

FINAL
ENVIRONMENTAL ASSESSMENT,
FINAL REGULATORY FLEXIBILITY ANALYSIS,
AND
REGULATORY IMPACT REVIEW
FOR A
FINAL RULE

TO IMPLEMENT TRADE RESTRICTIVE MEASURES RECOMMENDED AT THE 2002
AND 2003 MEETINGS OF THE INTERNATIONAL COMMISSION FOR THE
CONSERVATION OF ATLANTIC TUNAS

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United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Office of Sustainable Fisheries
Highly Migratory Species Management Division
1315 East-West Highway
Silver Spring, Maryland 20910

**Final Rule to Implement Trade Restrictive Measures Recommended at the 2002 and 2003
Meetings of the International Commission for the Conservation of Atlantic Tuna**

**Framework Adjustment to the Fishery Management Plan
for Atlantic Tunas, Sharks, and Swordfish**

Final Actions: Consistent with ICCAT recommendations, adjust country-specific import prohibitions for Atlantic bigeye tuna, bluefin tuna, and swordfish; implement measures and require chartering permit for chartering arrangements; and prevent trade with vessels engaged in illegal, unreported, and unregulated fishing as well as those vessels not listed on ICCAT's vessels larger than 24 meters in length list.

Type of Statement: Final Rule Documents: Environmental Assessment, Initial Regulatory Flexibility Analysis, and Regulatory Impact Review

Lead Agency: National Marine Fisheries Service, Office of Sustainable Fisheries

For Further Information: Michael Clark
Highly Migratory Species Management Division: F/SF1
1315 East-West Highway
Silver Spring, MD 20910
Phone: (301) 713-2347 Fax: (301) 713-1917

Abstract: Under the Atlantic Tunas Convention Act (ATCA), the United States promulgates regulations as necessary and appropriate to implement conservation and management recommendations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The final rule lifts or implements import restrictions for swordfish, bigeye tuna, and bluefin tuna from certain countries, including: Belize, Bolivia, Georgia, Honduras, Sierra Leone, and St. Vincents and the Grenadines. The rule also prohibits imports from vessels assumed to be engaged in illegal, unreported, and unregulated (IUU) fishing and vessels not listed on ICCAT's list of authorized large scale fishing vessels. Furthermore the final rule requires prior notification by the vessel owner to National Marine Fisheries Service (NMFS), and approval by NMFS via issuance of a chartering permit, before a U.S. documented or registered vessel begins to fish under a chartering arrangement.

FINDING OF NO SIGNIFICANT ENVIRONMENTAL IMPACT

The Highly Migratory Species (HMS) Management Division of the Office of Sustainable Fisheries submits the attached Environmental Assessment (EA) for the implementation of the trade restrictive measures recommended at the 2002 and 2003 meetings of ICCAT for Secretarial review under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act. This EA was developed as an integrated document that includes a Final Regulatory Flexibility Analysis (FRFA) and a Regulatory Impact Review (RIR). Copies of the final rule and the EA/FRFA/RIR are available from NMFS at the following address:

Michael Clark
Highly Migratory Species Management Division, F/SF1
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910
(301) 713-2347
or
<http://www.nmfs.noaa.gov/sfa/hms/>

The final action will:

- Lift bans on imports:
 - From Belize of bigeye tuna, bluefin tuna, and swordfish,
 - From Honduras of bigeye tuna, bluefin tuna, and swordfish,
 - From St. Vincent and the Grenadines of bigeye tuna
- Prohibit imports:
 - From Bolivia and Georgia of bigeye tuna, and
 - From Sierra Leone of bigeye tuna, bluefin tuna, and swordfish
- Require chartering permits to manage the chartering arrangements made between U.S. vessels and other Contracting Parties
- Implement measures to limit the amount of illegal, unreported, and unregulated fishing in the Atlantic Ocean.

National Oceanic and Atmospheric Administration Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations at 40 C.F.R. §1508.27 state that the significance of an action should be analyzed both in terms of “context” and “intensity.” Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ’s context and intensity criteria. These include:

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

Implementation of the final rule would not jeopardize the sustainability of any target species. The measures in the rule would impact trade, chartering arrangements, and IUU fishing consistent with conservation and management objectives of ICCAT and will not jeopardize the sustainability of target species. By reducing IUU fishing, the action may enhance the sustainability of target species.

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

The action is not expected to jeopardize the sustainability of any non-target species. As mentioned previously, the final measures will have little direct impact on fishing activities, but may enhance the sustainability of non-target species by reducing IUU fishing. Furthermore, documenting chartering arrangements will assist ICCAT in attaining its conservation and management objectives.

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

The action primarily affects foreign fishing vessels which do not fish in U.S. waters. Thus, there is no danger of damaging U.S. ocean and coastal habitats or EFH. Additionally, the action would not impact entities in the National Register of Historic Places or cause destruction to significant scientific, cultural, or historic resources.

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

The measures implemented by this rule would primarily impact foreign fishing vessels, U.S. fish dealers, and U.S. vessels that enter chartering arrangements. This action is not expected to have substantial adverse impacts on U.S. public health and safety.

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

Recently, NMFS reinitiated prepared a new Biological Opinion (BiOp) regarding the pelagic longline fishery. This BiOp considered the measures in this action. NMFS is in the process of complying with all the requirements of the BiOp in other actions. This final rule will not significantly harm or increase fishery interactions with endangered species or their habitat. Incidental takes of, or interactions with, protected species that are listed as threatened or endangered under the Endangered Species Act taking place under the auspices of a chartering permit arrangement will be included against the authorized take levels specified in relevant BiOps.

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

The action is not expected to result in cumulative adverse effects that could have a substantial effect on target or non-target species. As stated in Section 4.0, the catch level of target and non-target species will not be significantly impacted by this action.

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

The action is not expected to have a substantial impact on biodiversity and ecosystem function because it does not directly impact fishing effort. Section 4.0 discusses the impacts of all the measures and examines their expected impacts.

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

NMFS has conducted an economic analysis, a Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA). The results of these analyses indicate that the economic impacts of these actions would be minimal. The final rule will prohibit the importation of several HMS species from two countries while lifting prohibitions against three others in addition to imposing monitoring of chartering arrangements and prohibiting the import of HMS species from IUU fishing vessels. None of these nations are responsible for a significant portion of the imports of tuna-like species to the United States. As NMFS does not believe the IUU vessels and prohibited countries contribute a significant amount of HMS to U.S. markets, the measures are not anticipated to have an economic impact. Thus, the overall cumulative effects of this action are not significant.

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

NMFS does not believe that the action will be especially controversial since few chartering arrangements are anticipated, nations being restricted from importing to the United States have had relatively no history of trade in this sector, and curbing IUU fishing is imperative to the health and future of fish stocks.

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

This action has few impacts on property within the United States and would mainly impact trade of tuna and tuna-like products from the Atlantic Ocean between 3 and 200 nautical miles from shore. Therefore, there are no direct impacts on terrestrial, riverine, and cultural resources or ecologically critical areas.

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

Effects on the human environment are not likely to be highly uncertain and do not involve unique risks. Trade restrictions are imposed or lifted on nations that have relatively minor trade relations with the United States for tuna and tuna-like species. Implementation of measures meant to curb IUU fishing would result in predictable, beneficial impacts to the human environment by allowing stocks and managers to prevent illegal takes of fish.

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

The rule is not expected to result in cumulative adverse effects that could have a substantial effect on target or non-target species. As stated in Section 4.0, the monitored catch level of target and non-target species will not be impacted by this action.

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

This action will not affect any of the sites or objects listed above.

