

**Initial Regulatory Flexibility Analysis and  
Regulatory Impact Review  
for a Proposed Rule to**

**Implement HMS  
Trade Monitoring Programs**  
*and*

**Establish the HMS International  
Dealer Trade Permit**



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National Oceanic and Atmospheric Administration  
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# **Proposed Rule to Implement HMS Trade Monitoring Programs and Establish the HMS International Dealer Trade Permit**

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

**Proposed Actions:** Establish a trade monitoring program for the export, import, and re-export of bigeye tuna, southern bluefin tuna and swordfish; adjust the trade monitoring program for bluefin tuna consistent with recommendations from the International Commission for the Conservation of Atlantic Tuna (ICCAT) and the Inter-American Tropical Tuna Commission (IATTC); and establish the Highly Migratory Species International Dealer Trade Permit.

**Type of Statement:** Proposed Rule Documents: Initial Regulatory Flexibility Analysis and Regulatory Impact Review

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**Abstract:** The United States is authorized under the Atlantic Tunas Convention Act (ATCA) and Tuna Conventions Act (TCA) to promulgate regulations as necessary and appropriate to implement conservation and management recommendations that have been adopted by ICCAT or IATTC, respectively. This proposed regulation would implement recommendations adopted in 2001 by ICCAT that called for the establishment of Atlantic swordfish and bigeye tuna statistical document and re-export certificate programs and a 2003 recommendation from IATTC for a similar program for Pacific bigeye tuna. To facilitate the reporting and monitoring of the program, the National Marine Fisheries Service (NOAA Fisheries) is consolidating the existing trade permitting structure to form an international trade permit. This action is necessary to ensure continued progress toward the conservation goals of ICCAT and IATTC for Highly Migratory Species (HMS).



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## 1.0 Introduction

The United States is authorized under the Atlantic Tunas Convention Act [ATCA; 16 U.S.C. 971(d)3] and 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 the International Commission for the Conservation of Atlantic Tuna (ICCAT) and the Inter-American Tropical Tuna Commission (IATTC), respectively. ICCAT adopted recommendations for the establishment of Atlantic swordfish and bigeye tuna statistical document and re-export certificate programs at its 2001 annual meeting. At its June 2003 meeting, IATTC adopted a resolution establishing a statistical document program for Pacific bigeye tuna. In order to comply with recommendations from ICCAT and IATTC, NOAA Fisheries is creating an international trade monitoring program for the export, import and re-export of bigeye tuna, northern bluefin tuna, and swordfish. In order to ensure the trade monitoring program's effectiveness for northern bluefin tuna, trade of southern bluefin tuna will also be covered by the program. An international dealer trade permit will be established to facilitate implementation of these reporting requirements.

### 1.1 Statement of Problem

ICCAT has determined that Atlantic stocks of bigeye tuna (*Thunnus obesus*), bluefin tuna (*Thunnus thynnus*), and swordfish (*Xiphias gladius*) are overfished in the Atlantic Ocean. Large scale longline vessels from ICCAT member and non-member nations alike have been reported to operate in a manner that diminishes the effectiveness of previously implemented ICCAT measures designed, in part, to prevent overfishing and rebuild stocks of these species. At its 2000 meeting, ICCAT recommended the implementation of trade monitoring programs which would address such illegal, unreported and unregulated (IUU) catches in the Convention Area. During 2001, programs for bigeye tuna and swordfish statistical documents and re-export certificates were officially adopted.

ICCAT member nations are now required to implement the bigeye tuna and swordfish trade monitoring programs. As with ICCAT's previously required bluefin statistical document program, Pacific stocks are also included in order to establish an enforceable program. In addition, Pacific bigeye tuna statistical documents are required by IATTC to monitor trade of this species. A re-export certificate for bluefin tuna, which was required under the bluefin tuna statistical document program implemented previously by ICCAT, will also be included.

In order to improve compliance with the BFT SD program, a SD program for southern BFT is also needed. Southern bluefin tuna (*Thunnus moccovii*) are virtually indistinguishable from Atlantic bluefin tuna and Pacific bluefin tuna (*Thunnus orientalis*). Currently, it is possible for dealers to surreptitiously identify Atlantic or Pacific bluefin as southern bluefin in order to circumvent statistical document reporting requirements. This confounds the established trade tracking program. In addition, the Commission for the Conservation of Southern Bluefin Tuna has requested that the United States take part in its statistical document program in order to further conservation efforts for this species.



## **1.2 Description of the Management Objectives**

This action would implement the necessary U.S. trade monitoring programs by amending fishery regulations for dealer permitting and reporting of Atlantic and Pacific swordfish, bigeye tuna, bluefin tuna, and Southern bluefin tuna stocks. The objective of these management measures is to implement the ICCAT and IATTC recommendations regarding trade documentation, further the domestic and international understanding of the bigeye tuna and swordfish fisheries and fisheries trade, and help address illegal, unregulated, and unreported (IUU) fishing for these species. Specifically, this action would implement statistical document and re-export certificate programs for bigeye tuna, southern bluefin tuna, and swordfish, add a re-export certificate to the bluefin tuna statistical document program, and establish the Highly Migratory Species International Dealer Trade Permit (HMS ITP).



