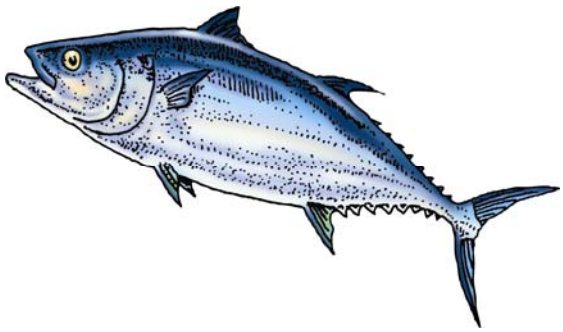
Draft Environmental Assessment,
Regulatory Impact Review,

and

Initial Regulatory Flexibility Analysis

for a Proposed Rule to Establish

Atlantic Bluefin Tuna Quota Specifications and Effort Controls for the 2009 Fishing Year



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

Proposed Action:	Establish 2009 fishing year Atlantic bluefin tuna (BFT) quotas for all domestic fishing categories and establish General and Angling category effort controls.
Type of statement:	Draft Environmental Assessment (EA), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA)
Lead Agency:	National Marine Fisheries Service (NMFS): Office of Sustainable Fisheries
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Abstract:	In October 2006, NMFS finalized the Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) and issued implementing regulations, including regulations for the Atlantic bluefin tuna fishery, to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This proposed action is 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 Act. This action would allocate the total ICCAT-recommended quota, adjust the 2009 quotas based on landing underharvests from 2008 (consistent with the ICCAT recommendation to cap carryover of underharvest at 50 percent of the overall quota), address a revised ICCAT 10-percent tolerance recommendation regarding school BFT, and propose retention limits for the General and Angling categories. These measures would be consistent with the Consolidated HMS FMP, including the BFT rebuilding program.

FINDING OF NO SIGNIFICANT ENVIRONMENTAL IMPACT

Finding of No Significant Impact for the 2009 fishing year
Atlantic bluefin tuna (BFT) quota specifications and effort controls.

National Marine Fisheries Service

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

1) Can the proposed action reasonably be 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 is the primary target species of fishing 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.

NMFS would implement the annual BFT Total Allowable Catch (TAC) for the United States in the western Atlantic management area of 1,034.9 mt (a decrease of 155.2 mt from the previous quota of 1,190.12 mt), which includes an annual allocation of 25 mt to account for incidental catch of BFT by pelagic longline vessels fishing in the vicinity of the management area boundary (i.e., the Northeast Distant Area, or NED); adjust the 2009 fishing category quotas consistent with the 2008 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the Consolidated HMS FMP (NMFS 2006b); and propose retention limits for the General and Angling categories. Because the recommended TAC is consistent with the western BFT rebuilding plan and intended to end overfishing by the end of 2010, the action is not expected to jeopardize the sustainability of BFT. In addition, while preparing this draft EA/RIR/IRFA, NMFS considered information contained in the Environmental Impact Statement (EIS) associated with the Consolidated HMS FMP and in the final EA/RIR/IRFA prepared for the December 31, 2007, final rule (72 FR 74193) implementing BFT 2008 final initial specifications and General and Angling category effort controls. This EA is consistent with the analyses and conclusions contained in the Consolidated HMS FMP EIS.

2) Can the proposed action reasonably be 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. The primary fishing gears used to target BFT (i.e., rod and reel and purse seine) allow for the live release of non-target species to a great degree. The quotas for these sectors of the fishery total more than 85 percent of the total U.S. annual quota. Primary non-target fish species caught by vessels targeting BFT include yellowfin tuna, bigeye tuna, and other large pelagic species.

Handgear and purse seine gear, covered under the June 2001 Biological Opinion (BiOp) for HMS fisheries, were determined not likely to jeopardize the continued existence of endangered or threatened species, including sea turtles. A June 2004 BiOp determined that the continued operation of the pelagic longline fishery (for which direct BFT fishing is not permitted but for which incidental BFT retention is permitted) is not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley seas turtles, but is likely to jeopardize the continued existence of leatherback sea turtles. NMFS has implemented the Reasonable and Prudent Alternatives required under the 2004 BiOp.