14) *Can the action be reasonably expected to result in the introduction or spread of a nonindigenous species?*

This action will not result in the introduction or spread of nonindigenous species.

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

By implementing the recommendations from the 2002 and 2003 ICCAT meetings this rule does establish/lift trade restrictions against several nations that could be used as a precedent for future consideration as to whether or not imports should or should not be allowed from these nations. These decisions may be made by ICCAT at future annual meetings.

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

This action is consistent with all other relevant laws.

17) *Can the action be reasonably expected to result in beneficial impacts, not otherwise identified and described above?*

The action could reduce illegal fishing effort, sanction nations for non-compliance with ICCAT conservation and management mandates, and detail the terms and conditions for chartering arrangements. Furthermore, U.S. fish dealers or importers that used to handle tuna and tuna-

like species from Belize, Honduras, and St. Vincents and the Grenadines will now have access to these markets once again.

DETERMINATION

In view of the information presented in this document and the analyses contained in the attached Environmental Assessment prepared regarding trade restriction measures from the 2002 and 2003 meetings of ICCAT, it is hereby determined that this action will not significantly impact the quality of the human environment as described above and in the Environmental Assessment. In addition, all impacts to potentially affected areas, including national, regional and local, have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.

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

Date

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1.0 PURPOSE AND NEED FOR ACTION

1.1 Management History

The United States fisheries in the Atlantic Ocean for tuna and tuna-like species are managed by the National Marine Fisheries Service (NMFS) under the authority of the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The ATCA authorizes the promulgation of regulations, as necessary and appropriate, in order to implement approved recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The final measures in this rulemaking were recommended at the 13th Special Meeting of ICCAT held in Bilbao, Spain during the fall of 2002 and at the 18th Annual Meeting of ICCAT held in Dublin, Ireland during the fall of 2003.

Based on recommendations from previous ICCAT meetings, NMFS has implemented a number of measures to prohibit imports of specific fish species from identified countries or lift import prohibitions (see Table 1.1 for current prohibitions). In 1997, NMFS promulgated a final rule that banned imports of Atlantic bluefin tuna (BFT) and its products in any form harvested by vessels of Panama, Honduras, and Belize (62 FR 44422, August 21, 1997). In 2000, the prohibition on importation of BFT from Panama was lifted, the importation of BFT and its products from Equatorial Guinea was prohibited, and the importation of Atlantic swordfish (SWO) and its products from Belize and Honduras was prohibited (65 FR 77523, December 12, 2000). In 2002, NMFS implemented Atlantic bigeye tuna (BET) trade recommendations from the 2000 ICCAT meeting. As a result, all shipments of BET and its products harvested by a vessel from Belize, Cambodia, Equatorial Guinea, or St. Vincent and the Grenadines are denied entry into the United States (67 FR 70023, November 20, 2002). While ICCAT recommended that BET imports from Honduras be prohibited in 2000, the United States did not implement this recommendation because ICCAT could not reach consensus in 2001 regarding whether Honduras had brought its fishing practices into conformity with ICCAT management measures.

| Country | Species Banned | Date and Federal Register (FR) cite |
|-------------------|-----------------------|--|
| Belize | Bigeye Tuna | November 20, 2002, 67 FR 70023 |
| | Bluefin Tuna | August 21, 1997, 62 FR 44422 |
| | Swordfish | December 12, 2000, 65 FR 77523 |
| Cambodia | Bigeye Tuna | November 20, 2002, 67 FR 70023 |
| Equatorial Guinea | Bigeye Tuna | November 20, 2002, 67 FR 70023 |
| | Bluefin Tuna | December 12, 2000, 65 FR 77523 |
| Honduras | Bluefin Tuna | August 21, 1997, 62 FR 44422 |
| | Swordfish | December 12, 2000, 65 FR 77523 |

| | | |
|--------------------------------|-------------|--------------------------------|
| St. Vincent and the Grenadines | Bigeye Tuna | November 20, 2002, 67 FR 70023 |
|--------------------------------|-------------|--------------------------------|

NMFS has also implemented measures to limit illegal, unreported, and unregulated (IUU) fishing in the United States through various permitting and reporting requirements on both vessels and dealers.

At the 2002 and 2003 meetings, ICCAT recommended measures to lift or set bans regarding imports, oversee chartering operations, and to limit the incidence of illegal, unreported, and unregulated (IUU) fishing in the Convention area. Specifically, ICCAT recommended that: (1) Contracting Parties prohibit imports of Atlantic BET, BFT, and SWO from Sierra Leone and Atlantic BET from Bolivia and Georgia, (2) Contracting Parties remove prohibitions on imports of BET, BFT, and SWO from Honduras, Belize, and BET prohibitions from St. Vincent and the Grenadines, (3) Contracting Parties adopt several requirements to ensure compliance by chartered vessels with relevant ICCAT management measures, (4) Contracting Parties enact measures to prevent vessels flying their flag from transshipping with a vessel on the IUU list, (5) Contracting Parties take measures to prohibit the fishing for, the retaining on board, the transshipment, and landings of tuna and tuna-like species by vessels larger than 24 meters in length which are not listed on the ICCAT record, and (6) Contracting Parties take the necessary measures to prohibit landings from fishing vessels, placing in cages for farming and/or the transshipment within their jurisdiction of tunas or tuna-like species caught by IUU fishing activities. This EA and accompanying final rule, would implement these recommendations for U.S. Fisheries.

1.2 Need for Action and Objectives

The purpose of this framework action is to implement the 2002 and 2003 ICCAT recommendations regarding trade measures (ICCAT 02-16; 02-17; 02-18; 02-19; 02-20; 02-21; 02-22; 02-23; 03-16; 03-17; and 03-18) consistent with the ATCA, the HMS FMP, the Magnuson-Stevens Act, and other domestic regulations. The final measures are necessary to ensure compliance with ICCAT conservation and management measures. In this EA/RIR/FRFA, NMFS considers the biological, social, and economic impacts of implementing the 2002 and 2003 ICCAT recommendations based on reviews of landings, logbook, and permitting data.

1.3 Other Concerns

NMFS is concerned about the incidence of IUU fishing in the Atlantic Ocean. The creation of the two lists regarding vessels over 24 meters known not to be engaged in IUU fishing (also referred to as the “positive list”) and vessels known to be engaged in IUU fishing (also referred to as the “negative list”) should allow Contracting Parties to reduce the incidence of IUU fishing. The United States submitted its positive list to ICCAT on July 22, 2003 and plans to update this list upon the request of ICCAT. Because the basin-wide effectiveness of these measures is contingent upon other Contracting Parties implementing the ICCAT recommendations, NMFS urges other countries to comply with these recommendations.

2.0 SUMMARY OF THE ALTERNATIVES

This section provides a summary and basis for the alternatives considered in this rulemaking. The preferred alternative for this rulemaking encompasses the recommendations from the 2002 and 2003 ICCAT meetings. Maintaining compliance with the ICCAT management measures serves as the basis for alternative A1. The other alternative addresses the impacts if the ICCAT recommendations are not implemented (i.e., no action). No other alternatives were considered because they would not meet the purpose and need as outlined in Chapter 1 of this document.

