

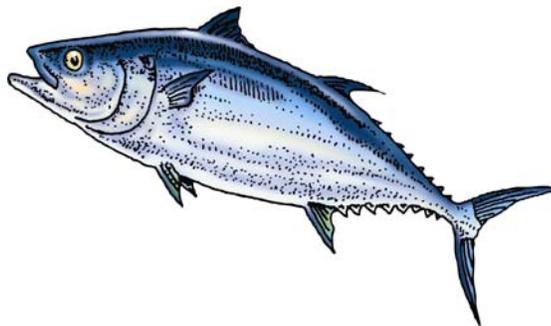
*Environmental Assessment,
Regulatory Impact Review,
and
Final Regulatory Flexibility Analysis*

for a Rule on

**2005 Final Initial Atlantic Bluefin Tuna
Quota Specifications**

and

General Category Effort Controls



United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Office of Sustainable Fisheries
Highly Migratory Species Management Division
May 2005

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 2005 Atlantic bluefin tuna (BFT) quota specifications and General category effort controls, per the International Commission for Atlantic Tunas (ICCAT) recommendations, for Secretarial review under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act. The EA also addresses an ICCAT eight-percent tolerance recommendation regarding harvest of school BFT. 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, and FRFA are available at the following address:

Highly Migratory Species Management Division, F/SF1
National Marine Fisheries Service
1315 East West Highway
Silver Spring, MD 20910
(301) 713-2347

or

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

The final action implements the following measures:

- 2005 fishing year BFT quotas for all domestic fishing categories,
- General category effort controls, including time-period subquotas and restricted fishing days,

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 (EIS) on the action is not required by Section 102(2)(c) of the National Environmental Policy Act or its implementing regulations.

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

Date

ABSTRACT

- Proposed Action:** Set 2005 fishing year BFT quotas for all domestic fishing categories and set General category effort controls.
- Type of statement:** Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis
- Lead Agency:** National Marine Fisheries Service (NMFS): Office of Sustainable Fisheries
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- Abstract:** In April 1999, NMFS adopted the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP), that was developed to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). These final initial 2005 BFT specifications are necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) pursuant to the Atlantic Tunas Convention Act (ATCA) and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) for the 2005 fishing year for Atlantic tunas (i.e., June 1, 2005 to May 31, 2006). The final initial quota specifications would allocate the total ICCAT-recommended quota among the several established fishing categories, adjust the 2005 quotas based on landing under- and overharvests from 2004, address an ICCAT eight-percent tolerance recommendation regarding school BFT, and establish General category effort controls, including time-period subquotas and restricted fishing days. These measures are consistent with the BFT rebuilding program as set forth in the 1999 FMP and implemented under the framework provisions of the 1999 FMP to achieve domestic management objectives for highly migratory species (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 promulgate regulations as may be necessary and appropriate to implement recommendations of 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, NMFS published in the Federal Register (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). The 1999 FMP includes framework provisions for the promulgation of annual specifications for the BFT fishery, in accordance with ATCA and the Magnuson-Stevens Act, and to implement the annual recommendations of ICCAT.

In November 2002, ICCAT recommended a Total Allowable Catch (TAC) of BFT for the United States in the western Atlantic management area of 1,489.6 mt, beginning in 2003. This recommendation of a base allocation of 1,489.6 mt for the United States will continue for subsequent fishing years until revised by ICCAT. 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” for the eastern and western BFT stocks. This area was defined in the 2003 BFT annual specifications (68 FR 56783, October 2, 2003) as the NMFS Northeast Distant statistical reporting area (NED), which is approximately the Grand Banks fishing grounds. The TAC of 1,489.6 mt is inclusive of the 25 mt pelagic longline allocation.

In setting the 2003 BFT annual specifications, NMFS relied on preliminary 2002 Angling category landings estimates to establish Angling category BFT quotas for the 2003 fishing year. These 2002 estimates indicated an underharvest, and the 2003 Angling category quotas and catch limits were established in light of this estimated carryover amount from 2002. After the publication of the final initial 2003 BFT quota specifications, revised preliminary estimates of 2002 fishing year Angling category landings were made available based on data collected through the Large Pelagics Survey (LPS). These preliminary LPS estimates indicated that the Angling category fishery actually overharvested its allocated quota in the 2002 fishing year. Because of this discrepancy, NMFS has engaged in a process of continuing review of the LPS methodologies. In order to improve the survey, NMFS has implemented changes in the way dockside interviews are obtained and in the methods of applying telephone interview data to make estimates of participation and effort. These procedural changes and changes in the geographic and temporal distribution of sampling effort, which are intended to increase sampling size and efficiency within the traditional survey design, were reviewed by a committee of NMFS scientists in 2004. A report evaluating these changes, and announcing final 2002 and 2003 fishing year Angling category landings, was released at the end of 2004 (Van Voorhees *et al.* 2004). The report found that Angling category over-harvests occurred in both 2002 and 2003.

The final initial 2004 BFT specifications incorporated the results of Van Voorhees *et al.* 2004 and implemented the baseline 2002 ICCAT recommended quota. In addition, the quota subcategory allocations established in the 1999 FMP were adjusted according to prior year overages or underages (NMFS 2005a).

During the 2004 fishing year, NMFS conducted two inseason quota transfers using the authority under the 1999 FMP implementing regulations at 50 CFR 635.27(a)(8). The first inseason adjustment transferred 223.1 mt of General category quota to the Angling category and transferred a combined quota of 161.9 mt from the General, Harpoon, and Incidental Longline categories to the Reserve category (69 FR 71732, December 10, 2004). The second inseason adjustment transferred 100 mt from the Purse seine category to the Reserve category (70 FR 302, January 4, 2005). The results of these inseason adjustments and the 2004 fishing year are indicated in Table 1a. The preliminary estimates of under and overharvest by category for the 2004 fishing season are illustrated in Table 1b, Column C.

1.2 Need for Action and Objectives

The objective of this action is to implement the 2002 ICCAT recommendation regarding the BFT TAC by establishing 2005 specifications for the BFT fishery that allocates the TAC among domestic fishing categories, and implement General category effort controls. Alternatives regarding allocation of this BFT quota among domestic fishing categories and General category effort controls were analyzed in order to ensure consistency with the objectives of the 1999 FMP and its implementing regulations, applicable law, and the 1998 ICCAT Rebuilding Plan.

2.0 SUMMARY OF THE ALTERNATIVES

This section describes the alternatives considered in this EA/RIR/FRFA for achieving the objective identified in Section 1.2. Section 2.1 describes the alternatives considered regarding allocation of BFT quota among domestic fishing categories, and Section 2.2 presents alternatives regarding General category effort controls, particularly with regard to providing an extended late season fishery off the south Atlantic coast.

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

This section describes the alternatives considered by NMFS regarding allocation of BFT quota among the commercial and recreational domestic fishing categories. The amount of annual quota available is determined by ICCAT recommendation along with consideration of overages/underages from the previous fishing year and a dead discard allowance. Alternatives one (no action) and two (selected) include the same considerations for 2004 overages and underages and the same dead discard allowance, but differ in base quota allocation. In addition, Alternative two is consistent with the 2002 ICCAT recommendation, ATCA, and the 1999 FMP while Alternative one is not. The third alternative considers another approach for quota distribution, and is consistent with the 2002 ICCAT recommendation and ATCA, but not the 1999 FMP. Each alternative is discussed in further detail below.

Each alternative would apply the overages and underages for each category as a result of the 2004 fishing year, identified in Table 1b (Column C). NMFS has preliminarily determined that the annual BFT dead discard allowance (68 mt) for 2004 was exceeded by 3.8 mt based on preliminary calendar year 2004 estimates from the Southeast Fisheries Science Center. Therefore, pursuant to 50 CFR 635.27(a)(9)(iv), the overage must be deducted from the Longline category. 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.

Alternative A1: No Action

Under this alternative, NMFS would take no action and not allocate the 2002 ICCAT quota recommendation among domestic fishing categories, thus defaulting to the lower quota allocated by the 1998 ICCAT recommendation. This alternative would be inconsistent with ATCA, the 1999 FMP, and implementing regulations. 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. The amount of available quota would be the pre-2002 baseline of 1,387 mt plus or minus underages or overages from 2004, respectively, and the dead discard allocation.

Alternative A2: Allocation of ICCAT quota to domestic categories in accordance with 2002 ICCAT Recommendation and 1999 FMP (Selected Alternative)

Under this alternative, the percentage allocations determined in the 1999 FMP would be applied to the 2002 ICCAT recommended BFT TAC. 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 and 25 mt to account for retained bycatch of BFT by U.S. pelagic longline fisheries in the vicinity of the management boundary area (defined hereafter as the NED).

All domestic fishing categories would receive a share of the increase in quota from the 2002 levels (i.e. $1,464.6 - 1,387 = 77.6$ mt, not including the 25 mt set aside for the pelagic longline fishery) as stipulated in the percentage allocations determined in the 1999 FMP. Dead discards would be deducted from the ICCAT dead discard allowance. Under/overharvests in each particular quota category from the 2004 fishing year would be accounted for and applied to those categories in the 2005 fishing year. Under this alternative, BFT incidentally caught by pelagic longliners and landed against the 25 mt set-aside in the NED would be deducted from the set-aside quota and any under/overharvests during 2004 would be "rolled-over" and added or subtracted, as appropriate, to an additional 25 mt allocation for fishing year 2005. A summary of the calculations resulting in the initial 2005 quota specifications under this alternative is provided in Table 1b. The intent of this option is to allocate the quota provided by ICCAT as specifically as possible to the category and area intended in the 2002 recommendation and in accordance with the 1999 FMP.

Under this alternative, NMFS also considered options for achieving ICCAT's recommended four-year average eight-percent tolerance on harvest of school BFT. As a method for limiting fishing mortality on school size BFT, ICCAT adopted an annual eight-percent tolerance limit in 1991 and, in the 1998 rebuilding plan, modified the tolerance to be calculated as a four-year average. The 2005 fishing year is the third year in the current four-year period. Van Voorhees *et al.* (2004) indicates that 2003 landings of school BFT were approximately 138 mt, which is approximately 9.3 percent of the base quota for that year, and preliminary figures for 2004 indicate that school landings were greater than 2003 school landings. Since landings of school BFT for the first half of the four year period have exceeded eight-percent, landings for the second half must be less than eight-percent to achieve an overall average of eight-percent or below.