## 2.0 Description of the Fisheries - Atlantic & Pacific

In addition to the authorities described in Section 1.0, provisions of the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act) (16 U.S.C. 1801 et seq.) are also applicable to HMS fisheries. NOAA Fisheries manages the Atlantic SWO and tuna fisheries under the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP). Regulations implementing the HMS FMP at 50 CFR part 635 were promulgated under the authorities of the Magnuson-Stevens Act and ATCA. NOAA Fisheries manages swordfish and tuna in the Pacific Ocean under the Western Pacific Pelagics Fishery Management Plan (PFMP) that was prepared by the Western Pacific Fishery Management Council (WPFMC). Regulations implementing that plan at 50 CFR parts 300 and 660 were promulgated under the authorities of the ATCA and TCA, and the Magnuson-Stevens Act, respectively. The Pacific Fishery Management Council also has developed an FMP for U.S. West Coast Highly Migratory Species, which is currently under review. 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. A new Western and Central Tuna Fisheries Convention is likely to come into force sometime in 2004. 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 Bureau of Customs and Border Protection (CBP), formerly the U.S. Customs Service (Customs), under title 19 of the CFR.

### 2.1 Bigeye Tuna

#### *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 - Although ICCAT recognizes a single Atlantic stock for management purposes, it notes the possibility that more than one stock might exist (SCRS 2002). ICCAT reported that the 2002 stock assessment was hampered by a lack of detailed information from some of the major fisheries. Despite the missing information, a number of production models were used to estimate maximum sustainable yield (MSY), which ranged from 79 to 105 thousand metric tons (mt). For the years between 1993-99, these models estimated that the total catch of bigeye tuna exceeded the upper MSY estimate limit for these years, which caused the stock to decline considerably. Total catches have decreased in recent years, and bigeye tuna biomass has leveled off. Current biomass is estimated to be about 10 to 20 percent below biomass corresponding to MSY. Current fishing mortality is estimated to be about 15 percent higher than fishing mortality (F) that would achieve MSY. ICCAT concluded that these and other results indicate that the Atlantic bigeye tuna stock is being overexploited. ICCAT also found that recruitment



overfishing may be occurring, and that yield per recruit could be increased with a reduction in fishing effort by small fish fisheries.

Pacific - Proposals have been made for separate eastern and central/western Pacific stocks; however, a single stock hypothesis is generally accepted for this species. A preliminary Pacific-wide analysis by the Secretariat of the Pacific Community in 2002 suggests that recruitment is estimated to have fallen in the 1990s and is currently at a low level. At the same time, catches and fishing mortality of juvenile bigeye in particular have increased. In this analysis, biomass showed a declining trend over time and current levels of total and adult biomass may be as little as 50% of initial levels. These findings lead to the development of a technically based recommendation that there be no increase in fishing mortality in Western Central Pacific Ocean (WCPO) bigeye surface fisheries until assessment certainties have been resolved.

The IATTC evaluation of eastern Pacific bigeye tuna stock status for 2000 (Watters and Maunder 2002) found that since 1993,  $F$  on young bigeye tuna (less than 5 years old) has increased while  $F$  on older bigeye tuna has decreased. The increase in harvest of young fish was attributed to their greater catchability by the expanding surface fisheries using fish aggregating devices (FADs). Natural variation in recruitment was identified as the factor most affecting current and predicted future stock status. Extremely large cohorts were produced during 1982, 1983, 1994, 1997 and 1998. Extremely low cohorts followed in 1999 and 2000. Throughout most of the period from 1980 - 2001, spawning stock appeared to be at a level greater than that necessary to produce the average maximum sustainable yield. The biomass of 1+ year-olds was estimated at 270,000 for early 2001. Projections indicate that the stock is likely to reach an historic low level within the next three years because of the recruitment of recent small cohorts. Recruitment overfishing does not appear to occur in the current fishery.

### *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 2002). 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 whole weight (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. Two pelagic longline fisheries accounted for just below 40 percent of the total bigeye catch by weight in 2001. Japan harvested 19,000 mt ww and Chinese Taipei harvested 16,400 mt ww. Catches by these gears accounted for the majority of landings for these countries. Ghana also



had a significant catch for 2001 (14,095 mt ww), and the US harvested 1085 mt ww. 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 both Korean and Japanese distant-water longline fleets as well as smaller, local longliners from Pacific Island nations. Pacific-wide catch of bigeye has varied between 100 and 200 thousand mt ww since 1980. Longline catches in the Eastern Pacific Ocean, (EPO, east of 150° W), which have historically been the primary longline fishery area for bigeye tuna, have varied from 50 to 102 thousand mt ww since 1980, and have generally fallen below 40,000 mt ww in recent years, with an historic low in 1999. Meanwhile, longline catches in the WCPO were the highest on record during 1999 (71,643 mt ww). Bigeye tuna are considered the economic cornerstone of the WCPO tropical longline fishery, with a value that approached \$1 billion in 2001.

There has been a rapid 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 70,000 mt ww in 2000. Of the record high WCPO 34,282 MT catch in 1990, the U. S. fleet harvested approximately 17,403 mt ww. Since 1999, bigeye tuna catches have declined. The number of U.S. vessels participating in WCPO tuna purse seine fisheries ranged from a low of 30 in 2001 to a high of 40 in 1994. The lowest bigeye tuna catch occurred in 1994.

In the US Exclusive Economic Zone (EEZ), primarily off southern California, the domestic fleet is responsible for less than 1 percent of the catch of bigeye tuna for the entire Eastern Pacific. 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.

#### *Current Domestic Trade Monitoring Requirements*

Dealer permitting and reporting requirements for Atlantic HMS are found in 50 CFR Secs. 635.4 and 635.5, respectively. Pacific HMS requirements are found in 50 CFR 300.