Preferred Alternative

Alternative A1: *Implement the ICCAT recommendations regarding import prohibitions, chartering, and IUU fishing*

This alternative would lift the import prohibition on Atlantic bigeye tuna from Honduras, St. Vincent and the Grenadines, and Belize. The import prohibitions on Atlantic bluefin tuna and Atlantic swordfish would be lifted from Honduras and Belize. ICCAT has decided to lift the import restrictions because these countries have shown improved compliance. Bigeye tuna imports from Sierra Leone, Bolivia, and Georgia would be banned. Bluefin tuna and swordfish imports from Sierra Leone would be banned. These prohibitions and lifting of import bans are summarized in Table 2.1. This alternative would also prohibit imports from vessels on the ICCAT negative list (i.e., list of vessels are presumed to have been involved with IUU fishing in the ICCAT convention area), vessels not included on the positive list (i.e., record of vessels larger than 24 meters in length that are authorized to fish in the Convention area), as well as vessels known to have been engaged in placing IUU caught tuna or tuna-like species in cages for farming and/or transshipment. The alternative would also require prior notification from vessels owners and approval, via issuance of a chartering permit, from NMFS before a vessel enters a chartering arrangement. ICCAT felt that authorizing imports from vessels on the positive list, prohibiting imports from vessels on the negative list, prohibiting imports from vessels placing in cages tunas or tuna-like species for farming and/or transshipment caught by IUU fishing activities, and the notification of chartering arrangements could improve compliance with existing conservation and management measures.

Table 2.1 **Summary of Country-Specific Trade Restriction Measures in the Preferred Alternative**

| Country | Bigeye Tuna | Bluefin Tuna | Swordfish |
|---------------------------------------|--------------------|---------------------|------------------|
| Belize | Lift | Lift | Lift |
| Bolivia | Ban | | |
| Honduras | Lift * | Lift | Lift |
| Georgia | Ban | | |
| Sierra Leone | Ban | Ban | Ban |
| St. Vincent and the Grenadines | Lift | | |

* The prohibition on imports of bigeye tuna from Honduras was never finalized so cannot be formally lifted.

Not Selected at this Time

Alternative A2: *No Action*

This alternative would maintain the status quo and would not implement measures to adjust the import prohibitions regarding HMS, monitor chartering arrangements, or curtail IUU fishing (see Table 1.1)

3.0 DESCRIPTION OF AFFECTED ENVIRONMENT

Detailed descriptions of the life histories and population status of the species managed by the HMS Management Division are given in the HMS FMP (NMFS, 1999) as well as the 2003 and 2004 Stock Assessment and Fishery Evaluation (SAFE) Reports (NMFS, 2003; 2004) and are not repeated here. Detailed information on catch and bycatch of HMS by fishery is also provided in the 2003 and 2004 SAFE Reports (NMFS, 2003; 2004b).

3.1 Status of the Stocks

Atlantic Bigeye Tuna

The stock is exploited primarily by three commercial gear types (longline, baitboat, and purse seine) throughout its range in the Atlantic Ocean. Baitboats are vessels that employ handlines/rod and reel gear with bait, versus a troll vessel that would be using artificial lures. Over the past ten years, the BET catch from all nations has fluctuated between about 96,000 metric tons (mt) whole weight (ww) and 132,000 mt ww. A stock assessment conducted in 2002 was hampered by the lack of detailed information from some of the major fisheries. Some of the sources of uncertainty include catches made by IUU longliners, the species composition of Ghanaian fisheries that target tropical tunas, and the lack of reliable indices of abundance for small BET. The range of maximum sustainable yield (MSY) estimates obtained from the 2002 stock assessment models was 79,000 to 105,000 mt ww. The current level of fishing mortality leads to the conclusion that the bigeye stock is overfished. Thus, the Standing Committee on Research and Statistics (SCRS) recommended that ICCAT consider limiting the total catches made by all countries fishing in the Atlantic to 100,000 mt or less (SCRS 2002).

West Atlantic Bluefin Tuna

Bluefin tuna in the Atlantic Ocean are managed as an eastern stock and a western stock. At the 2002 meeting of the SCRS of ICCAT, stock assessment analyses were prepared for the western and eastern Atlantic stocks of BFT. For western Atlantic BFT, two stock assessment scenarios were prepared based on assumptions regarding recruitment. The results of projections based on the low recruitment scenario for the western Atlantic stock indicated that a constant catch of 2,500 mt ww per year has a 97 percent probability of allowing rebuilding to the associated biomass at MSY by 2018. A constant catch of 2,500 mt ww per year has about a 35 percent probability of allowing rebuilding to the 1975 stock size by 2018. Under the high recruitment scenario, a constant catch of about 2,500 mt ww has approximately a 60 percent probability of allowing rebuilding to the 1975 stock size; a catch of 2,700 mt ww has approximately a 52 percent chance of reaching this stock size. The SCRS cautioned that these conclusions do not capture the full degree of uncertainty in the assessments and projections. The immediate rapid projected increases in stock size are strongly dependent on estimates of high levels of recent recruitment, which are the most uncertain part of the assessment. The implications of stock mixing between the east and west Atlantic add to the uncertainty. At the 2002 meeting, ICCAT adopted a recommendation to increase the annual quota of BFT in the western Atlantic Ocean from 2,500 mt ww to 2,700 mt ww, consistent with the western BFT rebuilding program

established in a 1998 ICCAT recommendation. NMFS published a final rule to implement these recommendations (October 2, 2003, 68 FR 56783).

East Atlantic Bluefin Tuna

For the eastern stock the SCRS noted that many of the recent catch statistics are undergoing revision. In conducting the 2002 stock assessment, the SCRS had difficulty in preferring one type of analysis over the other due to the low quality of the data. The new assessment indicates that the sustainable biomass of BFT in 2000 was approximately 86 percent of the 1970 level and that the 2000 level of fishing mortality was almost 2.5 times higher than that which maximizes yield per recruit. The SCRS expressed concern about the status of East Atlantic (including Mediterranean) BFT resources in the light of assessment results, the historically high reported catches and possible under-reporting since 1998. Analyses suggest that at current levels of recruitment and the present level of large- and small-fish fisheries, catch levels of 26,000 mt ww or more are not sustainable over the long-term. Because of the lack of confidence in the input data and in the assessment results, the SCRS was not in a position to give or suggest any strong management recommendations for the short or medium term. Based on these recommendations, ICCAT set the total allowable catch (TAC) for the eastern stock at 32,000 mt ww for the years 2003-2006.

North Atlantic Swordfish

North Atlantic swordfish are considered overfished. In 1999, assessments of the North Atlantic swordfish stock indicated that the decline in stock biomass had been slowed or arrested (SCRS, 1999). ICCAT noted positive signs from the fishery in terms of catch rates, and concluded that the observed high recruitment of age one fish in 1997 and 1998 should allow for increases in spawning stock biomass in the future, if these year classes are not heavily harvested. Prior to the 2002 meeting, ICCAT conducted another stock assessment examining North Atlantic swordfish. The SCRS concluded that the 2002 stock assessment indicated that the stock could support an increase in the TAC of North Atlantic swordfish. According to the stock assessment, the biomass at the start of 2002 was estimated to be 94 percent of the biomass needed to produce MSY. The SCRS felt that there was a greater than 50 percent chance that a TAC of 14,000 mt ww would allow the stock to rebuild to MSY by the end of 2009. NMFS published a proposed rule to implement these recommendations (June 20, 2003, 68 FR 36967). A new stock assessment for North Atlantic swordfish is scheduled for 2006.

South Atlantic Swordfish

South Atlantic swordfish are considered fully fished and overfishing may be occurring. The SCRS conducted a stock assessment of South Atlantic swordfish in 2002. Due to discrepancies between several of the datasets, reliable stock assessment results could not be produced. In general, the SCRS noted that the total catches have decreased since 1995 as recommended. Based on this information, significant changes in the management regime were not required. NMFS published a proposed rule to implement these recommendations (June 20, 2003, 68 FR 36967). A new stock assessment for South Atlantic swordfish is scheduled for 2006.