Because of the status of school BFT landings, NMFS is concerned about making the entire school category subquota available for harvest in 2005. Thus, NMFS considered options and specifically requested comment during the proposed rule stage other than providing the full school subquota for the 2005 fishery to assist with the future selection of a preferred alternative

and subsequent implementation. The status quo option includes maintaining the default Angling category retention limit of one fish (in any recreational size class, i.e., school, large school or small medium) per vessel per day for the entire 2005 season. However, this option still runs the risk of exceeding total available quota without additional measures, such as a reduction in season length or restrictions on access to the school size class. Other options include reallocating all or a portion of the 2005 school subquota to the large school or small medium subquota for 2005, or prohibiting school BFT landings entirely for 2005 and carrying over the subquota to 2006. Alternatively, NMFS could defer any action until the final year of the four year period (2006). This final action allocates the base school quota of 117.2 mt for 2005, leaving a very limited allocation available for the last year of the four-year period. Careful 2005 inseason management will be conducted to conserve school quota and ensure the United States does not exceed the four-year eight-percent ICCAT tolerance limit.

Alternative A3: Allocation of ICCAT quota to domestic categories via some other means than what is stipulated in 1999 FMP

Under this alternative, the percentage allocations determined in the 1999 FMP would not be applied to the TAC for all domestic fishing categories, but some other allocation scheme would be implemented. This alternative would implement the 2002 ICCAT recommendation and allocate the 1.464.4 mt BFT quota (plus the dead discard allowance and NED set-aside) to the United States, in a manner other than what is stated in the 1999 FMP and implementing regulations. This alternative is meant to address issues regarding specific set-asides and allocations for fishing groups not currently considered in the 1999 FMP. Since this alternative could result in a defacto sub-period quota reallocation, an FMP amendment is necessary for its implementation. NMFS is currently investigating alternative BFT quota allocation programs, particularly in the General category, during the development of the consolidated HMS FMP (69 FR 23730, April 30, 2004). Therefore, this alternative is not analyzed further in this document but is actively under consideration with the development of the consolidated HMS FMP (NMFS 2005b).

2.2 Issue Two: General category effort controls

The following two alternatives represent the options considered by NMFS regarding the use of General category restricted fishing days (RFDs). 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, sixty percent for June – August, thirty percent for September, and ten percent for October – January, was established in the 1999 FMP and codified in the implementing regulations, as amended, and is therefore not addressed in the following alternatives.

Alternative B1: Designate RFDs according to published schedule (Selected Alternative)

Under this alternative, the final initial specifications would announce the following schedule of RFDs for the 2005 season, for which persons aboard vessels permitted in the General category would be prohibited from fishing, including catch-and-release and tag-and-release, for BFT of all sizes: all Fridays, Saturdays, and Sundays from November 18, 2005 through January 31, 2006 and November 24, 2005, inclusive, while the fishery is open. This alternative is intended to provide participants prior notice of RFDs for planning purposes, address the need to slow the pace of the winter fishery in anticipation of high catch rates and limited available quota in the General category's third sub-period, and provide the opportunity for fishermen to spend holidays with family.

Alternative B2: No Action: No Designated RFDs and publish schedule during season

Under this alternative, there would be no RFDs published with the final initial specifications. Instead, NMFS would use its inseason authority to implement RFDs should the need arise. This alternative anticipates a slow winter season, where low catch rates and a slow fishery do not warrant RFDs.

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 BFT and the U.S. tuna fishery, including operations, catches, and discards, please see the 1999 FMP, HMS Stock Assessment and Fishery Evaluation Reports (SAFE Reports) for 2003 and 2004, and the *Predraft of the Consolidated Atlantic HMS FMP including the 2005 Stock Assessment and Fishery Evaluation (SAFE) Report for Atlantic HMS.* Also, for information on interactions and concerns with protected species and the Atlantic tuna fishery, please see the *2004 Final Supplemental Environmental Impact Statement (FSEIS) for a Final Rule to Implement Management Measures to Reduce Bycatch and Bycatch Mortality of Atlantic Sea Turtles in the Atlantic Pelagic Longline Fishery.*

3.1 Status of the Stocks

Western Atlantic BFT are considered overfished and overfishing is occurring. 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 in place for the duration of the rebuilding plan, unless amended in a future recommendation. At the 2004 ICCAT meeting it was determined that a new stock assessment will be conducted for both eastern and western stocks of BFT in 2006. After the 2006 assessment ICCAT may have new information on which to base a change, if any, to the western BFT quota and the U.S. quota share.

3.2 Fishery Participants, Gear Types, and Affected Area

Fishery participation in the Atlantic tuna fishery includes just over 30,000 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. Atlantic Tunas, HMS Charter/headboat, and HMS Angling category permits are issued over the internet, telephone 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 10 calendar days from issuance of the permit to correct the error or wait until the next season to change to the desired permit category.

U.S. landings of BFT for the 1996-2004 period are provided in Table 3. The historical level of landings has generally been determined by quotas since 1982. Since the implementation of the 1999 FMP, the BFT fishery has been managed on a fishing year basis versus a calendar year basis. Commercial categories are monitored by a census of landing cards, whereas the recreational catch is monitored primarily by survey, although the states of Maryland and North Carolina have implemented recreational census BFT tagging programs as well.

BFT movements throughout the Atlantic are the subject of much research and affect the availability of harvest for regional fisheries. Table 4 shows the affected areas off the coast of the United States and the approximate seasonal pattern of the fishery as the BFT migrate along the Atlantic and Gulf of Mexico coasts. During the 2003 and 2004 fisheries, the availability of fish in the New England area declined, causing dramatic reductions in the ability of General category fishermen to harvest the first two time period subquotas and the ability of purse seiners and harpooners to harvest their respective quotas (Table 3), which are traditionally taken in the New England region. Conversely, overall catches for the Angling category in 2004 and the previous 2 years have increased, although time lags in receipt and analyses of survey data, and uncertainty inherent in estimation procedures, mean delayed calculation of final landings estimates.

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 NMFS. 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 actions in light of the impacts they could have on these ESA-listed species. In the case of marine fisheries, NMFS 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, NMFS issues a Biological Opinion (BiOp) which outlines expected impacts of the action and specifies terms and conditions which must be met to mitigate impacts on ESA-listed species. See Section 4.5 for further discussion of consultations and BiOps issued for HMS Fisheries.

The MMPA is the principal Federal legislation that guides marine mammal species protection and conservation policy. Under requirements of the MMPA, NMFS 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).

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 NMFS 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). NMFS does require reporting and authorizes takes by charter/headboat fishermen (considered “commercial” by the MMPA), and, no takes have been reported to NMFS 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. As mentioned above, 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 1, 2004.

4.0 ENVIRONMENTAL CONSEQUENCES OF ANALYZED ALTERNATIVES

The impacts of alternatives 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 1999 FMP. Analyses for alternatives that were considered but not further analyzed in this document will be done in future rulemaking, including the consolidated HMS FMP currently under development. 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 A1, the No Action alternative, NMFS would not implement the 2002 ICCAT BFT quota recommendation. The 2005 fishery would be based on the level of quota allocated from ICCAT prior to 2002 (*i.e.*, 1,387.0 mt) and overages or underages from the 2004 fishing year. Application of the net underharvest from the 2004 fishing year (569.2 mt) to the 2005 fishing year would allow for an increase in BFT harvest for the 2005 fishing year compared to 2004 (Table 1b). This net underharvest from the previous fishing year combined with the annual baseline BFT quota allocation for the United States should not negatively affect the stock because the ICCAT recommended rebuilding plan for BFT assumes that the entire annual quota allocation is harvested, regardless of when that harvest occurs. NMFS is aware of the potential of a biological impact if carryover of a large amount of unharvested quota coincides with a particular year class. For example, the strong 1994 year class has recently recruited into the commercial fishery and is likely contributing to the current spawning stock. However, fluctuations in year class strength are to be expected, and are considered as a part of ICCAT's Standing Committee on Research and Statistics (SCRS) advice and ICCAT recommendations for rebuilding. In addition, the SCRS annually reviews international catches of Atlantic BFT, and may recommend adjustments to the rebuilding plan regarding potential impacts of the roll-over of large underharvests on year class strength, or other facets of BFT life history. No such recommendations have been made to date. Although this no action alternative would be inconsistent with the 1999 FMP, ATCA, and the 2002 ICCAT recommendation, its implementation would have slightly more positive ecological effects than Alternative A2 because the implemented quota would be 77.6 mt less than A2, and this alternative could assist in rebuilding the western Atlantic BFT stock at an accelerated rate by maintaining the U.S. quota at a lower level for the 2005 fishing year.

Alternative A2, the selected alternative, would have slightly higher ecological impacts than pre-2003 fishing years, and would be consistent with the 2002 ICCAT recommendation, 1999 FMP and ATCA. This slight increase in quota (77.6 mt) is not expected to result in long term negative impacts to BFT stocks because it is consistent with the ICCAT BFT rebuilding plan. The 2002 ICCAT recommendation and these 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. As discussed under the previous alternative, application of the net underharvest from the 2004 fishing year should not negatively affect the stock because the ICCAT recommended rebuilding plan for BFT assumes that the entire annual quota allocation is harvested regardless of when that harvest occurs.

The slight increase in quota available under Alternative A2 may result in a slight increase in impacts to other species as a result of a potential slight increase in fishing effort for handgear and purse seine fisheries; however, the minimal amount of increased quota is not expected to alter existing fishing patterns. Bycatch in HMS fisheries for both HMS and non-HMS species was analyzed in Section 3.5 of the 1999 FMP and discussed in the predraft of the consolidated HMS FMP (NMFS 2005b), and is not repeated here in detail. In summary, bycatch impacts are expected to be minimal from the harpoon fishery because of the deliberate nature of the gear. Investigations into bycatch in the purse seine fishery have found dead discards to be limited to tunas; however, ratios of discards to harvested tuna are not available. Some bycatch estimates for recreational HMS fisheries have been recorded by the Large Pelagics Survey (NMFS 1999); however, the sample size has not been large enough to expand data to annual estimates, and the data collected are from all HMS fisheries, not just BFT fisheries. That being said, the species that were discarded dead most frequently according to these data were BFT and skipjack tuna. Data for General category fisheries are not available, but discards are expected to be similar to recreational HMS fisheries. BFT are caught incidentally by the longline fishery, and are allowed to be retained if within the tolerance limits of set amounts of target catches. In addition, Alternative A2 is not expected to increase adverse impacts to protected species beyond those previously analyzed.

Consistent with the 2002 ICCAT recommendation, Alternative A2 would also allocate a 25 mt set-aside of BFT to the Longline North subcategory “in the vicinity of the management area boundary” (*i.e.*, the NED). As BFT caught and landed under this quota would be caught incidentally to directed pelagic longline fisheries on other species, and otherwise would likely be discarded dead due to regulatory target catch requirements, 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 Atlantic Tuna Dealer reporting mechanisms that are already in place. This alternative would also deduct prior years landings against the set-aside quota and apply the 2004 underharvest (39.7 mt) to the 2005 specific sub-quota allocation for this NED set-aside area. If excessive rollovers of unharvested quota continue over an extended period of time, there is a potential that this sub-quota category could increase to a level that provides an incentive for pelagic longline vessels to target BFT. This could result in some possible negative ecological impacts; however, it is unlikely that this will happen because overall regulations governing the pelagic longline sector of the fishery have been developed to avoid such an incentive.

