13 mt in 1999, followed by a decline. This decline in shark landings by the American Samoa longline fishery is also attributed to the Shark Finning Prohibition Act .

3.4.3 Current Domestic Trade Monitoring Requirements

Atlantic – Currently, the only relevant dealer permit requirement is for a person that receives, purchases, trades for or barters for Atlantic sharks from a fishing vessel of the United States must possess a valid shark dealer permit (50 CFR 635.4 (g) (2)). There are no permit requirements for the import or export of shark or shark products.

Pacific - There are currently no dealer permit requirements for the import or export of shark or shark products.

4.0 ECONOMIC EVALUATION

4.1 Background

This chapter evaluates the economic impacts of the alternatives considered in this rulemaking. The entities that could be affected are expected to be limited to the following three groups, including the universe of constituents who 1) participate in the international trade of bluefin tuna, southern bluefin tuna, swordfish, and/or frozen bigeye tuna and are required to hold an HMS ITP, 2) those who participate in the international trade of shark fins, and 3) those who purchase bluefin tuna from vessels and are required to hold an ATDP.

4.1.1 Number of Permit holders

The number of HMS ITP holders is given in Table 4.1. The permit has been in effect since 2005, and the number of permit holders in this table is expected to accurately reflect the number of businesses who are involved in international trade of species currently covered under the ITP.

The overall number of shark traders is currently unknown. The number of shark fin importers as identified in 2006 CBP data was 29. The number of shark dealer permits is given in Table 4.1 to help establish a proxy for shark fin traders. NMFS enforcement experience suggests that the actual number of shark fin exporters is much lower than either the number of shark dealer permit holders or ITP holders. NMFS is combining enforcement experience with the information available on the number of permit holders in Table 4.1 to estimate the potential number of shark fin traders at 100, which is expected to be an over-estimate.

Finally, Table 4.1 gives the number of ATDP holders, and the number of ATDP holders who also hold an HMS ITP.

Permit Type	Number of Permit Holders (2006)
ATDP	406
HMS ITP	230
ATDP with HMS ITP	64
Shark Fin Importers	29
Shark Fin Traders (estimate)	~ 100
Domestic Shark Dealer	225

Table 4.1 Number of ATDPs, HMS ITPs, Shark Dealer permits issued in 2006; and, the number of individuals who held an ATDP while also holding an HMS ITP in 2006.

4.1.2 Dealer Gross Revenue Associated with Trade

Dealer gross revenues are not publicly available, nor are dealers who hold NMFS dealer permits required to report their gross revenues to NMFS. Thus, dealer gross revenues are presently unknown, as are the actual economic effects of this rulemaking.

However, a review of the trade data that are available can assist in providing estimates of the degree of impact or effect. Table 4.2 gives the amount of product trade and its value for species covered under the HMS ITP, and sharks and shark fins, during the last five years.

Year	Import		Export		Re-Export	
	mt	$	mt	$	mt	$
Bigeye Tuna (frozen)						
2002	319.2	708,663	8.8	19,030	0	0
2003	560.6	1,481,517	40.7	82,728	4.6	11,575
2004	1,175.8	2,626,214	48.5	108,909	14.7	56,778
2005	1,538.6	3,325,229	49.5	119,744	4.8	12,320
2006	1,522.6	3,151,180	76.3	195,235	2.2	5,878
Bluefin Tuna						
2002	1,339.7	12,916,924	922.5	10,741,564	167.4	2,399,256
2003	1,495.2	19,226,240	998.2	11,366,003	1,184.3	18,940,653
2004	1,702.7	22,916,245	370.2	4,504,412	2,118.8	29,461,341
2005	1,779.7	27,703,695	453.6	5,295,658	2,433.4	35,315,613
2006	1,177.4	19,039,303	281.3	3,603,946	518.7	9,150,485
Southern Bluefin Tuna						
2002	582.9	1,274,310	0	0	0	0
2003	272.6	945,909	0	0	0	0
2004	191.6	1,114,776	0	0	5.6	66,001
2005	243.0	3,801,421	4.7	17,254	0	0
2006	131.2	2,383,090	4.3	11,760	0	0
Swordfish						
				0	0	0