Rebuilding plans, as appropriate, and fishing controls are already in place for non-target species. Goals of the Consolidated HMS FMP include implementing rebuilding plans, minimizing bycatch and bycatch mortality for overfished stocks, and managing healthy stocks for the optimum yield. Bycatch reduction measures are in place under the HMS Bycatch Reduction Implementation Plan (discussed in Section 3.8 of the Consolidated HMS FMP). Section 3.9.9.1 of the Consolidated HMS FMP lists the 22 marine mammal species that are or could be of concern with respect to potential interactions with HMS fisheries. Section 3.9.9.2 discusses interactions and the Endangered Species Act, including six endangered whale species.

This action is not expected to alter fishing patterns and/or behavior. Relative to the 2006 ICCAT recommendation, the 2008 ICCAT recommendation decreased the U.S. BFT quota by 155.2; therefore, a reduction in overall effort relative to the 2007-2008 level could be expected. In the last few years, commercial effort and landings have been greatly reduced because of decreased availability of BFT.

3) Can the proposed action reasonably be expected to cause 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?

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. The primary fishing gears used to harvest BFT (hook and line and purse seine) are pelagic in nature and have little impact on bottom substrate. 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.

4) Can the proposed action be reasonably expected to have a substantial adverse impact on public health or 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 decrease slightly as a result of this action in combination with recent evidence of an overall decrease in BFT availability on the historical fishing grounds. Although fishing can be a dangerous profession, NMFS encourages fishermen to be responsible in safety matters while at sea. Nothing in this action would increase the risks already inherent in the fishing profession.

5) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?

See response to Question 2 regarding findings of the 2001 and 2004 BiOps. Relative to the 2006 ICCAT recommendation, the 2008 ICCAT recommendation decreased the U.S. BFT quota by 155.2 mt; therefore, a reduction in overall effort relative to the level at the most recent consultation could be expected. There are restrictions on the BFT fishery, which include a closure on directed fishing in the Gulf of Mexico and daily retention limits for open access fisheries, and more specifically on the pelagic longline fishery, which is limited access and only allowed incidental retention of BFT. The measures in these proposed 2009 quota specifications and effort controls are not expected to alter current fishing practice or bycatch mortality rates, and therefore should not have adverse impacts on protected species, or have any further impacts on endangered species, marine mammals, or critical habitat beyond those considered in the 2001 and 2004 BiOps.

6) Can the proposed action be expected to have a substantial impact on biodiversity and/or 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.

7) Are significant social or economic impacts interrelated with natural or physical environmental effects?

No. There are no significant natural or physical environmental effects associated with the proposed action. Thus, there are no significant social or economic impacts interrelated with natural or physical environmental effects. The proposed action is expected to have short-term negative impacts due to the decrease in quota and subquotas for 2009 relative to 2008 although actual impacts will depend on BFT availability to the fishing gears. In the long-term, positive social and economic impacts can be expected as the fishery rebuilds. Further, the proposed action is necessary to implement the ICCAT-recommended adjusted BFT TAC for the United States in the western Atlantic management area of 1,034.9 mt and is consistent with the ICCAT

recommendation regarding the 10-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.

8) Are the effects on the quality of the human environment likely to be highly controversial?

The effects of this action on the human environment are not expected to be highly controversial because all current management measures and controls have been in place for several years.

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

No. The action area does not include the unique areas listed. Thus, the proposed action will not result in substantial impacts to the listed areas.

10) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

No. Effects on the human environment would be similar to those in similar annual actions since 1999, and have been considered in the Consolidated HMS FMP. The BFT quota specifications allocate the ICCAT-recommended BFT quota consistent with the FMP and other ICCAT recommendations. The effort controls considered here fall within the ranges established in the FMP and/or implemented in recent years.