The potential options described under alternative A2 to reduce mortality of school BFT and remain within the eight-percent tolerance limit are expected to have negligible ecological impacts. Any quota that is not harvested under the school subquota could be reallocated to other, larger recreational size classes. Total tonnage harvested would thus remain the same, although the numbers of fish landed would be less, if the landed fish represent larger size classes. ICCAT's rebuilding plan was taken into account when quota adjustments in tonnage were provided for under the 1999 FMP. School landings over the last two years appear to be slightly above the eight-percent tolerance provision, so any potential adjustments for 2005 are expected to be small. Conversely, a fishery which exceeds the eight-percent tolerance provision for the four-year balance period could have negative impacts on ICCAT's BFT rebuilding plan, and would be contrary to ICCAT recommendations, ATCA, and the HMS FMP.

Bycatch of non-target species is expected to be slightly higher for Alternative A2 than Alternative A1 because of the slight increase in quota available under A2.

Economic and Social Impacts

Alternative A1 would not alter current economic impacts to the United States and to local economies relative to the distribution and scale of those prior to the 2002 ICCAT recommendation, but would deny fishermen additional fishing opportunities per the 2002 ICCAT recommendation.

Alternative A2 could increase positive economic impacts to the United States and local economies compared to alternative A1 because of the slight increase in quota. Any positive economic impacts from alternative A2 because of a slight increase in quota would be distributed among the recreational and commercial sectors and are expected to mirror the distribution of the quota allocation in percentages set forth in the 1999 FMP. Potential positive impacts from this alternative will depend upon the ability of the fishery to harvest the quota. In 2004, less than 70% of the overall available quota was harvested, and an underage of 569.2 mt will be rolled over into 2005.

Alternative A2 would also provide slight additional positive economic impacts to the pelagic longline sector of the fleet, due to the 25 mt set-aside for BFT incidentally caught pursuant to longline fishing operations in the NED. Under the selected alternative, unharvested quota from the NED set-aside would be rolled-over to subsequent fishing years, and may provide positive economic impacts. Excessive rollovers may induce an incentive for pelagic longline vessel operators to target BFT in the NED, although regulations regarding longline vessel operations have been developed with the intent of avoiding such an incentive. Slight positive social impacts could accrue to those vessels and their home ports, or offloading ports, as a result of this rollover as well. Finally, under the selected alternative, the set-aside and any rollover from that set-aside cannot be transferred to other quota categories. There may be negative social and economic impacts among other fishery sectors if they are closed once achieving their quota and are unable to access available quota, via inseason transfers, from the NED set-aside.

The potential options for the school BFT fishery described under alternative A2 attempt to balance the needs of the recreational fishery in 2005, as well as 2006, with the requirement to reduce mortality of school BFT within the eight-percent tolerance provision established by ICCAT. Each of the options may result in modest social and/or economic impacts which could be mitigated by several factors. If action is deferred until 2006, then there would not be any impact in the coming fishing year; however, more severe measures may be required to reduce school harvest in 2006. If quota is transferred from the school category to the large school/small medium category, any negative impacts from loss of access to school size fish could be mitigated by the increased availability of quota to recreational anglers in the large school/small medium category; however, the geographic distribution of size classes may not be similar and a transfer would reduce the total number of fish available even though the amount of quota available by weight would be the same. Maintaining the default Angling category retention limit of one BFT per vessel per day could reduce school size class catches in comparison to prior years, but additional measures may be necessary in 2006 for a sufficient overall reduction. This option may also result in some negative impacts to recreational fishermen by unnecessarily reducing catches in the large school/small medium size class subquota during 2005. Each of the options that reduce impacts in 2005 could help lessen the severity of measures that may be necessary in 2006. Additionally, apparent increases in catch of school BFT over the last several years may indicate an increased abundance of school BFT, which would recruit into the large school size class in the near future. Thus, any reductions in school BFT catch could potentially be mitigated by an increase in availability of large school fish. After consideration of public comment and advice from the HMS Advisory Panel, the selected option is to allocate the base school quota of 117 mt to the 2005 recreational fishery, thus no negative economic or social impacts are foreseen for this action and the 2005 fishery. The school BFT harvest in previous years and the 2005 proposed school quota could result in a substantially reduced school quota in 2006 to remain within the ICCAT eight-percent tolerance provision for school BFT. Specific impacts will depend on actual landings during 2005, and will be further analyzed in the 2006 quota specification process.

Conclusion

Alternative A2 is the selected alternative as it is most consistent with the 1999 FMP, ATCA, and the 2002 ICCAT recommendation. Ecological impacts between the two analyzed alternatives are similar except that there may be a slight increase in non-longline BFT fishing effort associated with the minor increase of BFT quota in Alternative A2, which could result in slightly greater impacts to other species. The selected option to reduce mortality of school BFT is expected to have negligible ecological impacts. Overall, economic and social impacts are positive and are similar among the alternatives with a slight increase for A2. Retention limits for BFT including school BFT will be addressed by way of inseason actions as established in 50 CFR 635.23(b). Public comment and feedback that were received on the anticipated ecological, economic, and social impacts of the options to address the ICCAT eight-percent tolerance recommendation will assist the agency when considering inseason adjustments for the Angling

category. Under all of the alternatives considered, there may be slight differences in the level of economic and social impacts experienced by the specific individuals of the BFT fishery, as well as by participants within a particular fishery sector. For example, social and economic impacts regarding a formalized winter General category BFT fishery off the south Atlantic coast may affect General category participants differently depending on their geographical location. Impacts associated with alternatives for the distribution of BFT quota among General category time periods will be further analyzed in the consolidated HMS FMP or another future rulemaking.

4.2 Issue Two: General category effort controls

Ecological Impacts

Effort controls, in general, are designed to have positive economic and social impacts, and have neither positive nor negative ecological impacts since they only impact when and where BFT mortality occurs, and not the magnitude. The magnitude of mortality has been dictated by finite quotas established under a 20-year rebuilding plan for BFT, and other recommendations by ICCAT. The regulation of effort helps achieve optimum yield by considering the social and economic interests of the participants. The limited nature of these effort controls is therefore unlikely to have any differential impacts on the life history or overall biological distribution of the western Atlantic BFT stock. However, it is possible that if too many effort controls are implemented, effort may shift to other species or 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 1999 FMP and ATCA and any quota underage would be applied to the following year so mortality would only be deferred. This scenario is unlikely because NMFS regulations provide the agency with the flexibility to waive the RFDs if the fishery is slow. In addition, the RFDs will only be implemented during the later half of the season which has proceeded fairly rapidly over the last several years. Alternatively, if not enough effort controls are implemented, it is possible the BFT 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. This scenario is also unlikely given the relatively large amount of quota available to the General category in 2005, the slow pace of the early fishery over the last several years, and the regulations that allow NMFS to close the season once a subperiod quota is achieved.

Economic and Social Impacts

Under Alternative B1, the selected alternative, NMFS would publish a schedule of RFDs for the General category in the initial BFT specifications. This alternative would implement the following RFDs: all Fridays, Saturdays, and Sundays from November 18, 2005 through January 31, 2006 and November 24, 2005, inclusive, to ensure the availability of BFT quota throughout a south Atlantic late season fishery. In the past, when catch rates have been high, this type of

schedule has had positive economic consequences by avoiding oversupplying the market and extending the season.

Implementing RFDs to assist in extending a late season fishery would have positive social and economic impacts to south Atlantic fishermen. Conversely, establishing RFDs during the south Atlantic area fishery could have negative social and economic impacts to northern area fishermen willing to travel to the southern area because their stay would be extended as well. However, these adverse impacts could be mitigated if the ex-vessel prices during the extended southern area fishery are kept high by avoiding oversupplying the market. Overall, 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, and is expected to provide better than average ex-vessel prices with an overall increase in gross revenues.

The use of RFDs during a season also provides the positive social impact of predictability for fishermen. Rather than the uncertainty of unscheduled season openings and closings as managed under in-season actions, fishermen would know ahead of time which days would be available for fishing, and would be able to plan travel to the area or engage in other fishing endeavors. This holds particularly true for charter/headboat vessels that rely on scheduling paying passengers. In addition, the block of RFDs includes several national holidays, which will have the positive social impact of providing the opportunity for fishermen to spend holidays with family or friends, if they so desire.

Since 1999, active inseason management has made a range of between four and 27 percent of the total General category quota available for a late season south Atlantic commercial handgear BFT fishery (Table 5). Since the RFDs under this alternative are scheduled for late in the season, inseason management actions similar to those implemented in the 2003 season may also be necessary to provide for a southern area fishery. If the 2005 season mirrors the low landings rates from the early to mid-2004 season, inseason actions may not be necessary.

Alternative B2, the no action alternative, would not implement any RFDs with publication of the initial specifications, but would use inseason management authority established in the 1999 FMP to close and re-open the season should catch rates warrant. This alternative is based on the assumption of a season with low catch rates and would have positive economic and social consequences if slow catch rates were to persist. 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, there may not be enough quota in the General category to sustain a late season commercial handgear fishery off south Atlantic states through the end of January. Thus, there may be negative social and economic impacts to fishermen in southern states unless inseason management actions are taken during the late season fishery to space out landings during November through January.

Conclusion

The selected alternative is Alternative B1 because of the limited amount of quota available in the third General category subperiod, and to provide predictability in late season scheduling. To partially address economic and social concerns of southern Atlantic states, a series of blocks of RFDs including all Friday, Saturday and Sundays from November 18, 2005 through January 31, 2006, and November 24, 2005, inclusive, is implemented to assist availability of quota late in the season.

4.3 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 1999 FMP, NMFS 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, and the conclusion for the 1999 FMP is still applicable.

4.4 Impacts on Protected Species

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under Section 7 of the ESA. A Biological Opinion (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 NMFS jurisdiction. This BiOp also concluded that the continued operation of the purse seine and handgear fisheries may adversely affect, but are not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. NMFS has implemented the reasonable and prudent alternatives (RPAs) required by this BiOp.

Subsequently, based on the management measures in several proposed rules, a new BiOp on the Atlantic pelagic longline fishery was issued on June 1, 2004. The 2004 BiOp found that the continued operation of the fishery was not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. The 2004 BiOp identified RPAs necessary to avoid jeopardizing leatherbacks, and listed the reasonable and prudent measures (RPMs) and terms and conditions necessary to authorize continued take as part of the revised incidental take statement. On July 6, 2004, NMFS published a final rule (69 FR 40734) implementing additional sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with pelagic longline gear onboard. NMFS is working on implementing the other RPMs in compliance with the 2004 BiOp. On August 12, 2004, NMFS published an

Advance Notice of Proposed Rulemaking (69 FR 49858) to request comments on potential regulatory changes to further reduce bycatch and bycatch mortality of sea turtles, as well as comments on the feasibility of framework mechanisms to address unanticipated increases in sea turtle interactions and mortalities, should they occur. NMFS will undertake additional rulemaking and non-regulatory actions, as required, to implement any management measures that are required under the 2004 BiOp.