Year	Import		Export		Re-Export	
	mt	$	mt	$	mt	$
2002	15,712.05	88,266,887	0			
2003	13,150.3	75,628,337	0	0	0	0
2004	10,726.4	70,952,589	0	0	0	0
2005	10,186.8	77,166,715	0	0	0	0
2006	10,334.4	75,630,034	0	0	0	0
Sharks						
2002	889.3	2,331,078	1,951.7	3,818,061	31.7	68,244
2003	615.6	1,718,771	1,430.5	2,666,099	26.4	53,222
2004	806.9	3,357,100	1,008.9	2,176,350	18.5	37,753
2005	638.8	3,294,229	871.0	2,093,152	215.7	351,834
2006	431.1	2,029,294	1,563.1	3,006,893	2.8	13,879
Shark Fins						
2002	39.1	1,023,914	123.9	3,468,458	0.5	17,017
2003	11.2	110,146	46.0	4,037,766	2.3	58,585
2004	14.5	343,690	63.7	3,026,830	29.2	1,840,684
2005	27.3	752,081	30.8	2,367,795	32.1	1,413,083
2006	28.7	1,381,790	33.5	3,171,362	15.3	774,050

unk - unknown (southern bluefin tuna was not given a separate tariff code until 2002).

Table 4.2. Foreign trade data for sharks and species covered under the HMS International Trade Permit. Data source: U.S. Census Bureau.

Table 4.3 provides further insights into dealer activity for some of the species covered by the HMS ITP. The data sources include statistical documents and biweekly reports. The standard deviations calculated for the average number of bluefin tuna shipments and swordfish and southern bluefin tuna imports per dealer indicate that the number of shipments varies widely among dealers, so economic impacts of proposed NMFS actions would be expected to vary between dealers based on the amount of dealer

activity.

SPECIES	Shipment Type	Total No. Shipments *i.e.* statistical documents (2006)	Avg. No. of Shipments per Dealer (+/- std dev)	Avg price per lb/kg (+/- std dev)	Total Value ($)	Avg. Value per Dealer (=/- Std dev.) ($)
BFT	**Export** (20 dealers)	238	11.9 +/- 17.7	10.11 +/- 3.97	2,130,924	99,946 +/- 152,995
	Import (52 dealers)	1359	26.1 +/- 40.3	10.68 +/- 5.68	19,456,714	286,206 +/- 574,683
	Re-export (12 dealers)	64	5.3 +/- 7.5	9.00 +/- 7.69	355,221	18,426 +/- 33,650
BET	**Export**	*Not available*	*Not available*	*Not available*	*Not available*	*Not available*
	Import (6 dealers)	22	3.7 +/- 2.2	*Not available*	*Not available*	*Not available*
	Re-export (1 dealer)	7	7 +/- 0.0	*Not available*	*Not available*	*Not available*
SWO	**Export**	*Not available*	*Not available*	*Not available*	*Not available*	*Not available*
	Import (72 dealers)	3386	47.0 +/- 61.8	*Not available*	*Not available*	*Not available*
	Re-export (2 dealers)	169	84.5 +/- 36.5	*Not available*	*Not available*	*Not available*
SBFT	**Export**	*Not available*	*Not available*	*Not available*	*Not available*	*Not available*
	Import (8 dealers)	83	10.4 +/- 13.3	*Not available*	*Not available*	*Not available*
	Re-export (3 dealers)	7	2.3 +/- 1.9	*Not available*	*Not available*	*Not available*

Table 4.3. Foreign trade data for species covered under the HMS ITP. Data source: NMFS HMS International Trade Permit Program.

4.1.3 Variable Costs and Net Revenues

There are two primary costs associated with the final action and alternatives that were considered: the cost of the annual permit and the cost of reporting. In 2006, 230 individuals purchased the HMS ITP for $25 per permit. Opportunity cost for time spent filling out the application was estimated at $15 per hour for 0.83 hours per application for a total of $1.25 per applicant. The cost of mailing an application was estimated at $.50 per application. The total cost of the permit per applicant was approximately $26.75, for an overall cost including all applicants, of $6153 for 2006. Since shark fin traders are not currently permitted by NMFS, 2006 costs were $0. In 2006, the ATDP was provided free of charge. The opportunity cost for filling out the application and application mailing cost was estimated at a total of $959 or $2.36 per dealer.

Reporting requirements for HMS ITP holders include biweekly reports during each two week period with trade activity, and submission of trade tracking statistical documents and re-export certificates, or copies, including validation, as appropriate. Biweekly reports are used to cross-check statistical document and re-export certificate data as well as collect economic data on import/export/re-export transactions. In 2006, the total number of individuals holding an HMS ITP (230) would have, at the most, been required to report for every two week period during a year (24). This would have resulted in a reporting burden of 24 biweekly reports per dealer or 5520 biweekly reports overall. Dealer costs include the cost of submitting these reports to NMFS or .50 per 24 mailings for a total of approximately $12 per year per dealer, or $2760 annually overall. Each biweekly takes approximately 15 minutes to complete. Assuming opportunity costs are $15 per hour, cost to each dealer would be approximately $90 (*i.e.*, 24 x .25 x $15) or a total cost of $20,700 for all U.S. dealers, annually, and $102 (*i.e.*, $90 + $12) per dealer.