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

There are no significant cumulative impacts associated with this action in combination with other recent actions or foreseeable future actions. The proposed rule implements the 2008 ICCAT recommendation for BFT, which complements and adjusts the 1998 ICCAT BFT rebuilding plan originally implemented by NMFS in the 1999 FMP. Other recent actions have been consistent with this rebuilding plan. Any future domestic actions taken in regard to the BFT fishery would remain within the scope of ICCAT recommendations. Likewise, all actions in this proposed rule are consistent with previous Biological Opinions issued under the Endangered Species Act.

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

No, this proposed action would not adversely affect any of the listed locations because there are none in the action area.

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

As the action does not involve ballast water exchange or movement of vessels between water bodies, it is not expected to result in the introduction or spread of any non-indigenous species.

14) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

No, the proposed action is not likely to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration. The issuance of BFT fishing specifications is a routine procedure which occurs on an annual basis, without regulatory changes or significant effects. The HMS regulations at 50 CFR 635 lay out the approach and boundaries for the action, thus the decisions involved are limited and unlikely to involve principles which would affect future actions.

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

No, NMFS has preliminarily determined that the proposed action would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states on the Atlantic including the Gulf of Mexico and Caribbean that have approved coastal zone management programs. Letters will be sent to the relevant states asking for their concurrence when the proposed rule is filed with the Federal Register. This action would not result in any new impacts on State regulations, regulations outside the Exclusive Economic Zone (EEZ), or laws applicable to the EEZ.

16) Can the proposed action reasonably be 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 2008 ICCAT recommendation and would be consistent with ongoing implementation of a rebuilding plan for western Atlantic BFT and the objectives of the Consolidated HMS FMP. No increase in fishing effort or change in current fishing practices is expected relative to recent fishing years. The 2008 ICCAT recommendation was made after consideration of scientific and statistical information, including the 2008 BFT stock assessment, and to guide cumulative future management actions of member countries.

DETERMINATION

In view of the information presented in this document and the analysis contained in the

supporting Environmental Assessment prepared for 2009 BFT Quota Specifications and Effort Controls (and in the EIS for the Consolidated HMS FMP), it is hereby determined that the 2009 BFT Quota Specifications and Effort Controls will not significantly impact the quality of the human environment as described above and in the supporting Environmental Assessment. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.

_DRAFT_____ _____

Alan D. Risenhoover Date

Director, Office of Sustainable Fisheries

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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 of ATCA, which 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 included framework provisions to promulgate annual specifications for the BFT fishery, in accordance with ATCA and the Magnuson-Stevens Act, and to implement the annual recommendations of ICCAT. On October 2, 2006, NMFS published in the Federal Register (71 FR 58058) final regulations, effective November 1, 2006, implementing the Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), which includes slightly modified framework provisions.

At its 2008 meeting, ICCAT recommended a reduction in the TAC, set to allow for rebuilding of BFT in the western Atlantic through 2018, from 2,100 mt to 1,900 mt for 2009 and 1,800 mt for 2010 (including dead discards). These TACs are intended to end overfishing by 2010. From these TACs, the following allocations are made: 4 mt for the United Kingdom (in respect of Bermuda), 4 mt for France (in respect of St. Pierre and Miquelon), 25 mt for Mexico (to allow incidental catch in the longline fishery in the Gulf of Mexico), and, for bycatch related to directed longline fisheries in the Northeast Distant gear restricted area (NED), 15 mt for Canada and 25 mt for the United States. The U.S. share of the adjusted TAC is 57.48 percent, or 1,009.9 mt for 2009. Accounting for the 25-mt NED allocation, the total U.S. allocation is 1,034.9 mt for 2009. The previous (2006) ICCAT recommendation for a western Atlantic BFT TAC of 2,100 mt included a U.S. quota of 1,165.12 mt, which was effective from 2007 through the end of the 2008 fishing year (i.e., December 31, 2008), and also included a 25-mt NED allocation, for a total of 1,190.12 mt. The current ICCAT recommendation also maintains the provision to allow a contracting party with a TAC allocation to make a one-time transfer within a fishing year of up to 15 percent of its TAC allocation to other contracting parties with TAC allocations, consistent with domestic obligations and conservation considerations.

