

ENVIRONMENTAL ASSESSMENT,
REGULATORY IMPACT REVIEW,
AND
FINAL REGULATORY FLEXIBILITY ANALYSIS
FOR A FINAL RULE ON
THE FINAL INITIAL SPECIFICATIONS REGARDING
2003 QUOTAS AND EFFORT CONTROLS AND
ICCAT RECOMMENDATIONS
FOR THE ATLANTIC BLUEFIN TUNA FISHERY
AND
HIGHLY MIGRATORY SPECIES VESSEL PERMITS

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

September 2003

FINDING OF NO SIGNIFICANT ENVIRONMENTAL IMPACT

The Highly Migratory Species (HMS) Management Division of the Office of Sustainable Fisheries submits the attached Environmental Assessment (EA) for final initial 2003 Atlantic bluefin tuna (BFT) quota specifications, General category effort controls, a definition of “in the vicinity of the management area boundary” per a 2002 International Commission for Atlantic Tunas (ICCAT) Recommendation, and revisions to HMS vessel permit regulations 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 Regulatory Impact Review (RIR) and an Final Regulatory (FRFA). Copies of the EA/RIR/FRFA are available at the following address:

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

The final action would implement the following measures:

- 2003 fishing year BFT quotas for all domestic fishing categories, including a specific ICCAT quota allocation to the longline category “in the vicinity of the management area boundary,”
- Definition of “in the vicinity of the management area boundary,”
- General category effort controls, including time-period subquotas and restricted fishing days,
- Permit revision to allow General category vessels to participate in registered recreational HMS fishing tournaments, and
- Allowance for vessel permit applicants to change permit categories within 10 days from date of issuance of the permit.

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

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ABSTRACT

September 16, 2003
Date

Final Action: Set 2003 fishing year BFT quotas for all domestic fishing categories, including a specific ICCAT quota allocation to the longline category and a definition as to where this allocation and associated regulations apply; set General category effort controls; revise permit requirements to allow General category vessels to participate in recreational registered HMS fishing tournaments; and allow vessel permit applicants to change permit categories within 10-calendar days from date of issuance of the permit.

Type of statement: Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA)

Lead Agency: National Marine Fisheries Service (NOAA Fisheries): Office of Sustainable Fisheries (F/SF)

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Abstract: In April 1999, NOAA Fisheries adopted the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), that was developed to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). These final initial specifications are necessary to implement a 2002 ICCAT Recommendation pursuant to the Atlantic Tunas Convention Act (ATCA) and to achieve domestic management objectives under the Magnuson-Stevens Act for the 2003 fishing year for Atlantic tunas (i.e., June 1, 2003 to May 31, 2004). The final initial quota specifications would allocate the total ICCAT-recommended quota among the several established fishing categories, carry over any unharvested quota from 2002 to 2003, carry over any unused portion of the dead discard allowance, add 25 mt specifically allocated by ICCAT in 2002 to the Longline category and define the area set forth by ICCAT where the 25 mt applies, and revise HMS permit requirements and regulations. These measures would be consistent with the BFT rebuilding program as set forth in the HMS FMP and implemented under the framework provisions of the HMS FMP to achieve domestic management objectives for HMS.

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1.0. PURPOSE AND NEED FOR ACTION

1.1 Management History

Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to implement binding Recommendations of the ICCAT. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). On May 28, 1999, NOAA Fisheries published in the Federal Register (64 FR 29090) final regulations, effective July 1, 1999, implementing the HMS FMP that was adopted and made available to the public in April 1999. The HMS FMP includes framework provisions for the promulgation of annual specifications for the Atlantic tuna fishery, in accordance with ATCA and the Magnuson-Stevens Act, and to implement the annual Recommendations of ICCAT.

In November 2002, ICCAT recommended an increase in the Total Allowable Catch (TAC) of BFT for the United States in the western Atlantic management area from 1,387.0 mt to 1,489.6 mt, effective beginning in 2003. Also in the 2002 Recommendation, ICCAT allocated 25 mt to account for incidental catch of BFT by longline fisheries directed on other species “in the vicinity of the management boundary area.” The TAC of 1,489.6 is inclusive of the 25 mt pelagic longline allocation. In addition to the 2002 ICCAT quota Recommendation, quota allocations are adjusted based on over- or underharvest from prior fishing year’s activity (2002 fishing year underharvest = 361.4 mt) and results of U.S. data on dead discards and use of the ICCAT dead discard allowance. As part of the BFT rebuilding program, ICCAT recommends an allowance for dead discards. The U.S. dead discard allowance is 68 mt. The 2002 calendar year preliminary estimate of U.S. dead discards, as reported in pelagic longline vessel logbooks, totaled 38.0 mt (U.S. TASK I data submitted to ICCAT in 2003). As estimates of BFT dead discards for the 2002 fishing year are not yet available, the estimate for the 2002 calendar year was used to calculate the amount to be added to, or subtracted from, the U.S. BFT landings quota for 2003 as a result of dead discards. Estimates of dead discards from other gear types and fishing sectors that do not use the pelagic longline vessel logbook are unavailable at this time and thus are not included in this calculation. As U.S. fishing activity is estimated to have resulted in less dead discards than its allowance, the ICCAT Recommendation and U.S. regulations state that the United States may add one half of the difference between the amount of dead discards and the allowance (i.e., $68.0 \text{ mt} - 38.0 \text{ mt} = 30.0 \text{ mt}$, $30.0 \text{ mt}/2 = 15.0 \text{ mt}$) to its total allowed landings for the following fishing year, or to individual fishing categories, or to the Reserve. Thus, the BFT landings quota for the 2003 fishing year is 1,866.0 mt ($1,489.6 + 361.4 + 15.0 = 1,866.0 \text{ mt}$).

On December 18, 2002, NOAA Fisheries published a final rule that, among other matters, established an Atlantic HMS recreational permit and required its use by all HMS recreational vessels (67 FR 77434). Several issues continue to be raised by the public as a result of this rule, particularly by General category permit holders regarding applicability of the regulations and impacts regarding traditional participation in recreational tournaments. In

addition, numerous permit applicants are finding, for a variety of reasons, (i.e. confusion over nomenclature, operator error, etc), that they have obtained a permit in a fishing category other than the one intended. Current regulations only allow one change of permit category per year and permit holders with an incorrect permit, who wish to correct the error, are unable to do so. NOAA Fisheries recently issued two temporary rules in part to address these concerns. The first temporary rule (68 FR 35185, June 12, 2003) provided 30 days for General category permit holders to switch their permit category to the new HMS Angling permit due to the confusion over the new permit and the change to allowed activities under the General category. Since issuance of that temporary rule, NOAA Fisheries received numerous comment on a daily basis that other permits were issued in incorrect categories due to confusion about the new HMS Angling permit, unfamiliarity with the automated permitting system, and possible administrative error. NOAA Fisheries issued a second temporary rule on June 23, 2003 (68 FR 38233), that allowed 10 days from date of permit issuance for changes to permit categories to correct any errors.

Related to this action, but beyond the scope of this rulemaking, are a number of other BFT issues raised as a result of prior rulemaking by NOAA Fisheries including a petition for rulemaking from the State of North Carolina; and from an HMS Advisory Panel (HMS AP) meeting held in Silver Spring in February 2003. On November 18, 2002, NOAA Fisheries published a Notice of Receipt of a Petition for rulemaking in the Federal Register that acknowledged a petition from the North Carolina Division of Marine Fisheries that requests an amendment of the current BFT allocation criteria and creation of a winter time-period subquota (67 FR 69502). This issue was extensively discussed at the HMS AP meeting, as were a number of other issues including opening and closing dates for several of the commercial BFT categories and size tolerances for the Harpoon and Purse Seine fisheries. On July 9, 2003, NOAA Fisheries published a notice in the Federal Register (68 FR 40907) of its intent to prepare an FMP amendment that would address, among other issues, quota allocation of BFT among and within domestic fishing categories.

1.2 Need for Action and Objectives

The purpose of this final action is to implement the 2002 ICCAT Recommendation regarding the BFT TAC, implement 2003 specifications for the BFT fishery that allocates the TAC among domestic fishing categories, including 25 mt of BFT quota to the Longline category, implement General category effort controls, and revise permit regulations. ICCAT allocated 25 mt to the pelagic longline fisheries “in the vicinity of the management boundary area.” This action is needed to further define “in the vicinity of the management boundary area” to ensure consistency with international obligations and to provide accurate monitoring and management of this additional allocation. Alternatives regarding allocation of this additional BFT quota among domestic fishing categories, as well as General category effort controls, need to be analyzed in order to ensure consistency with the objectives of the HMS FMP and its implementing regulations, applicable law, and the 1998 ICCAT BFT Rebuilding Plan. The domestic quota allocations and General category effort controls in these final initial

specifications need to be issued as soon as possible given that the 2003 fishing year is currently underway.

This action also is needed to revise the current regulations regarding permit requirements to allow General category vessels to participate in registered recreational HMS fishing tournaments and address the problem of permit holders obtaining incorrect permits. Other issues that need to be addressed by FMP amendment, including the Petition for Rulemaking and results of the HMS AP meeting, are raised in the discussion below and are deferred to future rulemaking.

2.0 SUMMARY OF THE ALTERNATIVES

This section describes the alternatives considered in this EA/RIR/FRFA. Section 2.1 describes the alternatives considered regarding allocation of BFT quota among domestic fishing categories, including a specific allocation by ICCAT of BFT quota to the Longline category. Section 2.2 presents alternatives regarding General category effort controls, particularly with regard to providing a late season fishery off the south Atlantic coast. Section 2.3 presents alternatives regarding permit category changes and General category vessel participation in recreational fisheries, specifically in registered HMS tournaments. Section 2.4 presents alternatives regarding definitions of the “in the vicinity of the management area boundary.” The alternatives are evaluated in Sections 4, 7, and 8. Alternatives considered but not further analyzed in this document are identified below as “deferred.”

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

The following alternatives represent the range of options considered by NOAA Fisheries regarding allocation of BFT quota among the six commercial and one recreational domestic fishing categories. The 2002 ICCAT Recommendation concerning conservation of western Atlantic BFT set the TAC, inclusive of dead discards, for the western Atlantic management area to 2,700 mt. In accordance with the same Recommendation, several deductions (mainly for other nations) reduced the TAC by 152 mt to 2,458 mt. The United States share of this revised TAC is 57.48% or 1,464.6 mt. In addition to this available quota, the United States is also allocated 68 mt to account for dead discards of BFT. The 2002 calendar year preliminary estimate of U.S. dead discards, as reported in pelagic longline vessel logbooks, totaled 38.0 mt. As estimates of BFT dead discards for the 2002 fishing year are not yet available, the estimate for the 2002 calendar year was used to calculate the amount to be added to, or subtracted from, the U.S. BFT landings quota for 2003 as a result of dead discards. The 2002 ICCAT Recommendation also included 25 mt quota which is intended to account for retained bycatch of BFT by U.S. pelagic longline fisheries in the vicinity of the management boundary area. The alternatives range from No Action to application of the TAC according to the HMS FMP and ICCAT Recommendation. Finally, NOAA Fisheries needs to account for over/underharvest of BFT from prior year’s fishing activity, and calculate any over or underage from the allocated ICCAT dead discard allowance.

2.1.1 Alternative 1: No Action

Under this alternative, NOAA Fisheries would take no action and not allocate the 2002 ICCAT quota among domestic fishing categories, nor provide the 25 mt quota for the pelagic longline fishery. This alternative is contrary to ATCA, and thus would be inconsistent with the HMS FMP and implementing regulations. However, quota and fishing levels prior to the 2002 ICCAT Recommendation serve as baseline conditions for comparison and analytical purposes with the remaining alternatives and other issues.

2.1.2 Alternative 2: Allocation of ICCAT quota to domestic categories in accordance with 2002 ICCAT Recommendation and HMS FMP (Final Action)

Under this alternative, the percentage allocations determined in the HMS FMP would be applied to the TAC for all domestic fishing categories. This alternative is meant to implement the 2002 ICCAT Recommendation and allocate a 2003 BFT quota to the United States (1,464.6 mt), in a manner consistent with the HMS FMP and implementing regulations. Dead discards estimates would be deducted from the ICCAT dead discard allowance resulting in 15 mt (i.e., $68.0 \text{ mt} - 38.0 \text{ mt} = 30.0 \text{ mt}$, $30.0 \text{ mt} / 2 = 15.0 \text{ mt}$) to be carried over to the 2003 BFT quota. Under/overharvests from the 2002 fishing year would be accounted for and applied to the 2003 fishing year. Under this alternative, the additional 25 mt allocated by ICCAT for bycatch of BFT related to the U.S. directed swordfish and bigeye, albacore, yellowfin, and skipjack tunas (BAYS) longline fisheries in the vicinity of the management area boundary would be allocated specifically to the existing domestic longline north subcategory. The 25 mt would be considered in addition to, and separate from, the existing allocation process in accordance with the HMS FMP. A summary of the calculations resulting in the final initial 2003 quota specifications is provided in Table 1. The intent of this option is to allocate the additional quota provided by ICCAT as specifically as possible to the category and area intended in the 2002 Recommendation and in accordance with the HMS FMP.

2.1.3 Alternative 3: Allocation of increase in ICCAT quota to particular category or subcategory (Deferred)

Under this alternative, the percentage allocations determined in the HMS FMP would be applied to most of the TAC for all domestic fishing categories but some portion of the increase in quota from the 2002 levels (i.e. $1,464.6 - 1,387 = 77.6 \text{ mt}$, not including the 25 mt for the pelagic longline fishery) would be reserved and set aside for particular purposes such as creation of a winter General category fishery. This alternative is meant to address issues regarding specific set-asides and allocations for fishing groups not currently considered in the HMS FMP. Dead discards would be deducted from the ICCAT dead discard allowance and under/overharvests from the 2002 fishing year would be applied to the 2003 fishing year. Potentially under this alternative the additional 25 mt allocated by ICCAT for the pelagic longline fishery would also be distributed among all categories by FMP percentages or, conversely, allocated entirely to the reserve or some other category or subcategory, although this would be inconsistent with ICCAT

and ATCA. This alternative is deferred for future rulemaking to ensure consistency with the HMS FMP, implementing regulations, and relevant mandates.