3.2 Fishery Participants, Gear Types, and Affected Area

BET, BFT, and swordfish are harvested throughout the Atlantic Ocean by many countries using baitboat, hook and line, longline, purse seine, and trap fisheries. In comparing the United States versus the international catch of HMS, the U.S. fisheries account for 8.02 percent of Atlantic swordfish, 5.58 percent of Atlantic BFT, and 0.79 percent of Atlantic BET catch (NMFS, 2004b). Because of the current demand for seafood in the U.S., many countries export HMS to the United States. ICCAT is comprised of 38 contracting parties and is tasked with managing tuna and tuna-like species in the Atlantic Ocean. Information about the operation of U.S. HMS fisheries can be found in the 2003 and 2004 SAFE Reports (NMFS, 2003; 2004b).

3.3 Habitat

The 2003 and 2004 SAFE Reports as well as the HMS FMP address the habitat utilized by the various species targeted by HMS fisheries. Typically, the commercial fisheries targeting BET, BFT, and swordfish exist off-shore in deep water, so there is no interaction with bottom substrate or other essential fish habitat.

3.4 Protected Species

NMFS released a BiOp on June 1, 2004, specific to the HMS pelagic longline fishery. This BiOp considered, among other things, the management actions in this document and found that the continued operation of the fishery was not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. This revised the incidental take statements for leatherback and loggerhead sea turtles and implemented additional measures designed to reduce sea turtle interactions and mortalities to comply with the ESA and other applicable law. NMFS is in the process of complying with the terms of the BiOp in other rulemakings

Under Section 118 of the Marine Mammal Protection Act (MMPA), NMFS publishes a List of Fisheries (LOF) that places all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals that occurs in each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. On August 10, 2004, (69 FR 48407), NMFS announced that the pelagic longline fishery continues to be a category I fishery (animals injured or killed include humpback, minke, and pilot whales and Risso's, bottlenose, Atlantic spotted, and common dolphins). NMFS continues to work with fishermen to reduce protected species interactions in this fishery. In 2002, NMFS estimated that the pelagic longline fishery interacted with 53 pilot whales and 28 Risso's dolphins (NMFS, 2004b).

The U.S. fleet is a small part of the international fleet that competes on the high seas for catches of tunas and swordfish. Although the U.S. fleet landed as much as 35 percent of the swordfish from the north Atlantic, north of 5°N. latitude in 1990, this proportion decreased to 28 percent by 2002. For tunas, the U.S. proportion of international landings was 58, 0.79, 19.5, 2.2, 0.42%

of the regional catch for bluefin, bigeye, yellowfin, albacore, and skipjack tunas in 2002. Based on available information, the U.S. fleet accounts for none or virtually none of the landings of swordfish and tuna from the Atlantic Ocean, south of 5°N. latitude, and does not operate at all in the Mediterranean Sea. Tuna and swordfish landings by foreign fleets operating in the tropical Atlantic and Mediterranean are greater than the catches from the north Atlantic area where the U.S. fleet operates. Even within the area where the U.S. fleet operates, the U.S. portion of pelagic longline fishing effort (in numbers of hooks fished) is approximately 5.5% of the entire international fleet's effort, and likely less than that due to differences in reporting effort between ICCAT countries (NMFS, 2004b). Since other ICCAT nations do not monitor incidental catches of protected species, an exact assessment of their impact is not possible. However, as NMFS has estimated the U.S. pelagic longline fishing effort in the Atlantic Ocean to be approximately 5 to 6 percent of the total Atlantic fishing effort, the U.S. fleet may represent a small portion of the catch of protected species in this basin.

4.0 ENVIRONMENTAL CONSEQUENCES OF ALTERNATIVES CONSIDERED

The environmental, social, and economic consequences of the alternatives considered are described below and in Sections 6.0, 7.0, and 8.0.

4.1 Trade Restriction Alternatives

A1: Implement the ICCAT recommendations regarding import prohibitions, chartering, and IUU fishing (preferred)

A2: No Action

Ecological Impacts

Implementing the ICCAT recommendations concerning import prohibitions (A1) would have positive ecological impacts on HMS because they would discourage IUU fishing and maintain compliance with ICCAT recommendations. Prohibiting imports of BET from Bolivia and Georgia as well as BET, BFT, and SWO from Sierra Leone would likely benefit the stocks as it would discourage IUU fishing and aid the SCRS in evaluating management measures in light of the need for rebuilding these stocks. These actions could also have positive impacts on other HMS and protected species if they reduce the level of IUU fishing. Pelagic longline vessels frequently catch other species: sea turtles, seabirds, marine mammals, billfish, bluefin tuna, and sharks. Large-scale illegal fishing is likely to have a negative impact on many species; this impact, however, is not quantifiable at this time. Not implementing the import prohibitions (A2) would have negative impacts on target, non-target, and protected species. It would allow the U.S. market to remain open to imports from these countries which could encourage continued IUU fishing activities.

Lifting the import prohibitions on BET, BFT, and SWO from Belize; BFT, and SWO from Honduras; and BET from St. Vincent and the Grenadines (A1) would not be expected to have adverse ecological impacts on HMS. When deciding to lift the prohibitions, ICCAT noted that these countries have made progress in addressing the vessels that were diminishing the effectiveness of ICCAT conservation and management measures and in implementing management measures to achieve compliance with ICCAT recommendations. By recommending that the import prohibition be lifted, ICCAT is signifying that the fishing activities of these countries would not have an adverse impact on target species and that these countries must abide by the conservation and management programs for the target species, which are established by ICCAT. By fishing in an ICCAT-approved manner, NMFS feels that lifting the import prohibition would not pose adverse ecological impacts to protected species. Not lifting the import prohibitions (A2) could undermine support for the ICCAT management process and it does not comply with the 2002 ICCAT recommendations.

Implementing measures to monitor chartering arrangements, via the issuance of chartering permits, (A1) would not be expected to have adverse ecological impacts. NMFS would submit information regarding charters to ICCAT to assist in reporting landings. The measure would not be expected to alter fishing effort or catch levels. Maintaining the status quo (A2) would

not be expected to have significant ecological impacts. As this measure involves the monitoring of chartering transactions, it is not expected to greatly affect fishing activities.

The final measures (i.e., prohibiting imports from vessels on the ICCAT negative and positive lists) to limit IUU fishing (A1) would be expected to have a positive ecological impact. If the identified IUU vessels are prohibited from landing or transhipping their catch, the conservation and management of HMS would be improved. ICCAT assumes that these vessels would cease their illegal operations targeting HMS which would also reduce the impacts on non-target and protected species. Due to the lack of reporting from these vessels, NMFS cannot predict the extent of the impact at this time. Taking no action (A2) could have impacts on target, non-target, and protected species. The IUU fishing vessels could continue to fish and land their catch in the United States. Their fishing activities would be outside the realm of ICCAT management which would threaten to undermine the existing management regimes for ICCAT species. Additionally, there would be unmonitored interactions with non-target and protected species.