As a method for limiting fishing mortality on juvenile BFT, in 1991, ICCAT adopted a tolerance limit which allows the annual harvest of no more than eight percent of the quota as school size (27 inches to less than 47 inches) fish. The 1998 rebuilding plan modified the tolerance to be calculated as an average over a four-consecutive-year balance period, and the 2006 ICCAT recommendation increased the tolerance limit to no more than 10 percent of the total bluefin quota per contracting party over each four-year quota balancing period. During the 2007 and 2008 fishing years, NMFS actively managed the BFT Angling category to stay within the tolerance limit. The 2008 ICCAT recommendation has modified the tolerance limit to apply over the 2009-2010 period.

1.2 Need for Action and Objectives

This proposed action is necessary to implement ICCAT recommendations pursuant to ATCA and to achieve domestic management objectives under the Magnuson-Stevens Act, including ending overfishing. NMFS is committed to ending overfishing in the BFT fishery within two years, i.e., by the end of 2010. The objective of this proposed action is to domestically implement the 2008 ICCAT recommendation, including the BFT TAC and 10-percent tolerance limit on harvest of school size BFT by proposing 2009 fishing year specifications for the BFT fishery that allocate the TAC among domestic fishing categories, and implement General and Angling category effort controls (daily retention limits). As discussed in Section 4.2, NMFS finds that conservative Angling category effort controls will be needed in 2009 due to the convergence of several factors: the reduced U.S. quota and Angling category quota for 2009, the increasing rate with which the Angling category quota has been filled over the last 2 years (due to increased average weight of fish caught within the recreational size classes), the shorter timeframe for managing the school BFT fishery due to the new ICCAT recommendation, and the schedule under which complete recreational landings information is available. NMFS is considering three alternatives that are as restrictive, or more restrictive, than the 2008 daily retention limits in order to ensure that the Angling category quota is not exceeded. NMFS will seek comment specifically on an Angling category effort control alternative that would vary the daily retention limit over the course of the fishing season.

Alternatives regarding allocation of this BFT quota among domestic fishing categories and General and Angling category effort controls are analyzed in order to ensure consistency with the objectives of the Consolidated HMS FMP and its implementing regulations, applicable law, the 1998 ICCAT BFT Rebuilding Plan, as modified in 2008, and other ICCAT Recommendations. These BFT quota allocations and effort controls, including General and Angling category retention limits, would be effective through December 31, 2009.

Because BFT quotas and allocations are now codified in the HMS regulations at § 635.27, a regulatory amendment is necessary to modify the baseline landings quota from 1,165.12 mt to 1,009.9 mt (1,034.9 mt minus the 25-mt NED allocation) and the allocations (in mt) to the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories, per the percentage allocation shares set forth in the Consolidated HMS FMP.

2.0 SUMMARY OF THE ALTERNATIVES

This section describes the alternatives considered in this draft EA/RIR/IRFA 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 and Angling category effort controls.

2.1 Issue 1: 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 the ICCAT TAC recommendation after consideration of overharvest/ underharvest from the previous fishing year and accounting for estimated dead discards of BFT. Three alternatives are considered.

In its recommendations that applied from 1999 through 2006, ICCAT historically recommended a deduction of 79 mt from the TAC as an allowance for dead discards, and the U.S. portion of this allowance was 68 mt. The 2006 ICCAT recommendation neither included a recommended dead discard allowance, nor specified a dead discard reporting methodology for compliance purposes. Nevertheless, the United States must report dead discard estimates to ICCAT annually and account for this mortality as part of the specification calculation process. To be consistent with reports from the United States to the ICCAT Standing Committee on Research and Statistics for stock assessment purposes, NMFS reports dead discards as the estimate generated via extrapolation of pelagic longline vessel logbook tallies by pooled observer data, as warranted. Since dead discard estimates for 2008 are not available, the 2007 estimate of 90 mt is used as a proxy. 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. In accordance with ICCAT recommendations, the United States must subtract 90 mt from its allocation of catch that can be retained. Per the ICCAT recommendation, which specifies a U.S. quota that is inclusive of dead discards, and consistent with the BFT quota regulations at 635.27(a), NMFS would subtract the 90 mt of estimated dead discards from the amount of quota available for the Longline category for the 2009 fishing year, regardless of the overall quota and the distribution of quota among categories. Table 2 presents the calculations to determine the proposed 2009 fishing year quotas.