2.2 Issue Two: General category effort controls

The following alternatives represent the range of options considered by NOAA Fisheries regarding the use of General category restricted fishing days (RFDs) and subdivision of General category quota among time-periods. RFDs and time-period subquotas have been used to slow down the rate of fishing in the General category for a variety of purposes, including reduction of market gluts, greater temporal and spatial sampling for data collection purposes, and expansion of fishing opportunities to a broad range of participants. Subdivision of the General category into three time-period subquotas was established in the HMS FMP and codified in the implementing regulations.

2.2.1 Alternative 2.1: Designate RFDs according to published schedule

Under this alternative, the final initial specifications would announce a set schedule of final RFDs prior to the start of the season. In the past, these days have generally corresponded to a Sunday, Monday, and Wednesday schedule, included Japanese market holidays, and commenced mid-July through the Fall. This alternative is intended to provide prior notice to participants of RFDs in anticipation of high catch rates and the need to slow the pace of the fishery.

2.2.2 Alternative 2.2: No Action: No initial RFDs and publish during season

Under this alternative, there would be no RFDs published with the final initial specifications, except perhaps those that fall on a Japanese market holiday. Instead, NOAA Fisheries would use its inseason authority to implement RFDs should the need arise. This alternative anticipates seasons similar to the last several years where RFDs have had to be waived due to low catch rates and a slow fishery during most of the season.

2.2.3 Alternative 2.3: RFDs established late in the season to provide for late Fall, southern Atlantic fishery (Final Action)

Under this alternative, a solid block of RFDs are finalized in the final initial specifications for the Fall, from November 15 to November 31, inclusive, where no General category BFT fishing would take place. This would allow for BFT to migrate off southern Atlantic States, assist the availability of quota late in the season, and partially address concerns from south Atlantic area fishermen regarding fishing opportunities during a late Fall/early Winter fishery.

2.2.4 Alternative 2.4: Revise General category time-periods and subquotas (Deferred)

The HMS FMP established three time-periods for division of General category quota from June through August, September, and October through December. In addition, the General category quota was subdivided 60/30/10 percent among these three time-periods, respectively. This alternative would consider adjusting the time-periods and/or the subquota amounts allocated to each time-period for a variety of purposes, including further extending fishing opportunities to south Atlantic General category fishermen in the late Fall/early Winter (i.e., by extending the latter time-period from October to January or creating a new time-period from November through January). Reallocation and sub-division of quota would also be considered for each new time-period to ensure adequate fishing opportunities within each time-period. This alternative is deferred for future rulemaking to ensure consistency with the HMS FMP, implementing regulations, and relevant mandates.

2.3 Issue Three: Permit Categories

Since the HMS FMP, additional changes have been made to the HMS and Atlantic tunas permit categories regarding allowed activities for each permit category and definitions of permit types to further meet domestic management objectives. Recent rulemaking established a new recreational permit category for all HMS and replaced the previous Atlantic tunas Angling permit category (67 FR 77434, December 18, 2002). All vessels recreationally fishing for HMS must obtain this new permit and vessels that are recreationally fishing for HMS are only allowed to do so with possession of this permit. As in the past, only one type of tuna or HMS permit can be issued to a particular vessel. In the recent past, General category permit holders were also allowed to recreationally fish for swordfish, sharks, and billfish (i.e., marlins) under their General category permit. Now, because the new HMS Angling permit is required for these recreational fishing activities, General category permit holders must choose whether to retain their commercial General category permit and forgo recreational HMS fishing opportunities, or vice versa and switch permit categories to an Atlantic HMS Angling permit.

Partly as a result of the above rulemaking and also due to potential confusion during the permit application process, many applicants have found themselves with a permit other than the one intended. Under current regulations, because permit holders cannot make more than one change a year or change categories after they have renewed a permit, many permit holders are finding they are unable to obtain permits for the correct category and may be unable to fish in the manner they intended for the current year if they do not meet a particular permit requirement (e.g., cannot sell fish in the Angling category, or do not hold a Captain or Master's license with a Charter/Headboat permit, etc). Several alternatives are presented, including the No Action alternative, that are intended to provide some level of accommodation to General category vessels wishing to pursue recreational HMS fishing opportunities and to provide permit applicants some flexibility and ability to correct an administrative error and switch permit categories.

2.3.1. Alternative 3.1: No Action: General category vessels cannot participate in recreational HMS fisheries and no permit changes are allowed once a permit has been issued for the season

Under this alternative, no changes would be made to the regulations and General category vessels would remain excluded from all HMS recreational fishing opportunities. This alternative represents the No Action alternative since it would not alter publication of the final rule published on December 18, 2002, that further differentiated recreational vessels from commercial vessels with separate fishing category permits. In addition, applicants would remain bound by current regulations that do not allow permit category changes once a permit has been issued regardless of whether an incorrect permit was obtained due to the applicant or administrative error.

2.3.2. Alternative 3.2: General category vessels allowed to participate in recreational HMS registered fishing tournaments (Final Action)

This alternative would allow General category vessels to participate in recreational HMS fisheries provided they are participating in a registered HMS fishing tournament (according to HMS tournament registration and participation regulations), as well as abiding by the regulations of the tournament. When General category vessels fish in tournaments for sharks, swordfish, and/or billfish, it is NOAA Fisheries' intent that HMS Angling category regulations, as well as any specific tournament rules, would apply to the General category vessels. However, when fishing for, or landing, Atlantic tunas in a tournament, the General category regulations would apply, including restricted fishing days and General category retention/size limits. Thus, this alternative would not allow General category vessels to fish for BFT less than 73". It is incumbent upon the General category vessel owner/operator to verify that a tournament is registered. This alternative is intended to provide some relief from the current restriction and allow General category vessels access to tournaments where they may have participated in the past. As the tournament must be registered, NOAA Fisheries will also be able to collect data on catch, effort, and participants.

2.3.3 Alternative 3.3 Allow dual permits and require declaration by General category vessels prior to trip regarding which permit to be used

This alternative is designed to provide General category vessel owners/operators a choice regarding which permit category and regulations under which they wish to participate. For enforcement and management purposes, a declaration would be required to be recorded prior to the trip so that it was clear which regulations applied. This alternative is intended to provide relief from the current restriction although still not allow General category vessels to commercially and recreationally fish on the same trip.

2.3.4 Alternative 3.4 Allow permit applicants 10-calendar days from date of issuance of the permit to change categories (Final Action)

This alternative is intended to address the situation where permit applicants who, due to applicant or administrative error, received the wrong permit and who otherwise would be unable to change to the intended permit. Ten calendar days is intended to provide enough time for permit applicants to obtain their permit, check that it is the correct permit, and contact the NOAA Fisheries permit contractor to affect a change. Less time may not provide sufficient time to discover an error given the mailing process (although most receive permits via fax or print directly) and the possibility that the owner may not check the permit immediately. Extending the time period much further may begin to undermine the original intent of the regulation restricting multiple permit category changes if permit applicants are motivated to actively participate in more than one category per season.

2.4 Issue Four: Definition of “Vicinity of Management Boundary Area”

The 2002 recommendation by ICCAT concerning conservation of western Atlantic BFT provided that the United States shall receive a quota (for catch that can be retained) of 25 mt, to account for retained bycatch related to their directed longline fisheries in the “vicinity of the management boundary area.” The management boundary area used by ICCAT to differentiate western versus eastern Atlantic BFT lies in the north Atlantic along 45° West longitude. As ICCAT did not further define this area, various interpretations are possible of where the 25 mt bycatch of BFT can be retained by longline vessels targeting other species. The following alternatives are intended to provide a range of interpretations, including No Action, from least to most restrictive to the fishery that would allow the United States to manage this allocation with adequate monitoring and enforcement. All other regulations and requirements that apply to United States pelagic longline vessels would remain in effect.

Currently, NOAA Fisheries is in the third year of a three-year sea turtle bycatch reduction experiment in a geographic area termed the Northeast Distant (NED) area where pelagic longline vessels are prohibited from fishing unless they are actively participating in, and complying with, the terms and conditions of the NED experiment. Such vessels would participate in the NED experiment pursuant to an Endangered Species Act (ESA) Section 10 permit and exempted fishing permits with 100 percent observer coverage. The NED area straddles the management boundary area from 60° to 20° W. Longitude and 35° to 55° N. Latitude, thus providing NOAA Fisheries an opportunity to coordinate implementation and operations of the NED experiment with monitoring of this 25 mt incidental catch BFT allocation to pelagic longline vessels. Although the NED experiment was primarily designed to protect sea turtles and investigate impacts of different longline gear modifications on sea turtle bycatch and bycatch mortality, the presence of independent observers on all vessels participating in the experiment (and the only vessels authorized to fish in the area), and the strict controls on vessel participation in the NED experiment, means the incidental catch and accounting of the 25 mt by pelagic longline vessels can be carefully managed and coordinated with the NED experiment. Given the strict controls of the experimental design, fishermen may not fish as they would outside the experiment and incidental catch of BFT may be reduced to the point that target catch requirements may not be met and all BFT would have to be discarded.

2.4.1 Alternative 4.1 Allocate 25 mt to Longline North quota subcategory, and do not define “in the vicinity of the Management Boundary Area” (No Action alternative)

Under this alternative, there would be no further definition of the geographic area that applies to the 25 mt provided by ICCAT to the pelagic longline vessels other than that provided in the recommendation. Domestic regulations would apply the 25 mt to the Longline North subcategory and operational procedures would be implemented to account for landings under this particular quota by coordinating with pelagic longline vessels and their observers participating in the NED experiment, the only vessels authorized to fish near the management boundary area. For example, landing cards from dealers handling transactions of BFT caught incidentally in the vicinity of the management boundary area could be marked with longitude/latitude coordinates and databases modified to indicate accurate accounting of these landings. Data would be collected to determine exactly where vessels are operating and interacting with BFT and decisions made regarding an appropriate definition at that time. This alternative may pose administrative and enforcement problems in implementing the ICCAT recommendation effectively because vessels could land BFT both west and east of the boundary line.

2.4.2 Alternative 4.2. Allocate 25 mt to Longline North quota subcategory, restrict to pelagic longline vessels participating in NED experiment in the NED closed area only, target catch requirements do not apply (Final Action)

The final action is to define the area of applicability of the 25 mt to the same geographic area as the NED experiment. The management boundary area lies within the NED closed area and thus, vessels could potentially be participating and landing BFT both west and east of the boundary line. This alternative would provide the broadest interpretation of the ICCAT language of the three action alternatives in terms of area of applicability. As a result, it would also have the most flexibility to apply the 25 mt. This alternative would also have the greatest potential to reduce discards because target catch requirements for retention of incidentally caught BFT would not apply to the 25 mt allocation, given the strict controls of the experiment. However, once the 25 mt limit is attained, the retention limits and target catch requirements for incidentally caught BFT would apply. This alternative is also intended to exactly match the existing NED experiment area to simplify operations and management and collect as much data as possible. Finally, this alternative would be restricted to only those vessels participating in the NED experiment.

2.4.3 Alternative 4.3. Allocate 25 mt to Longline North quota subcategory, restrict to pelagic longline vessels participating in NED experiment only, apply to area east of 50° West longitude and west of 40° West longitude and north of 35° North latitude

This alternative would limit the area of coverage to a 10° swath straddling the management boundary area at 45° West longitude by 5° either side of the boundary. This alternative is the most restrictive in terms of area covered and is designed to correspond more tightly with the management area boundary line itself. The area falls within the NED experiment and would also be restricted to only those vessels participating in the NED.

2.4.4 Alternative 4.4. Allocate 25 mt to Longline North quota subcategory, restrict to pelagic longline vessels participating in NED experiment only, apply to area east of 45° West longitude and north of 35° North latitude

This alternative would limit the area of coverage for allocation of the 25 mt to NED vessel participants in an area east of the management boundary area only.

3.0 DESCRIPTION OF AFFECTED ENVIRONMENT

This section includes a brief summary of the status of the stocks, fishery participants and gear types, and affected area including habitat and protected species. For a complete description of the biology and status of Atlantic tunas and their habitat, and BFT in particular, and the U.S. tuna fishery, including operations, catches, and discards, please see the HMS FMP and the 2003 HMS Stock Assessment and Fishery Evaluation Report (SAFE Report). Also, for information on interactions and concerns with protected species and the Atlantic tuna fishery, please see the 2002 Final Supplemental Environmental Impact Statement (FSEIS) for Regulatory Amendment 2 to the HMS FMP to Reduce Sea Turtle Bycatch and Bycatch Mortality in HMS.

3.1 Status of the Stocks

Western Atlantic BFT are considered overfished and undergoing overfishing. At the 2002 meeting of the Standing Committee on Research and Statistics (SCRS) of ICCAT, stock assessment analyses were prepared for the western and eastern Atlantic stocks of BFT. For western Atlantic BFT, two stock assessment scenarios were prepared based on assumptions regarding recruitment. The results of projections based on the low recruitment scenario for the western Atlantic stock indicated that a constant catch of 2,500 mt per year has a 97 percent probability of allowing rebuilding to the associated B_{MSY} level by 2018. A constant catch of 2,500 mt per year has about a 35 percent probability of allowing rebuilding to the 1975 stock size by 2018. The SCRS notes that, arguably SSB_{75} is appropriate as a target level for interpreting the implications of projections based on the high recruitment scenario. Under the high recruitment scenario, a constant catch of about 2,500 mt has about a 60 percent probability of allowing rebuilding to the 1975 stock size; a catch of 2,700 has about a 52 percent chance of

reaching this stock size. The SCRS cautioned that these conclusions do not capture the full degree of uncertainty in the assessments and projections, in part, but not exclusively due to, assumptions regarding recruitment.