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 Atlantic Tunas Dealer Permit (ATDP), which is issued by the NOAA Fisheries Northeast Regional Office (NER).

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. 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 the NOAA Fisheries Southeast Regional Office (SER).





In the special circumstances when a dealer imports or lands a fish and then transfers it to another dealer, the first dealer is responsible for including it on a biweekly report, and must contact the second dealer to obtain the pricing and destination information necessary to complete the biweekly.

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

## **2.2 Bluefin Tuna**

### *Biology and Stock Status*

Detailed descriptions of the life histories of bluefin tuna are given in the 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. At the 2002 meeting of the Standing Committee on Research and Science (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 about a 60 percent probability of allowing rebuilding to the 1975 stock size; a catch of 2,700 mt ww has about a 52 percent chance of reaching this stock size. The SCRS cautioned that these conclusions do not capture the full degree of uncertainty in the assessments and projections. 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 to 2,700 mt, consistent with the western BFT rebuilding program established in 1998. NOAA Fisheries has published a final rule to implement these recommendations (October 2, 2003, 68 FR 56783).

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 about 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 TAC for the eastern stock at 32,000 mt ww for the years 2003-2006.

Pacific - IATTC reviews the status of north Pacific bluefin tuna occasionally. The stock is mainly located in the western Pacific Ocean and catches have decreased since the late 1950s, but now appear to be in recovery. West coast fishermen take about 10 percent of the total catch level, mainly the juveniles that migrate irregularly to the eastern Pacific. There is little evidence that overfishing is occurring or that there is a persisting decline in the stock. However, there are no standardized effort measures for the western fisheries for developing abundance indices. An MSY has not been determined, but a proxy value is taken to be the average level of recent catches (20,000 mt ww), with a proxy optimal yield of 75 percent of that as MSY. Bluefin tuna is the least productive with the most restricted spawning among the tunas. Because the stock is primarily in the western Pacific and there is a lack of international agreement on stock status relative to MSY, there are no current regional harvest guidelines at this time.

Southern - The stock assessment undertaken by the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) in 1998 suggested that the parental biomass of southern bluefin tuna is at historically low levels, in the order of 7 to 15 percent of the 1960 level. The CCSBT acknowledged the advice of the Scientific Committee at its annual meeting in October 2002 that at a global catch of about 15,500 mt ww, there was an equal probability that the stock could decline or improve. It was acknowledged that at current catch levels there is little chance that the southern bluefin tuna spawning stock will be rebuilt to the 1980 levels by 2020.

### *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 2000 and 2001 are estimated as 2,395 MT and 2,597 MT, respectively. 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.

The East 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 the 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. Additionally, it is suspected that large quantities of undersized fish are caught but not reported. In 2000, ICCAT estimated the landings of bluefin tuna from the East Atlantic and the Mediterranean (including estimates of unreported catch) to be approximately 33,754 MT.

Pacific - North Pacific bluefin in the western Pacific Ocean are mainly caught by purse seine and troll gears, but also by pelagic longline and other gears. Catches have averaged 20,000 mt ww per year stock-wide (1995-1999). In the eastern Pacific, catches are much less, having averaged 3,500 mt ww per year (1990-1997), and are primarily taken by purse seiners (IATTC 1999). Fishing in the eastern Pacific Ocean occurs off southern California and Mexico, mainly between spring and fall and within 100 miles of shore.

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. 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. A TAC of 11,750 mt ww was agreed upon and applied from 1989 to 1997. From 1998, the three original members maintained voluntary catch limits. In 2001 the voluntary limits were: Japan - 6,432 mt ww, Australia - 5,265 mt ww, and New Zealand - 420 mt ww. On joining the Commission, Korea agreed to limit its national annual catch to 1,140 mt ww. Taiwan has agreed to limit its annual catch to 1,140 mt ww as part of its undertakings to join the Extended Commission. Korea and Taiwan primarily use longline and purse seine gear to harvest southern bluefin tuna. The combined harvest in 2001 was estimated to be 16,216 mt ww.

#### *Current Domestic Trade Monitoring Requirements*

The United States implemented a Bluefin Tuna Statistical Document (BSD) 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 and a government accredited institution validation system 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 BSD program. Complementary systems are in place for Atlantic and Pacific bluefin tuna, and information on both subspecies are reported to ICCAT on a semi-annual basis.

Atlantic - Up to three reporting forms are required if Atlantic or GOM coast dealers purchase from a vessel, import, and/or export a bluefin tuna. Upon purchasing a bluefin tuna from a vessel, a dealer must place a uniquely numbered tag, provided by NER, 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 NER HMS. The original of this form must be mailed to NER HMS within 24 hours of landing. Portions of this information must also be recorded on the Bi-weekly 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 NER HMS 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 (BSD) and attach it to the shipment on route to its final destination. This regulation is based on an ICCAT requirement that a BSD accompany any bluefin tuna that is exported from one country to another. Copies of the BSDs for an exported fish that was domestically landed must be postmarked and mailed or faxed by the dealer to NER HMS within 24 hours after export. Dealers importing bluefin tuna with the United States as the final destination must postmark and mail the original BSD from the foreign country to HMS within 24 hours of import. Dealers re-exporting (exporting a bluefin tuna after it was imported from another country) must attach the original BSD from the foreign country with the shipment on route to its final destination. Copies of the BSD must be postmarked and mailed or faxed to NER HMS within 24 hours of re-export.