Alternative A1: No action

Under this alternative, NMFS would not allocate the 2008 ICCAT quota recommendation among domestic fishing categories, defaulting to the quota allocated by the 2006 ICCAT recommendation, previously in effect. The quota allocation scheme established in the Consolidated HMS FMP would be applied to the U.S. TAC that has been in effect since 2007. The 2006 ICCAT BFT quota recommendation specified that any overharvest of U.S. TAC be subtracted the following fishing year, and that underharvest could be carried forward to the following year but not to exceed 50 percent of the overall quota. Under the current regulations regarding annual quota adjustments, individual quota category carryovers may not exceed 100 percent of their baseline allocations, and the total of the adjusted category quotas and the Reserve must be consistent with ICCAT recommendations, including restrictions on landings of school BFT.

Quota and fishing levels prior to the 2008 ICCAT recommendation serve as baseline conditions for comparison and analytical purposes with the remaining alternatives and other issues. This alternative would set the baseline quota for the 2009 fishing year at the pre-2008 U.S. allocation of 1,190.12 mt. Dead discards would be deducted and the full amount of allowed underharvest from

2008, i.e., 50 percent of the pre-2008 U.S. allocation (595 mt) would be added. From the quota rolled forward, 15 percent of the U.S. TAC (178.5) would be added to the baseline amount of Reserve. This alternative would be inconsistent with ATCA, the Consolidated HMS FMP, and implementing regulations, which require that quotas be set consistent with ICCAT recommendations.

Alternative A2: Allocation of ICCAT quota to domestic categories in accordance with the 2008 ICCAT Recommendation and Consolidated HMS FMP (Proposed Action)

Under this alternative, the percentage allocations determined in the Consolidated HMS FMP would be applied to the 2008 ICCAT recommended BFT TAC. The 2008 ICCAT recommendation concerning conservation of western Atlantic BFT reduced the TAC, set to allow for rebuilding of BFT in the western Atlantic through 2018, from 2,100 mt to 1,900 mt for 2009 and 1,800 mt for 2010 (including dead discards). These TACs also are intended to end overfishing by 2010. From these TACs, the following allocations are made: 4 mt for the United Kingdom (in respect of Bermuda), 4 mt for France (in respect of St. Pierre and Miquelon), 25 mt for Mexico (to allow incidental catch in the longline fishery in the Gulf of Mexico), and, for bycatch related to directed longline fisheries in the NED, 15 mt for Canada and 25 mt for the United States. The U.S. share of the adjusted TAC is 57.48 percent, or 1,009.9 mt for 2009. Accounting for the 25-mt NED allocation, the total U.S. allocation is 1,034.9 mt for 2009.

The current ICCAT recommendation allows a contracting party with a TAC allocation to make a one-time transfer within a fishing year of up to 15 percent of its TAC allocation to other contracting parties with TAC allocations, consistent with domestic obligations and conservation considerations. The ICCAT recommendation stipulates that the quota transfer may not be used to cover overharvests, and that a contracting party that receives a one-time quota transfer may not retransfer that quota. For the United States, the 15-percent limit on quota transfer equates to 178.5 mt. In considering whether or not the United States could enter into an arrangement with another ICCAT contracting party, several factors would need to be taken into account, including, but not limited to, the amount of quota to be transferred, the projected ability of U.S. vessels to harvest the U.S. TAC before the end of the fishing year, the potential benefits of the transfer to U.S. fishing participants (such as access to the EEZ of the receiving contracting party for the harvest of a designated amount of BFT), potential ecological impacts, and the contracting party's ICCAT compliance status. Analysis of a transfer of U.S. BFT quota is not provided in this document. Should NMFS consider a transfer of U.S. quota to another ICCAT contracting party, NMFS would publish a separate action in the Federal Register, which would provide detail of the transaction considered, including information regarding the factors above.