At the 2002 meeting, ICCAT adopted a recommendation to increase the annual quota of BFT in the western Atlantic Ocean from 2,500 mt to 2,700 mt, consistent with the rebuilding program for western Atlantic BFT established in 1998. The share allocated to the United States was set at 1,464.59 mt. In addition, ICCAT recommended this TAC remain the same for 2003 and 2004. A new stock assessment will be conducted at the end of 2004; at that time ICCAT may have new information on which to base a change, if any, to the western BFT quota and the U.S. quota share. ICCAT also recommended an additional 25 mt be allocated for U.S. pelagic longline operations in the “vicinity of the management boundary area.”

3.2 Fishery Participants, Gear Types, and Affected Area

Fishery participation in the Atlantic tuna fishery includes over 25,000 vessels in five permitted directed fishing categories and two permitted incidental fishing categories (Table 2). Generally, separate permits are issued for a distinct fishery category by specific gear types, and participants are restricted to the use of only those allowed gears. For directed fisheries on BFT, these gears consist of purse seine, rod and reel, harpoon, handline, and bandit gear. Pelagic longline gear is used to target other HMS species, primarily swordfish, bigeye, and yellowfin tuna. It is not an allowed gear type for directed fishing on BFT although this gear type is allocated a quota for incidentally caught BFT. Finally, a small incidental quota (less than 2 mt) is provided for trap gear. Tuna, HMS Charter/Headboat and HMS Angling category permits are issued via a contractor and over the web, phone or mail. Only one permit category change is allowed per year and not after a permit has already been renewed for a season. Permit category holders who accidentally obtain an incorrect permit have to wait until the next season to change to the desired permit category. However, during the Spring of 2003, two temporary rules were published allowing permit holders to make a change of permit categories to facilitate administrative processing of permits in cases where an error had been made.

U.S. landings of BFT for the 1996-2002 period are provided in Table 3. The historical level of landings has generally been determined by quotas since 1982. Commercial categories are monitored by a census of landing cards, whereas the recreational catch is monitored by survey. Quotas have been established for the Angling category, although time lags in receipt and analyses of survey data, and uncertainty inherent in estimation procedures, mean delayed calculation of final landings estimates. BFT movements throughout the Atlantic are the subject of much research and it is generally thought that the Gulf of Mexico and Mediterranean are used as spawning areas. Since the implementation of the HMS FMP, the BFT fishery has been managed on a fishing year basis versus a calendar year basis. Table 4 shows the affected areas off the coast of the United States and the seasonal pattern of the fishery as the BFT migrate along the Atlantic and Gulf of Mexico coasts.

3.3 Habitat

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

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

The ESA is the primary federal legislation governing interactions between fisheries and species whose continued existence is threatened or endangered. Through a consultative process, the ESA allows federal agencies to evaluate proposed/final actions in light of the impacts they could have on these ESA-listed species. In the case of marine fisheries, NOAA Fisheries Office of Sustainable Fisheries consults with the Office of Protected Resources to determine what impacts major fishery management actions will have on endangered populations of marine species and what actions can be taken to reduce or eliminate negative impacts. Under the consultative process, NOAA Fisheries issues a Biological Opinion (BiOp) which outlines expected impacts of the proposed/final action and specifies terms and conditions which must be met to mitigate impacts on ESA-listed species.

The MMPA of 1972 is the principal Federal legislation that guides marine mammal species protection and conservation policy. Under requirements of the MMPA, NOAA Fisheries produces an annual List of Fisheries that classifies domestic commercial fisheries, by gear type, relative to their rates of incidental mortality or serious injury of marine mammals. The List of Fisheries includes three classifications:

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

Fishermen participating in Category I or II fisheries are required to be registered under the MMPA and if selected, to accommodate an observer aboard their vessels. Vessel owners or operators, or fishermen, in Category I, II, or III fisheries must report all incidental mortalities and injuries of marine mammals during the course of commercial fishing operations to NOAA

Fisheries Headquarters. There are currently no regulations requiring recreational fishermen to report takes, nor are they authorized to have incidental takes (i.e., they are illegal). NOAA Fisheries does require reporting and authorizes takes by charter/headboat fishermen (considered “commercial” by the MMPA), however, no reports have been submitted to NOAA Fisheries to date.

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

The pelagic longline fishery is listed as a Category I fishery. Longlines are known to present potential dangers to listed sea turtles and marine mammals, and the activity of the fishery is regulated by the terms of the BiOp dated June 14, 2001, including closing the NED area to pelagic longline fishing and requiring specific gear deployment methods and the use of line clippers and dipnets to reduce bycatch and bycatch mortality of sea turtles. In order to research gear modifications and fishing techniques to reduce bycatch and bycatch mortality of sea turtles, the BiOp allowed for a 3-year experimental fishery using pelagic longline vessels as research platforms. In order to participate in the experiment, each vessel had to meet a number of requirements such as holding a valid permit, carrying an observer, and complying with all other regulations.

In 2001, the first year of the experiment, 8 vessels participated and conducted approximately 185 sets. The experiment examined colored bait and gangion spacing; results indicated that neither blue-dyed bait nor gangion spacing were effective in reducing sea turtle bycatch. In the summer and fall of 2002, NOAA Fisheries conducted the second year of the experimental fishery. The use of circle hooks, mackerel bait, and shortened daylight soak time were tested to examine their usefulness in reducing the capture of sea turtles. Approximately 495 sets were made with 100 percent observer coverage by 14 vessels. Results from 2002 indicated that these measures significantly decreased sea turtle takes and circle hooks with mackerel bait improved swordfish/tuna catch. In 2003, the experimental fishery will confirm the effects of mackerel bait with circle hooks on sea turtle and swordfish/tuna catches, gather more data on the use of circle hooks with squid bait without daylight soak restrictions, and examine two new hooks types.

4.0 ENVIRONMENTAL CONSEQUENCES OF ALTERNATIVES CONSIDERED

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

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

Ecological Impacts

Under Alternative 1, the No Action alternative, NOAA Fisheries would not implement the new 2002 ICCAT Recommendation to increase the quota allocation to the United States from 1,387 to 1,464.6 mt. This alternative could be inconsistent with the HMS FMP and ATCA but implementation of the No Action alternative would not have negative ecological effects as it would not alter current fishing practices. The No Action alternative would be consistent with the ICCAT published rebuilding plan, and in particular assist in rebuilding the western Atlantic BFT stock, by maintaining the U.S. quota, and therefore the TAC, at levels recommended by ICCAT in 1998. Compliance by other nations harvesting the BFT stock would also influence overall stock conditions.

Alternative 2, the final action, would also not have negative ecological impacts because the BFT quota increase would be minimal and it would not change current fishing practices. The final action would be consistent with the 2002 ICCAT Recommendation and the western Atlantic BFT rebuilding plan. Although under Alternative 2, fishing pressure may increase slightly, due to the minor increase in landings quota (i.e., 77.6 mt), this slight increase in effort may be attributed to the minor increase of quota and thus potentially allowing vessels to fish a couple of days further into the season (than under the No Action alternative 1). These final initial quota specifications comprise a step in a longer-term stock rebuilding program designed to stabilize fishing pressure and allow the stock to rebuild to higher levels. Application of the underharvest from the 2002 fishing year (361.4 mt) to the 2003 fishing year would also allow for increased harvest of BFT, but this is quota which was not harvested last year and the overall BFT quota and mortality for the United States should not be affected by reallocating the underharvest in 2003. The final action should not alter current predator/prey relationships as the increase in BFT quota is minimal.

Consistent with the 2002 ICCAT Recommendation, this alternative would also allocate 25 mt of BFT to the Longline North subcategory in the vicinity of the management area boundary. As BFT caught and landed under this quota would be caught incidentally to directed pelagic longline fisheries on other species and otherwise likely discarded dead anyway, there would not be any additional mortality or ecological impacts to the BFT stock from this alternative. There would be no additional impacts to other species as this alternative would not alter existing fishing patterns or effort of pelagic longline vessels. Monitoring and management of the pelagic longline fishery in this area, and the accounting of the 25 mt, would be done in concert with the ongoing NED Experimental Fishery where observers are required on all vessels and strict reporting mechanisms are already in place.

Analysis of Alternative 3 (i.e., allocation of increase in ICCAT quota to particular category or subcategory) is deferred for future analysis and consideration.

For additional information regarding the potential impacts to EFH and protected resources please refer to sections 4.5 and 4.6, respectively, of this document.

Economic and Social Impacts

Alternative 1 would maintain economic impacts to the United States and to local economies at a distribution and scale similar to 2002 but would deny fishermen additional fishing opportunities as recommended by the 2002 ICCAT Recommendation and as mandated by ATCA. Alternative 2 would provide slightly greater positive economic impacts due to the additional quota of 77.6 mt. These additional positive economic impacts would be distributed among the recreational and commercial sectors in percentages set forth in the HMS FMP. In the recent past, there have been communities in the North Carolina outer banks area who have expressed concerns that the current management system and quota allocation process puts them at a disadvantage. Fishermen from these areas contend that, as the BFT do not appear off the south Atlantic coast until late in the calendar year, there may not be any General category BFT quota left due to fishing effort further north. These negative impacts have been mitigated somewhat in the past by transferring remaining BFT quota from other categories, in accordance with the HMS FMP criteria for quota transfers, to provide for a late season, south Atlantic General category BFT fishery. This final action would also provide slight additional positive economic impacts to one sector of the commercial fleet, namely the pelagic longline fleet. However, the allocation of 25 mt to this fleet is only for BFT incidentally caught pursuant to fishing operations on other target species (i.e. yellowfin and bigeye tuna, swordfish). Pelagic longline vessels are not allowed to target BFT and are only allowed to retain BFT caught incidentally to other fishing activities. Regulations regarding longline vessel operations have been developed with the intent to avoid providing an economic incentive to target BFT. Slight positive social impacts would accrue to those vessels and their home ports, or offloading ports, as a result of this additional tonnage. The analyses that are deferred for Alternative 3 could investigate new quota allocation systems to address these impacts.

Conclusion

Alternative 2 is the final action as it is most consistent with the HMS FMP, ATCA, and the 2002 ICCAT Recommendation. Ecological impacts among the alternatives are similar except that there may be a slight increase in BFT fishing effort associated with the minor increase of BFT quota. Overall positive economic and social impacts are also similar among alternatives with differences expected mainly within the fishery and between categories. For example, social concerns and economic issues regarding a winter General category BFT fishery off the South Atlantic coast may remain among General category participants. Alternatives that have been deferred in this action may address and mitigate these issues.

4.2 Issue Two: General category effort controls

Ecological Impacts

Effort controls, in general, are designed to have positive economic and social impacts and should not result in different impacts to habitat or protected resources as those stated in the HMS FMP because the involved fishing practices (i.e., handgear fishery) typically do not adversely

impact habitat or protected resources. It is possible that if too many effort controls are implemented the pace of the fishery could be slowed to such an extent that the full quota is not attained. This would be contrary to the HMS FMP and ATCA and any quota underage would be applied to the following year so mortality would only be deferred. Alternatively, if not enough effort controls are implemented, it is possible the fisheries would attain their quota rapidly and close prematurely. Fishermen may then turn to other stocks to target, particularly other HMS species, with corresponding impacts to other elements of the ecosystem.

Economic and Social Impacts

Under Alternative 2.1, NOAA Fisheries has traditionally published a schedule of RFDs for the General category prior to the start of the season. When catch rates have been high, this had positive economic consequences by avoiding market gluts and providing access to higher quality fish later in the season. Positive social impacts have also occurred as fishermen have commented that knowing the exact schedule of RFDs prior to the season facilitates planning and scheduling of trips. Over the past several years, a schedule of RFDs has been published with the annual specifications, but due to low catch rates, the RFDs subsequently have been waived. Waiving RFDs in mid-season can cause confusion and disrupt fishermen's activity and, although information regarding the cancelling of RFDs is widespread over various electronic and paper media, there are some negative social impacts as a result of fishermen being unaware of the change in RFDs.

Alternative 2.2, the No Action alternative, would not implement any RFDs with publication of the final initial specifications, but rather would use inseason management authority established in the HMS FMP to implement RFDs during the season should catch rates increase. This alternative anticipates another season of low catch rates and would have positive economic and social consequences if the assumption of slow catch rates is valid. Overall, the season would "regulate itself" and fishermen could choose when to fish or not based on their own preferences. However, even with low catch rates and no RFDs, it is unlikely that there will be enough quota in the General category to sustain a late season commercial handgear fishery off south Atlantic states. Thus, if the 2003 season should be similar to the 2002 fishery, there may be negative social and economic impacts to fishermen in southern states unless inseason management actions (similar to those in 2002, i.e., inseason transfers) are taken to directly address these concerns and potential impacts.

Alternative 2.3, the final action, would be similar to Alternative 2.2 with no scheduling of RFDs to slow the fishery during the summer. However, this alternative would implement a solid block of dates to essentially stop the fishery in late November to ensure the availability of BFT quota for a south Atlantic fishery later in the season. For 1997 through 1999, all General category quota had been used by November 15 (Table 5). Since 1999, however, active inseason management has made between 4 and 8 percent of the total General category quota available for a late season south Atlantic commercial handgear BFT fishery. Implementing RFDs to deliberately assist a late season fishery could have potentially negative social and economic impacts to those northern area fishermen who would have otherwise caught and sold fish earlier

in the season, but would have positive social and economic impacts to those south Atlantic fishermen. Impacts would be slightly mitigated if northern area fishermen are willing to travel south late in the season. Overall, however, extending the season as late as possible would enhance the likelihood of increasing participation by southern area fishermen and access to the fishery over a greater range of the fish migration. Options to revise the General category time-periods and subquotas under Alternative 2.4 are deferred for future rulemaking. Analyses conducted for such options could directly examine appropriate time-period subdivisions and quota allocations to address northern and southern area fishermen's concerns and interests.