Social and Economic Impacts

The economic and social impacts from these alternatives (A1 and A2) are anticipated to be minor. Belize did not export BET, BFT, or SWO to the United States prior to the prohibition being promulgated, so NMFS does not expect lifting the import ban to have an impact. Bolivia has not exported BET and Sierra Leone has not exported BET, BFT, and SWO to the United States within the past ten years, so NMFS does not expect an impact from the alternatives. Lifting the BFT, and SWO import prohibitions against Honduras would be expected to have a positive social and economic impact. There have been BET imports from Honduras in 2002 and 2003 (due to the prohibition not being formally implemented) and there have been imports of SWO in 1997, 1998, and 2003. Lifting the prohibition would increase trade opportunities for importers and dealers in the United States. Lifting the import prohibition on BET from St. Vincent and the Grenadines could have positive economic impacts. In 2001, there were imports of BET from the country. Following the lifting of the ban, these could continue which would increase trade opportunities for importers and dealers in the United States. Currently, NMFS cannot quantify the estimated impact of lifting or imposing the trade prohibitions.

As described in Chapter 6, implementing a chartering permit program to increase the monitoring of chartering arrangements is not expected to have significant economic or social impacts. The measure would gather information from vessel owners who are chartering their vessels. NMFS would report the information to ICCAT as a means of monitoring the transaction. NMFS will issue permits only if it is determined that the chartering arrangement is in conformance with ICCAT's conservation and management programs. NMFS does not anticipate major economic impacts to domestic vessels as a result of permit denial, given that these vessels will continue to be able to fish in domestic waters for HMS and market prices for HMS may be higher in the United States than in other countries.

The final measures to prevent IUU fishing, creating a list of vessels over 24 meters authorized to fish for HMS and a list of vessels presumed to engage in IUU fishing (A1), are not expected to have economic or social impacts. NMFS currently believes that there are few IUU vessels

trading with U.S. entities. While the amount and extent of the imports are unknown, NMFS feels that the statistical document program currently in place has minimized the occurrence. The no action alternative (A2) would not be expected to have economic or social impacts as the current regulatory system would be maintained. In the long-term, however, if the U.S. is seen as not complying with ICCAT recommendations, then the U.S. could lose negotiating status at ICCAT or could have restrictions placed on the country that could impact domestic vessels and dealers.

Conclusion

NMFS is authorized to implement ICCAT recommendations under ATCA. ICCAT recommendations are part of an international cooperative effort to rebuild, conserve, and manage tuna and tuna-like species. The preferred alternative would satisfy the United States' obligation to implement the binding conservation and management measures that have been adopted by ICCAT. Alternative A1 is consistent with ICCAT recommendations, the ATCA, the Magnuson-Stevens Act, and the HMS FMP. NMFS does not expect any negative ecological, economic, or social impacts from implementing the alternative.

4.2 Impacts on Essential Fish Habitat

The measures in this rule would mostly impact fishing outside the U.S. Exclusive Economic Zone (EEZ). Because essential fish habitat (EFH) is defined as areas within the U.S. EEZ, the preferred alternative would not impact EFH.

4.3 Impacts on Other Finfish Species

The final actions are not expected to significantly alter U.S. fishing practices or effort and therefore should not have any impact on other finfish species that have not already been considered in the HMS FMP or the supplemental environmental impact statements finalized since then. The final measures may decrease the fishing effort of IUU vessels. If this occurs, then the incidence of bycatch of other finfish species in foreign fleets may be decreased.

4.4 Impacts on Protected Species Listed under the Endangered Species Act or Marine Mammal Protection Act

The final measures are not expected to alter U.S. fishing practices or effort. As noted earlier, NMFS revised the incidental take statements for leatherback and loggerhead sea turtles and implemented measures designed to reduce sea turtle interactions and mortalities in the June 1, 2004, BiOp to comply with the ESA and other applicable law. NMFS is in the process of complying with the terms of the BiOp in other rulemakings. Protected resource interactions that take place outside the EEZ will be documented and counted towards appropriate incidental take statements.

4.5 Environmental Justice Concerns

Executive Order 12898 requires that federal actions address environmental justice in the decision-making process. In particular, the environmental effects of the actions should not have a disproportionate effect on minority and low-income communities. The final actions in this document would not have any effects on human health. Additionally, the final actions are not expected to have any social or economic effects and should not have a disproportionate effect on minority and low-income communities.

4.6 Coastal Zone Management Act Concerns

NMFS has determined that the regulations selected in this final rule will be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management programs. The proposed regulations were submitted to the responsible state agencies for their review under Section 307 of the Coastal Zone Management Act. All of the states that responded found NMFS' proposed actions to be consistent with their coastal zone management programs. Concurrence is presumed for those states that did not respond.

4.7 Comparison of Alternatives

Table 4.1 Comparison of Final Alternatives. This table compares the impacts of the alternatives considered in this section. The symbols +, -, 0 refer to positive, negative, and zero impacts respectively. Minor impacts and impacts that are possible but unlikely are noted with + or -. More than minor impacts are noted with ++ or --, and significant impacts are noted with +++ or ---. Refer to the proceeding sections for details of the impacts of each alternative.

| Management Measure | Ecological Impacts | Economic Impacts | Social Impacts |
|--------------------|--------------------|------------------|----------------|
| A1: Preferred | + | + | + |
| A2 | - | 0 | 0 |

4.8 Cumulative Impacts of the Alternatives

On May 28, 1999, NMFS published a final rule (64 FR 29090) that implemented the HMS FMP and Amendment One to the Atlantic Billfish FMP, and that consolidated regulations for Atlantic HMS into one C.F.R. part. The Final Environmental Impact Statements (FEIS) associated with these FMPs addressed the rebuilding and ongoing management of Atlantic tunas, swordfish, sharks, and billfish. Alternatives to rebuild and manage the Atlantic swordfish and tuna fisheries included, among other things, quotas levels, retention and size limits, upgrading restrictions, overharvest and underharvest adjustment authority, and permitting and reporting requirements, including a limited access system. The HMS FMP concluded that the cumulative long-term impacts of these and other management measures would be to rebuild overfished fisheries, minimize bycatch and bycatch mortality, to the extent

practicable; identify and protect essential fish habitat; and minimize adverse impacts of fisheries regulations on fishing communities, to the extent practicable.

Since the HMS FMP, NMFS has finalized three supplemental environmental impact statements that affect pelagic longline fishing. The first one, published in June 2000, analyzed management measures, particularly time area closures, to reduce bycatch, bycatch mortality, and incidental catch in the pelagic longline fishery. The final actions were expected to have negative direct, indirect, and cumulative economic and social impacts for pelagic longline fishermen and were expected to have positive benefits regarding reduction in bycatch and bycatch mortality.

The second supplemental environmental impact statement, published in July 2002, implemented the measures in a June 14, 2001, Biological Opinion addressing of sea turtle bycatch and bycatch mortality in HMS fisheries. Certain measures in this rulemaking, such as the closure of the Northeast Distant Area (NED) to pelagic longline vessels, are expected to have negative direct, indirect, and cumulative economic and social impacts on pelagic longline fishermen, which are mitigated in the short-term for vessels that participate in an experimental fishery in the NED. Other measures, such as requiring gangions to be 10 percent longer than floatlines, requiring the use of corrodible, non-stainless steel hooks, reporting lethal sea turtle takes within 48 hours, and posting sea turtle handling and release guidelines in the wheelhouse were not expected to have serious impacts.

The third supplemental environmental impact statement, published on July 6, 2004 (69 FR 40734), to implement measures intended to reduce sea turtle interactions in the pelagic longline fishery. This BiOp found that the continued operation of the fishery was not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. This revised the incidental take statements for leatherback and loggerhead sea turtles and implemented measures designed to reduce sea turtle interactions and mortalities in compliance with the ESA and other applicable law. The actions in this final rule are not expected to change interactions with protected species or result in significant cumulative impacts.