The NMFS HMS Management Division has informally coordinated with the NMFS Protected Resources Division regarding this action. The measures in this action are not expected to have adverse impacts on protected species. Although the 2002 ICCAT recommendation increased the BFT quota, which may result in a slight increase in effort, NMFS does not expect this slight increase to alter current fishing patterns. The options to reduce mortality of school BFT are expected to have negligible ecological impacts and not adversely impact protected species. The specific action to allocate additional BFT quota to the Longline category would not alter current impacts on threatened or endangered species. The action would not modify fishing behavior or gear type, nor would it expand fishing effort because BFT are only allowed to be retained incidentally. Also, Thus, the selected alternatives in this EA/RIR/FRFA would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or substantially alter current fishing practices or bycatch mortality rates.

4.5 Environmental Justice Concerns

Executive Order (E.O.) 12898 requires that Federal agencies address environmental justice in the decision-making process. In particular, the environmental effects of Federal actions should not have a disproportionate effect on minority and low-income communities. The 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 actions relieve restrictions and provide economic opportunities.

4.6 Coastal Zone Management Act (CZMA) Concerns

NMFS has determined that these 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 were sent to those states requesting their concurrence. As of May 17, concurrence letters have been received from seven states.

4.7 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.

4.8 Cumulative Impacts

The 1999 FMP adopted ICCAT's 20-year stock rebuilding program for western Atlantic BFT, which included, among other things, authority for NMFS to implement ICCAT's BFT quota allocation on a yearly basis through a framework procedure. The FEIS for the 1999 FMP concluded that the cumulative long-term impact of the final actions in the 1999 FMP, which included the BFT rebuilding program and annual quota allocation process, would be to establish sustainable fisheries for Atlantic HMS. These initial 2005 BFT specifications would be consistent with the 1999 FMP and with rulemaking completed in 2003 that modified the target catch requirements for pelagic longline vessels to retain incidentally caught BFT (68 FR 32414, May 30, 2003), and a regulatory amendment to address aspects of the commercial BFT fishery, including start and opening dates of various fishing categories, in particular extending the General category through January (68 FR 74504, December 24, 2003). This action would also be consistent with the recent publication, on July 6, 2004 (69 FR 40733), of a FSEIS for a final rule to implement management measures to reduce bycatch and bycatch mortality of Atlantic sea turtles in the Atlantic pelagic longline fishery.

Currently, NMFS is developing a consolidated HMS FMP for the HMS fisheries. In the foreseeable future, the amendment process and development are expected to include regulatory changes to the 1999 FMP implementing regulations. Any future actions taken in regard to the BFT fishery would remain within the scope of ICCAT recommendations as well as established BFT TACs. In another action, NMFS published an advanced notice of proposed rulemaking on August 12, 2004 (69 FR 49858) to solicit public comments on issues of bycatch in the longline fishery that have arisen since the Biological Opinion was prepared in June of 2004. Agency action relative to these issues may affect the incidental longline BFT fishery in the future. In the reasonably foreseeable future, other NMFS actions that might affect BFT fisheries, including those that are outside the scope of the HMS Management Division, are not expected.

The selected alternatives considered in this EA/RIR/FRFA, regarding implementation of the 2002 ICCAT recommendation regarding quota allocations and designation of General effort category controls are expected to have modest positive social and economic impacts. Options to address the ICCAT eight-percent tolerance recommendation regarding school BFT may potentially have some modest social and/or economic impacts, although all options would ensure consistency with the international rebuilding plan. The selected approach is not expected to have negative social or economic impacts for the 2005 season, but may negatively impact recreational fishing opportunities on school-sized fish in 2006. NMFS will carefully conduct inseason management during the 2005 fishery in an attempt to minimize the potential for negatively impacting the 2006 school fishery. The measures that are a part of this action are not expected to change current fishing practices, and thus are not expected to cause biological impacts not previously addressed in the 1999 FMP's EIS and the July 2004 FSEIS for sea turtle bycatch.

NMFS' goal for HMS management has been to provide sustainable harvests that will provide the greatest economic benefits to the largest number of individuals. While certain actions have resulted in negative socio-economic impacts, all of the past, present, and reasonably foreseeable future actions are expected to ensure the long-term sustainability and continued economic viability of U.S. Atlantic HMS fisheries consistent with applicable law. Likewise, other fisheries under NMFS and council management

Thus, NMFS 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 selected alternatives.

5.0 MITIGATION AND UNAVOIDABLE ADVERSE IMPACTS

5.1 Mitigating Measures

The selected alternatives would assist NMFS implement the 2002 ICCAT recommendation in accordance with domestic legislation and the 1999 FMP and implementing regulations. Using its inseason management authority, NMFS will be able to monitor and make adjustments to the fishery close to “real time.” Since NMFS 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.

Certain measures in this action, such as not explicitly addressing the request for a subquota for a winter commercial handgear fishery (as requested by a Petition for Rulemaking from the State of North Carolina) are expected to have short term negative direct, indirect, and cumulative economic and social impacts to fishermen in south Atlantic states. Any such impacts would be mitigated by implementing the selected option for an RFD schedule designed to ensure General category quota is available late in the season. In addition, the consolidated HMS FMP development process will consider additional changes to the 1999 FMP and Billfish FMPs that would further enhance rebuilding, prevent overfishing, improve data collection methodology, enhance enforcement of regulations, update essential fish habitat identifications, and maintain the United States’ compliance with multilateral treaties relating to HMS.

5.2 Unavoidable Adverse Impacts

Although the rule would result in a slight increase in quota relative to levels prior to implementation of the 2002 ICCAT recommendation, it is consistent with the ICCAT BFT rebuilding plan, the 1999 FMP, ATCA, and the Magnuson Stevens Act. NMFS does not expect this slight increase to alter current fishing patterns. The specific action to allocate additional BFT quota to the Longline category would not alter current impacts on threatened or endangered species. The action would not modify fishing behavior or gear type, nor would it expand fishing effort because BFT are only allowed to be retained incidentally. Thus, the selected alternatives in this EA/RIR/FRFA would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or substantially alter current fishing practices or bycatch mortality rates.

5.3 Irreversible and Irrecoverable Commitment of Resources

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

6.0 ECONOMIC EVALUATION

Note that all dollars have been converted to 1996 dollars using the Consumer Price Index (CPI) Conversion Factors for comparison purposes.

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 up to over \$9.00 per pound round weight in the late 1990's. This increase over time 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 1999 FMP and combined pre-draft of the consolidated HMS FMP and 2005 SAFE report (NMFS 2005 b); and is not repeated here. Many factors, including the yen/dollar exchange rate, market supply and demand, and fish quality may affect ex-vessel prices. Table 7 gives the average ex-vessel price of BFT per year for each category, adjusted to reflect 1996 dollars.

Ex-vessel prices in 2004 were lower than those for 2003 for every category, and 2003 prices were generally low compared to prices two years earlier (Table 7). Average ex-vessel price has fallen fairly consistently for all categories since 2000. Prices for 2004 showed a particularly sharp drop for the Harpoon, Longline, and Purse seine categories. Average monthly prices for General category landings in 2004 were well below comparable 2003 values, with the exception of January 2005 (Table 8). 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. The rapid growth of the Mediterranean BFT farming industry could have contributed substantially to reduced ex-vessel prices by over-supplying the market.

6.2 Ex-vessel Gross Revenues

Ex-vessel gross revenues from recorded sales of BFT in all commercial categories for 2004 (adjusted to 1996 dollars) were the lowest in the nine year history presented in Table 9. The combination of reduced ex-vessel prices (Tables 7 & 8) and reduced commercial landings (Table 3) had a severe impact on ex-vessel gross revenues in 2004. For all categories but the General category, 2004 revenues were less than half of 2003 revenues. Purse seine revenues dropped the most dramatically and were reduced by a factor of ten. General category revenues for 2004 were slightly greater than half of 2003 earnings. Prior to that, in 2003, General category revenues were also slightly more than half of the previous year's revenues, and Purse seine category revenues in 2003 were \$1 million less than for 2002. Both the Harpoon and Longline categories experienced increases from 2002 to 2003.

Overall, revenues for the General category have been falling since a peak in 2001 (Table 9). Purse seine category revenues reached a peak in 1997, and a trend of falling revenues has occurred over the last three years. Both the Longline and Harpoon category fisheries experienced a peak in revenues in 1999, with below nine year average revenues since then, with the exception of Longline category revenues in 2003.

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 2004, or could have landed 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 1999 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 1999 FMP, different cost estimates were derived for each of the permitted categories. In the 1999 FMP, average variable costs estimated for the directed commercial categories were: General category at \$516/trip, Harpoon category at \$488/trip, and Purse Seine \$1,750 per day or \$10,580 per metric ton. The 1999 FMP reports that 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 overages 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. The consolidated HMS FMP currently under development may consider individual transferable quotas for the General category fishery. Even without additional limited access management in the U.S. fishery, 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

NMFS has taken several steps to define and distinguish commercial, recreational, and Charter/Headboat fishermen. In 1992, a final rule went into effect prohibiting 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 2002, 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 required recreational vessels that do not sell their catch to obtain an HMS Angling category permit (67 FR 77434, December 18, 2002). A minor exemption was made in a final rule published on December 24, 2003 (68 FR 74504), which allows vessels that are permitted in the General category to participate in recreational HMS fisheries, so long as they are a participant in a registered HMS tournament, thus acknowledging their historical

participation in HMS tournaments. These actions effectively separated the commercial and recreational fisheries and left the HMS Charter/headboat category as the one permit under which both recreational and commercial HMS activities could take place, at any time, given the inherent dual nature of charter/headboat vessels' operations. 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 to be fishing under commercial and/or recreational regulations.

Given the prohibition on the sale of BFT under 73 inches in length, any 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 are collected via 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 1999 FMP estimated that, in 1997, there were approximately 6,612 charterboat trips targeting BFT from Maine to North Carolina. Of these trips, 2,527 targeted commercial-sized BFT. The 1999 FMP estimated that charterboats charge about \$800 per day; however, a survey of daily charter rates advertised by Atlantic HMS Charter/Headboat permit holders which was included in the combined pre-draft of the consolidated HMS FMP and 2005 SAFE report (NMFS 2005 b) estimated that the average rate for an all day trip in 2004 was \$1053. Assuming that the total number of trips in 2004 was the same as 1997, and applying the 2004 average to the total number of trips from 1997 results in a rough estimate of gross revenues for BFT charters in 2004 of about \$7.0 million. These estimated direct revenues exceeded the total gross revenues of all other commercial BFT categories combined for 2004 (Table 9), and could be an underestimate of revenues accruing to charterboats 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 charterboat 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 1999 FMP, preliminary estimates of angler consumer surplus (ACS) in the private BFT fishery are \$1,132 per fishing trip. 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 1999 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 1999 FMP includes a detailed discussion regarding the export, import, and re-export trade program and market for BFT. As noted above, total landings of BFT and U.S. ex-vessel prices for most categories were lower in 2004 and 2003 than in 2002, with a subsequent decline in gross revenues. The majority of domestically harvested BFT are exported, and there was a corresponding decrease in the amount of exports of BFT from 2002 to 2004 (NMFS 2005 b). The reduction in amount of exports and decrease in the ex-vessel value of landings for this time period indicates a corresponding decrease in the value of exports, although these figures are not available for only Atlantic product (NMFS 2005 b).