Conclusion

Unlike prior years, the final action is to not implement RFDs with implementation of the final initial specifications. This is due primarily to the experience of the past several years when low catch rates have resulted in NOAA Fisheries having to waive all previously announced RFDs. However, to partially address economic and social concerns of southern Atlantic states, a block of RFDs in November is preferred to assist availability of quota late in the season.

4.3 Issue Three: Permit Categories

Ecological Impacts

Under the No Action alternative, General category vessels cannot participate in recreational HMS fisheries. Currently, there are nearly 7,000 vessels in the General category (Table 3). BFT, shark, and swordfish fisheries are managed under strict commercial quotas (recreational BFT are also managed with strict quotas) and closed once the quota is attained and thus ecological impacts to these species would be negligible. Although BAYS (i.e., bigeye, albacore, yellowfin, and skipjack tuna) are not under a quota management system, a minimum size requirement for bigeye and yellowfin tuna protects juvenile fish. The No Action alternative regarding permit category changes would mean permit category holders with an incorrect permit could potentially be unable to fish with slight positive consequences to stocks. Under final action 3.2, ecological impacts may increase slightly if General category vessels are allowed to participate in registered recreational HMS tournaments, due to greater effort on stocks targeted in the tournament. However, it is likely the impact would be modest as it is assumed only a small proportion of the total number of General category vessels would take advantage of these recreational HMS tournaments (i.e., it is assumed most participants would be recreational anglers with an Atlantic HMS Recreational Angling category permit). Alternative 3.3 would have slightly greater impacts to stocks than the final action as it would allow General category vessels to choose whether to fish recreationally or commercially for HMS at any give time and not just during registered HMS tournaments. It is unclear how many vessels would choose this option and thus how great the impact would be. Final action 3.4, which allows a 10-calendar day window for permit category changes, is not anticipated to have ecological impacts because it is an administrative mechanism to correct permit errors and BFT and other HMS are managed under quotas.

Economic and Social Impacts

Under the current baseline conditions of the No Action alternative (3.1), final action 3.2 would have positive economic and social impacts by relieving a restriction on General category vessels. Final action 3.4 would have positive social impacts on vessel permit holders who inadvertently received an incorrect permit and who would be unable to fish in the manner they intended. Alternative 3.4 also would have positive economic impacts for those vessels who intended to engage in commercial activity but could not due to an incorrect permit. After the final rule was published that established the HMS recreational Angling permit, many owners/operators of General category vessels commented about negative impacts due to the fact that now they had to choose between a recreational Angling permit and a commercial General category permit. Previously, General category vessels could be used both commercially for Atlantic tunas and recreationally for other HMS species. Final action 3.2 would alleviate some of these perceived negative impacts and allow General category vessels some opportunities to participate in recreational fisheries. So long as the tournaments are registered with NOAA Fisheries and the General category vessel registers with the tournament and abides by the regulations of the tournament, the General category vessel would be able to participate under the HMS angling regulations while participating in the tournament and while fishing for sharks, swordfish, and/or billfish. When fishing for Atlantic tunas, General category RFDs fishing days. A third alternative 3.3 would further liberalize the restriction and alleviate any negative economic impacts by allowing General category vessels to choose on any given day whether they wish to fish commercially or recreationally. There would be some administrative impacts to vessel owners/operators wishing to use this flexibility as they would have to declare with NOAA Fisheries their intent before making the trip. From NOAA Fisheries' perspective, this alternative would be difficult to manage and enforce (i.e., ensuring declarations were made, monitoring the declarations in real-time, providing multiple permits for the same vessel, etc.) and may end up causing more confusion within the fishery than alleviating any perceived negative social and economic impacts.

Final action 3.4 would provide a specific time period for permit holders to check their permits, ensure they had the correct permit, and be able to change it if they found an error. The alternative is primarily designed to ease an administrative issue and allow processing of permits with positive economic and social consequences. The private contractor, upon request, would be able to verify in the database the date of issuance of a permit and reissue a correct permit if requested within 10-calendar days. Otherwise, permit holders would either have to meet the requirements of the permit category they have been issued or wait until the following year to change to the desired permit category for the next fishing season.

Conclusion

The intent behind the final actions is to address and relieve General category fishermen of a perceived negative social and economic impact due to the current requirement to choose whether a vessel will be commercial or recreational during a given season and to provide a corrective administrative process to all permit category holders who have obtained an incorrect

permit. As many of the comments from General category fishermen specifically mentioned the problem with no longer being able to access recreational tournaments, the final action helps address this specific concern but at the same time maintains the overall NOAA Fisheries policy to separate the two types of fleets and fishing activity.

4.4 Issue Four: Definition of “Vicinity of Management Area Boundary”

Ecological Impacts

Under all of the alternatives considered, the ecological impacts would be minimal because BFT landings are managed under a quota system that also accounts for discard mortality. The alternatives considered would vary the amount of incidentally caught BFT that could be retained. Under Alternative 4.1, the No Action alternative, there may be slight negative ecological impacts because the target catch requirements would apply in the management boundary area and the vessels participating in the NED experiment, which encompasses the management boundary, may not be able to meet the target catch requirements given the strict controls of the experiment, thus potentially increasing dead discards. Under Alternative 4.2, the final action, the definition of the management boundary area would exactly match the NED closed area (in which the only vessels authorized to fish are the pelagic longline vessels participating in the NED experiment). Pelagic longline vessels participating in the NED experiment would be allowed to retain up to 25 mt of incidentally caught BFT. No target catch requirements would apply to the 25 mt allocation, but once the 25 mt limit is reached, retention limits and target catch requirements would apply to such vessels. While the amount of BFT that could be landed under the Alternative 4.2 is greater than under the No Action alternative, there would be no discards whereas the No Action alternative would likely have some level of discards. Alternatives 4.3 and 4.4 would also likely have some level of discards because target catch requirements would apply and vessels participating in the NED experiment may not be able to meet them given the strict controls of the experiment, in addition to limiting the applicability of the 25 mt to a smaller area so that BFT landed outside that area may need to be discarded. These alternative should not result in different impacts to protected resources because the involved fishing practices will not be altered.

Economic and Social Impacts

Under Alternatives 4.1, 4.3, and 4.4, more BFT would likely be discarded than under the final action and negative economic and social impacts may occur due to lost revenues from discarded BFT. However, any negative impacts are expected to be minor because BFT are caught incidentally to fishing for other species, thus there are no costs. The final action would provide slight positive economic and social impacts by allowing more retention of incidentally caught BFT relative to the other alternatives because no target requirements would apply.

Conclusion

Alternative 4.2 is the final action because it would provide the broadest interpretation of the ICCAT recommendation with the most flexibility to apply the 25 mt as well as have the greatest potential to reduce discards. Additionally, the final action would ensure consistency in operations and management with the NED experiment.

4.5 Impacts on Essential Fish Habitat

The Magnuson-Stevens Act established a program to promote the protection of EFH in the review of projects conducted by Federal agencies, or under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat. After the Secretary has identified EFH, Federal agencies are obligated to consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any EFH. In the HMS FMP, NOAA Fisheries concluded that there is no evidence that physical effects caused by fishing for HMS are adversely affecting EFH to the extent that detrimental effects can be identified on the habitat of fisheries. As this action would not alter fishing gears or practices, it is anticipated that this action would not have any adverse impacts to EFH.

4.6 Impacts on Protected Species

The final actions in this EA/RIR/FRFA would not be expected to change endangered species or marine mammal interaction rates or magnitudes, substantially alter current fishing practices, or bycatch mortality rates. A memo concluding that no adverse effect would result from this action if implemented was submitted to the Office of Protected Resources on July 18, 2003. No comments were received that would alter that conclusion. On June 14, 2001, NOAA Fisheries issued a BiOp after concluding formal consultation for the HMS fisheries under Section 7 of the ESA. The BiOp concluded that the pelagic longline fishery is likely to jeopardize the continued existence of threatened or endangered species. NOAA Fisheries has implemented the reasonable and prudent alternatives from the BiOp, and the final actions from this EA/RIR/FRFA are consistent with, and would not adversely affect, NOAA Fisheries' actions to implement the reasonable and prudent alternatives required by the BiOp. The 2002 ICCAT Recommendation, which allocates 25 mt to pelagic longline fishery in the vicinity of the management boundary area, would only allow incidental BFT catch to be retained. Thus, it is not expected to expand fishing effort or modify fishing behavior and/or gear types because BFT are only allowed to be retained incidentally by pelagic longline gear. The minor increase in the BFT TAC allocated to the other domestic fishing categories, and thus a slight increase in effort, is not enough to change the impacts these categories have on protected species. The final actions of this EA/RIR/FRFA would not likely increase takes of listed species, nor foreclose the use of other alternatives for managing the Atlantic pelagic longline fleet and reducing adverse impacts on protected resources. The final action to define the vicinity of the management boundary area as the NED closed area would ensure close monitoring and data collection given the 100 percent observer coverage in the NED experiment. Finally, as a result of the BiOp, the continued operation of the purse seine and handgear fisheries as a result of this action may adversely affect,

but is not likely to jeopardize, the continued existence of any endangered or threatened species under NOAA Fisheries jurisdiction.

4.7 Environmental Justice Concerns

Executive Order (E.O.) 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 nor are they expected to have any disproportionate social or economic effects on minority and low-income communities. Any social or economic impacts are expected to be slightly positive because the final actions relieve restrictions and provide economic opportunities.

4.8 Coastal Zone Management Act (CZMA) Concerns

NOAA Fisheries has determined that these final regulations are consistent to the maximum extent practicable with the enforceable policies of those coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have approved coastal zone management programs. Letters will be sent to those states for their concurrence. As of September 11, 2003, NOAA Fisheries has received five responses, all concurring with NOAA Fisheries' consistency determination. Because no responses were received from other states, their concurrence is presumed.

4.9 Comparison of Alternatives

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

4.10 Cumulative Impacts

The 1999 HMS FMP adopted ICCAT's 20-year stock rebuilding program for western Atlantic BFT, which included, among other things, authority to implement ICCAT's BFT quota allocation on a yearly basis through a framework procedure. The FEIS for the HMS FMP concluded that the cumulative long-term impact of the final actions, which included the BFT rebuilding program and annual quota allocation process, would be to establish sustainable fisheries for Atlantic HMS.

Present regulatory actions include the publication, in July 2002, of a final rule and Final Supplemental Environmental Impact Statement (FSEIS) to implement a June 14, 2001, BiOp that addresses reduction of sea turtle bycatch and bycatch mortality in HMS fisheries. Some of the

measures adopted in the action are expected to have positive, but varying degrees of, direct, indirect, and cumulative impacts on protected species populations. Some General category BFT fishermen in southern Atlantic states may continue to experience negative direct, indirect, and cumulative economic and social impacts, because the existing quota allocations are unchanged in this action. However, these impacts are mitigated in the short-term through the preferred option for an RFD schedule which is designed to ensure General category quota is available late in the season. The impacts of other actions that should be considered include a final rule to modify the target catch requirements for pelagic longline vessels to retain incidentally caught BFT (68 Fr 32414, May 30, 2003). Vessels permitted in the Atlantic tunas Longline category should not experience negative direct, indirect, and cumulative economic and social impacts, because the existing incidental BFT quota allocation for this fishery are slightly increased in this action.

In the foreseeable future, NOAA Fisheries plans on preparing a regulatory amendment and an HMS FMP amendment regarding the BFT fishery (68 FR 40907, July 9, 2003) as well as gathering results from the NED Experimental Fishery. The current action would be consistent with these future activities and results, and would provide useful information regarding fishing effort and landings (including incidental catch) of BFT that could be used in the development of these future activities and analyses, thus no adverse cumulative impacts are anticipated. Any future actions taken in regard to the BFT fishery would remain within the scope of ICCAT Recommendations as well as established BFT TACs.

Overall, the alternatives considered in this EA/RIR/FRFA, which include implementation of the 2002 ICCAT Recommendation regarding quota allocations, designation of General category effort controls, definition of the “vicinity of the management boundary area,” adjustments to allowed fishing activities in the General category, and providing a 10-calendar day window for permit category corrections, are not expected to change current fishing practices or cause impacts not previously addressed in the HMS FMP’s Revised FEIS and the July 2002, FSEIS for sea turtle bycatch. Thus, NOAA Fisheries considers that this action is consistent with past and current actions, and anticipates that it also will be consistent with future actions with no substantial adverse, cumulative impacts on the environment from the final actions. As described in the preceding discussion of the alternatives, NOAA Fisheries expects that the final actions would have modest positive ecological, social, and economic impacts.

5.0 MITIGATION AND UNAVOIDABLE ADVERSE IMPACTS

5.1 Mitigating Measures

No major adverse environmental impacts are expected to result from the final initial specifications/final rule. The final actions would assist NOAA Fisheries implement the 2002 ICCAT Recommendation in accordance with domestic legislation and the HMS FMP and implementing regulations. NOAA Fisheries recognizes that several outstanding issues remain unaddressed in this action, such as the specific request for a time-period subquota of BFT in the Petition for Rulemaking by the State of North Carolina. However, concurrent rulemaking will provide the opportunity to address these issues and propose mitigating measures should NOAA

Fisheries deem appropriate. In the immediate term, implementing the final action regarding RFDs and using its inseason management authority, NOAA Fisheries will be able to monitor and make adjustments to the fishery close to “real time.” Since NOAA Fisheries will continue to monitor the fishery, any unpredicted increase in effort and landings of BFT, should they occur, could be addressed within a fishing season.