Pacific - Federal dealer permits are not required for purchase of BFT from a U.S. flag vessel on the U.S. Pacific coast. In order to import or export bluefin tuna, a Pacific dealer must obtain a Pacific Bluefin Dealer Permit (PBDP) which is issued free of charge by the NOAA Fisheries Southwest Regional Office (SWR). All imported bluefin tuna must be accompanied by a BSD originating from the exporting nation. The importer must provide SWR with a copy of the BSD within 24 hours of receiving the shipment. The BSD must accompany the shipment to the final destination.

Exported individual bluefin tuna must be associated with a dealer prepared BSD, and either a tail tag or government validation. For bulk shipments, government validation of the BSD may be performed by a federal government representative at the SWR or a non-government organization authorized to validate bulk shipments. Currently, The San Pedro Fisheries Institute located in San Pedro, CA is authorized to validate bulk shipments for its member. The original copy of the BSD accompanies the shipment of fish, and a copy of the BSD must be delivered to SWR within 24 hours. Biweekly dealer reports must be submitted to SWR for each pre-defined two week period during which a shipment is imported or exported.

Southern - Currently, there is no reporting requirement for imports or re-exports. CBP instituted a separate tariff code in 2002 to aid in tracking shipments.

## **2.3 Swordfish**

### *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 - ICCAT divides swordfish management units in the Atlantic into north and south sectors at 5° N latitude. The North Atlantic stock assessment conducted by ICCAT in 2002 showed an improvement in stock status since 1998 (SCRS 2002). In particular, recruitment appears to have improved substantially since 1997. If the strong year classes of 1997 and 1998



are not heavily fished in the future, improvements are expected to continue. Early in 2002 the biomass was estimated to be 94 percent of that necessary to produce MSY. Fishing mortality was estimated to be three-quarters of  $F_{MSY}$ , and replacement yield was estimated at about MSY. Biomass is expected to increase further under current catch levels.

South Atlantic swordfish are considered fully fished and overfishing may be occurring. ICCAT 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, ICCAT noted that the total catches have decreased since 1995 as recommended. Based on this information, significant changes in the management regime were not required.

Pacific - There is uncertainty over the stock structure of swordfish in the Pacific. There are either one or two stocks in the eastern Pacific Ocean (EPO), and a third northwestern stock may occasionally move into the area. If there are two EPO stocks, one would be centered off California and Mexico, and the second in the southeastern Pacific. It appears that fisheries in the EPO are fishing above the average MSY (Hinton and Bayliff 2002). Catches in the region have been fairly stable since 1989, averaging about 13,000 mt ww annually. Taking these considerations into account, swordfish in the EPO do not appear to be overfished. However, since gillnet and longline fisheries are increasingly targeting swordfish in this area, the IATTC stock assessment (Hinton and Bayliff 2002) suggests that these stocks be monitored closely for any changes in trends.

Fisheries in the Western-Central Pacific Ocean (WCPO) also appear to be occurring at sustainable levels. This deduction is based on consistency in catch and size composition comprising Hawaii landings, which supports the finding that WCPO swordfish are not overfished.

### *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 U.S. quota is 29 percent of the total North Atlantic quota established by ICCAT. The current U.S. quota is 2,951 mt ww and a proposed rule (68 FR 36967) published on June 20, 2003, proposes increasing the quota to 3,877 mt ww. Numerous other countries, both members and non-members of ICCAT, harvest lesser amounts of swordfish.

In the South Atlantic, vessels fishing for swordfish are primarily from Brazil, Spain, Japan, and Uruguay. Vessels from the United States landed less than 2 percent of total South Atlantic landings in 1999. Japanese vessels catch swordfish incidental to tuna longline operations throughout the Atlantic Ocean. The current U.S. quota is 384 mt ww and a proposed rule (68 FR 36967) published on June 20, 2003, proposes reducing the quota to 100 mt ww. 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, Mexico, Ecuador, Peru, Chile, and off Australia and New Zealand (PFMC 2002). The catch by U.S. West coast-based vessels has been estimated to be about 5% of the international Pacific-wide catch.

Hawaiian longliners targeting swordfish were a primary producer of swordfish prior to 2001. However, conservation measures to protect sea turtles phased out the swordfish segment of the longline fishery (WPRFMC 2002). The total number of trips for the Hawaii based longline fishery has remained the same; however, swordfish and mixed targeted trips have decreased by 99% and 95%, respectively, when compared to 1991 activity. The Hawaii-based longline fishery now exclusively targets large tunas for sashimi and fresh fish for local retail and wholesale outlets, mainland U.S. markets, and export to Japan. A number of vessels gave up their limited access permit to the Hawaii fishery in order to continue to target swordfish in the California fishery. The California fishery fishes closer to the U.S. mainland than the Hawaiian fleet.

Under California law, longline fishing in the EEZ off the state is prohibited; however longline caught fish may be landed in California as long as fishing takes place outside the EEZ. Landings for this fishery, which constitute the entire swordfish landings for the mainland west coast longline fishery, have increased from 27 MT in 1991 to 1,287 MT in 1999 (PFMC 2002). With the confinements placed on the Hawaiian longline fishery, these landings may indeed continue to increase in the near future; however, the Pacific Fishery Management Council is considering restrictions similar to those faced by the western Pacific fleet.

Swordfish are also harvested by a U.S. mainland based drift gillnet fishery off California and Oregon, and a harpoon fishery operating within the southern California bight (PFMC 2002). In addition to the United States, other nations harvesting great amounts of swordfish from the EPO in recent years include Chile, Japan, and Mexico.