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 or years prior if all other factors remain constant (e.g., number of participants, ex-vessel values, catch rates, etc.). Potentially, overall gross revenues to the fishery could be approximately \$20,500,000 as occurred in 2001 (Table 9). However, there is variability in quota each fishing year due to the rollover provisions from the previous fishing year, therefore the amount of available quota would likely not remain consistent with the level of a previous specific fishing year. The alternative would not significantly alter ex-vessel prices or costs or change economic benefits accrued at a level from 2002 or prior years.

The selected alternative, in accordance with the 1999 FMP, would distribute an additional tonnage of 77.6 mt throughout the fishery and an additional 25 mt to the Longline North subcategory as per the 2002 ICCAT recommendation. Depending on the overall harvest,

average ex-vessel value and average size of the fish caught per category, economic benefits in addition to the potential \$20,500,000 gross revenues of 2001 identified under the No Action alternative would accrue to each category as a result of this slight quota increase. Although the increase in quota from the 2002 recommendation was also available in 2003 and 2004, there are anomalies in these fishing years, including under-estimated recreational overages (as discussed in Section 1.4) and unavailability of fish in the New England region (as discussed in Section 3.2), which preclude the use of these years for comparison of expected economic impacts. Therefore, pre-2002 gross revenues (*i.e.* \$20,500,00 from 2001) are used as a baseline for comparison purposes, with the potential additional economic benefits estimated below.

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, over pre-2002 ICCAT recommendation levels, of 36.5 mt for the 2005 fishing year. Using the average ex-vessel price per pound in round weight for the 2004 fishing year of \$5.78 (Table 7), this would provide an increase of \$465,109 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, over pre-2002 ICCAT recommendation levels, of 3 mt for the 2005 fishing year. Using the average ex-vessel price per pound in round weight for the 2004 fishing year of \$5.02 (Table 7), this would provide an increase of \$33,202 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, over pre-2002 ICCAT recommendation levels, of 6.3 mt for the 2004 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 2003 fishing year of \$3.56, this could provide a potential increase of \$245,657 to the ex-vessel gross revenues for the category as a whole, although there are a limited number of vessels capable of fishing in the NED and the realized increase could be less. 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, over pre-2002 ICCAT recommendation levels, of 14.4 mt for the 2005 fishing year. Using the average ex-vessel price per pound in round weight for the 2004 fishing year of \$3.97, this would provide an increase of \$126,034 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 2005 fishing year. Although NMFS believes that recreational fisheries have a large influence on the economies of coastal communities, NMFS has little current information on the costs and expenditures of anglers or the businesses that rely on them. See sections 4.2 and 8.6 for potential economic impacts of options to address the ICCAT eight-percent tolerance recommendation.

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 a more 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, except for the latter part the season, as those implemented earlier in the season have all been waived due to the slow pace of fishing activity. In fact, adding RFDs to a slow fishery could potentially deny fishermen fishing opportunities to catch the available quota with a corresponding negative impact to overall gross revenues.

The selected alternative, to add a series of blocks of RFDs through the late season from November through January, is intended to have positive economic impacts to fishermen in southern Atlantic states. Late season BFT fisheries often earn higher average monthly prices due to the higher average quality of the fish and the low supply of BFT on the market (Table 8). Preliminary results from extending the General category into January for both 2004 and 2005 show that prices generally remained consistent with, or were above, prices for the November through December timeframe (Table 8). This late season fishery has also seen a fairly significant rise in available quota after November 15 (Table 5), due to a combination of management inseason actions and an apparent change in fish availability on the New England fishing grounds. The potential for oversupplying the late season market exists; however, the degree of harvest necessary for this to occur is unknown.

The selected alternative would implement the following series of RFDs: all Fridays, Saturdays, and Sundays from November 18, 2005 through January 31, 2006 and November 24, 2005, inclusive, while the fishery is open, to pace the fishery and ensure the availability of BFT quota for a south Atlantic fishery late in the season. Prior to 2000, almost all General category quota had been harvested by November 15 (Table 5). Since 2000, active inseason management and a change in BFT availability has made a range of four to 27 percent of the total General category quota available for a late season south Atlantic General category BFT fishery. Using the average price per pound for November 2004 through January 2005 (\$7.14) and the landings after November 15, 2004 (92.4 mt), the estimated ex-vessel gross revenue for the 2004 late season fishery was \$1,454,468.

The selected alternative may have negative economic impacts to northern area fishermen who choose to travel to the southern area during the late season fishery. Travel and lodging costs may be greater if the season were extended over a greater period of time as included under the selected alternative. Those additional costs could be mitigated if the ex-vessel price of BFT stays high, as is intended under this alternative. Without RFDs, travel costs may be less because of a shorter season; however, the market could be oversupplied and ex-vessel prices could fall. Overall, extending the season as late as possible would enhance the likelihood of increasing participation by southern area fishermen, increase access to the fishery over a greater range of

the fish migration, and is expected to provide better than average ex-vessel prices with an overall increase in gross revenues.

7.0 REGULATORY IMPACT REVIEW

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

7.1 Description of the Management Objectives

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

7.2 Description of the Fishery

Please see Section 3 for a description of 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

NMFS does not foresee that the national net benefits and costs would change significantly in the long term as a result of implementation of the action. The total amount of BFT landed and available for sale under the selected alternatives is expected to provide modest net positive economic impacts. 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 actions described in this EA/RIR/FRFA and rulemaking do not meet the above criteria, for example, the economic impacts as reflected in this rule are under the \$100 million threshold. This action raises no novel or legal policy issues as it sets fishing year BFT quotas for all domestic fishing categories consistent with international and domestic law and policy and establishes General category effort controls in accordance with the processes established in the 1999 FMP, and is not expected to result in any inconsistency with other agency actions. Therefore, under E.O. 12866, the 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 Action

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

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

This 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 30,000 vessels that obtained an Atlantic HMS Charter/Headboat, Atlantic HMS Angling, or an Atlantic tunas permit as of February 2005. 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 Action, Including an Estimate of the Classes of Small Entities which will be Subject to the Requirements of the Report or Record

The selected alternatives 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 Action

This rule must be consistent with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. NMFS strives to ensure consistency among the regulations with Fishery Management Councils and other relevant agencies. NMFS does not believe that the considered alternatives would conflict with any relevant regulations, federal or otherwise. Once the rule is finalized and made effective, fishermen participating in the affected fisheries must comply with the final rule.

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

NMFS has prepared this FRFA to analyze the impacts on small entities of the alternatives for establishing 2005 fishing year BFT quotas for all domestic fishing categories and General category effort controls, as described under each alternative in Section 2.

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, NMFS has estimated the average impact that the alternative to establish the 2005 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, to be redistributed to the domestic fishing categories based on the allocation percentages established in the 1999 FMP, as well as a set-aside quota of 25 mt to account for incidental catch of BFT related to directed longline swordfish fisheries and other regulated tuna (bigeye, albacore, yellowfin, and skipjack) fisheries in the NED. Both these quota modifications were established in the 2003 and 2004 specifications. In 2004, the annual gross revenues from the commercial BFT fishery were approximately \$5.2 million. There are approximately 9,500 vessels that are permitted to land and sell BFT under four BFT quota categories (including charter/headboat vessels). The commercial categories and their 2004 gross revenues are General (\$4,346,814), Harpoon (\$317,104), Purse seine (\$231,791), and Longline (\$305,180). The analysis for the FRFA assumes that each vessel within a category will have similar catch and gross revenues. While this may not be true, the analyses are sufficient to show the relative impact of the various selected alternatives on vessels.

For the allocation of BFT quota among domestic fishing categories, NMFS analyzed a no action alternative and Alternative two (selected alternative) which would implement the 2002 ICCAT recommendation. NMFS considered a third alternative that would have allocated the 2002 ICCAT recommendation in a manner other than that designated in the 1999 FMP that was meant to address issues regarding specific set-asides and allocations for fishing groups which are not currently considered in the 1999 FMP. However, since the third alternative could have resulted in a defacto sub-period quota reallocation, an FMP amendment would be necessary for its implementation, and it was not further analyzed. In a concurrent rulemaking, the development of the consolidated HMS FMP has been initiated (68 FR 40907, July 9, 2003) to consider sub-period quota allocations in the BFT fishery, among other things.

As noted above, Alternative two would implement the 2002 ICCAT recommendation in accordance with the 1999 FMP and consistent with ATCA. Under ATCA, the United States is obligated to implement ICCAT-approved quota recommendations. The selected alternative would apply this quota and have positive impacts for fishermen. The no action alternative would keep the quota at pre-2002 ICCAT recommendation levels (i.e., 77.6 mt less) and would not be consistent with the purpose and need for this action and the 1999 FMP. It would maintain economic impacts to the United States and to local economies at a distribution and scale similar to 2002 or recent prior years, but would deny fishermen additional fishing opportunities as

recommended by the 2002 ICCAT recommendation and as mandated by ATCA. This alternative was rejected because it was inconsistent with ATCA, the 1999 FMP, and the purpose and need for this action.

Alternative two also included consideration of several options for reducing catch of school bluefin tuna, including: (1) taking no action until 2006; (2) reallocating all or a portion of the 2005 school subquota to the large school/small medium subquota for 2005; (3) maintaining the default Angling category retention limit of one fish per vessel per day for the entire 2005 season; or (4) prohibiting landing of school BFT in 2005 and carrying over the subquota to 2006. During the public comment period, comment was specifically sought on these options. Because of limited economic data regarding recreational HMS fisheries, economic impacts of the various options cannot be quantified. However, the options that include some reduction in school BFT landings in 2005 (Options 2, 3 and 4) could have minor negative economic impacts for 2005. Any modest economic impacts to charter/headboat or recreational fisheries as a result of option 2 could be mitigated by the shift of quota to the large school/small medium subquota. In addition, the apparent recent increase in school BFT landings could indicate an increase in abundance of young BFT, some of which could be recruited into the large school/small medium size class in 2005, thus mitigating any reduction in school BFT from Options 2 or 4. Impacts from Option 3 are less likely to be mitigated by shifts in quota or abundance since the one fish retention limit would be in place for the entire season, and the small retention limit could have greater impacts on charter/headboat fisheries than the other options. Options 2, 3, and 4 were rejected because each was more likely to have negative impacts on the 2005 fishing year as describe above than Option 1. Under Option 1, the selected alternative, there would be few negative impacts in the coming fishing year compared to the other alternatives; however, more severe measures may be required to reduce school harvest in 2006. NMFS intends to use inseason actions to the extent possible to adjust retention limits and moderate the catch of school BFT during the 2005 fishing year to maximize fishing opportunities and mitigate impacts in 2005 and 2006.