5.2 Unavoidable Adverse Impacts

There are no unavoidable adverse impacts from these final initial specifications/rule.

5.3 Irreversible and Irretrievable Commitment of Resources

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

6.0 ECONOMIC EVALUATION

6.1 Prices and Markets

The ex-vessel price of BFT in the United States has increased substantially over the past two and a half decades, from roughly \$0.20 per pound to up to \$7.00 per pound round weight in 2002. This increase is largely attributed to increased demand for fresh BFT in Japan, the principal consumer of U.S. BFT. The role of the Japanese market, and of quality and market structure considerations in the determination of BFT prices, is discussed in great detail in the HMS FMP and is not repeated here. Many factors, including the yen/dollar exchange rate, market supply and demand, fish quality, and possibly Japanese buyers knowing when large quantities of BFT would arrive for auction (because of the published effort control schedule for U.S. fishermen) may affect ex-vessel prices. Ex-vessel prices in 2002 were lower than those for 2001, which overall were low compared to 2000 (Table 7). This drop in prices may be due to the appreciation of the dollar relative to the yen over the last several years, lingering problems with the Asian economic crisis, as well as market supply conditions in Japan. Among the categories within the past several years, General category prices have remained higher than the others and peaked in 2000 at \$9.46/lb. This may have been due to slower catch rates over the past several years in the General category and pacing of the supply onto the Japanese markets under favorable market conditions and without glutting the market. Tables 7 and 8 show average ex-vessel price by commercial quota category and General category average ex-vessel prices by month for 1996-2002, respectively.

6.2 Ex-vessel Gross Revenues

Ex-vessel gross revenues from recorded sales of BFT in all commercial categories for 1996-2002 are presented in Table 9. The General category ex-vessel gross revenues have grown fairly steadily since 1998, peaking in 2001 at almost \$16 million, and then dropping last year to almost \$14 million. These rising revenues can be explained by steadily increasing landings from

1996 in the General category that also reached a high in 2001 of 933 mt (Table 3) despite fluctuating prices in the General category over the same time-period (Table 7).

Before drawing conclusions on trends in gross revenues, it should be emphasized that this discussion focuses on gross revenues only, and not net revenues. Given the lack of data, particularly regarding cost information, for the past three seasons, it is difficult to draw conclusions concerning net revenues (or profits) to fishermen. Individual vessels may have experienced an increase in net revenue even with lower gross revenues reported for their fishing category. For example, an owner may have been forced to perform major repairs on a vessel in 2000, or could have been landing fish in a month when market conditions were relatively poor. Thus, trends in gross revenues can only indicate the average trends in gross income and the effect on fishermen's net revenues if their costs remained relatively steady over the period examined. The section of the HMS FMP pertaining to HMS science and research specifically highlights the need to conduct social and economic studies of HMS industries and fishing communities, such as via a logbook or survey research project, which would help calculate adequate cost information. The more frequently and thoroughly this can be conducted the better the estimates of the current net revenues.

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

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

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

Even if stocks improve as a result of restrictive quotas and rebuilding plans, derby fishery conditions continue. Society bears the costs of increased capital investment in the BFT fishery, increased idle capacity, and possibly a poorer quality product. In addition, short run supply gluts

in local markets can result in declines in ex-vessel price as dealers reach the limits of their storage capacity. Also, in the case of BFT which receives higher prices when marketed fresh on the Japanese market, further declines in ex-vessel prices may result because fresh inventory cannot be diverted to a frozen market without decreases in quality and price. To the extent that dealers might have to handle sudden increases in supply due to seasonal availability of BFT, processors may have to invest in refrigeration equipment to store supplies until markets can absorb the excess. After the season ends, this excess storage capacity should remain unused. Processors may also have to hire additional labor during the season which are laid off after the landings season ends. This seasonal employment may have to be augmented by unemployment compensation and social welfare programs. However, insufficient information exists with which to estimate the magnitude of this problem.

Alternative management measures could improve net benefits in the BFT fishery. A control date was implemented on September 1, 1994, and limited access workshops were commenced to consider management regulations that create quasi-property rights in the fishery. The 1996 final rule established freely transferable purse seine quota, in whole or in part, among the seiners. Restrictive quotas set internationally by ICCAT, as part of the ICCAT Rebuilding Plan recommended in 1998, should conserve the BFT stock and allow for its recovery.

6.3 Angling and Charter Boat Revenues

NOAA Fisheries has recently taken several steps to further define and distinguish commercial, recreational, and Charter/Headboat fishermen. In 1992, a final rule went into effect banning the sale of BFT under 73 inches (57 FR 32905, July 24, 1992). A separate rulemaking (62 FR 30741, June 5, 1997) prohibited persons aboard vessels permitted in the General category from retaining BFT less than the large medium size class. Until March 2003, anglers in the General category were allowed to land and sell a BFT 73 inches or above and recreationally fish on other HMS species. In fact, the large number of permit holders in the General category used to be explained by the purchase of permits by recreational anglers "in case" they land a commercial size BFT. However, in December 2002, a final rule requires recreational vessels who do not sell their catch to obtain an HMS Angling category permit (67 FR 77434, December 18, 2002). Owners of General category permits may now no longer recreationally fish for any HMS species. These actions effectively separated the commercial and recreational fisheries and left the HMS Charter/headboat category as the one permit where both recreational and commercial HMS activities could take place given the inherent dual nature of the vessel's operation. The same final rule that separated the commercial and recreational handgear operations in the tuna fishery also clarified and defined when HMS Charter/Headboat operations would be considered commercial and/or recreational.

Given the ban on the sale of BFT under 73 inches in length, the direct income associated with the Angling category is limited to charter/headboat vessel operations. As with the commercial fishing categories, the ideal analysis would include calculation of costs and revenues to charter vessels such that producer surplus could be estimated. The economic importance of the recreational fisheries for Atlantic tunas is not limited to charter vessel producer surplus,

however, nor does it necessarily depend upon the value of the landings which are sold, but rather the participants' willingness to pay for recreational fishing. These non-market values are difficult to estimate, and involve either direct questioning (contingent valuation) or indirect survey techniques such as the travel cost method, as a basis for estimating demand (and thus consumer surplus) for recreational fishing. The economic importance of the recreational Atlantic tuna fisheries, including non-market benefits, should thus be kept in mind when examining the gross revenue figures from other categories, despite the difficulty in attaching a dollar value to recreational fisheries.

The HMS FMP estimated that in 1997 there were approximately 6,612 charter boat trips targeting BFT from Maine to North Carolina. Of these trips, 2,527 targeted commercial sized BFT. Assuming that charter boats charge about \$800 per day, as stated in the HMS FMP, the gross revenues from BFT fishing would be about \$5.3 million. These direct revenues represent nearly 25 percent of the total gross revenues to the other BFT categories, and is an underestimate of revenues accruing to charter boats because some of the BFT landed are probably sold (only large mediums and giants after the 1992 rule). Additionally, tips which are typically given to the mate (about \$100 per trip) are not included. The producer surplus component of the value of the recreational fishery would thus be these gross revenues minus costs incurred in providing the charter boat services. Variable costs were estimated at \$392 per trip resulting in a producer surplus for operations targeting BFT of \$408 / trip (800 - 392).

According to the HMS FMP, preliminary estimates of angler consumer surplus (ACS) in the private BFT fishery are \$1,132 per fishing trip. Given that the estimate of total catch of recreational size-class fish in 2001 was nearly five times that estimate for 2000, it is likely that aggregate ACS increased as well. It should be emphasized that these net revenues would be only a part of the value of the recreational fishery, since ACS is another important component as well. ACS is generated from charter/headboat vessel services as well as from private vessel participation in the recreational fisheries.

6.4 Bluefin Tuna Fishery Participation

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

6.5 Bluefin Tuna Processing and Export

The HMS FMP includes a detailed discussion regarding the export, import, and re-export trade program and market for BFT. As noted above, total landings and the U.S. ex-vessel prices for BFT were lower in 2002 than in 2001, with a resulting decline in gross revenues. As the majority of the domestic BFT are exported there would have been a corresponding decrease in the value of exports of BFT from 2002 to 2001. Tables 7 and 8 shows average ex-vessel price by commercial quota category and General category average ex-vessel prices by month for 1996-2002, respectively.

6.6 Expected Economic Impacts of the Alternatives

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

6.6.1 Allocation of BFT Among Domestic Fishing Categories

Under the No Action alternative, fishery participants would experience positive economic impacts on a scale similar to 2002 if all other factors remain constant (i.e., number of participants, ex-vessel values, etc.). Potentially overall gross revenues to the fishery could be approximately \$18,000,000 (Table 9). The alternative would not alter ex-vessel prices or costs or change economic benefits accrued at a level from last year. In contrast, the final action, in accordance with the HMS FMP, would distribute an additional tonnage of 77.6 mt throughout the fishery and an additional 25 mt to the Longline north subcategory. Depending on the average ex-vessel value and average size of the fish caught per category, additional economic benefits would accrue to each category as a result.

The General category is allocated 47.1 percent of the annual BFT TAC. Based on the 2002 ICCAT Recommendation, the General category would receive a quota increase of 36.5 mt for the 2003 fishing year. Using the average ex-vessel price per pound in round weight for the 2002 fishing year, \$7.02, this would provide an increase of \$564,885 to the ex-vessel gross revenues for the category as a whole. The Harpoon category is allocated 3.9 percent of the annual BFT TAC. Based on the 2002 ICCAT Recommendation, the Harpoon category would receive a quota increase of 3 mt for the 2003 fishing year. Using the average ex-vessel price per pound in round weight for the 2002 fishing year, \$6.82, this would provide an increase of \$45,106 to the ex-vessel gross revenues for the category as a whole. The Incidental Longline category is allocated 8.1 percent of the annual BFT TAC. Based on the 2002 ICCAT Recommendation, the Incidental Longline category would receive a quota increase of 6.3 mt for the 2003 fishing year. In addition to the 6.3 mt, ICCAT recommended an additional set aside quota of 25 mt to account for incidental BFT catch in the vicinity of the management area boundary, thus making the total increase 31.3 mt. Using the average ex-vessel price per pound in round weight for the 2002 fishing year, \$5.05, this would provide a potential increase of \$348,470 to the ex-vessel gross revenues for the category as a whole. The Purse Seine category is allocated 18.6 percent of the annual BFT TAC. Based on the 2002 ICCAT Recommendation, the Purse Seine category would receive a quota increase of 14.4 mt for the 2003 fishing year. Using the average ex-vessel price per pound in round weight for the 2002 fishing year, \$6.64, this would provide an increase of \$210,795 to the ex-vessel gross revenues for the category as a whole.

The recreational Angling category would also receive an increase in BFT quota as a result of the 2002 ICCAT Recommendation. The Angling category is allocated 19.7 percent of the annual BFT TAC. Based on the 2002 ICCAT Recommendation, the Angling category would receive an increase of 15.4 mt for the 2003 fishing year. Although NOAA Fisheries believes that

recreational fisheries have a large influence on the economies of coastal communities, NOAA Fisheries has little current information on the costs and expenditures of anglers or the businesses that rely on them.

6.6.2 General Category Effort Controls

The economic value of General category effort controls are difficult to quantify. By regulating the pace of fishing activity, one expected outcome is more of an even supply of fish on the market with the result of an increase in the average price per fish. However, the last several years have shown the addition of RFDs to be unnecessary as they have all been waived due to the slow pace of fishing activity. In fact, adding RFDs to an already slow fishery could potentially deny fishermen fishing opportunities to catch the available quota with a corresponding negative impact to overall gross revenues. Thus, the alternative to put RFDs in place with implementation of the annual specifications, is assumed to have negative economic impacts if the fishery is slow, whereas adding them if they become necessary due to higher catch rates would have positive impacts.

The final action, to add a block of RFDs in November, is intended to have positive economic impacts to fishermen in southern Atlantic states. Potentially however, this economic benefit would be cancelled by corresponding negative economic impacts to northern area fishermen who would otherwise have harvested and sold the available quota. Often, however, late season BFT fisheries earn higher average monthly prices due to the higher quality of the fish and the low supply of BFT on the market (Table 8). However, since 2000, late season average monthly prices (October, November, December) do not appear dramatically different from prior months (Table 8). This same time frame has also seen a fairly significant rise in available quota after November 15 (Table 5). Potentially, although still a relatively small supply of tonnage (only approximately 4 - 8 percent of the total), this increased availability and supply of fish late in the season may be enough to glut the market.

The final action addressing General category effort controls would implement a solid block of dates to essentially stop the fishery in November to ensure the availability of BFT quota for a south Atlantic fishery later in the season. Prior to 2000, almost all General category quota had been harvested by November 15 (Table 5). From 2000 through 2002, however, active inseason management has made between 4 and 8 percent of the total General category quota available for a late season south Atlantic General category BFT fishery. The average landings for this time-period is 6.3 mt. Using the average price per pound for November and December 2002 (\$6.43) and the landings after November 15, 2002 (73.1 mt), the estimated ex-vessel gross revenue for this late season fishery is \$1,034,623. Implementing RFDs to deliberately assist a late season fishery could have potentially negative economic impacts to those northern area fishermen who would have otherwise caught and sold fish earlier in the season but positive economic impacts to those south Atlantic fishermen. Overall, however it is possible that extending the season would broaden the geographic range of fishery participation.

Options to revise the General category time-periods and subquotas under Alternative 2.4 are deferred for future rulemaking. Analyses conducted for such options could directly examine appropriate time-period subdivisions and quota allocations to address northern and southern area fishermen's concerns and interests.