Burden estimates for the trade-tracking portion of the HMS ITP program are calculated in Table 4.4. The reporting requirements include statistical documents and re-export certificates for frozen bigeye tuna, southern bluefin tuna, swordfish, and bluefin tuna, including validation. The annual number of shipments by species for each trade activity (import/export/re-export) was estimated based on data obtained from the CBP and Census Bureau databases for 2005. CBP data track total imports, and provide the total annual weight and number of shipments for each species. This information was used to calculate the average weight of each shipment. Total weight for imports, exports, and re-exports by species is available in the Census database, (which is generally considered to be more accurate than the CBP database). By dividing the total weight (Census data) by weight per shipment (CBP data) the total number of shipments can be estimated and is given in Table 4.4.

Exports (including re-exports of untagged fish or split shipments) associated with statistical document programs must be validated. This validation requirement is implemented by either tagging each fish in a shipment and maintaining the necessary records, or obtaining verification from a government official or their designee. The tagging option is currently available for exports of Atlantic and Pacific bluefin tuna from the United States. (All Atlantic bluefin tuna are tagged upon landing). A fax-in system is available to U.S. dealers for all other validation, whereby a dealer faxes a complete document to a NMFS contractor, and the document is returned to the dealer with the necessary validation stamp in place and a document number.

The total burden associated with statistical documents, re-export certificates and validation for HMS ITP holders is 1027 hours (3,490–2463) or approximately 4.5 hours per permit holder. At an opportunity cost of $15/hour, costs would total $68 annually per dealer and $15,405 overall. Statistical documents and re-export certificates would be mailed to NMFS at a total cost of $5884 (.50 x 11,768) or approximately $26 per HMS ITP holder. The burden per dealer for the trade tracking portion of the program is approximately ($68 + $26) = $94 per year.

The average cost of the ITP program per dealer per year would equal

approximately $26.75 (permit) + $94 (statistical documents) + $102 (biweekly reports)= $222.75.

A. Activity	B. # of SDs or RXCs (based on # of shpmts for 2005)	C. SD/RXC Response Burden (Responses x 5 min./.08 hrs per form)	D. Validation Burden (Responses x 15 min./.25 hrs per shipment)		E. TOTAL HOURS (Column C + Column D)
			Burden for Domestic Respondents (HMS International Trade Permittees) = 230) (hrs.)	Burden for Foreign Respondents (International Dealers) = 930) (hrs)	
BET (frozen)					
I	947	76		237	313
E	31	2	8		10
R	0	0	0		0
BFT (Atlantic/Pacific)					
I (A)	1,520	122		380	502
E (A)	1,580	126	N/A[1]		126
R (A)	67	5	17		22
I (P)	269	22		67	89
E (P)	3	15 min.	45 min.		1
R (P)	236	19	59		78
SBT					
I	83	7		21	28
R	0	0	0		0
E	2	15 min.	30 min.		1
SWO					
I	7030	562		1,758	2,320
E	0	0	0		0
R	0	0	0		0
TOTAL	11,768	942	85	2463	**3,490**

(NOTE [1:] Atlantic BFT landed in the United States are required to be tagged, which is used for certification of exports. Burden hours are not included here).

Table 4. 4 International dealer trade reporting burden estimates for bigeye tuna (BET), bluefin tuna (BFT), southern bluefin tuna (SBT) and swordfish (SWO) statistical documents (SD), re-export certificates (RXC), and shipment certification. Estimates are given by species for imports (I), exports (E) and re-exports (R)) and by coast (Atlantic - A, Pacific - P) for bluefin tuna.

Costs associated with reporting for ATDP holders that are considered in this rulemaking include the cost of filling out and submitting biweekly reports for landing Atlantic bluefin tuna when that tuna is also exported. The number of export shipments of Atlantic bluefin tuna vary from year to year. In 2006, 238 shipments of U.S. landed Atlantic bluefin tuna were exported. Since negative reporting is not required for Atlantic bluefin tuna landing biweekly reports, the greatest burden associated with biweekly reports that could occur would be if every dealer exporting Atlantic bluefin tuna (20 in 2006, Table 4.3) was required to report for every reporting period (24), which would result in an overall burden of (20 x 24 x (.25 hours x $15/hr)) = $1,800 per year or $90 per dealer per year. Including mailing costs ($.5 x 24=$12 per dealer), the overall cost would be $240 + $1800 = $2040 per year ($102 per dealer).