NMFS is in the process of creating an amendment to the FMP that may address numerous HMS management issues such as quota distribution, streamlining the limited access program, and essential fish habitat. The Notice of Availability of an Issues and Options paper published on April 30, 2004 (69 FR 23730) with public comments being received until July 14, 2004. Comments are now being reviewed, and priorities established for the forthcoming amendment and rulemaking. NMFS does not anticipate significant cumulative impacts as a result of this activity in conjunction with the measured included in this rule.

Taking into consideration the HMS FMP and its forthcoming amendment, the August 2000 bycatch and time area closure rule, the July 2002 rule implementing the BiOp measures, and the recent seaturtle bycatch mitigation rule for the pelagic longline fishery, NMFS expects no adverse cumulative impacts from the preferred alternative. The measures that comprise alternative A1 are not expected to have significant ecological, economic, or social impacts. It is

possible that there will be some impacts on foreign fleets or vessels, but NMFS cannot quantify these impacts at this time.

5.0 MITIGATION AND UNAVOIDABLE ADVERSE IMPACTS

5.1 Mitigating Measures

NMFS does not expect the final alternative to have significant ecological, economic, or social impacts. Thus no mitigating measures are final at this time. NMFS has requested comments on the preferred alternative. If the submissions indicate impacts that require further consideration, mitigating measures will be considered.

5.2 Unavoidable Adverse Impacts

The final alternative is not expected to have any unavoidable adverse impacts.

5.3 Irreversible and Irretrievable Commitment of Resources

The final alternative is not expected to result in any irreversible or irretrievable commitments of resources.

6.0 ECONOMIC EVALUATION

This section primarily addresses the economic impacts of the final alternative implementing the trade measures from the 2002 and 2003 ICCAT meetings.

6.1 Number of Fishing and Dealer Permit Holders

The preferred alternative addresses trade measures, particularly, HMS imported from other countries or fishing vessels. Dealer permits are required for commercial receipt of Atlantic tuna, swordfish, and sharks. In recent years, the number of dealer permit holders has declined slightly, but the trend does not appear to be significant (see Table 6.1). The majority of the tuna dealers are located in Massachusetts (22%), New York (14%), New Carolina (8%), and New Jersey (8%). The primary concentration of swordfish dealers is in Florida (35%), followed by Massachusetts (11%), California (10%), and New York (10%). The measures preventing the importation of specified HMS species from certain countries and the prohibiting of HMS imports from IUU fishing vessels could impact these entities.

Table 6.1 Number of U.S. dealer permits issued for tuna and swordfish in 2000 - 2003 (excluding those in other countries). (NMFS, 2003)

| Year | Atlantic Tuna | Atlantic Swordfish |
|-------------|----------------------|---------------------------|
| 2000 | 544 | 295 |
| 2001 | 522 | 286 |
| 2002 | 479 | 305 |
| 2003 | 516 | 302 |

The final measure to monitor the vessel chartering arrangements would primarily affect pelagic longline vessel owners. The number of active pelagic longline vessels has been decreasing since 1994, as shown in Table 6.2 which lists the number of active vessels from 1990 to 2002.

Table 6.2**The number of vessels that reported fishing with pelagic longline gear in the pelagic logbook.**

Source: Bertolino, 2003.

| Year | Number of active vessels | Year | Number of active vessels |
|-------------|---------------------------------|-------------|---------------------------------|
| 1991 | 333 | 1997 | 350 |
| 1992 | 337 | 1998 | 286 |
| 1993 | 434 | 1999 | 224 |
| 1994 | 501 | 2000 | 199 |

| Year | Number of active vessels | Year | Number of active vessels |
|------|--------------------------|------|--------------------------|
| 1995 | 489 | 2001 | 161 |
| 1996 | 367 | 2002 | 148 |

Currently, NMFS is not aware of the number of vessels engaged in IUU fishing in the Atlantic Ocean. ICCAT is composing a list and has asked that contracting parties submit a list of vessels that are known to be engaged in IUU fishing by July 15 of each year. ICCAT will then make the list available to participating nations. NMFS is not aware of any U.S. vessels that are participating in IUU fishing.

6.2 Gross Revenue of Fishermen

For a recent description of some of the variable costs and gross revenues for the pelagic longline fishery, please see Section 6.2 of the FSEIS for Reduction of Sea Turtle Bycatch and Bycatch Mortality in the Atlantic pelagic longline fishery (NMFS, 2004a). Beginning in 2003, NMFS initiated mandatory cost earnings reporting for selected vessels in order to improve the economic data available for all HMS Fisheries.

The measure concerning the monitoring of chartering arrangements, via issuance of a chartering permit, is the only measure impacting U.S. vessels. At this time, NMFS is uncertain of the gross revenue generated by vessel owners for leasing their vessels, but requiring these owners report to NMFS on the status of lease arrangements is unlikely to result in any change in gross revenues.

NMFS will only issue a permit if it is determined that the chartering arrangement is in conformance with ICCAT's conservation and management programs. In the event of a permit denial, NMFS does not anticipate major economic impacts to domestic vessels, given that these vessels would continue to be able to fish in domestic waters for HMS and market prices for HMS may be higher in the U.S. than in other countries.

6.3 Variable Costs and Net Revenues

For a recent description of some of the variable costs and net revenues for the pelagic longline fishery, please see Section 6.2 of the FSEIS for Reduction of Sea Turtle Bycatch and Bycatch Mortality in the Atlantic pelagic longline fishery (NMFS, 2004a). Beginning in 2003, NMFS initiated mandatory cost earnings reporting for selected vessels in order to improve the economic data available for all HMS Fisheries. None of the management measures would change the variable costs and net revenues of fishermen.

6.4 Trade Information

In examining data concerning imports of HMS into the United States from the countries ICCAT recommended trade measures against, NMFS does not expect any significant impacts from the final measures. Belize and Sierra Leone have not exported any tuna or swordfish into the

United States between 1992 and 2002. There is no data concerning imports from Bolivia. Georgia exported to the United States 15,626 kg of non-specified tuna in 1995. Honduras exported to the United States 1,418 kilograms (kg) of BET in 2002 and 2,476 kg in 2003 worth \$4,844 and \$24,760, respectively. BET from Honduras was less than 0.01% of all BET imports during 2002. Honduras also exported 6,763 kg of swordfish in 1997, 871 kg in 1998, and 6,256 kg in 2003 worth \$29,820, \$5,778, and \$43,792, respectively. Swordfish from Honduras is only 0.05% of all swordfish imports to date during 2003. In 2001, St. Vincent and the Grenadines exported to the United States 14,552 kg of BET worth \$80,206. BET from St. Vincent and the Grenadines was only 0.31% of all BET imported during 2001. The measures to be implemented by this rule could allow continued imports from Honduras and St. Vincent and the Grenadines. Due to the limited nature of the historical imports, NMFS does not anticipate a significant impact on the revenues of dealers in the United States.

6.5 Expected Economic Impacts of the Alternatives Considered

As mentioned previously, NMFS does not expect significant economic impacts from the preferred alternative. Lifting the prohibitions on BET, BFT, and SWO from Belize is not expected to increase the amount of fish imported into the United States. From 1992 through 2003, Belize has not exported any of those fish species to the U.S. If this changes in the future and BET, BFT, and swordfish are exported to the U.S., it could improve the economic situation of HMS dealers. Conversely, it could impact fishermen by lowering the market price of the imported species.

As noted in Chapter 4 of this document, lifting the prohibition on BFT and SWO (the BET prohibition was never implemented) from Honduras may result in positive economic impacts. Honduras did not export any BFT to the United States between 1992 and 2002. In the same time frame, Honduras exported 1,418 kg of BET worth \$4,844 in 2002 and has exported 2,476 kg of BET worth \$24,760 in 2003 through May. Regarding SWO, Honduras exported 6,763 kg worth \$29,820 in 1997, 871 kg worth \$5,778 in 1998, and 6,256 kg worth \$43,792 through May 2003.