6.6.3 Permit Categories

Compared to the No Action alternative, the other three alternatives are expected to provide increasing levels of economic benefits compared to No Action, as they relieve existing restrictions. Alternative 3.2, which would allow General category vessels to participate in registered recreational HMS fishing tournaments, would provide additional ACS from additional recreational activities as well as generate additional revenue from the tournament itself. Alternative 3.3, to allow call-in declarations, would have the same benefits as 3.2 plus any additional ACS benefits accrued from those General category participants who elect to also purchase an Atlantic HMS Angling permit. Some of the positive economic impacts from the additional ACS with the additional recreational trips may be reduced if the trip would have been otherwise a commercial trip and thus the revenue from commercial sale is now foregone. Alternative 3.4 would provide positive economic impacts for those vessels that intended to engage in commercial activity but could not due to an incorrect permit.

The final action regarding General category permit restrictions would allow General category vessels some opportunities to participate in recreational fisheries. General category vessels would be allowed to participate in registered recreational HMS fishing tournaments. So long as the tournaments are registered and the vessel enters the tournament, then it would be clear that, under these special circumstances, a General category vessel would be fishing under the recreational regulations when participating and fishing for sharks, swordfish, and/or billfish. When in a tournament and fishing for Atlantic tunas, the General category regulations would apply in order to ensure no fishing for BFT less than 73" regardless of whether the vessel was participating in a tournament. In 2002, there were approximately 7,000 General category permitted vessels. NOAA Fisheries does not currently know what percentage of these vessels have participated in tournaments in the past. Tournaments can generate a lot of money for the surrounding communities and local businesses. Besides the entry fee to the tournament and possibly the calcutta, anglers also pay for marina space and gas (if they have their own vessel), vessel rental (if they do not have their own vessel), meals and awards dinners (if not covered by the entry fee), hotel, fishing equipment, travel costs to and from the tournament, camera equipment, and other miscellaneous expenses. There is little additional data or new reports regarding Atlantic HMS tournaments. The most recent economic information associated with HMS tournaments can be found in the HMS FMP and the 2003 SAFE report.

6.6.4 Definition of "Vicinity of Management Boundary Area"

The alternatives regarding defining in the "vicinity of the management boundary area" would only impact vessels participating the NED experiment. In recent years, fewer than 20 vessels have fished in the NED area in any given year. However, these few vessels land a

significant portion of the swordfish by the U.S. pelagic longline fleet. From 1998 through 2000, the number of vessels fishing in the NED area ranged from 10 to 15 and the amount of all swordfish landed by these vessels ranged from 18.3 to 24.7 percent of all the swordfish landed by U.S. pelagic longline fishermen. Thus, although few fishermen actively participate in the NED area each year, the fishermen that are active in the NED area report landing a substantial amount of the swordfish relative to the entire fleet. In general, gross and net revenues for vessels that fish in the NED area are much higher than the gross and net revenues for vessels that fish in other areas, with the possible exception of the Caribbean, the average annual ex-vessel gross revenues per vessel for 1999 is \$325,545 and for 1998 is \$188,561. The average annual ex-vessel gross revenues per vessel for vessels in areas other than the NED area was \$41,053 in 1998 and \$46,473 in 1999.

Compared to the final action, the No Action alternative and the other alternatives considered would have less economic benefits because fewer BFT could be retained and landed, primarily because the final action would not apply target catch requirements to 25 mt of BFT caught incidentally by vessels participating in the NED experiment, but would apply retention limits and target catch requirements once the 25 mt limit is reached. The final action would not apply target catch requirements for incidentally caught BFT and so more BFT would likely be landed and positive economic benefits would accrue. While not imposing direct costs (because BFT are incidentally caught in fishing operations for other species), the other alternatives would have opportunity costs associated with discarding BFT that might be landed and sold.

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. Following this section is an FRFA prepared in accordance with the Regulatory Flexibility Act that analyzes the impacts of the various alternatives on each of the small business entities.

7.1 Description of the Management Objectives

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

7.2 Description of the Fishery

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

7.3 Statement of the Problem

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

7.4 Description of Each Alternative

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

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

NOAA Fisheries does not foresee that the national net benefits and costs would change significantly in the long term as a result of implementation of the final actions. The total amount of BFT landed and available for sale under the final actions is expected to increase slightly with modest net positive economic impacts. The final action to allow General category vessels to participate in registered recreational HMS fishing tournaments relieves a restriction and would also have slightly positive economic benefits from those vessels that participate and increase the revenues of the tournament. The final action to establish a 10-calendar day time period for permit category changes/corrections would also have a positive economic benefit for those that would be excluded from commercial fishing due to an incorrect permit category. Defining “in the vicinity of the management boundary area” and allowing retention of incidentally caught BFT without target catch requirements should also have slightly positive economic benefits by minimizing discards from pelagic longline vessels fishing in this area. A more detailed analysis of the expected economic impacts of the alternatives is contained in Section 6.6 of this document. Table 10 indicates the possible net economic benefits and costs of each alternative.

7.6 Conclusion

Under E.O. 12866, a regulation is a "significant regulatory action" if it is likely to: 1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; 2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; 3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights, and obligation of recipients thereof; or 4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The final actions described in this EA/RIR/FRFA and final rulemaking do not meet the above criteria. Therefore, under E.O. 12866, the final actions described in this document have been determined to be not significant for the purposes of E.O. 12866. A summary of the expected net economic benefits and costs of each alternative can be found in Table 10.

8.0 FINAL REGULATORY FLEXIBILITY ANALYSIS

8.1 Description of the Reasons Why Action is Being Considered

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

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

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

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

This final action would apply to all participants in the Atlantic BFT fishery, all of which are considered small entities. As shown in Table 2, there are approximately 26,000 vessels that obtained an Atlantic tunas or HMS Charter/Headboat permit as of August 2003. These permitted vessels consist of commercial, recreational, and charter vessels as well as headboats.

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

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

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

These final initial 2003 BFT quota specifications, General category effort controls, General category permit revision, 10-calendar day period for permit category changes/corrections, and definition of the management boundary area have been determined to be not significant for the purposes of E.O. 12866. On September 7, 2000, NOAA Fisheries reinitiated formal consultation for all HMS commercial fisheries under section 7 of the ESA. A BiOp issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NOAA Fisheries jurisdiction. NOAA Fisheries is currently implementing the reasonable and prudent alternative required by the BiOp. These final specifications, effort controls, and permit revisions would not have any additional impacts on sea turtles as these actions would not likely increase or decrease pelagic longline effort, nor are they expected to shift effort into other fishing areas. The 2002 ICCAT Recommendation, which allocates 25 mt to pelagic longline fishery in the vicinity of the management area boundary, would only allow incidental BFT catch to be retained. Defining the management boundary area as the NED closed area would also ensure consistency with the NED experimental fishery conducted pursuant to the BiOp. The other gears' slight increase in the BFT TAC is not enough to change the impacts previously considered. No impacts are expected from this final action that would have the effect of foreclosing the implementation of the requirements of the BiOp.

On December 18, 2002, NOAA Fisheries published a final rule defining the operations

and regulations for HMS Charter/Headboats, implemented a requirement for an Atlantic HMS recreational Angling permit, adjusted the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits, clarified the regulations regarding the retention of BFT in the Gulf of Mexico by recreational and Charter/Headboat vessels, and provided NOAA Fisheries with the authority to set differential BFT retention limits by vessel type (e.g., charter boats, headboats).

On January 7, 2003, NOAA Fisheries published a final rule to amend regulations governing Atlantic billfish and North Atlantic swordfish recreational fisheries to implement 2000 ICCAT Recommendations and enhance management programs for these species. The intent of this action is to improve monitoring and conservation of overfished Atlantic billfish and North Atlantic Swordfish.

On May 30, 2003, NOAA Fisheries published a final rule, effective June 30, 2003, implementing a regulatory amendment affecting the landing of BFT in the Atlantic pelagic longline fishery. The intent of this action was to minimize dead discards of BFT and improve management of the Atlantic pelagic longline fishery, while complying with the National Standards of the Magnuson-Stevens Act and allowing harvest consistent with ICCAT Recommendations.

On June 12, 2003 NOAA Fisheries published a temporary rule, effective June 9, 2003 through July 9, 2003, to provide a limited time during which Atlantic tunas General category permit holders may change their permit category to the HMS Angling category. The intent of this action was to alleviate some of the confusion regarding permit categories resulting from the establishment of the recreational HMS Angling category permit.

On June 27, 2003, NOAA Fisheries published another temporary rule, effective June 23, 2003 through December 31, 2003, to provide a mechanism to correct permit errors for a limited time after permit issuance for all Atlantic tunas and Atlantic HMS permit holders, excluding Atlantic tunas Longline and Purse seine category permits. This mechanism was meant to provide additional relief for those vessel operators who were issued permits incorrectly due to confusion resulting from the establishment of the new HMS Angling category permit, unfamiliarity with the automated permit system, or possible administrative error.

All of the Federal rules mentioned above do not duplicate, overlap, or conflict with the final 2003 BFT quota specifications, General category effort controls, General category permit revision, 10-period for category changes/corrections, or the management boundary area.

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

NOAA Fisheries has prepared this FRFA to analyze the impacts on small entities of the

alternatives for establishing 2003 fishing year BFT quotas for all domestic fishing categories, General category effort controls, revising General category permit requirements to allow participation in recreational registered fishing tournaments, allowing permit category changes within 10 days, and defining the management boundary area, as described in Sections 2.1.2, 2.2.3, 2.3.2, 2.3.4, and 2.4.2, respectively.

The analysis for the FRFA assesses the impacts of the various alternatives on the vessels that participate in the BFT fisheries, all of which are considered small entities. In order to do this, NOAA Fisheries has estimated the average impact that the alternative to establish the 2003 BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories. As mentioned above, the 2002 ICCAT Recommendation increased the BFT quota allocation to 1,489.6 mt. This increase includes 77.6 mt to be redistributed to the domestic fishing categories based on the allocation percentages established in the HMS FMP, as well as a set-aside quota of 25 mt to account for incidental catch of BFT related to directed longline swordfish and BAYS (bigeye, albacore, yellowfin, skipjack) fisheries in the vicinity of the management area boundary. In 2002, the annual gross revenues from the commercial BFT fishery were approximately \$18 million. There are approximately 11,091 vessels that are permitted to land and sell BFT under four BFT quota categories. The four quota categories and their 2002 gross revenues are General (\$13,948,190), Harpoon (\$588,884), Purse Seine (\$3,066,034), and Incidental Longline (\$588,352). The analysis for the FRFA assumes that all category vessels have similar catch and gross revenues. While this may not be true, the analyses are sufficient to show the relative impact of the various final actions on vessels.

For the allocation of BFT quota among domestic fishing categories, two alternatives were considered: The final action that will allocate the ICCAT-recommended quota to domestic categories in accordance with the 2002 ICCAT Recommendation and HMS FMP and the No Action alternative. Under ATCA, the United States is authorized to promulgate regulations as necessary and appropriate to implement ICCAT-approved recommendations, except that no regulations may have the effect of increasing or decreasing any allocation or quota agreed to pursuant to an ICCAT Recommendation. The final action will increase the quota by 77.6 mt and will have positive impacts for fishermen. The No Action alternative was rejected because it was not consistent with the purpose and need for this action and the HMS FMP. The No Action alternative would maintain economic impacts to the United States and to local economies at a distribution and scale similar to 2002, but would deny fishermen additional fishing opportunities as recommended by the 2002 ICCAT Recommendation, inconsistent with ATCA. No other alternatives would meet the purpose and need for this action.

For the General category effort controls, three alternatives were considered: the final action to establish RFDs late in the season to provide a late Fall, southern Atlantic fishery, designate RFDs according to a published schedule, and the No Action (no initial RFDs and publish a schedule during the season). The final action would have positive economic impacts to those south Atlantic fishermen, but could have potentially negative economic impacts to those northern area fishermen who would have otherwise caught and sold fish earlier in the season. These negative impacts will be slightly mitigated if northern area fishermen are willing to travel

south late in the season. NOAA Fisheries has selected this final action, because extending the season as late as possible enhances the likelihood of increasing participation by southern area fishermen and increasing overall access to the fishery over a greater range of the fish migration. The impacts of designating RFDs according to a published schedule may vary according to the pace of the fishery. If catch rates are slow as in recent years, as is expected, scheduled RFDs may need to be waived which causes confusion and disrupts fishermen's activities, thus having negative economic impacts. Therefore this alternative is rejected. The No Action alternative could have positive economic consequences if another season of low catch rates occurs. However, even with low catch rates and no RFDs, it is unlikely that there will be enough quota in the General category to sustain a late season commercial handgear fishery off south Atlantic states, thus negatively impacting south Atlantic fishermen. Therefore this alternative is rejected.

For the permit revision issue, four alternatives were considered: the final action which allows General category vessels to participate in registered recreational HMS fishing tournaments, a final action which allows 10-calendar days from the date of issuance of the permit to change categories, No Action (General category vessels cannot participate in recreational HMS fisheries and no permit changes are allowed once a permit has been issued), and allow dual permits and require declarations by General category vessels prior to every trip regarding which permit is to be used. The final action, which allows General category vessels to participate in registered recreational HMS tournaments, will have positive economic and social impacts by relieving a restriction on General category vessels. The final action also provides a 10-calendar day time period for permit changes due to errors which would have positive social and economic impacts. The No Action alternative would have negative social and economic impacts because General category vessels would not be able to participate fully in recreational fishing tournaments, and because it would not allow permit category changes to correct errors. Therefore, this alternative is rejected. The alternative to allow dual permits would further liberalize the restriction and alleviate any negative economic impacts by allowing General category vessels to choose on any given day whether they wish to fish commercially or recreationally. However, there would be some administrative impacts to vessel owners/operators as they would have to declare with NMFS their intent before making a trip, and difficulties in monitoring and enforcing the declarations in real-time and providing multiple permits for the same vessel may end up causing more confusion within the fishery than alleviating any perceived negative economic impacts, thus this alternative is rejected.