Previous ICCAT recommendations specified that the harvest of school BFT not exceed 10 percent over a 4-year balancing period. For the 2006 recommendation, this period was 2007-2010. The 2008 recommendation modified this time period to a two-year period of 2009-2010. Under this alternative, NMFS would manage the recreational BFT fishery by setting the baseline school BFT subquota at 10 percent of the U.S. TAC, by making no adjustments to that subquota (i.e., not apply

any underharvest to it), and by setting Angling category daily retention limits appropriate for the harvest of the limited amount of school BFT subquota.

Initial landings estimates (as of January 13, 2009, see Table 1) indicate 2008 underharvests, in all categories, totaling 705 mt. However, the ICCAT recommendation limits the amount the United States may carry over for 2009 to 50 percent of the 2009 Total U.S. TAC (i.e., 517.5 mt).

Calculations to determine the proposed BFT specifications for the 2009 fishing year are presented in Table 2. Under this alternative, and consistent with the ICCAT-recommended 50-percent cap on quota carryover, NMFS would add 517.5 mt of quota carryover from the 2008 fishing year to the 2009 fishing year, and distribute that underharvest to: 1) Allow for potential transfer of a portion (up to 15 percent) of the 2009 U.S. quota to other ICCAT Contracting Parties, if warranted; 2) ensure that the Longline category has sufficient quota to operate during the 2009 fishing year while also considering accounting for BFT discards; and 3) provide the non-Longline quota categories a share of the remainder of the underharvest consistent with the allocation scheme established in the Consolidated HMS FMP.

Specifically, NMFS would divide the 517.5 mt of quota carryover such that 155.2 mt (i.e., 15 percent of 1,034.9 mt) is placed in the Reserve for potential ICCAT transfer purposes. NMFS also would assign a sufficient amount of the quota carryover (82.5 mt) to the Longline category, due to the revised dead discard accounting methodology, so that after accounting for the 90 mt of dead discards, sufficient quota is available to cover the anticipated landings and dead discards of the pelagic longline fishery during the 2009 fishing year. Providing sufficient landings quota would allow a full year fishery and avoid discards that could result if the fishery were closed due to the quota being met while longline vessels are fishing for other species. Finally, NMFS would distribute the remainder of the quota carryover (279.8 mt) to the Angling, General, Harpoon, Purse Seine, and Trap categories consistent with their FMP allocations. The Longline category baseline quota allocation (currently 8.1 percent of the TAC) may need to be revisited in the future. Any change to the baseline allocation would require an amendment to the Consolidated HMS FMP.

As indicated above, the percentage allocations determined in the Consolidated HMS FMP would be applied to the 2008 ICCAT recommended ("baseline") BFT TAC. There would be no adjustment to the NED allocation (i.e., it would be 25 mt for the 2009 fishing year). Under this alternative, NMFS would set the harvestable school BFT Angling category subquota to 10 percent of the U.S. TAC (i.e., 103.5 mt), consistent with ICCAT's recommended 2-year average 10-percent tolerance on harvest of school BFT.

Alternative A3: Allocation of ICCAT quota to domestic categories in accordance with the 2006 ICCAT recommendation but not the Consolidated HMS FMP

This alternative would be the same as for Alternative A2, except that an allocation scheme other than the one established in the Consolidated HMS FMP would be implemented for the purpose of specifying 2009 fishing year quotas. This alternative would implement the 2006 ICCAT

recommendation and allocate the 1,034.9-mt BFT quota to the United States, in a manner other than what is stated in the Consolidated HMS FMP and implementing regulations.

This alternative could address issues relative to the changing nature of BFT fisheries and BFT distribution. These issues are in part characterized by the growth of a late season General category fishery, ongoing underharvested quota for several commercial categories, and recent full quota use and overharvests by the recreational Angling category. The Consolidated HMS FMP addressed several aspects of the changing BFT fishery and included modification to time period subquotas and authorized gear for use in BFT fisheries, among other things. Further consideration of the information provided by the 2008 BFT stock assessment, international deliberations at, and following the 2008 ICCAT meeting, and observed changes in the recreational fishery (e.g., increasing weight of available fish) may provide further insight into the larger fishery issues raised by this alternative, and could result in future regulatory or FMP amendments. For the time being, modifications to domestic management of BFT outside the limitations of the Consolidated HMS FMP, current ICCAT recommendations, and ATCA are outside the scope of this action, and are not analyzed further in this action.