4.2 Expected Economic Impacts of the Alternatives Considered

As discussed in the previous section, the final rule and the alternatives considered for each issue could result in economic impacts in two ways, including costs associated with dealer permitting and costs associated with dealer reporting. This chapter reviews the potential effect of the final action and each alternative on these two factors. The costs associated with the "No Action" alternative for each issue are considered to be the current costs associated with permitting and reporting under the HMS ITP program, which were discussed in detail in the previous section.

4.2.1 Permitting Alternatives

Only two of the issues under the category of "permitting" include alternatives that could have economic impacts. For the issue of identification of the entity responsible for obtaining the HMS ITP in importing situations, and thus for fulfilling subsequent reporting requirements, the "No Action" alternative is the final action. The final rule continues to require the consignee as indicated in CBP import documentation to be the responsible party for obtaining the ITP. This alternative was chosen to for enforcement purposes since the consignee would be the actual receiver of the consignment, and would have an address within the United States. The annual costs associated with this action are the costs associated with permitting (including the cost of the permit, mailing costs and time for filling out the application – estimated at $26.75 per applicant) and the cost of reporting (including filling out and submitting the report forms – estimated at $102 per dealer for biweekly reports and $94 per dealer for trade tracking documentation, for a total of $196 per dealer). Alternative Two would require that the consignee on the bill of lading obtain an HMS ITP in addition to the consignee on CBP entry documentation, and was not chosen because it would have resulted in duplicative reporting. The overall negative economic impact for this alternative would increase based on the number of consignees identified on import bills of lading that differ from consignees on CBP documentation. NMFS estimates the cost of this alternative to be twice that of the final action, assuming that there is one additional permit holder for each current permit holder. Costs per dealer would be the same as for the final action. For Alternative Three, which would require the importer of record to obtain the HMS ITP, economic impacts are estimated to be approximately the same as the final action, using the assumption that

there would be approximately the same number of importers of record identified on CBP entry documentation as consignees for consignments of products addressed under HMS ITP regulations. This alternative was not selected because importers of record can be foreign-based companies, which could impede enforcement.

The second permitting issue with alternatives that could have economic impacts is shark fin trader permitting. The final action requires that shark fin traders obtain an HMS ITP. This alternative was chosen to obtain information on the shark fin trade industry and support regulatory enforcement. NMFS anticipates that approximately 100 entities are expected to require the HMS ITP for shark fin trading. Since there would be no reporting requirements associated with this permit, the only annual costs are for obtaining the permit ($26.75 per dealer). The other alternative considered for this issue was the "No Action" Alternative, with neither permitting nor reporting costs for shark traders. This alternative was not selected because it would not provide the information needed on shark fin trading or support regulatory enforcement.

4.2.2 Reporting Alternatives

Neither the final action, nor any of the alternatives for these issues would change the number of entities required to obtain an HMS ITP, so there would be no permitting related costs for any of these issues.

The first issue under the category of "Reporting" that has reporting-associated economic impacts includes alternatives that would adjust reporting requirements for when and how report submission would be required. Alternative One is the "No Action" alternative, and would not change any reporting regulations or associated annual costs, which are estimated at $196 per dealer. This alternative was not chosen because the current use of a postmark does not ensure that NMFS has received the report in a timely fashion. Alternative Two would rescind the requirement for copies of import statistical documents to be faxed to NMFS within 24 hours of receipt by an importer. This alternative was not selected because NMFS requires the opportunity to review import statistical documents as close to the time of import as possible. The regulation requiring the permit holder to fax the document to NMFS within 24 hours balances the need for NMFS to be promptly notified of the import with providing the permit holder a reasonable amount of time to complete the document. This alternative would provide a slightly positive economic benefit in the form of a slightly reduced time burden for import reporting. Dealers would still be required to fill out and mail import statistical documents twice per month. The final action (Alternative 3) would adjust HMS ITP and ATDP reporting regulations to use a "received-by" date rather than a postmark date for determining dealer compliance with required report submittal schedules. The ITP regulations would also be clarified to indicate when use of a fax machine would be an acceptable method for submitting a report. This alternative was chosen because it establishes consistency within HMS regulations by using the "received-by" date to ensure NMFS receives the report by a date certain, and provides for all report submission alternatives, including faxes. It also retains the 24-hour reporting requirement for enforcement purposes. This alternative is expected to have no economic consequences,

since it would not impact reporting frequency.