For the definition of the management boundary area, four alternatives were considered: the final action which defines the area as the Northeast Distant (NED) area and will allow retention of the 25 mt quota of BFT with no target catch requirements, the No Action (no definition of the area and operational procedures would account for quota allocated to the area), defining the area as 5 degrees on both sides of the management boundary line, and defining the area as east of the management boundary line. All but the No Action alternative would restrict the quota to vessels participating in the NED experimental fishery. The final action will provide slight positive economic impacts by allowing more retention of incidentally caught BFT relative to the other alternatives because no target requirements will apply. Under the No Action alternative and the other two rejected alternatives, more BFT would likely be discarded than

under the final action and negative economic impacts may occur due to lost revenues from discarded BFT.

9.0 COMMUNITY PROFILES

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

The following towns were identified during the HMS FMP development and are analyzed for social impacts in this action due to the importance of BFT fishing to the community: Gloucester, MA; New Bedford, MA; Barnegat Light, NJ; Brielle/Point Pleasant, NJ; Hatteras, NC; Wanchese, NC; Dulac, LA; and Venice, LA. These communities are discussed in detail in chapter 9 of the HMS FMP.

The impacts of the final actions will be minor in all of these communities. The action to increase the BFT quota could increase the time vessels spent fishing for BFT but could also allow fishermen more time to plan activities with their families during the fishing season because the fishing seasons would likely be longer. Additionally, because individual BFT fishermen might land more fish than they have under the 1,387 mt quota and might fish for longer during the season, dealers, suppliers, and other related industries within the community could experience positive benefits. The action to allow General category vessels to participate in registered recreational HMS fishing tournaments could have beneficial impacts on these communities because tournament participants also pay for marina space and gas (if they have their own vessel), vessel rental (if they do not have their own vessel), meals and awards dinners (if not covered by the entry fee), hotel, fishing equipment, travel costs to and from the tournament, camera equipment, and other miscellaneous expenses. The action to allow permit category changes within 10 days should have slight positive impacts by allowing fishermen to participate in their intended category. The definition of the management boundary area should also have slight positive impacts by allowing retention of BFT caught incidentally in the NED experimental fishery.

10.0 OTHER CONSIDERATIONS

10.1 Magnuson-Stevens Act

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

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

The final actions do not discriminate against fishermen in any state (NS 4) nor do they alter the efficiency in utilizing the resource (NS 5). With regard to NS 6, the final actions take into account any variations that may occur in the fishery and the fishery resources. Additionally, NOAA Fisheries considered the costs and benefits of these management measures economically and socially under NSs 7 and 8 in Sections 4, 5, and 6 of this document. The final actions would ensure that bycatch of BFT, in terms of dead discards, is counted against an ICCAT allowance quota and NOAA Fisheries has considered the impact of the final actions on protected species and finfish (NS 9). Finally, the final actions would not require fishermen to fish in an unsafe manner (NS 10).

10.2 Paperwork Reduction Act

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

10.3 E. O. 13132

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

11.0 CONSIDERATION OF NOAA AND CEQ SIGNIFICANT IMPACT CRITERIA

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

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

The action is not expected to jeopardize the sustainability of BFT, which are the primary target species of operations affected by this action, because fishing patterns and behavior are not expected to change and only a minor increase in effort is anticipated, as a result of this action. The action would implement the adjusted BFT TAC for the United States in the western Atlantic management area from 1,387.0 mt to 1,489.6 mt consistent with ICCAT's 2002 Recommendation. Because the Recommended TAC increase is consistent with the western BFT rebuilding plan, the action is not expected to jeopardize the sustainability of BFT.

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

The action is not expected to jeopardize the sustainability of any non-target finfish species. This action would not alter fishing patterns and/or behavior, although there may be a slight increase in effort which should not substantially alter non-target catches, bycatch, or bycatch mortality. Rebuilding plans, as appropriate, and fishing controls are already in place for non-target species. The over-arching goal of the HMS FMP is to implement rebuilding plans to reduce directed or bycatch mortality rates for overfished stocks and to manage healthy stocks for the optimum yield. Measures established to reduce bycatch and bycatch mortality are discussed in Section 3.5 of the HMS FMP and Chapter 8 of the 2003 SAFE Report.

- (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?*

Because this action is not expected to change BFT fishing patterns, although fishing effort may increase slightly, this action is not expected to change the impact on EFH or to allow substantial damage to ocean and coastal habitats and/or EFH. Further, the effects of this action would not apply to any sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural or historical resources. Should such structures or resources be located in the Exclusive Economic Zone (EEZ), vessels would already avoid those areas to avoid potential gear loss.

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

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

- (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?*

The action is not expected to alter current impacts on threatened or endangered species. The action would not modify fishing behavior or gear type, although it may expand effort in the handgear fishery slightly. Longlines are known to present potential dangers to listed sea turtles and marine mammals, and the activity of the fishery is regulated by the terms of a BiOp dated June 14, 2001. The agency is implementing the BiOp pursuant to a final rule published on July 9, 2002 (67 FR 45393), which, among other matters, restricts and monitors operations of, pelagic longline vessels to reduce interactions with sea turtles. Pelagic longline fishing effort should not be altered because the 25 mt allocation would only allow the increased retention of incidentally caught BFT. The definition of the management boundary area is consistent with the NED

experimental fishery, conducted pursuant to the BiOp. Other HMS gear types are not problematic for sea turtles or marine mammals.

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

The action is not expected to result in cumulative adverse effects that could have a substantial effect on target species or non-target species. The action implements the 2002 ICCAT Recommendation for the BFT fishery, which should have positive cumulative social and economic impacts. This action would be consistent with ongoing implementation of rebuilding plans for western Atlantic BFT, objectives of the HMS FMP, and the final rule to implement the BiOp for sea turtles. The action is not expected to change current fishing practices, although effort may increase slightly, or cause impacts not previously addressed in the above rebuilding plans and rulemakings.

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

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

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

The action is not expected to have any significant, positive or negative, social or economic impacts. The preferred action is expected to have modest positive social and economic impacts, by implementing the ICCAT-recommended adjusted BFT TAC for the United States in the western Atlantic management area from 1,387.0 mt to 1,489.6 mt. This would increase the amount of BFT to be landed by 102.6 mt over the No Action alternative. See Sections 6 for an analysis of the predicted economic impacts to the BFT fishery and small business entities.

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

The action is not expected to be highly controversial on the human environment. There are no highly uncertain effects associated with this action due to the fact that the BFT fishery has been in operation for years. This action would not implement any new impacts on State regulations, regulations outside the Exclusive Economic Zone (EEZ), or laws applicable to the EEZ. Thus, implementing the 2002 ICCAT BFT quota Recommendation is consistent with the

past, would not set a new precedence, and would provide positive economic impacts due to the application of the additional BFT quota. Although many controversial issues associated with the BFT fishery remain, they are beyond the scope of this particular rulemaking and will be addressed in future regulatory and FMP amendments.

12.0 SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSES TO DRAFT EA/RIR AND IRFA

Comment 1: Comments expressed support for the new RFDs of November 15-30 to assist in extending the General category fishery into the late winter season. Comments also stated that implementing this block of RFDs should also provide NOAA Fisheries with adequate time to account for all BFT harvests made prior to any winter fishery.

Response: NOAA Fisheries' final action maintains the proposed block of RFDs in the final initial specifications for the Fall, from November 15 to November 31, where no General category BFT fishing would take place. This is due primarily to the experience of the past several years when low catch rates have resulted in NOAA Fisheries having to waive all previously announced RFDs mid-season, which can cause confusion and disrupt fishermen's activities. This action will allow for BFT to migrate off southern Atlantic States, assist the availability of quota late in the season, and partially address economic and social concerns from south Atlantic area fishermen.

Comment 2: Comments regarding the General category permit revision to allow General category vessels to participate in registered HMS recreational fishing tournaments were generally supportive. One commentor stated that General category vessels should also be allowed to land BFT in the recreational size classes while participating in a tournament. One comment received stated that the catching of shark, swordfish, and billfish recreationally or retaining any bycatch for personal consumption, has been a traditional component of the General category. The same comment stated that this action sets a precedent which could mean that a commercial permit holder for one species may not fish recreationally for another species.

Response: The final action maintains the preferred alternative that will allow General category vessels to participate in recreational HMS fisheries provided they are participating in a registered HMS recreational fishing tournament (according to HMS tournament registration and participation regulations), as well as abiding by the regulations of the tournament. NOAA Fisheries' intent is to allow General category vessels to land sharks, swordfish, and billfish recreationally while actively participating in a tournament. However, when fishing for, or landing, tunas in a tournament the General category regulations would apply, including RFDs and General category retention/size limits. This action is intended to provide some relief from the current restriction and allow General category vessels the same access to tournaments where they may have participated in the past. As the tournament must be registered, NOAA Fisheries will also be able to collect data on catch, effort, and participants.

Recent rulemaking established a new recreational permit category for all HMS which,

among other matters, means General category permit holders must choose whether to retain their commercial General category permit and forgo recreational HMS fishing opportunities or, switch permit categories to the new Atlantic HMS Angling permit and forgo their ability to sell tunas. The HMS Angling category permit completes a process that NOAA Fisheries initiated several years ago to separate commercial and recreational HMS fishing activities to enhance both monitoring and management of all domestic HMS fishing categories.

Comment 3: Comments regarding the 10-calendar day window of opportunity to correct any errors in permit categories were generally positive. Some comments stated that the 10 days should be business days to provide a more adequate time frame for permit applicants to receive and check their permit. One commentor stated that permit category changes should be allowed up until NOAA Fisheries finalizes the BFT Quota Specifications for each fishing year.

Response: The final action establishes a 10-calendar day window of opportunity to correct any errors in permit categories (e.g., if a permit is issued on July 1, then corrections to the permit category must be made by July 10). This action is intended to address the situation where permit applicants who, due to applicant or administrative error, received a permit in the wrong category and who otherwise would be unable to change to the intended permit category. Ten calendar days provide enough time for permit applicants to obtain their permit, check that it is the correct permit, and contact the NOAA Fisheries permit contractor to affect a change. Extending the time period may begin to undermine the original intent of the regulation (i.e., restricting multiple permit category changes) if permit applicants are motivated to actively participate in more than one category per season.

Comment 4: Some comments stated that based on the system NOAA Fisheries has in place for rapid curtailment of effort in the BFT fisheries, and due to the large amounts of inseason transfers made in the past, a large portion of the Reserve category quota for this season should be earmarked for the late season fishery off the south Atlantic states. The comments also stated this could be accomplished by changing the description of the Reserve category for this season to assure that a portion of the Reserve category quota is transferred to the General category in the late fall-early winter months.

Response: The final action will maintain the Reserve category description as stated in § 635.27 (a)(8). NOAA Fisheries maintains the authority to transfer quota among categories or, as appropriate, subcategories throughout the fishing year. Prior to making any such transfers, NOAA Fisheries has established set of criteria that must be considered before performing an inseason transfer. The criteria are listed at § 635.27 (a)(7)(iii)(A) through § 635.27 (a)(7)(iii)(F).

13.0 LIST OF PREPARERS

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14.0 LIST OF AGENCIES AND PERSONS CONSULTED

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

15.0 REFERENCES

- NMFS. 1999. Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks.
- NMFS. 2000. Final Supplemental Environmental Impact Statement for the Regulatory Amendment to the Atlantic Tunas, Swordfish, and Sharks Fishery Management Plan: Reduction of Bycatch and Incidental Catch in the Atlantic Pelagic Longline Fishery. June 14, 2000.
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- NMFS. 2002a. Final Supplemental Environmental Impact Statement for Regulatory Amendment 2 to the Atlantic Tunas, Swordfish, and Sharks Fishery Management Plan: Final Rule to Reduce Sea Turtle Bycatch and Bycatch Mortality in Highly Migratory Species Fisheries. U.S. Department of Commerce, National Marine Fisheries Service,

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16.0 TABLES

Table 1: Calculations to determine Final Initial BFT quotas for the 2003 fishing year, (all figures in metric tons)

	A	B	C	D	E	F	G	H
	Adjusted '02 FY Quota (67 FR 63854, 10/16/02; 67 FR 71487, 12/02/02)	Estimated 2002 Fishing Year Landings ¹	2002 Fishing Year under or over (-) harvest (A-B)	Final Adjustments to/from Reserve	Final Adjustments from the Dead Discard Allowance (DDA)	Adjustments to '02 FY Quotas, (i.e., Reserve, DDA, transfers, over/under harvest from 02)	Baseline allocation for 2003 Fishing Year	Final initial 2003 Fishing Year Quota (F+G)
Angling category	354.0	125.1	228.9	0.0	0.0	0.0	288.6	497.0
School	160.1	26.3	133.8	0.0	0.0	0.0	97.1	230.9
north	88.1	3.9	84.2	0.0	0.0	0.0	45.8	130.0
south	72.0	22.4	49.6	0.0	0.0	0.0	51.3	100.9
Lg. school/sm. medium	166.2	90.1	76.1	0.0	0.0	-1.5	162.8	237.4
north	60.5	9.7	50.8	0.0	0.0	0.0	76.8	127.6
south	105.7	80.4	25.3	0.0	0.0	-1.5	86.0	109.8
Lg. medium/giant	7.2	8.7	-1.5	0.0	0.0	1.5	6.6	6.6
north	3.0	0.2	2.8	0.0	0.0	-2.8	2.2	2.2
south	4.2	8.5	-4.3	0.0	0.0	4.3	4.4	4.4
School reserve	20.5	0.0	20.5	0.0	0.0	-20.5	22.1	22.1
General category	882.0	897.7	-15.7	10.3	0.0		5.4	684.4
Harpoon category	60.9	40.5	20.4	0.0	0.0	0.0	57.1	77.5
Purse Seine category	317.7	207.7	110.0 ³	0.0	0.0	0.0	272.4	382.4
Longline category	60.7	55.5	5.2	0.0	0.0	0.0	143.6 ⁴	148.8 ⁴
north	10.3	7.9	2.4	0.0	0.0	0.0	47.4 (25 ⁴)	49.8 (25 ⁴)
south	50.4	47.6	2.8	0.0	0.0	0.0	71.2	74.0
Trap category	2.3	0.0	2.3	0.0	0.0	0.0	1.5	3.8
Reserve²	10.3	0.0	10.3	-10.3	15.0	35.5	36.6	72.1
Total	1687.9	1326.5	361.4	0.0	15.0	15.0	1489.6 ⁴	1866.0 ⁴

¹2002 Fishing year landings figures are preliminary and subject to change. For the Angling category, landings were estimated using Maryland tagging figures, North Carolina tagging figures, and ALRS data; For commercial landings, figures are derived from NERO dealer report database.