For comparison purposes, Table 3 shows the category allocations that would result from implementation of Alternative 1 and Alternative 2.

2.2 Issue 2: Effort controls

The following two sets of alternatives provide options for effort control in the General and Angling categories during the 2009 fishing year. Effort controls, such as daily retention limits and restricted-fishing days (not implemented in past several years), are meant to maximize the opportunity for catching the quota and biological, social, and economic benefits while balancing relative costs and negative impacts. For example, certain effort controls might provide more flexibility for the fishery by increasing retention limits when fish are known to be available on the fishing grounds in certain areas, and then reducing limits at other times so that limited quota may be available to other areas at other times.

2.2.1 General category retention limits

On December 18, 2008, NMFS set the January 2009 General category BFT daily retention limit at two BFT per vessel, via an inseason action (73 FR 76972). This retention limit was selected following review of dealer reports, daily landing trends, the winter fishery performance over the last few years, the availability of BFT on the fishing grounds, and the relatively small January General category baseline subquota. The General category fishery closed on January 31, 2009, and will reopen June 1, 2009.

NMFS considered the following three alternatives for General category retention limits for the resumption of the 2009 fishing season. Retention limits in the General category are designated as the number of large medium or giant BFT (73 inches curved fork length (CFL)) that may be retained on board a vessel with a General category Atlantic tunas permit. NMFS intends for this retention limit

to go into effect prior to the start of the fishery on June 1, 2009, and to remain in place until the end of the first General category subperiod on August 31, 2009, or until adjusted before that with an inseason action, if necessary (depending on several factors, including but not limited to catch rates and availability of quota). On September 1, 2009, the default retention limit of one large medium or giant BFT would go into effect, unless adjusted with an inseason action, if warranted. A three fish retention limit is the maximum General category retention limit allowed by Federal regulations (50 CFR 635.23).

Regardless of the duration of a fishing trip, the daily retention limit applies. For example, whether a vessel that is fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily retention limit may not be exceeded (three fish, under proposed Alternative B3). The General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessels permitted in the General category as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

Alternative B1: No action: Initial General category daily retention limit of one fish

Without an action to adjust the General category retention limit, the default daily limit under current regulations (635.23(a)(2)) of one large medium or giant BFT (i.e., one fish measuring 73 inches or greater) per General category vessel would remain in effect for the June through August subperiod.

Alternative B2: Establish an initial General category daily retention limit of two fish

Alternative B2 would establish a General category daily retention limit of two large medium or giant BFT for the June through August subperiod.

Alternative B3: Establish an initial General category daily retention limit of three fish (Proposed Action)

Alternative B3, the proposed action, would establish a General category daily retention limit of three large medium or giant BFT for the June through August subperiod.

2.2.3 Angling category retention limits

Federal regulations at 50 CFR 635.23 allow the establishment and adjustment of Angling category retention limits via inseason actions, and NMFS has used inseason actions in the past for this purpose. However, as was done for 2008, NMFS is providing alternatives for the Angling category retention limits in the 2009 fishing year specifications in order to provide more opportunity for public comment and to improve the ability of charter/headboat businesses and recreational anglers to plan for the season. Each of these alternatives balance the following considerations: limited overall Angling category quota compared to fleet size; the ICCAT school landings tolerance limit; the different needs of the private angler and charter/headboat sector of the Angling category; and the varying availability of different size classes during different seasons and various areas of the U.S.

Atlantic seaboard. Under each of these alternatives, the retention limit could be adjusted with an inseason action during the fishing year, if warranted; however, for Alternatives D1 and D2, NMFS' intent is to maintain the retention limits as proposed in each alternative for the 2009 fishing year. The following three alternatives are provided for consideration and comment. See Table 4 for graphic presentation of the retention limit alternatives.