The second reporting-related issue considers alternatives to initially implement ICCAT Recommendation 07-10 and the new BCD program. The final action implements the program for commercial U.S. Atlantic bluefin tuna fisheries and bluefin tuna imports, exports and re-exports as part of a program that will apply to all ICCAT member nations. This alternative was chosen to keep the United States in compliance with the ICCAT Recommendation, and ensure that U.S. product would be accepted for import by other ICCAT member nations. The BCD program requires the use of new forms with fields similar to the ICCAT bluefin tuna statistical document that was in place before the BCD program was implemented. The change in reporting burden will only affect HMS ITP holders that re-export untagged bluefin tuna. When re-exporting an untagged bluefin tuna, the HMS ITP holder is required to send a copy of the re-export certificate to the ICCAT Secretariat and importing nation within five working days via addresses and information provided by NMFS. The costs per transaction could range from zero for electronic transmission of the documents, to approximately $100 for mailing, for an average of $50 per transaction. In 2006, 17 consignments would have been subject to this additional cost. In addition, a time burden of .25 hours per consignment would have resulted in an additional 4.25 aggregate hours for a total annual cost of $64, or $3.75 per transaction. There would be no additional costs for the No Action alternative, with current annual average costs for statistical document program reporting at $196 per dealer. The No Action alternative was not selected because it would result in the United States being out of compliance with ICCAT recommendations, and would hinder export of U.S. product to ICCAT member nations.

The last issue under this category addresses reporting of Atlantic bluefin tuna exports. The final action provides a positive economic impact, reducing the current reporting burden for individuals who hold both an ATDP and HMS ITP by clarifying that bluefin tuna exports would only need to be reported on one biweekly report. This alternative was chosen because it ensures the reporting burden for export of domestically landed Atlantic bluefin tuna is not duplicative with landing reporting requirements. This action could positively affect the 64 individuals who concurrently hold an ATDP and HMS ITP and could save an estimated $51 per dealer per year. In addition, the final action could reduce the reporting burden for HMS ITP holders who purchase bluefin tuna from an ATDP holder, with an estimated savings similar to those for individuals holding both permits. Alternative One, the “No Action” alternative, would continue to require reporting for both permits, and is estimated to cost each impacted dealer approximately $102 per year. Alternative Two would require that operational procedures were adjusted to mirror the current regulations. Neither of these alternatives were selected because each had a higher overall reporting burden than the final action. The economic impact of Alternative Two would be the same as that estimated for the “No Action” alternative.

4.2.3 Regulatory Structure and Clarification Alternatives

The last category of issues addressed in the final rule is “Regulatory Structure and Clarification,” and includes two issues that could have economic consequences. The first

issue is the implementation of the new definition of "import" included in the Magnuson-Stevens Act as amended by the Magnuson-Stevens Reauthorization Act. Both the "No Action" Alternative and the final action would have the same economic consequences, which would be the permitting and reporting costs associated with the current HMS ITP program, averaged at $222.75 per dealer per year. The final action was selected because it is consistent with the Magnuson-Stevens Act, and continues to clearly articulate the applicability of HMS ITP program regulations to shipments between the United States and its insular possessions. The "No Action" Alternative was not selected because it is not consistent with the Magnuson-Stevens Act. The second alternative would adopt the Magnuson-Stevens Act definition of "import," without distinguishing that consignments between the United States and its insular possessions with separate customs territories would be considered domestic interactions, as intended by RFMO consignment programs. This alternative was not selected because it would unnecessarily increase reporting burdens. If such consignments required permitting and reporting under the HMS ITP program, negative economic consequences would occur which are currently unknown but, based in part on the amount of product and number of participating dealers, are expected to be minor in nature. For example, an average of four consignments from Guam to ports under U.S. Customs authority have occurred each year from 2002 through 2007. The estimated annual impact per dealer (approximately four dealers) would be $223.

The last issue considered in this final rule that could have economic impacts addresses the verification of foreign validating officials for imports. The final rule includes no regulatory changes for this issue. Under the Preferred Alternative, NMFS would pursue further international coordination on this issue, and there would be no economic related consequences. This alternative was selected to mitigate reporting burden for U.S. businesses and further coordinate international action for this issue. Likewise, the "No Action" Alternative would not have economic consequences since it does not require any current or additional action. This alternative was not selected because it would not provide a way to verify validating authorities. Alternative Two could have considerable negative economic consequences since it would require that importers check the password-protected ICCAT website to determine whether validating officials are authorized government representatives. This alternative would require computer hardware and software with Internet access. Alternative Two was not selected because it is unclear whether it is consistent with the intent of the ICCAT statistical document program.