For the General category effort controls, two alternatives were considered: the selected alternative to designate RFDs according to a schedule published in the initial BFT specifications and the no action alternative (no RFDs published with the initial specifications, but implemented during the season as needed). In the past, when catch rates have been high, the use of RFDs (selected alternative) has had positive economic consequences by avoiding oversupplying the market and extending the season as late as possible. Implementing RFDs to extend the late season may have negative economic impacts to northern area fishermen who choose to travel to the southern area during the late season fishery. Travel and lodging costs may be greater if the season were extended over a greater period of time as indicated under the selected alternative. Those additional costs could be mitigated if the ex-vessel price of BFT stays high. Without RFDs, travel costs may be less because of a shorter season; however, the market could be oversupplied and ex-vessel prices could fall. Despite the possible negative impacts, extending the season as late as possible would enhance the likelihood of increasing participation by southern area fishermen, increase access to the fishery over a greater range of the fish migration, and is expected to provide better than average ex-vessel prices with an overall increase in gross

revenues.

The no action alternative would not implement any RFDs with publication of the initial specifications but rather would use inseason management authority established in the 1999 FMP to implement RFDs during the season, should catch rates warrant. This alternative is most beneficial during a season of low catch rates and would have positive economic consequences if slow catch rates were to persist. 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, this alternative was rejected because it is unlikely that there will be enough quota in the General category to sustain an extended late season commercial handgear fishery off south Atlantic states.

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.” Federal agencies should address the aesthetic, historic, cultural, economic, social, or health effects which may be direct, indirect, or cumulative. The Magnuson-Stevens Act also requires, among other matters, consideration of social impacts. Consideration of the social impacts associated with fishery management measures is a growing concern as fisheries experience variable participation and/or declines in stocks.

Profiles for the following communities were included in Chapter 9 of the 1999 FMP and updated in the predraft for the combined consolidated HMS FMP and 2005 SAFE report (NMFS 2005 b). These communities 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.

The impacts of the actions will be minor in all of these communities. The action to provide the 2002 ICCAT recommended quota levels would provide for positive social impacts by providing some increased fishing opportunities compared to quota levels prior to the 2002 ICCAT recommendation. The pattern of RFDs would allow fishermen to plan for fishing activities throughout the late season fishery and maximize ex-vessel prices.

10.0 OTHER CONSIDERATIONS

10.1 Magnuson-Stevens Act

The analyses in this document are consistent with the National Standards (NS) under the Magnuson Stevens Act and as set forth in the 50 C.F.R. part 600 NS Guidelines.

This action 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 selected alternative is based on the results of the 2002 ICCAT recommendation, the final action is 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, NMFS 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 minimize BFT bycatch to the extent practicable by reducing dead discards and accounting for incidentally caught BFT in the NED against an ICCAT allowance quota (NS 9). Finally, the final actions would not require fishermen to fish in an unsafe manner (NS 10).

10.2 Paperwork Reduction Act

The quota specifications and effort controls 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, except for pelagic longline operations where BFT is an incidental catch. Fishing patterns and behavior are not expected to change as a result of this action, except for a minor increase in effort due to a slight increase in U.S. BFT quota. The action would implement the 2002 ICCAT recommendation for BFT. For example, as stated in Chapter 2, NMFS would implement the BFT TAC for the United States in the western Atlantic management area of 1,489.6 mt consistent with ICCAT's 2002 recommendation and eight-percent tolerance recommendation on harvest of school BFT. Because the Recommended TAC 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 relative to levels prior to implementation of the 2002 ICCAT recommendation, this 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 goals of the 1999 FMP are 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 1999 FMP.

- (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?*

Although fishing effort may increase slightly relative to levels prior to implementation of the 2002 ICCAT recommendation, this action is not expected to change BFT fishing patterns or impacts 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?*

This action is not expected to have adverse impacts on endangered or threatened species. The 2002 ICCAT recommendation increased the BFT quota by 77.6 mt, which may result in a slight increase in effort that could potentially slightly increase the number of protected species interactions. Due to current restrictions on the BFT fishery, and more specifically the pelagic longline fishery, NMFS does not expect this slight increase in effort relative to levels prior to implementation of the 2002 ICCAT recommendation, to alter current fishing patterns or change previously analyzed endangered or threatened species, marine mammals, or critical habitat interaction rates or magnitudes, substantially alter current fishing practices, or bycatch mortality rates.

- (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 a rebuilding plan for western Atlantic BFT plus the objectives of the 1999 FMP. Although fishing effort may increase slightly, this action is not expected to change current fishing practices, 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, 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 selected 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 of 1,489.6 mt and is consistent with the ICCAT recommendation regarding the eight-percent tolerance of school BFT harvest. See Section 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. Implementing the 2002 ICCAT BFT quota recommendation is consistent with the past, would not set a new precedent, and would provide positive economic impacts due to the application of the additional BFT quota. An EA/RIR/IRFA was prepared for this action, and public comments with agency responses are summarized in Section 16.0. Most commenters were supportive of the final action, and several comments were outside the scope of this action. No comments were received critiquing or opposing the analyses conducted within this document. The only comment received on the agency's implementation of the public review process under the National Environmental Policy Act included several requests for public hearings in other locations. Thus, this action is not controversial for environmental reasons.

12.0 LIST OF PREPARERS

This EA/RIR/FRFA was prepared by Dianne Stephan, Brad McHale, Mark Murray-Brown, and Christopher Rogers from the HMS Management Division, Office of Sustainable Fisheries. Please contact the HMS Management Division, Northeast Regional Office, for a complete copy of current regulations for the Atlantic tunas fisheries.

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13.0 LIST OF AGENCIES AND PERSONS CONSULTED

Discussions relevant to the formulation of the selected alternatives and the analyses for this EA/RIR/FRFA involved input from several NMFS components and constituent groups, including: NMFS Southeast Fisheries Science Center, NMFS Northeast Regional Office, NMFS 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). NMFS has also received numerous comments from individual fishermen and interested parties.

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15.0 TABLES

Table 1a. Adjustments to the final 2004 bluefin tuna quota as a result of inseason actions (all figures in metric tons (mt)).

Category	Final Initial Specs 2004 Quota	Inseason Action (69 FR 71732; 12/10/04)	Result	Inseason Action (70 FR 302) 01/04/05	Adjusted 2004 FY Quota (Column A in Table 1b)
Angling	76.5	+223.1	299.6	0.0	299.6
General	659.0	-223.1 -76.9	359.0	0.0	359.0
Harpoon	81.4	-40	41.4	0.0	41.4
Purse seine	389.4	0.0	389.4	-100.0	289.4
Longline	171.2	-45.0	126.2	0.0	126.2
Trap	2.3	0.0	0.0	0.0	2.3
Reserve	36.6	+76.9 + 45.0 + 40.0	198.5	+100.0	298.5
Total	1416.4	0.0	1416.4	0.0	1416.4

Table 1b. Calculations to determine final initial BFT quotas for 2005 fishing year (all figures in metric tons).

Category	A	B	C	D	E	F	G	H
	Adjusted '04 FY Quota	2004 Fishing Yr. Landings ¹ (as of 05 May 2005)	2004 Fishing Yr. under or over (-) harvest (A-B)	Proposed Adjustments to/from Reserve	Dead Discards	Applied Adjustments to '04 FY Quotas, (C+D+E)	Baseline allocation for 2005 Fishing Year	Final Initial 2005 Fishing Year Quota (F+G)
Angling	299.6	364.7	-65.1	65.1	0.0	0	288.6	<u>SUBQUOTAS:</u> 288.6 School 117.2 TOTAL South 50.4 North 45.1 Reserve 21.7 Lg sch/Small Med.....164.8 TOTAL North 77.8 South 87.0 Trophy.....6.6 TOTAL North 2.2 South 4.4
General	359.0	343.0	16.0	202.5	0.0	218.5	689.8	<u>SUBQUOTAS:</u> 908.3 01 JUN – 31 AUG 539.0 01 SEP – 30 SEP 269.5 01 OCT – 31 JAN 89.8 NY Bight 10.0
Harpoon	41.4	29.9	11.5	21.4	0.0	32.9	57.1	90.0
Purse Seine	289.4	31.8	257.6 ³	0.0	0.0	257.6	272.4	530.0
Longline	126.2	77.6	48.6	0.0	-3.8	44.8	143.6	188.4
North (- NED)	30.8	22.8	8.0		-3.8	4.2	47.4	51.6
NED	49.2	9.5	39.7			39.7	25.0 ⁴	64.7
South	46.2	45.3	0.9			0.9	71.2	72.1
Trap	2.3	0	2.3	0.0	0.0	2.3	1.5	3.8
Reserve	298.5	0.2 ²	298.3	-289.0	0.0	9.3	36.6	45.9
Total	1416.4	847.2	569.2	N/A	N/A	565.4	1489.6	2055.0

¹2004 Fishing year landings figures are preliminary and subject to change; the 2004 fishing year Longline category is open through May 31, 2005. Landings for the Angling category were estimated using North Carolina and Maryland tagging figures, LPS data, and ALRS landings of trophy fish; commercial landings were derived from the NERO dealer report database.

²Landings counting towards Reserve are projections based on current ongoing 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: 2005 Fishing Year (June 1, 2004 - May 31, 2005) Atlantic HMS and Atlantic tunas permits as of February 2, 2005.

Category	Number of Permits
General	5,183
Harpoon	49
Purse Seine	5
Incidental Longline/Trap	219
HMS Angling (Recreational)	20,966
HMS Charter/Headboat	3,945
Total	30,367

*Source: Atlantic HMS/Tunas Permit Database

Table 3: BFT landings by year and category (metric tons), 1996 to 2004.