Lifting the prohibition on BET from St. Vincent and the Grenadines could have slight positive impacts on U.S. fish dealers. In 2001, prior to the prohibition, 14,552 kg of BET worth \$80,206 was exported to the U.S. from St. Vincent and the Grenadines. If the exports of BET resume after the prohibition, there could be a positive impact on U.S. fish dealers. However, that could have potential negative impacts on U.S. fishermen if it lowers market prices.

The preferred alternative of prohibiting imports of BET from Bolivia and Georgia as well as BET, BFT, and SWO from Sierra Leone is not expected to have any negative impact. There have been no imports into the United States of these species from those countries between 1992 and October 2003. Because of this, NMFS does not anticipate any significant negative impacts from this provision.

Establishing measures to monitor and report chartering arrangements is not expected to have a negative economic impact on U.S. vessel owners. Although there were approximately 148 pelagic longline vessels that actively fished during calendar year 2002, NMFS presumes less

than 10 of these vessels to be engaged in chartering arrangements. Therefore, the number of impacted parties seeking out chartering permits would be small and the associated burden of filling out the necessary paperwork would be light. The estimated time to prepare and submit the required information is 40 minutes per report, for a total time of 6.7 hours per year.

As noted earlier, NMFS will only issue a charter permit if it is determined that the chartering arrangement is in conformance with ICCAT's conservation and management programs. In the event of a permit denial, NMFS does not anticipate major economic impacts to domestic vessels, given that these vessels would continue to be able to fish in domestic waters for HMS and market prices for HMS may be higher in the U.S. than in other countries.

The measures impacting the IUU fishing vessels are not expected to have significant economic impacts. Requiring that imports of HMS, if from vessels greater than 24 meters, come from vessels on the ICCAT positive list will not impact U.S. vessels. NMFS does not know of any U.S. fishing vessel over 24 meters in length that would be on this list. Prohibiting imports from vessels on the IUU negative list could potentially impact U.S. dealers, but NMFS does not believe any HMS is imported from those vessels.

In considering the measures together, NMFS does not expect significant positive or negative economic impacts. The preferred alternative could impact primarily foreign vessels. The countries that would have their exports of certain HMS prohibited do not regularly trade in those species with the United States. Because of the statistical document programs for several HMS fish, prohibiting imports from known IUU vessels should not have a significant economic impact because there is not a high incidence of occurrence.

7.0 REGULATORY IMPACT REVIEW

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

7.1 Description of the Management Objectives

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

7.2 Description of the Fishery

Please see Section 3 for a description of the fisheries that could be affected by this rulemaking.

7.3 Statement of the Problem

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

7.4 Description of Each Alternative

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

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

NMFS does not believe that the national net benefits and costs would change significantly in the long run as a result of implementation of the preferred alternative compared to the baseline of no action. The trade import prohibitions are not expected to have significant economic benefits or costs associated with them, the charter arrangement provision has primarily a monitoring function, and the IUU fishing measures would primarily impact foreign entities.

| Management Measure | Net Economic Benefits | Net Economic Costs |
|---|---|---|
| A1: Implement the ICCAT recommendations regarding import prohibitions, chartering, and IUU fishing Preferred | <i>Long-term:</i> Some expected. <i>Short-term:</i> Some expected. | <i>Long-term:</i> None expected. <i>Short-term:</i> None expected. |
| A2: No Action | <i>Long-term:</i> None expected. <i>Short-term:</i> None expected. | <i>Long-term:</i> Some expected. <i>Short-term:</i> None expected. |

7.6 Summary

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 action described in this document and in the final rule do not meet the above criteria. Therefore, under E.O. 12866, the final rule is not a significant regulatory action.

8.0 FINAL REGULATORY FLEXIBILITY ANALYSIS

The FRFA is conducted to comply with the Regulatory Flexibility Act (5 USC 601 et. seq.) and provides analyses of the economic impacts of the various alternatives on small entities. Certain elements required in an FRFA are also required as part of an environmental assessment. Thus, this section should be considered only part of the FRFA, the rest of the FRFA can be found throughout this document.

8.1 Statement of Need For and Objectives of This Final Rule

Please see section 1 of this document for a description of the need for the final rule.

8.2 A Summary of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, A Summary of the Assessment of the Agency of Such Issues, and a Statement of any Changes Made in the Rule as a Result of Such Comments

NMFS received several comments related to this proposed rule that published in the Federal Register, on May 6, 2004. These comments are summarized in Appendix 1 of this document and are included in the final rule. The comment period for this proposed rule closed on June 21, 2004. There were no comments received specific to the Initial Regulatory Flexibility Analysis or economic impacts. Most comments were related to penalty schedules and terms and conditions of chartering permits.

8.3 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 fisheries affected can be found in Section 3.0 of this document. As described in section 6.1, there are currently 516 Atlantic Tuna and 302 Atlantic Swordfish dealer permit holders, most of which do not import HMS from the fishing vessels of other countries. Additionally there are 206 directed Atlantic Swordfish and 235 Atlantic Tuna permit holders (NMFS, 2004b). During 2002 only 148 permit holders that reported fishing with pelagic longline gear. While these 148 permit holders could arrange to charter their vessels, NMFS anticipates less than 10 of these vessels to enter into chartering arrangements. Section 6.0 discusses the economic impacts on impacted small entities.

8.4 Description of the Projected Reporting, Record-keeping, and Other Compliance Requirements of the Final Rule

Some of the final measures in this document result in additional reporting, record-keeping, and compliance requirements. The chartering application and notification requirements for vessels entering a chartering arrangement has been cleared by OMB under control number 0648-0495. The monitoring of chartering arrangements would require vessel owners to submit information concerning the details of the arrangement, via an application for a chartering permit, to NMFS. This reporting requirement would not require any additional skills. The other reporting requirements apply to NMFS and will not impact HMS fishery constituents.

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

Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. NMFS strives to ensure consistency among the regulations with Fishery Management Councils and other relevant agencies. NMFS does not believe that the final alternative would conflict with any relevant regulations, federal or otherwise.

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

In the Initial Regulatory Flexibility Analyses for this proposed rule, NMFS described alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in other sections of this document. Additionally, the Reg Flex Act (5 U.S.C. § 603 (c) (1)-(4)) lists four general categories of “significant” alternatives which should be discussed. These categories (all of which assume the proposed action could impact small entities differently than large entities) 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 permit holders to be small entities, and thus, in order to meet the objectives of this final rule and address the management concerns at hand, NMFS cannot exempt small entities or change the reporting requirements for small entities. The second and third alternatives are relevant but are not practical under this rule. NMFS is proposing this alternative to comply with ICCAT recommendations which are negotiated between many countries. Furthermore, ATCA requires the United States to promulgate ICCAT recommendations as necessary. Thus, the final measures cannot easily be adjusted or modified. Additionally, the final measures are adjustments to current regulations and do not significantly change compliance measures.

The alternative selected by NMFS for this final rule would implement trade restrictions on Bolivia, Georgia and Sierra Leone and lift restrictions against Belize, Honduras, and St. Vincent and the Grenadines. It also would require vessel owners to submit information about chartering arrangements, via an application for a chartering permit, to NMFS. Finally, the final rule would prohibit imports of HMS from IUU fishing vessels. This final rule is expected to have

few, if any, economic impacts on small entities. No other alternatives exist that would meet the purpose and need for this action.