5.0 SIGNIFICANCE OF REGULATORY ACTION WITH REGARD TO E.O. 12866

Under E.O. 12866, an action is considered significant if the regulations result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

The final actions described in this document and in the final rule do not meet the above criteria. As described in this RIR/FRFA, the effect on the economy does not equal or exceed $100 million, or adversely affect the economy, any sector of the economy, or any other indicated criteria. This final rule would not create a serious inconsistency or otherwise affect any action taken or planned by another agency. The final actions would not materially alter budgetary impacts of the named programs, or the rights or obligations of recipients. This final rule would not raise novel legal or policy issues. Therefore, under E.O. 12866, the final rule is not a significant regulatory action.

6.0 FINAL REGULATORY FLEXIBILITY ANALYSIS

6.1 Description of the Reasons Why Action is Being Considered

Please see Chapter 1.1 of this document for a description of the need for the final rule.

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

Please see Chapters 1.0 and 2.0 of this document for a description of the objectives and legal basis for the final rule.

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

NMFS considers all permit holders to be small entities. A description of the affected fisheries can be found in Chapter 3.0 of this document. As described in Chapter 4.1, there are currently approximately 240 dealers who hold the HMS ITP, and would be directly impacted by the final rule, and an estimated 100 who will be required to apply for this permit as stated in the final rule. In addition, there are approximately 406 ATDP holders, some of which may be affected by the final rule.

6.4 Description of the Projected Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule

This final rule is making minor modifications to a program which already exists and includes reporting, record-keeping, and compliance requirements. The adjustments to the current reporting, record-keeping, and compliance requirements associated with the final rule are outlined in Chapter 2.0, *Summary of the Alternatives,* under the heading for each final action. A brief summary is included here.

The current requirements of the HMS ITP program are outlined in the regulatory text at 50 CFR part 300 subpart M. This final rule makes several changes to the regulatory text regarding who would be required to be permitted under these regulations, and would be subject to the reporting, record-keeping, and compliance requirements in the regulations. The final rule requires that shark fin traders be permitted under this program. In addition, foreign importers are no longer allowed to hold the HMS ITP, but resident agents or corporate surety providers for foreign importers are required to hold the HMS ITP instead.

Additional changes to the current regulations in 50 CFR part 300 subpart M that would adjust reporting, record-keeping, or other compliance criteria include the following: 1) Applicants are required to submit their application at least 30 days prior to the date upon which the applicant desires to have the permit effective; 2) timeliness of report receipt will be based on received-by date rather than postmark date; 3) the HMS ITP regulations are clarified to indicate that they apply to all individuals required to be

permitted under the regulations rather than just individuals holding the HMS ITP, and, 4) re-exporters of untagged consignments of Atlantic bluefin tuna are required to submit a BCD to the ICCAT Secretariat and government agency of the importing nation, and all re-exports require re-export certificates.

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

Fishermen, fish dealers and fishery managers involved in these fisheries must comply with a number of international agreements, domestic laws, regulations and FMPs. These include, but are not limited to, the International Convention for the Conservation of Atlantic Tunas, 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. NMFS strives to ensure consistency among the regulations with Fishery Management Councils and other relevant agencies. NMFS does not believe that the final actions would conflict with any relevant regulations, federal or other.

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

One of the requirements of FRFA is to describe any alternatives to the final rule which accomplish the stated objectives and which minimize any significant economic impacts. Economic impacts are discussed below and in other sections of this document. Additionally, the Regulatory Flexibility Act (5 U.S.C. § 603 (c) (1)-(4)) lists four types of categories of options which should be discussed. These categories 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.

Under the first and fourth categories listed above, NMFS considers all dealers to be “small entities.” Thus, in order to meet the objectives of this final rule and address management concerns, NMFS cannot exempt small entities or change the reporting requirements for small entities.

Category Two includes options for clarifying, simplifying, and consolidating compliance and reporting requirements for small entities. Many of the measures in this rule satisfy the goal of Category Two by simplifying or clarifying the existing dealer permitting and reporting structure in several instances, and by seeking further international clarity for several issues that cannot be implemented under the current

program. Specifically, the final rule clarifies who is the entity responsible for obtaining the HMS ITP in cases involving foreign importers and synchronizes requirements between HMS ITPs and NMFS regional permits. Although alternatives are considered for modifying the entity responsible for obtaining a permit based on CBP entry documentation, the final rule does not modify the current regulations, which is in effect the simplest of the alternatives considered.