Category	1996	1997	1998	1999	2000	2001	2002	2003	2004*
General	575	679	706	714	725	933	898	595	343
Harpoon	58	53	60	59	53	68	41	53	30
Purse Seine	245	250	248	247	275	196	208	265	32
No. Longline	21	20	23	17	12	8	8	25	30
So. Longline	43	27	24	51	51	28	48	69	11
Trap	1	2	1	0	0	0	0	0	0
Angling	362	299	184	100	50	241	651	410	359
Total	1305	1330	1246	1188	1166	1484	1834	1417	805

*2004 Fishing year landings figures are calculated as of 1/19/05, and are preliminary and subject to change. For the Angling category, landings were estimated using revised preliminary LPS numbers and Maryland tagging figures. For commercial landings, figures are derived from NERO dealer report database.
 Note: Starting with the implementation of the 1999 FMP in 1999, 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 Lookout to Cape Cod	School	<i>June-October</i>
		Medium	<i>June-October</i>
		Large Medium and Giant	<i>December-March</i>
	Gulf of Mexico	Giant	<i>January-June</i>
Purse Seine	Cape Hatteras to Cape Cod	Large Medium and Giant	<i>July-October</i>
	Cape Cod Bay	Large Medium and Giant	<i>July-October</i>

Table 5: General category landings of BFT before and after November 15, 1996-2004

Year	Before November 15		November 15 and After	
	Metric Tons	Percentage of Total	Metric Tons	Percentage of Total
2004	251.0	73	92.4	27
2003	486.9	82	108.1	18
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	695.0	95.3	33.9	4.8

* Note: Starting with the implementation of the 1999 FMP, BFT are managed on a fishing year basis versus a calendar year basis.
 Source: 1996-2004 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						
A1. No Action	Distributes quota according to 1998 ICCAT Rebuilding plan	No change in fishing patterns and no increase in effort	No change in fishing patterns and no increase in effort	Positive	Overall negative. Denial of additional fishing opportunities per ICCAT 2002 Rec.	Inconsistent with ATCA. (i.e., additional quota not allocated)
A2. Implement ICCAT recommendation, including 25 mt for longline: SELECTED	Consistent with BFT rebuilding plan; slightly less than A1 as allocates 77.6 mt more quota towards fishing mortality of BFT.	Fishing patterns remain consistent, minor increase in effort	Fishing patterns remain consistent, minor increase in effort	Slightly more positive than A1, i.e. additional fishing opportunities	Overall positive. Provide additional fishing opportunities	Consistent with ATCA, ICCAT 2002 Rec. and 1999 FMP
Issue 2: GENERAL CATEGORY EFFORT CONTROLS						
B1. RFD schedule published in initial BFT specifications SELECTED	Neutral	Neutral	Neutral	Overall positive. Facilitates planning, minimizes market gluts and extends season as long as possible.	Overall positive. Facilitates planning, minimizes market gluts and extends season as long as possible.	Can use inseason authority to waive and cancel if necessary
B2. No Action: No RFDs, publish in initial BFT specifications; adjustments via inseason actions	Neutral	Neutral	Neutral	Mixed. Can be positive or negative depending on catch rates.	Marginal positive. Depends on outreach and avoiding confusion.	Requires at least 3 day notice to implement.

Table 7: Ex-vessel average prices* (per pound, round weight) for BFT by commercial fishing category, 1996-2004

Category	1996	1997	1998	1999	2000	2001	2002	2003	2004
General	\$8.71	\$7.23	\$5.20	\$6.93	\$9.46	\$7.65	\$7.02	\$6.06	\$5.78
Harpoon	\$7.69	\$8.09	\$5.92	\$9.10	\$7.05	\$7.42	\$6.82	\$6.89	\$5.02
Incidental	\$4.79	\$4.94	\$5.06	\$5.47	\$5.89	\$5.74	\$5.05	\$5.29	\$3.56
Purse Seine	\$8.61	\$8.32	\$6.01	\$6.75	\$7.22	\$6.97	\$6.64	\$4.68	\$3.97

Note1: Starting with the implementation of the 1999 FMP, BFT are managed on a fishing year basis versus a calendar year basis.

* All dollars have been converted to 1996 dollars using the Consumer Price Index (CPI) Conversion Factors

Source: 1996-2004 Dealer Report Database

Table 8: Average monthly prices (per pound, round weight) for Atlantic bluefin tuna in the General Category, 1996-2004

	June	July	August	September	October	November	December	January
2005								\$8.19
2004	\$5.05	\$4.72	\$4.16	\$5.31	\$5.28	\$6.66	\$6.56	\$8.08
2003	\$5.11	\$7.77	\$7.82	\$7.19	\$4.65	\$8.40	\$7.22	
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	--	--

* Note: Starting with the implementation of the 1999 FMP, BFT are managed on a fishing year basis versus a calendar year basis.

* : All dollars have been converted to 1996 dollars using the Consumer Price Index (CPI) Conversion Factors

Source: 1996-2004 Dealer Report Database

Table 9: Ex-vessel gross revenues in the U.S. Atlantic bluefin tuna fishery by commercial fishing category, 1996-2004

Year/Cat.	General	Harpoon	Inc./LL	P.S.	Total
2004	\$4,346,814	\$317,104	\$305,180	\$231,791	\$5,200,888
2003	\$7,476,461	\$772,810	\$635,498	\$2,546,236	\$11,431,005
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
Average	\$10,722,979	\$820,168	\$582,569	\$3,246,719	\$15,372,434

Note: Starting with the implementation of the 1999 FMP, BFT are managed on a fishing year basis versus a calendar year basis.

* : All dollars have been converted to 1996 dollars using the Consumer Price Index (CPI) Conversion Factors

Source: 1996-2004 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		
A1. No Action	Positive economic impacts on a scale similar to 2002.	Opportunity cost of revenue foregone from not implementing 2002 ICCAT recommendation.
A2. Implement ICCAT recommendation, including 25 mt for longline: SELECTED	Slightly greater positive economic benefit than No Action as allocates additional quota and greater fishing opportunities.	None
Issue 2: GENERAL CATEGORY EFFORT CONTROLS		
B1. RFD schedule published in initial BFT specifications SELECTED	Positive IF catch rates high at end of season as will space product on market; positive for charter/headboat charter scheduling.	IF catch rates are low, may unduly limit catch further; if catch rates are very high, may be insufficient and require additional measures.
B2. No Action: No RFDs, publish in season	Marginal positive by providing greatest degree of flexibility IF catch rates are low; None if catch rates are high.	IF catch rates are high, may need to add RFDs inseason which could have negative impacts due to time required to implement and late scheduling changes for charter-headboats.

Note: Discussions of options to address the ICCAT eight-percent tolerance recommendation for school BFT are presented in sections 4.1, 4.2, and 8.6.

16.0 PUBLIC COMMENTS AND AGENCY RESPONSES

Comment 1: – Many commenters supported the quota allocation in the proposed rule and the timing of the proposed rule and comment period relative to the start of the BFT season. One commenter stated that each category should be responsible for its overages and underages in future years.

Response: – The final rule implements the proposed quota allocation, with minor modifications to account for minor additional recreational landings and minimal landings under experimental fishing permits, and a minor adjustment for dead discards. NMFS intends to publish annual specifications with enough notice and sufficient information so constituents can plan for the BFT fishing year. When setting annual specifications, NMFS strives to ensure each category's overages and underages are applied within the same category. However, transfer of quota among categories is provided for in regulations at 50 CFR 635.27 (a)(8). In general, NMFS may choose to transfer quota among categories to maximize fishing opportunities and help achieve optimum yield in BFT fisheries, while this valuable stock undergoes rebuilding.

Comment 2: - Some commenters supported the proposed RFDs while others did not. The commenters that supported the RFDs recognized that the RFDs would serve several purposes, including maximizing the market value of the catch by distributing the available quota over a longer time period and allowing the charter/headboat and recreational fleets the opportunity to fish without the presence of the commercial fleet. Commenters who opposed the RFDs noted that the RFDs would disadvantage non-resident commercial fishermen since they may have to pay for lodging or docking during non-fishing days and that some General category fishermen are only able to fish on the weekends. Commenters opposed to the RFDs also stated that waiving RFDs during previous fisheries had occasionally been untimely, and that weather would serve to moderate the landings for the last subperiod. A commenter also asked that the RFD for Thanksgiving be removed so that fishermen could have the option to fish.

Response: – The final rule maintains the following schedule of RFDs, as proposed: Fridays, Saturdays, and Sundays between November 18 and January 31 and Thursday, November 24. The purpose of the RFDs is to assist with distribution and achievement of optimum yield, and to extend the late season General category fishery. NMFS recognizes that three day consecutive RFDs could negatively impact non-resident fishermen. The intent of the configuration of the RFDs is to separate the commercial and recreational fisheries temporally (i.e. General category fishes Monday through Thursday, Angling category fishes Friday through Sunday) in order to improve conditions on the fishing grounds for both fisheries. Market value of BFT is expected to increase as a result of spreading the fishery out over the late season, and could mitigate any potential extra costs of non-resident fishermen for boat dockage and overnight fees. General category fishermen with situations such as other full time jobs on Monday through Friday may need to make other arrangements such as taking annual leave in order to fish during weekdays. NMFS recognizes that the weather is unpredictable during this time period of the fishery (i.e. November 18 through January 31), and that poor weather conditions may limit participation without the need for additional RFDs during this part of the season. Should BFT landings and catch rates during the late season fishery merit the waiving of RFDs, under 50 CFR 635.23(a)(4), NMFS may adjust the daily retention limits with a minimum three day notification to fishermen.

Thanksgiving (November 24, 2005) and other holidays during November through January for 2005-6 are maintained as RFDs to provide fishermen the opportunity to spend holidays with family or friends without disadvantaging them in the fishery. Providing U.S. holidays (i.e. November 24, December 24-25, December 31 and January 1) as RFDs is a new approach for management of the General category fishery, and may be re-evaluated in future years based on experience gained from this year's fishery. In this year's fishery, holidays other than Thanksgiving happen to occur on Friday, Saturday, or Sunday, which have been established as RFDs for other purposes. Thus, the evaluation of providing holidays will rest on the experience of Thanksgiving day for 2005. As discussed above, RFDs can be waived as the season progresses if warranted by conditions in the fishery.

Comment 3: - Several commenters stated a need to change the way BFT recreational landings are counted. Commenters stated that landings estimates in recent years were much higher than what seemed to be more reasonable estimates from prior years. Several commenters requested that a tail-tag program similar to the landings programs in place in North Carolina and Maryland be implemented on a coastwide basis. A commenter noted that real-time recreational landings estimates are necessary for inseason adjustments to keep the recreational fishery open during the entire season and from exceeding its quota. Similar comments regarding the need for improvement to HMS recreational landings statistics were presented by the HMS Advisory Panel during a March 2005 meeting.

Response: - NMFS collects recreational landings data for HMS through the following three programs: (1) Large Pelagics Survey (LPS); (2) Automated Landing Reporting System (ALRS), and (3) comprehensive tagging of recreationally landed BFT in the states of Maryland and North Carolina. Each of these programs has limitations, and none of them provides real-time data on a coastwide basis, but they are the best data available. NMFS considers improving recreational landings data for HMS to be a high priority, and continues to investigate options for improving the reliability and utility of these data. Specifically, an ad hoc committee of NMFS scientists was formed to review the 2002 and 2003 methods and estimates of U.S. recreational fishery landing of BFT, white marlin, and blue marlin reported by NMFS to ICCAT to verify that the reported estimates were the most accurate that could be made with available data. A report stating the Committee's findings was released in December 2004. Based on the findings of this report, and consultations with the contractor that performs the LPS, methods of fish measurement and length/weight conversion will be further scrutinized. Proposals to implement an Atlantic-wide tail-tag monitoring program remain under discussion among coastal states and within NMFS and include issues regarding specifics of logistics, implementation, and establishment of partnerships with coastal states.