#### *Current Domestic Trade Monitoring Requirements*

All dealers who import swordfish must obtain a swordfish dealers permit from the NOAA Fisheries Southeast permit office in St. Petersburg, FL. This permit covers dealers who purchase product from vessels on the Atlantic coast, as well as any dealer that imports swordfish, regardless of location. A certificate of eligibility (COE) must be accompanied by each shipment of swordfish imported into the United States. This document certifies that shipments of Atlantic swordfish were harvested following the required ICCAT management regime. Swordfish importers must report all imports; however there is some regional variability in reporting method. For all regions, swordfish import biweekly reports are required with attached copies of COEs, but biweekly reports are not required for periods without activity. All swordfish dealers are required to submit biweekly reports for domestic landings, including negative reports, even if they are solely engaged in import activity.

Atlantic - In addition to the national requirement for dealers purchasing imported swordfish, the swordfish dealer permit is also 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 unlike the biweekly report for imported swordfish, biweekly landings reports must be submitted 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 with the local NOAA Fisheries Northeast Region (NER) port agent. Dealers in these states that import swordfish report to the Beaufort, North Carolina NER port agent on a biweekly basis. Copies of COEs accompanying import shipments must be attached, and as described above, negative reports for imports are not required.

Pacific - On the Pacific coast, the only relevant dealer permit requirement is for imported swordfish, as described above. Special dealer permits are not required for swordfish landed by U.S. vessels on the west coast. Pacific dealers file biweekly import reports with the SEFSC in Key Biscayne, FL. COEs must be attached, and negative reporting for imports is not required.



### 3.0 Description of Alternatives

#### **Alternative 1 - Create the Highly Migratory Species International Trade Permit (HMS ITP) - Preferred Alternative**

This alternative would implement the ICCAT and IATTC statistical document programs as required by ATCA and TCA, respectively, by establishing a federal Highly Migratory Species International Trade Permit (HMS ITP) governing the import and export of bigeye tuna, Atlantic and Pacific BFT, southern bluefin tuna and swordfish. To achieve this, the swordfish dealer permit would be modified to remove importers, the Atlantic Tuna Dealers permit would be modified to remove bluefin tuna import and exports, and the Pacific Bluefin Tuna Dealers Permit would be eliminated. This alternative would implement statistical documents for bigeye tuna, southern BFT, swordfish, and implement re-export certificates for bluefin tuna, bigeye tuna, southern bluefin tuna, and swordfish. A new biweekly HMS international dealer trade report would be created by combining elements of the biweekly Pacific bluefin tuna and swordfish import reports for biweekly reporting of bluefin tuna, bigeye tuna, southern bluefin tuna, and swordfish imports, exports, and re-exports. Segregation of international dealers from domestic dealers will allow international reporting requirements to be addressed solely to international dealers, which will minimize burden and confusion for domestic dealers.

#### **Alternative 2 - Status Quo / No Action**

This alternative would maintain the status quo permitting and reporting arrangements (see section 2). This alternative is not preferred because there would be no changes to the existing reporting structure which would put the United States in non-compliance with the ICCAT and IATTC recommendations.

#### **Alternative 3 - Build on Existing Permitting and Reporting Systems**

This alternative would modify the Atlantic and Pacific Tuna Dealer Permits to include dealers who export, import, or re-export southern bluefin tuna or bigeye tuna, and would modify the swordfish permit to include dealers who export or re-export swordfish. The additional reporting requirements that would be involved include southern bluefin tuna, bigeye tuna and swordfish statistical documents, re-export certificates, bluefin tuna re-export certificates, and modified biweekly reports. This alternative is not preferred because it would increase the number of permits required for many dealers and increase the complexity associated with monitoring the imports and exports of HMS and with complying with regulations. Also, it would inhibit future expansion of the permitting system and would not dissociate unrelated international and domestic activities.

#### **Alternative 4 - Create a new HMS International Trade Permit that does not cover southern bluefin tuna trade**

This alternative would establish a federal HMS ITP governing the import and export of bigeye tuna, bluefin tuna, and swordfish but would not include southern bluefin tuna. Southern





bluefin is not specifically included in either the ICCAT or IATTC recommended trade program. This alternative is not preferred since it would compromise the effectiveness of the United States' implementation of the statistical document program for bluefin tuna (see section 1.2). Southern bluefin would continue to be managed with a separate CBP tariff code.



## 4.0 Economic Evaluation

This section examines the anticipated economic impacts resulting from the proposed rule. NOAA Fisheries anticipates that the only impacts of the proposed permit and reporting requirements will be on seafood dealers.

### 4.1 Number of Dealer Permit Holders

Under Alternative one, the total number of dealers required to obtain the HMS ITP (number of respondents) is estimated to be 960 (see Table 1). This figure is expected to be an overestimate since the total number of dealers who currently possess the Swordfish Dealer Permit and Atlantic Tuna Dealer Permit are included in the estimate. Each of these permits covers dealers that may only purchase swordfish or bluefin tuna domestically. Under the other alternatives, NOAA Fisheries would expect the number of impacted dealers to remain approximately the same. Upon implementation of this rule, the number of dealers operating solely in domestic or international transactions will be more clearly defined, and the estimated number of dealers should decrease. The estimated number of dealers is also expected to decrease for the Swordfish Dealer Permit and Atlantic Tuna Dealer Permit since dealers solely operating in international transactions will no longer be required to obtain these permits.