The final rule reduces and simplifies reporting requirements so that reporting may be combined in certain instances when an individual holds both the HMS ITP and the ATDP, which have similar reporting requirements. A business holding one of these permits can also coordinate with a business who handles the same individual bluefin tuna but holds the other corresponding permit. The final rule would also clarify the use of faxes for report submission and would further consistency with other HMS regulations by establishing the "received by" date as the date used for compliance determinations. There would be some increase in reporting burden and cost because of the requirement for international communication of consignment documents directly to the ICCAT secretariat and importing nation's government agency, however costs should be minimized since affected businesses are encouraged to submit the required documentation electronically.

The final rule also directly addresses issues of regulatory structure and clarification. The final rule would update certain HTS codes which in part clarifies reporting. The final rule also adopts the Magnuson-Stevens Reauthorization Act's new definition of import, with a clarifying caveat that shipments of affected product between insular possessions and the United States are not considered "imports." Finally, the final rule clarifies that the regulatory requirements in 50 CFR part 300 subpart M apply to all entities engaging in covered activities, rather than just those who obtain the required permit. Alternatives for verification of validating authorities are also considered, but because of technical difficulties, no action requiring verification of validation is included in the proposed rule.

The third category identified in the RFA, "use of performance rather than design standards," is not applicable, since ICCAT has very specific requirements for implementation of the trade tracking programs addressed in this action. Although the shark fin trade is not currently covered by an ICCAT recommendation, in order to address category two and maintain a simple structure for HMS trade permits, shark fin traders are required to obtain an HMS ITP under the final rule.

7.0 LIST OF PREPARERS

This document was prepared by a team of individuals from the Office of Sustainable Fisheries of NMFS, including Dianne Stephan, LeAnn Southward Hogan, Mark Murray Brown, and Margo Schulze-Haugen. Additional contributions were made by National Oceanic and Atmospheric Administration employees Meggan Englke-Ros, Chris Fanning, Kathy Goldsmith, Kim Dawson Guynn, David Hamm, Bill Jacobsen, Steve Koplin, Caroline Park, Jeff Radonski, Lori Robinson, Chris Rogers, Frank Sprtel, Megan Walline, and NMFS Pacific Islands Regional Office contractor Patricia Donley.

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9.0 PUBLIC COMMENTS ON THE PROPOSED RULE AND RESPONSES

Comment 1: Several commentors stated that shark fin traders could provide valuable information and should be required to report.

Response: The final rule requires permitting for shark fin traders without additional reporting requirements at this time. NMFS considered additional reporting requirements for shark fin traders beyond the reporting already required by other state and/or Federal agencies, but determined that permit requirements alone would be an effective initial step in achieving the rule's objective to further understand the international trade aspects of the industry. The Agency may consider additional reporting requirements at a later date, with due notice and opportunity for public comment.

Comment 2: One commenter stated that U.S. bluefin tuna re-exporters are assigned an unfair reporting burden for re-export of untagged bluefin tuna relative to the bluefin tuna trade industry in other nations. The United States is one of the few countries that tags every exported fish, which results in a reduced burden for re-exporters in other nations. The U.S. industry carries more reporting burden than industry members in other countries.

Response: The final rule requires that re-exporters of untagged bluefin tuna provide copies of completed re-export certificates and associated documentation to the ICCAT Secretariat and competent authorities of importing nations at provided addresses. NMFS included this requirement since ICCAT Recommendation 07-10 specifically requires all nations, including the United States, to conduct such reporting. However, the United States' sophisticated catch monitoring program, which includes tagging every Atlantic bluefin tuna domestically and commercially harvested, exempts U.S. industry members from certain other parts of the ICCAT Recommendation 07-10 BCD program. NMFS will continue to work with ICCAT to balance the burden of international fisheries management fairly among participating nations. Overall, the reporting requirements of the ICCAT BCD program that must be implemented by the United States have been mitigated and reduced because of the U.S. programs currently in place.

Comment 3: A commentor stated that the proposed rule and regulatory program are complex, and the public comment period should be extended and more public hearings should be held on the east coast.