Comment 4: - Many comments regarding the 2005 recreational season were received; most in response to the agency's request for comments on addressing ICCAT's eight-percent provision for school size BFT as set forth in 50 CFR 635.27(a)(2). In addition, a joint letter from several recreational advocacy groups outlined specific bag limits and season requests for the 2005 recreational fishing year, and several other commenters requested that sufficient quota be available for the southern area recreational fishery, and that it be extended in time beyond that available in previous years. The comments regarding the eight-percent tolerance provision received included support of a limit of one school size BFT per vessel per day and support of a one fish (any size category) limit per vessel per day. Shifting some of the quota into the large

school/small medium subquota was supported by one commenter but not by another because of concern over increasing pressure on spawning fish. Several commenters suggested harvesting the entire school allotment for the next two years during 2005. Several other commenters expressed concern over postponing action to limit school size catches until 2006 and any other actions that could jeopardize a school size fishery in 2006. A commenter opposed completely prohibiting the catch of school size BFT in 2005 since it could negatively impact the charter industry. One commenter proposed use of a bonus tag system for additional harvest for vessels with a bonus tag and another commenter suggested that the recreational fishery be closed after October.

Response: – To balance concerns regarding the eight-percent ICCAT provision with requests for more quota, higher retention limits and longer seasons, and to ensure that the Angling category does not exceed the school size subquota set forth in 50 CFR 635.27(a)(2), the final action maintains the proposed allocation of 117.2 mt in the school subquota. NMFS is considering several scenarios for season openings/closings and potential adjustments to Angling category retention limits. However, inseason establishment of retention limits and seasons per 50 CFR 635.23(b)(3) and 635.28(a)(3), respectively, takes into consideration information that is only available as the season progresses, including but not limited to catch rates and the availability of fish on the fishing grounds, and are accomplished during the season via inseason actions. Potential inseason adjustments to retention limits and seasons are being considered by NMFS, and are provided here to assist for constituent planning purposes. However, these adjustments are only potentially being considered for implementation, and may be adjusted based on incoming data as the season progresses. Retention limits under consideration include raised retention limits for the CHB fishery early in the season as well as during the month of September, and access for all recreational vessels to the large school/small medium size classes (47 up to 73 inches) from October 1, 2005 through March 15, 2006, after which the fishery may close. The limits under consideration would be in addition to the one trophy fish per year for Angling category vessels. The intent of this planned recreational season is to provide fishermen recreational opportunities throughout the geographic range of the fish and for the season to extend slightly longer than the average fishery for recent prior years. Establishing a bonus tag program is outside the scope of this action and may be considered as part of the ongoing research into the recreational data programs.

Comment 5: - Several individuals commented on management of the General category, including requests from several commenters that a multiple fish retention limit be established for the start of the 2005 season. A commenter requested that any underage from the June through August subquota not be rolled over but moved to the reserve category for harvest by the southern area fishery. Several commenters requested that 150 mt be available for the southern area fishery and one commenter asked that 10.5 percent of any quota transferred to the General category from another category during an inseason action be moved into the third subperiod quota. Another commenter requested that the subperiod percentages in the General category remain the same. One commenter stated that the southern area fishery should be closed since it appears to be negatively impacting the traditional New England fishery.

Response: – Similar to the Angling category season and retention limits discussed above in the previous response, seasonal management of the General category takes into account time-sensitive information such as current catch rates, among other information, and retention limits

and seasons are established with inseason actions per 50 CFR 635.23(a)(4) and 635.28(a)(3), respectively. Potential inseason adjustments to retention limits and seasons are being considered by NMFS, and are provided here to assist for constituent planning purposes. However, these adjustments are only potentially being considered for implementation, and may be adjusted based on incoming data as the season progresses. NMFS is considering setting a two fish retention limit for the General category early in the season and adjusting this to one fish per vessel per day after September 1. The increased retention limit early in the season is being considered in expectation of low landings rates during June through August and the availability of a large amount of quota for the fishing year. Should catch rates accelerate, NMFS has the ability to responsively adjust the retention limit in order to ensure availability of quota throughout the range of the fishery. Unused quota in General category time periods is traditionally rolled over from one time period to the next; however, 50 CFR 635.27(a)(8) does allow the transfer of quotas among subcategories and identifies specific criteria that must be considered. Any actual transfers between subcategories or categories may be addressed in subsequent actions. NMFS continues to be aware of the interests of Southern area fishermen, particularly off North Carolina, for some limited but fixed General category quota allocation. In the past several years, NMFS has endeavored and succeeded in meeting this request and will continue to do so in 2005. NMFS is considering several alternatives for restructuring General category subquotas in the consolidated HMS FMP (68 FR 40907, July 9, 2003) currently under development to provide a long-term, codified solution to quota allocation for the December to January timeframe.

Comment 6: - Several commenters requested that more notice be given for opening and closing of seasons so that participants and other affected businesses (e.g., tackle shops) have more planning opportunities. One commenter requested a fixed opening date for the southern area fishery. Another commenter requested the General category fishery be kept open until the entire quota is harvested.

Response: – NMFS inseason management of the BFT fishery attempts to balance the constituents' need to plan business affairs and recreational activities with maximizing responsiveness to the changing availability of fish stocks, changes in regional fishery participation, and enforcement of regulations and administrative requirements. For example, establishing fixed opening and/or closing dates provides a certain degree of predictability; however, the availability of BFT on the fishing grounds is not predictable. In addition, daily landings of fisheries that vary based on fleet size, weather, and fish availability are unpredictable in nature, and a fixed closing date could result in quota overages or underages. NMFS will continue to strive to provide sufficient notification of season openings, closings, and retention limit adjustments while maximizing fishing opportunities within the bounds of the established BFT fishery management program.

Comment 7: – Several commenters requested that NMFS investigate the effect of the herring fishery and the abundance of dogfish on the BFT catch and fishery in New England.

Response: – NMFS recognizes the importance of considering ecosystem interactions in fishery management planning, and addresses ecosystem management as one of the goals of the NMFS Strategic Plan. The agency continues to work toward integrating an ecosystem approach into fishery management practices. Currently, Atlantic herring is managed under a separate FMP by the New England Fishery Management Council (NEFMC) and spiny dogfish is

managed by the Mid-Atlantic Fishery Management Council (MAFMC). The Atlantic herring FMP is being amended, and a public hearing document is expected to be available in the near future. An amendment to the spiny dogfish FMP was initiated several years ago and is currently under development. A framework action to increase the time period for fishery specifications is currently underway, by the NEFMC and MAFMC jointly. Little information is available regarding the interaction between these three fisheries. As council and NMFS FMPs are amended, NMFS will continue to evaluate the information available regarding this issue.

Comment 8: – Several commenters opposed establishing two-tiered retention limits that allow charter/headboat operators to retain more fish than other Angling category vessels. Another commenter supported a higher retention limit for charter/headboats during the fall season of one fish for every four to six passengers. One commenter suggested that charter/headboat limits vary with the size of the fish (e.g., keep a greater number of smaller fish and fewer large fish).

Response: – Angling category and CHB retention limits for the 2005 fishing year is discussed in the response to Comment 4. Establishment of retention limits is regularly addressed by inseason actions during the fishing year. NMFS regulations at 50 CFR 635.23(b)(3) explicitly provide for retention limits within the Angling category based upon vessel type, including differentiation of bag limits for private, charterboat and headboat vessels. Differentiation has been used in past actions based on the different and unique practices of each respective vessel type.

Comment 9: – One individual stated that there should be more public meetings where fishermen can provide input, and that anecdotal information should be better incorporated into the management process. Several commenters were dissatisfied with the locations of the public hearings, and stated that none were available to recreational fishermen between Gloucester, MA and Morehead City, NC. Another commenter stated that commercial fishermen should be excluded from the fishery management process.

Response: – The Magnuson-Stevens Act and ATCA specifically provide for the involvement of the public and fishery participants (commercial and recreational) in the Federal fishery management process. NMFS provided several opportunities for commenting on this rulemaking, including publications requesting comments at the proposed rule state and a total of two public hearings on April 8 and April 11, 2005. Rulemaking background documents were made available by request and on several internet websites. Public hearings are scheduled based on anticipated attendance and distribution of user groups, and may be limited by the constraints of both time and funding. NMFS is interested in receiving feedback about potential locations for future public hearings relative to this topic. Please see the Addresses section for suggestion submissions.

Comment 10: - One commenter requested that the purse seine category be eliminated. Several commenters requested that the size limit for the General category be reduced, while one commenter requested that it be increased. A commenter requested that the minimum size in the young school size category be increased, and that the commercial sector quota be cut by five percent across the board. Another commenter requested that BFT quotas be cut by 50 percent this year and 10 percent per year on a continuing basis. The commenter opposed the allowance of 68 mt of dead discards in the BFT fishery,

Response: – This final rule is designed to provide for the fair and efficient harvest of the

BFT quota that is allocated to the United States by ICCAT and is consistent with ATCA and the Magnuson-Stevens Act. This action establishes BFT quotas based on a 2002 ICCAT recommendation, which includes a dead discard allowance, subdivided among the U.S. domestic fishing fleet categories according to percentages established by the 1999 FMP and implemented in NMFS regulations at 50 CFR 635.27(a). The remaining requested actions are all outside the scope of this action and would require changes to the 1999 FMP, implementing regulations, and/or ICCAT recommendations. These issues are not currently being considered in the development of the amendment to the 1999 FMP.

Comment 11: - Several commenters indicated that NMFS is only concerned about management of the commercial fishery. Another commenter believed that recreational fishermen should be allowed to sell fish.

Response: – The Magnuson-Stevens Act, 1999 FMP, and implementing regulations all explicitly recognize the value of both commercial and recreational fisheries, and identify the promotion of domestic commercial and recreational fisheries, under sound conservation and management principles. This final rule is consistent with all applicable law including the Magnuson-Stevens Act, and the 1999 FMP. Recreational anglers are prohibited from selling BFT subject to NMFS' intent to manage the commercial and recreational sectors of the BFT fishery under different objectives, as indicated in the 1999 FMP. Implementing regulations at 50 CFR 635.4(c) strictly prohibit the sale of Atlantic HMS caught on board vessels holding an HMS Angling permit. The General category fishery is an open-access commercial fishery, and permits in this category are available to any fisherman that submits a complete application package. Allowing recreational fishermen to sell fish is outside the scope of this rulemaking.