**Table 1.** Summary of activities covered by the HMS ITP including importing (imp), exporting, and re-exporting (exp). The number of dealers that would need to purchase the HMS ITP are estimated.

Activity	Number of Dealers	Method for Estimating Number of Dealers per Activity
<b>NATIONWIDE</b>		
Swordfish Imp	315	Number of current swordfish dealer permits (covers domestic purchase of Atlantic swordfish from vessels and swordfish import)
Swordfish Exp	30	Estimated no. of dealers exporting swordfish but not importing or purchasing domestically
<b>ATLANTIC</b>		
Bluefin tuna Imp/Exp	522	Number of current Atlantic Tuna Dealer Permits (covers international trade of Atlantic bluefin tuna and domestic purchase of Atlantic bluefin tuna & bigeye tuna)
Bigeye tuna Imp/Exp	42	Estimated no. of dealers internationally trading Atlantic bigeye tuna but not purchasing bigeye tuna domestically
<b>PACIFIC</b>		
Bluefin tuna Imp/Exp	39	Number of current Pacific Tuna Dealer Permits (covers international trade of Pacific bluefin tuna)
Bigeye tuna Imp/Exp	12	Estimated number of dealers internationally trading Pacific bigeye tuna
<b>TOTAL</b>	<b>960</b>	<b>Estimated number of HMS ITPs</b>



## 4.2 Gross Revenue of Dealers

It is difficult to assess the gross revenue of individual dealers due to the inability to determine the quantity of imports, exports, and re-exports each dealer handles. Some dealers handle larger quantities of fish than others and some handle only domestic product. In addition, the market prices for HMS fluctuate frequently and vary considerably on an annual basis. The data in Table 2 is taken from the U.S. Census Bureau which gets reports from U.S. CBP. It provides an idea of how much bigeye and bluefin tuna, southern bluefin tuna, and swordfish products enter and leave the country each year and their value.

**Table 2.** Foreign Trade Data from the U.S. Census Bureau

	Import		Export		Re-Export	
	kg	\$	kg	\$	kg	\$
<b>Bigeye Tuna</b>						
1998	NA	NA	NA	NA	NA	NA
1999	NA	NA	NA	NA	NA	NA
2000	NA	NA	NA	NA	NA	NA
2001	4,820,039	26,025,163	NA	NA	NA	NA
2002	6,632,219	40,551,787	104,336	241,324	10,461	22,002
<b>Bluefin Tuna</b>						
1998	261,894	3,693,818	1,551,277	10,643,876	33,718	361,183
1999	583,986	3,931,604	1,183,339	9,374,950	38,144	208,734
2000	400,598	7,181,652	1,044,863	11,206,529	13,043	61,855
2001	626,753	9,934,284	1,020,023	10,700,208	11,415	74,194
2002	1,339,736	12,916,924	922,530	10,741,564	167,384	2,399,256
<b>Southern Bluefin Tuna</b>						
1998	unk	unk	unk	unk	unk	unk
1999	unk	unk	unk	unk	unk	unk
2000	unk	unk	unk	unk	unk	unk
2001	unk	unk	unk	unk	unk	unk
2002	582,893	1,274,310	0	0	0	0
<b>Swordfish</b>						
1998	16,281,831	82,577,668	NA	NA	NA	NA
1999	13,842,970	71,726,266	NA	NA	NA	NA



<b>2000</b>	14,314,075	85,579,449	NA	NA	NA	NA
<b>2001</b>	13,697,592	81,899,112	NA	NA	NA	NA
<b>2002</b>	15,711,975	88,266,887	NA	NA	NA	NA

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

### 4.3 Variable Costs and Net Revenues

There are two primary costs associated with the proposed alternatives: the cost of the permit and the cost of reporting. Under the preferred alternative and alternative 4, U.S. dealers would be required to obtain the initial permit, and then renew their permit annually. Both of these applications take an estimated 5 minutes to complete. Therefore, the total reporting burden for the permit is 960 respondents x 0.083 hours per response = 79.7 hours. At an opportunity cost of \$15 per hour, this totals \$1,196 and is less than \$2 per dealer. In addition to the time burden, NOAA Fisheries anticipates a permitting fee of \$100. Assuming each dealer applies for the permit, the total cost could be \$96,000 (960 x \$100). The total postage cost for submitting the form will be \$0.37 x 960 = \$355.20.

Under alternative 2, there would be no additional permit related costs. Under Alternative 3, the same number of dealers would require a permit as in alternative 1; however, the type of permit would vary. Atlantic and Pacific tuna dealer permits are issued free of charge, and swordfish dealer permits cost either \$100 or \$25 each, depending upon the number of Southeast Region issued permits the dealer possesses. The difference in cost associated with this alternative and alternative 1 ranges from \$0 to \$100 per dealer.

The number of dealers that would be required to report (Table 3) under the preferred alternative differs from the number of dealers required to have the HMS ITP since international dealers are also affected by the reporting requirements. Foreign dealers impacted by this collection include exporters that must fill out statistical documents and obtain validation prior to shipment to the US. The number of foreign respondents was estimated by identifying the number of countries exporting bigeye tuna (40), bluefin tuna, (20), southern bluefin tuna (4) or swordfish (29) to the United States, and assuming that there were approximately 10 active exporters per country. The same number of dealers would be impacted under alternative 3 since all dealers that import and/or export the affected species would be required to report. Slightly fewer dealers may be impacted under alternative 4 since there may be some dealers that do not import or re-export species other than southern bluefin tuna, and these dealers would be excluded from reporting requirements.