9.0 COMMUNITY PROFILES

Mandates to conduct social impact assessments come from both the National Environmental Policy Act (NEPA) and the Magnuson-Stevens Act. NEPA requires federal agencies to consider the interactions of natural and human environments by using a “systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences...in planning and decision-making” [NEPA section 102(2)(a)]. Moreover, agencies need to address the aesthetic, historic, cultural, economic, social, or health effects which may be direct, indirect, or cumulative. Consideration of social impacts is a growing concern as fisheries experience increased participation and/or declines in stocks. With an increasing need for management action, the consequences of these actions need to be examined in order to mitigate the negative impacts experienced by the populations concerned.

Social impacts are generally the consequences to human populations that follow from some type of public or private action. They may include alterations to the ways people live, work or play, relate to one another, and organize to meet their needs. In addition, cultural impacts, which may involve changes in values and beliefs that affect people’s way of identifying themselves within their occupation, communities, and society in general, are included under this interpretation. Social impact analyses help determine the consequences of policy action in advance by comparing the status quo with the projected impacts. Although public hearings and scoping meetings provide input from those concerned with a particular action, they do not constitute a full overview of the affected constituents.

As mentioned in previous sections, the final rule is expected to have few economic or social impacts on the fishery and the dependent communities. None of the alternatives drastically modify the HMS fisheries as they currently exist. The primary impact will be on foreign fishing fleets or IUU fishing vessels. In the United States, dealers importing HMS from these foreign fleets or fishing vessels may be impacted positively or negatively by the lifting or imposing of trade sanctions. However, based on the small amount of BET, BFT, and SWO imported into the U.S. from the specified nations, NMFS does not anticipate a significant impact from the trade measures. The other measure that would impact U.S. entities is the chartering permit requirement, which would allow the U.S. to monitor and track chartering arrangements. NMFS anticipates that the impact of this measure would be minimal as it requires a submission of information upon the start and termination of a vessel chartering agreement. While NMFS may occasionally deny a chartering permit because of concerns regarding the chartering countries compliance with ICCAT recommendations, NMFS does not believe this will lead to large social or economic impacts due to the small number of vessels likely to enter into a chartering agreement. Thus, the final rule is not expected to have significant social impacts.

10.0 OTHER CONSIDERATIONS

10.1 National Standards

The analyses in this document are consistent with the National Standards (NS) set forth in the 50 C.F.R. part 600 regulations.

This final rule is consistent with NS 1 in that it would implement measures that are part of an international conservation and management effort to prevent the overfishing of BET, BFT, and SWO in the Atlantic Ocean. Because the final rule is based on the recommendations of the 2002 and 2003 ICCAT meetings which took into consideration the most recent stock assessments for the impacted species, the alternatives considered are based on the best scientific information available (NS 2), including self-reported, observer, and stock assessment data which provide for the management of the species throughout their ranges (NS 3). The final rule does not discriminate against fishermen in any state (NS 4) nor does it alter the efficiency in utilizing the resource (NS 5). With regard to NS 6, the rule takes into account any variations that may occur in the fishery and the fishery resources. Additionally, NMFS considered the costs and benefits of these management measures economically and socially under NS 7 and 8 in sections 6, 7, 8, and 9 of this document. The final measures would ensure that bycatch and impacts to protected species are minimized by implementing regulations that encourage countries and IUU vessels to comply with ICCAT conservation and management measures (NS 9). Finally, this final rule would not require fishermen to fish in an unsafe manner (NS 10).

10.2 Paperwork Reduction Act

This action contains a new collection-of-information requirement for purposes of the Paperwork Reduction Act approved by OMB under 0648-0495. NMFS anticipates that the number of impacted parties would be small and that the burden of filling out the necessary paperwork is light. Specifically, NMFS expects that there would be no more than 10 respondents that had engaged in a chartering arrangement. The estimated time to prepare and submit the required information is 40 minutes per report, for a total time of 6.7 hours per year.

10.3 Federalism

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

11.0 LIST OF PREPARERS

This document was prepared by a team of individuals currently employed by the Office of Sustainable Fisheries of the National Marine Fisheries Service including:

Karel Breasted-Gauss, M.S., Fishery Management Specialist
Michael Clark, M.S., Fishery Management Specialist
Tyson Kiddled, MEM., Fishery Management Specialist
Heather Starrett, MAMA, Fishery Management Specialist
Christopher Rogers, Ph.D., Division Chief

Individuals in other offices within NAA contributed including the Office of Protected Resources and the Office of General Counsel.

12.0 LIST OF AGENCIES AND PERSONS CONSULTED

Discussions pertinent to formulation of the proposed action involved input from a variety of scientific and constituent interest groups including the U.S. delegation to ICCAT (including commercial and recreational fishermen, and environmental advocates), ICCAT's SCRS, ICCAT (35 member states), and staff from the International Fisheries Division of NMFS and the NAA's General Counsel for Fisheries. Letters were also sent to the consulting parties required in section 305 of the Magnuson-Stevens Act seeking their comments. Public comments will be accepted during a 45-day comment period and there was one public hearings.

13.0 REFERENCES

- Bertilino, A., J. Cramer, and A. Paine. 2003. Annual Summary of Large Pelagic Species. NOAA Tech. Memo. NMFS-SEFSC 496. 29 pp.
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- SCRS. 1999. Report of the Standing Committee on Research and Statistics, 16th Regular Meeting of the Commission, Executive Summary, October 12, 1999.
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Appendix 1 Public Comments Received and Responses by NMFS Regarding Trade Restrictive Measures Recommended At The 2002 and 2003 Meetings of the International Commission for the Conservation of Atlantic Tunas

Several comments were received at the public hearing and via email from two individuals, including:

Comment 1: I object to lifting country specific tuna import prohibitions.

Response: ICCAT adopted the recommendations to lift certain import restrictions because these countries had come into compliance with the conservation and management goals of the commission. Concurrently, ICCAT adopted other recommendations that ban imports from certain countries that are not complying with the goals of the convention. Under ATCA, the United States is required to implement ICCAT recommendations. Thus, this final rule implements all the ICCAT recommendations from 2002 and 2003 that lift or ban imports of ICCAT species.

Comment 2: NMFS excludes citizens that are not directly involved with fisheries from their public hearings.

Response: Public hearings for NMFS are open to any and all interested members of the public, including those with physical disabilities and the hearing impaired, not just those directly involved in the fishery.

Comment 3: The penalties for violation of chartering permits should be severe, including permit sanctions, and be detailed in the regulatory text.

Response: NMFS agrees that submitting false charter permit information should be met with stiff penalties. Penalties are often based, among other things, on past convictions, severity of offense, and propensity to commit the offense again.

Comment 4: The terms and conditions of chartering permits should include specifics about when the VMS should be turned off and on if they are required to use an equivalent system while fishing in foreign waters. In addition, in situations where the chartering countries quota has been exceeded and a no dead discard provision in place, the United States should stipulate that permit holders will be required to seek an exemption from the chartering country before entering into a chartering arrangement.

Response: The terms and conditions of chartering permits will describe the specific requirements and allowances of individual chartering permits, including: use of VMS, reporting requirements, target species and size, quantity of fish landed, gear employed, protected species interactions, etc. Restrictions in place by both flag and chartering nations must be adhered to and for the entire duration of the agreement and would be considered before permit issuance. a result of these public comments.

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Drafted by Mclark 9/24/04

Revised as per Kbrewster Geisz 10/4/04

Revised by Mclark as per Snathanson 11/4/04