Response: NMFS did not extend the public comment period for this rulemaking or add public hearings to those announced with the proposed rule. NMFS worked to balance its obligations of meeting the international implementation deadline for the ICCAT BCD program while also conducting extensive public outreach with email, direct mail, and public hearings on both the Atlantic and Pacific coasts. NMFS undertook mailings to current permit holders and shark fin importers, and held public hearings in five locations that were chosen based on industry participation during the previous ITP rulemaking (69 FR 67268, November 17, 2004). The Atlantic HMS Advisory Panel was briefed on April 16, 2008. Further, documentation associated with this rulemaking was available on NMFS websites and www.regulations.gov. ICCAT adopted the BCD recommendation at the end of November 2007 and required its implementation by July 1, 2008. U.S. businesses desiring to export bluefin tuna to foreign markets could be negatively impacted if the BCD program was not in place by the required implementation

date.

Comment 4: One ITP holder asked what type of document would be necessary for bluefin tuna imports into the United States originating from South Africa.

Response: The type of documentation required would depend upon the species of bluefin tuna traded. Southern bluefin tuna are found through the Southern Ocean, south of 30˚ South latitude. The final rule requires that an ICCAT BCD accompany any shipment of Atlantic bluefin tuna into the United States. The Commission for the Conservation of Southern Bluefin Tuna's statistical document continues to be required for imports of southern bluefin tuna into the United States.

Comment 5: One commentor noted that there are "transfer houses" in Boston that receive product from Canadian importers, but do not appear to be required to report any information to NMFS. One permit holder stated that they had experienced a greater degree of enforcement attention from NMFS. Several permit holders requested that the "playing field between businesses be level" regarding reporting burden and enforcement activity. One of these permit holders stated that NMFS enforcement personnel may pay more attention to their company because of its large size.

Response: The final rule maintains the previous requirement that the importer, which is defined as the consignee as listed on entry documentation required by Customs and Border Protection, must hold an ITP and abide by reporting requirements. If a non-resident corporation is listed as the consignee, then a resident agent is required to hold the permit and fulfill reporting requirements. All permit holders are equally responsible for abiding by applicable regulations. NMFS enforcement officers enforce regulations as resources are available, based on the individual facts and circumstances of each case.

Comment 6: Several ITP holders expressed concern that they would be held responsible for imports from other countries that appeared to be legal, but were later determined to be IUU product, or product that came with falsified statistical documents that appeared to be legal upon import.

Response: HMS ITP holders are responsible for the reporting requirements and administrative recordkeeping articulated in the ITP regulations. If compliance issues or enforcement activities arise as a result of ITP dealer activity, each case will be examined by enforcement on a case-by-case basis, based on the individual facts and circumstances of each case.

Comment 7: One commentor requested that there be internationally agreed upon methods for numbering consignment documents and for format of documents to assist importers in identifying illegal product.

Response: ICCAT Recommendation 07-10 requires that each BCD have a unique document identification number specific to the flag state. A circular from ICCAT (Circular #569/08) dated April 14, 2008, recommended a numbering convention for BCDs that would use 8 digits which include the country code and year of capture, followed by a unique number, which is sequentially ordered as issued by the appropriate government agency. The final rule states at § 300.186(b): "A nationally approved form from another country may be used for exports to the United States if that document strictly conforms to the information requirements and format of the applicable RFMO."

Comment 8: Several permit holders stated that they were supportive of the increasing international role the United States is taking in reducing IUU fishing.

Response: One of the purposes of ICCAT's BCD program is to more accurately

account for stock landings and help reduce IUU fishing. In addition, the Magnuson-Stevens Act includes several provisions to reduce IUU fishing. NMFS published an advance notice of proposed rulemaking on June 11, 2007 (72 FR 32052) and is currently drafting a proposed rule to implement these provisions.

Comment 9: Current ITP holders commented on several operational aspects of the trade monitoring program which were not addressed in this rulemaking, in reference to swordfish imports. The issues raised included the following: 1) most swordfish import statistical documents are received by fax rather than original documents, and some arrive three days after the consignment has been accepted in the United States; 2) because of the amount of swordfish imported into the United States, the trade monitoring requirements as written for swordfish are overly burdensome; 3) flexibility is needed in the format of biweekly report forms. In addition, several comments were provided on shark and shark fin fishery management.

Response: These issues are outside the scope of this rulemaking and amendment to the ITP regulations. However, the current ITP regulations require that imports of swordfish, bluefin tuna, southern bluefin tuna, and frozen bigeye tuna be accompanied by original statistical documents which are provided to NMFS if the United States is the final point of import. Biweekly reports are required to be submitted to NMFS on forms provided by NMFS. NMFS may consider future modifications of the HMS ITP regulations, including further consideration of these comments. NMFS is in the process of coordinating with Customs and Border Protection to implement the International Trade Data System which is expected to modify NMFS import and trade-monitoring programs. An advanced notice of proposed rulemaking on this issue is expected to be published in the Federal Register during 2008.