**Table 3.** Estimated number of dealers affected by reporting requirements by alternative.

<b>Dealer Type</b>	<b>Number of Dealers</b>
HMS International Trade Permits	960
Foreign Dealers (bluefin, bigeye, swordfish)	890
Foreign Dealers (southern bluefin)	40



<b>TOTAL (Alt. 1 &amp; 3) / Alt 4</b>	<b>1890 / 1850</b>
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Burden estimates for the trade-tracking components of this action are calculated in Table 4. The new reporting requirements include the implementation of a statistical document and re-export certificate for bigeye tuna, southern bluefin tuna, and swordfish and a re-export certificate for bluefin tuna. 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 databases. 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.

The total burden associated with statistical documents, re-export certificates and validation is 35,780 hours or approximately 19 hours per dealer (37,592 / 1890). At an opportunity cost of \$15 / hour, costs would total \$285 annually per dealer and \$536,700 overall, including costs for foreign dealers. Statistical documents and re-export certificates would be mailed to NOAA Fisheries at a total cost of \$4144 (.37 x 11,202) or approximately \$2.20 per dealer.

**Table 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).

Activity	# of SDs or RXCs (based on # of shpmnts for 2001)	SD/RXC Response Burden (.08 hrs per form)	Validation Burden (2 hrs per shipment)		TOTAL HOURS
			Domestic	Foreign	
<b>BET</b>					
I	6663	533		13,326	13,859
E	163	13	326		339
R	1106	88	2212		2300
<b>BFT (Atlantic/Pacific)</b>					
R (A)	11	1	22		23
R (P)	4	1	8		9
<b>SBT<sup>2</sup></b>					
I	579	46		1158	1204
R	12	1	24		25
<b>SWO</b>					



<b>I</b>	8664	693		17,328	18,021
<b>E</b>	0	0	0		0
<b>R</b>	0	0	0		0
<b>TOTAL</b>	11,202	1,375	2,592	31,812	<b>35,780</b>

<sup>1</sup>Domestically landed BFT are required to be tagged, which is used for certification of exports. Burden hours are calculated separately.

<sup>2</sup>Southern bluefin tuna (SBT) data are from 2001

U.S. dealers would also be required to submit the HMS International trade biweekly form for each two week reporting period. These forms are used to cross-check statistical document and re-export certificate data as well as collect economic data on import/export/re-export transactions. Assuming the total estimated number of dealers obtaining an HMS ITP (960) reported for every two week period during a year (24), a total of approximately 2300 biweeklies would be filed, or 24 biweeklies per dealer. Dealer costs include the cost of submitting these reports to NOAA Fisheries or .37 per 24 mailings for a total of approximately \$9.00 per year per dealer, or \$8,640 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 \$86,400 for all U.S. dealers annually.

Costs for dealers associated with permitting and reporting would not change from the current situation under the status quo alternative. However, without the ICCAT or IATTC required documentation, U.S. product might be denied entry to nations participating in international management programs. Since the nations responsible for receiving the greatest amount of imports of U.S. product are member nations, this alternative could have serious negative consequences for U.S. exporters (see Table 3 for the value of recent U.S. exports).

Alternative 3 would be expected to result in a greater reporting burden than Alternative 1 since domestic and international dealers would be covered under the same permit, and frequently regulations apply to the entire permit holder category. Additional administrative burden in the form of confusion could also result from continuing to build on exiting systems for reporting of HMS trade. Alternative 4 would be expected to have slightly less reporting burden since SBT trade transactions would not be subject to trade monitoring requirements. This alternative could result in negative impacts to the international bluefin tuna management program since dealers could surreptitiously label Atlantic or Pacific bluefin as southern bluefin tuna. This could confound trade data by underestimating trade in bluefin and could provide a lucrative market for bluefin obtained through illegal, unreported or under-reported fishing.

#### **4.4 Expected Economic Impacts of the Alternatives Considered**

NOAA Fisheries expects only minor negative economic impacts from the preferred alternative because the proposed measures only involve adjusting the permitting and reporting requirements. The no action/status quo alternative (alternative 2) would make no changes to current programs. The remaining three alternatives would implement the recommended trade programs for swordfish, bigeye tuna, and bluefin tuna. The preferred alternative (alternative 1)



and alternative 4 would implement the recordkeeping requirements by linking them to the newly established HMS international dealer trade permit for dealers of these species. The preferred alternative differs from alternative 4 by requiring trade monitoring for southern bluefin tuna in addition to the other species, in order to facilitate program effectiveness, whereas alternative 4 would not require the use of SBT statistical documents or require a dealer permit for trading in SBT. Alternative 3 would implement the trade program by building onto existing dealer permits and associated recordkeeping requirements. Overall, the immediate costs associated with the preferred alternative and alternatives 3 and 4 are expected to be greater than for alternative 2 (no action); however, access to international markets could be reduced under the status quo, which is expected to have much greater negative economic impacts in the long term. ‘

The initial cost of obtaining the permit for each U.S. dealer under the preferred alternative and alternative 4 is expected to be \$100 plus the time of filling out the form and the cost of postage, which would be approximately \$2. NOAA Fisheries expects this amount to be a minor negative impact for the affected dealers. The permit-associated cost for the preferred alternative and alternative 4 differs from building onto existing systems (alternative 3) in an amount between \$0 to \$100 per dealer, depending upon the other permits held by the dealer. Under alternative 3, if the dealer were required to have an Atlantic or Pacific tuna permit to trade in bigeye tuna or southern bluefin tuna, there would be no associated cost since these permits are issued free of charge. However, if the dealer were required to have a swordfish permit for importing or exporting swordfish, the cost could be either \$25 or \$100, depending upon whether the dealer has another permit issued by the Southeast Region of NOAA Fisheries. NOAA Fisheries estimates that approximately 960 dealers would be impacted by the preferred alternative and alternative 3. Alternative 4 would entail similar costs per dealer as alternative 1; however, slightly fewer dealers would be impacted since dealers trading in southern bluefin tuna without trade in any of the other covered species would not be required to purchase a permit.