²Landings counting towards Reserve are based on scientific research projects (e.g., archival tagging off North Carolina and in the Gulf of Mexico).

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

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

Table 2: Number of Atlantic HMS and Atlantic tunas permits as of May 2003

Category	Number of Permits
General	6,797
Harpoon	59
Purse Seine	5
Incidental Longline/Trap	237
HMS Angling (Recreational)	15,444
HMS Charter/Headboat	3,993
Total	26,535

Table 3: BFT landings by year and category (metric tons), 1996 to 2002

Category	1996	1997	1998	1999	2000	2001	2002
General	575	679	706	714	725	933	898
Harpoon	58	53	60	59	53	68	40
Purse Seine	245	250	248	247	275	196	208
No. Longline	21	20	23	17	12	8	8
So. Longline	43	27	24	51	51	28	30
Trap	1	2	1	0	0	0	0
Angling	362	299	184	100.3	50.4	241	122.9
Total	1305	1330	1246	1188.3	1166.4	1484.0	1306.9

Sources: Landings data from Northeast Region mandatory dealer report program, except for Angling category landings which are survey-derived.

* Note: Starting with the implementation of the HMS FMP, BFT are managed on a fishing year basis versus a calendar year basis.

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

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

Table 5: General category landings of BFT before and after November 15, 1996-2002

	Before November 15		November 15 and After	
Year	Metric Tons	Percentage of Total	Metric Tons	Percentage of Total
2002	825.2	92	73.1	8
2001	894.8	96	38	4
2000	677.5	93	47.3	7
1999	714.4	100	0	0
1998	706.2	100	0	0
1997	679.9	100	0	0
1996	574.7	99	4.7	1
Total Average	724.7	97.1	23.3	~3

Source: 1996-2002 Dealer Report Database

Table 6: Comparison of Impacts of Alternatives

Alternative	Ecological Impacts BFT	Ecological Impacts other fish species	Protected Species	Economic Impacts	Social Impacts	Administrative/Legal/EJ/CZMA Considerations
Issue 1: BFT QUOTA ALLOCATION						
1. No Action	Positive; Distributes quota according to 1998 ICCAT Rebuilding plan	Neutral. No increase in effort	Neutral. No increase in effort	Positive	Overall positive. However potential negative impacts to south Atlantic fishery	Inconsistent with ATCA. (i.e., additional quota not allocated)
2. Implement ICCAT recommendation, including 25 mt for longline: FINAL	Positive; slightly less than No Action as allocates 77.6 mt more quota towards fishing mortality of BFT.	Neutral. Minor increase in effort	Neutral. Minor increase in effort	Slightly more positive than No Action, i.e. additional fishing opportunities	Overall positive. However potential negative impacts to south Atlantic fishery - BUT see preferred effort controls	Consistent with ATCA, ICCAT 2002 Rec. And HMS FMP
3. Allocate some portion of quota increase to specific area: DEFERRED						Beyond scope of current action
Issue 2: GENERAL CATEGORY EFFORT CONTROLS						
2.1. RFD schedule	Neutral	Neutral	Neutral	Depends: Negative if catch rates low (i.e., further slows fishery)	Mixed. Likely negative if catch rates low.	Can use inseason authority to waive and cancel if necessary
2.2. No Action: No RFDs, publish in season	Neutral	Neutral	Neutral	Mixed. Can implement depending on catch rates in fishery.	Marginal positive. Depends on outreach and avoiding confusion	Requires at least 3 day notice.
2.3 RFD block in November FINAL	Neutral	Neutral	Neutral	Marginal positive. Should extend fishery into late fall with higher price fish	Mixed. Northern area fishermen may be disadvantaged - Southern area advantaged.	N/A
2.4 Revise GC Time-periods/Subquotas DEFERRED						Beyond scope of current action

Table 6: (Continued)

Alternative	Ecological Impacts BFT	Ecological Impacts other fish species	Protected Species	Economic Impacts	Social Impacts	Administrative/ Legal Considerations
Issue 3: PERMIT CATEGORIES						
3.1. No Action: No General cat. Recr'n fishing	Positive. Can only fish on commercial sized BFT in accordance with rebuilding plan	Minor Positive. Less recreational pressure allowed on other HMS species.	Neutral. No change in overall effort	Negative relative to HMS FMP baseline. Local revenue is foregone from shoreside recreational support facilities	Negative relative to HMS FMP baseline. Vessel operators unable to continue previous practices of mixed rec and comm fishing	
3.2. General Cat. vessels allowed to participate in tournaments. FINAL	Same as No Action. Even under tournaments no recreational BFT fishing allowed	Slightly less positive than no action. Would allow rec. fishing on other species when in a tournament only	Neutral. No change in overall effort	Slightly less negative than no action. Provides some additional revenue stream from tournaments	Slightly less negative than no action. Partly relieves a restriction and address some of the General categories concerns.	
3.3 Dual permits and prior declaration	Should be same as No Action if obtaining a recreational permit also means no fishing on small BFT	Slightly less positive than 2.2. Additional pressure allowed on recreational fisheries all the time	Neutral. No change in overall effort	Should restore economic revenue contributions from rec fishing by GC to HMS FMP levels	Maybe slightly positive to those users who wish to get two permits	Difficult to enforce and manage. Maybe confusing to fishery
3.4 Allow 10 days from permit issuance to change permit categories FINAL	Neutral. Administrative mechanism	Neutral. Administrative mechanism	Neutral. No change in overall effort	Minor positive relative to no action. Would allow commercial fishermen to fish in intended category.	Minor positive relative to no action. Would allow fishermen to fish in intended category.	Minor. Contract costs may increase slightly due to making permit category changes
Issue 4: DEFINITION OF "VICINITY OF MANAGEMENT BOUNDARY AREA"						
4.1 No action: No definition of area, 25 mt to Longline North	Slightly less positive than final action due to potentially higher discards	Neutral. No change in effort on other species	Neutral. No change in overall effort	Slightly less positive than final action due to lost revenues from discarded BFT	Slightly less positive than final action due to more discarded BFT	
4.2 Define area as NED closed area, restrict to NED experiment vessels, no target catch requirements for 25 mt then retention limits/target catch requirements apply, 25 mt to Longline North FINAL	Slightly more positive than no action because no discards for 25 mt	Neutral. No change in effort on other species	Neutral. No change in overall effort	Slightly more positive than other alternatives due to higher revenues from landed BFT	Slightly more positive than other alternatives due to less discarded BFT	Easier to monitor due to consistency with NED experiment

4.3 Define area as east of 50°, west of 40° long. and north of 35° lat., 25 mt to Longline North	Slightly less positive than final action due to potentially higher discards	Neutral. No change in effort on other species	Neutral. No change in overall effort	Slightly less positive than final action due to lost revenues from discarded BFT	Slightly less positive than final action due to more discarded BFT	
4.4 Define area as east of 45° long. and north of 35° lat., 25 mt to Longline North	Slightly less positive than final action due to potentially higher discards	Neutral. No change in effort on other species	Neutral. No change in overall effort	Slightly less positive than final action due to lost revenues from discarded BFT	Slightly less positive than final action due to more discarded BFT	

Table 7: Ex-vessel average prices (per pound, round weight) for BFT by commercial fishing category, 1996-2002*

Category	1996	1997	1998	1999	2000	2001	2002
General	\$8.71	\$7.23	\$5.20	\$6.93	\$9.46	\$7.65	\$7.02
Harpoon	\$7.69	\$8.09	\$5.92	\$9.10	\$7.05	\$7.42	\$6.82
Incidental	\$4.79	\$4.94	\$5.06	\$5.47	\$5.89	\$5.74	\$5.05
Purse Seine	\$8.61	\$8.32	\$6.01	\$6.75	\$7.22	\$6.97	\$6.64

*2002 figures are preliminary

Source: 1996-2002 Dealer Report Database

Table 8: Average monthly prices (per pound, round weight) for Atlantic bluefin tuna in the General Category, 1996-2002*

	June	July	August	September	October	November	December
2002	\$6.70	\$7.50	\$7.78	\$5.55	\$7.86	\$5.35	\$7.48
2001	\$5.49	\$8.13	\$7.53	\$8.12	\$7.71	\$6.22	--
2000	\$9.27	\$13.36	\$9.22	\$9.14	\$8.74	\$8.82	\$11.69
1999	\$5.84	\$8.55	\$6.66	\$6.79	\$6.50	--	--
1998	\$7.31	\$4.99	\$4.80	\$4.94	\$6.09	\$10.38	--
1997	\$7.16	\$6.83	\$7.79	\$7.04	\$8.09	--	--
1996	\$7.81	\$7.86	\$8.55	\$8.33	\$9.97	\$15.26	--

*2002 data are preliminary

Source: 1996-2002 Dealer Report Database

Table 9: Ex-vessel gross revenues in the U.S. Atlantic bluefin tuna fishery by commercial fishing category, 1996-2002*

Year/Cat.	General	Harpoon	Inc./LL	P.S.	Total
2002	\$13,948,190	\$588,884	\$558,352	\$3,066,034	\$18,161,460
2001	\$15,883,631	\$1,089,423	\$449,794	\$3,011,046	\$20,433,894
2000	\$15,027,728	\$824,636	\$803,012	\$4,383,679	\$21,039,055
1999	\$10,470,014	\$1,185,947	\$805,687	\$3,671,460	\$16,133,108
1998	\$7,763,996	\$743,666	\$482,858	\$3,285,014	\$12,275,534
1997	\$10,808,589	\$939,322	\$531,208	\$4,579,361	\$16,858,480
1996	\$10,781,387	\$919,717	\$671,528	\$4,445,852	\$16,818,484

*2002 figures are preliminary.

Source: 1996-2002 Dealer Report Database

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

Alternative	Net Economic Benefits	Net Economic Costs
Issue 1: BFT QUOTA ALLOCATION		
1. No Action	Distributes quota according to 1998 ICCAT Rebuilding Plan	Opportunity cost of revenue foregone from not implementing 2002 ICCAT Recommendation
2. Implement ICCAT recommendation, including 25 mt for longline: FINAL	Slightly greater positive economic benefit than No Action as allocates additional quota and greater fishing opportunities.	N/A
3. Allocate some portion of quota increase to specific area: DEFERRED	N/A	N/A
Issue 2: GENERAL CATEGORY EFFORT CONTROLS		
2.1. RFD schedule	Minimal IF catch rates high as will space product on market	IF catch rates are already slow then fishermen will be denied additional fishing opportunities.
2.2. No Action: No RFDs, publish in season	Minimal IF catch rates low as unnecessary to regulate delivery of product on market.	IF catch rates high may need to add RFDs inseason which could have negative impacts on planning schedules.
2.3 RFD block in November FINAL	As above with 2.2, plus additional economic impacts for southern Atlantic states although maybe no NET benefit if at detriment to northern states.	As above with 2.2, plus additional costs with revenues forgone in northern area fishery although may be no NET cost as otherwise southern states negatively impacted.
2.4 Revise GC Time-periods/Subquotas DEFERRED	N/A	N/A
Issue 3: PERMIT CATEGORIES		
3.1. No Action; No General category recreational HMS fishing	Minimal as instead of generating income from recreational fishing (i.e. ACS) there maybe some revenues from commercial sale.	Opportunity costs for those vessels that can now no longer participate in any form of recreational fishing.
3.2. General Category vessels allowed to participate in HMS recreational tournaments FINAL	Slightly greater benefit than 3.1 as now some recreational fishing opportunities allowed, particularly in valuable tournaments.	Slightly less cost than 3.1 as some opportunities provided but still cannot recreational fish outside of tournaments
3.3 Dual permits and prior declaration	Greatest benefit of all three alternatives as now allows participants to choose trip type on a trip by trip basis.	Administrative, management and enforcement costs would increase to oversee program.
3.4 Allow 10 days from permit issuance to change permit categories FINAL	Slightly greater benefit than 3.1 by allowing participants to fish in intended category	Slightly less cost than 3.1 as participants would not have to wait until next fishing season to correct an error
Issue 4: DEFINITION OF "VICINITY OF MANAGEMENT BOUNDARY AREA"		
4.1 No action: No definition of area, 25 mt to Longline North	Slightly less benefits than 4.2 as fewer BFT are likely to be landed	Opportunity costs for those NED vessels than may not be able to meet target catch requirements and must discard BFT

4.2 Define area as NED closed area, restrict to NED experiment vessels, no target catch requirements, 25 mt to Longline North FINAL	Slightly greater benefits than 4.1 as higher number of BFT are likely to be landed	
4.3 Define area as east of 50° long, west of 40° long, and north of 35° lat., 25 mt to Longline North	Slightly less benefits than 4.2 as fewer BFT are likely to be landed	Opportunity costs for those NED vessels than may not be able to meet target catch requirements and must discard BFT
4.4 Define area as east of 45° long, and north of 35° lat., 25 mt to Longline North	Slightly less benefits than 4.2 as fewer BFT are likely to be landed	Opportunity costs for those NED vessels than may not be able to meet target catch requirements and must discard BFT