NOAA Fisheries estimates that approximately 1,890 dealers (930 foreign and 960 domestic) could be impacted by the reporting requirements under the preferred alternative and alternatives 3 and 4. Impacts for each of these alternatives is expected to be approximately the same since all dealers must submit the required reports, regardless of the type of permit. The annual economic impacts would be approximately \$386 per dealer, including statistical document and re-export certificate opportunity costs (\$285) and mailing (\$2), biweekly opportunity cost (\$90) and mailing (\$9). This amount will vary depending on the volume of HMS imported or exported or the number of forms submitted. Alternative four would eliminate the need for reporting southern bluefin tuna trade, so costs would be slightly reduced. Finally, dealers could be negatively impacted if the time burden interferes with how dealers conduct their business; however, NOAA Fisheries does not expect the direct or indirect costs or associated time burden of additional reporting to be more than a minor negative impact for the affected constituents.



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





## **6.0 Initial Regulatory Flexibility Analysis**

### **6.1 Description of the Reasons Why Action is Being Considered**

Please see section 1.1 of this document for a description of the need for the proposed rule.

### **6.2 Statement of the Objectives of, and Legal Basis for, the Proposed Rule**

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

### **6.3 Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply**

NOAA Fisheries considers all permit holders to be small entities. A description of the affected fisheries can be found in Section 2.0 of this document. As described in section 4.1, there are currently approximately 960 HMS dealers that will be required to apply for the International Trade Permit and approximately 1,890 respondents that will be impacted by the reporting requirements of the preferred alternative. The measures proposed in this rule will not apply to other participants in HMS fisheries, so the impacts will be limited.

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

The preferred alternative would require all dealers who import, export, or re-export swordfish, bigeye tuna, or bluefin tuna to obtain a valid federal HMS ITP. Under the proposed rule, trade in other federally-managed HMS fisheries would not trigger the international trade permit requirement. The scope of the permit may be expanded in the future to include other HMS should NOAA Fisheries deem it necessary based on domestic or international management needs. Reporting requirements attached to this permit would, at a minimum, include statistical documents, re-export certificates, and bi-weekly summary reports. The statistical documents are species-specific and generally contain vessel information, area of catch, product description, export and import certification and government validation information. Biweekly reports generally include import/export dates, customs information, product and shipment information, and some economic information. The re-export certificates are species-specific and generally contain information regarding nation of re-export, product information, as well as certification and validation information. NOAA Fisheries expects that the preferred alternative would clarify and simplify current regulations and should also minimize the compliance requirements. NOAA Fisheries has requested approval from the Office of Management and Budget for the HMS ITP information collection under 0648-0327 and dealer reporting under 0648-0040.

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



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. NOAA Fisheries strives to ensure consistency among the regulations with Fishery Management Councils and other relevant agencies. NOAA Fisheries does not believe that the proposed alternatives would conflict with any relevant regulations, federal or otherwise. The existing swordfish permit and Atlantic tuna dealer permit would drop the international components of their requirements to avoid duplication with the HMS ITP.

#### **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 Proposed Rule on Small Entities**

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below 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, NOAA Fisheries considers all dealers to be small entities. Thus, in order to meet the objectives of this proposed rule and address the management concerns at hand, NOAA Fisheries cannot exempt small entities or change the reporting requirements for small entities. The third category is not applicable, since ICCAT and IATTC have very specific requirements for implementation of the trade tracking programs addressed in this action. The proposed measures satisfy the goal of category two by consolidating and simplifying the existing dealer permitting and reporting structure. NOAA Fisheries is proposing the alternatives in this proposed rule to comply with ICCAT and IATTC recommendations which are negotiated between many countries. Thus, the proposed measures cannot easily be adjusted or modified.

The preferred alternative proposed by NOAA Fisheries meets the requirements of IATTC and ICCAT while simplifying the permitting and reporting processes. The preferred alternative also eases the burden of trade monitoring by allowing for improved tracking of bigeye tuna, southern bluefin tuna, bluefin tuna and swordfish. To achieve a similar level of oversight with regard to trade monitoring, several modifications would have to be made to the existing permitting and reporting structure. These changes, described as alternative 3 would increase the compliance burden on the dealers and would increase the administrative burden on NOAA



Fisheries. The no action alternative (alternative 2) would not meet the regulatory requirements of the IATTC and ICCAT so is not deemed a satisfactory management alternative. Alternative 4 would jeopardize the enforceability and effectiveness of ICCAT's bluefin tuna statistical document program. NOAA Fisheries believes that there are no other alternatives that would minimize any impacts of the proposed alternative and meet legal obligations.



## **7.0 List of Preparers**

This document was prepared by a team of individuals from the Office of Sustainable Fisheries of NOAA Fisheries including:

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## 8.0 References

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