Regardless of the duration of a fishing trip, the daily retention limit applies. For example, whether a vessel that is fishing under the Angling category limit takes a two-day trip or makes two trips in one day, the daily limit of two fish may not be exceeded.

Alternative C1: No action: Maintain default Angling category daily retention limit of one fish measuring 27 inches to less than 73 inches per vessel (Proposed Action)

Without an action to adjust the retention limit, the default daily retention limit under current regulations of one school, large school, or small medium BFT (i.e., one fish measuring 27 inches to less than 73 inches) per vessel would go into effect.

Alternative C2: Establish an Angling category daily retention limit of one fish measuring 27 inches to less than 47 inches and one fish measuring 47 inches to less than 73 inches per vessel

This alternative would establish a daily retention limit, for both the charter/headboat and the private sectors of the fishery, of one school BFT (i.e., one fish measuring 27 inches to less than 47 inches) , plus one large school/small medium BFT (i.e., one fish measuring 47 inches to less than 73 inches) per vessel. This Angling category daily retention limit was in effect for the 2008 fishing year.

Alternative C3: Establish an Angling category daily retention limit of one fish measuring 27 inches to less than 47 inches and, for certain periods, one fish measuring 47 inches to less than 73 inches per vessel

This alternative would establish a daily retention limit, for both the charter/headboat and the private sectors of the fishery, of one school BFT (27 to less than 47 inches) per vessel for the entire 2009 fishing year. Additionally, it would allow daily retention of one large school/small medium BFT (47 to less than 73 inches) per vessel for specific periods, i.e., date ranges. For example, NMFS could manage Angling category using the North/South line (39° 18' N. latitude, currently used in dividing the Angling category quota) so that the fishery is open in the southern area for the early summer and for the northern area in the late summer/fall. This approach was used in managing the school BFT fisheries in 2006. This alternative is intended to allow anglers the opportunity to retain a large school/small medium BFT during part or parts of the 2009 fishing season while reducing the risk of overharvest of the large school/small medium BFT adjusted subquota. NMFS seeks specific suggestions regarding appropriate periods during the 2009 fishing season for retention of the additional one large school/small medium BFT.

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 2008 HMS Stock Assessment and Fishery Evaluation (SAFE) Report (NMFS 2008), as well as the latest BFT Stock Assessment (SCRS 2008). Also, for information on interactions and concerns with protected species and the Atlantic tuna fisheries, 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* (NMFS 2004). The action area is the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

3.1 Status of the Stocks

Western Atlantic BFT are considered overfished and overfishing is occurring. At the 2008 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. The SCRS cautioned that conclusions of the 2008 stock assessment do not capture the full degree of uncertainty in the assessments and projections, and noted that an important factor contributing to uncertainty is mixing between fish of eastern and western origin. Furthermore, the projected trends in stock size are strongly dependent on estimates of recent recruitment. The SCRS strongly advised against an increase in TAC (currently 2,100 mt) and recommended adoption of a lower TAC that would result in a higher probability (than the historical 50-percent probability used to set TACs) that B_{MSY} is achieved by the beginning of 2019, the target rebuilding time. SCRS provided projections for a range of TACs for both the high and low recruitment scenarios, looking specifically at probability levels of 50 percent and 75 percent, which provide a set of "bookends" for consideration in developing management recommendations. The following three paragraphs summarize information and recommendations presented by SCRS to ICCAT for the consideration in setting the western Atlantic BFT TAC.

To determine the outlook, SCRS conducted a medium-term (12-year) evaluation of changes in spawning stock size and yield over the remaining rebuilding period under various management options. In order to provide advice relative to rebuilding the western Atlantic bluefin tuna resource, SCRS conducted projections for two scenarios about future recruitment. The "low recruitment" scenario assumed that future average recruitment will approximate the average of recruitment (at age one) levels observed from 1976 through 2004 (70,000 recruits). The "high recruitment" scenario assumed average recruitment levels would increase as the stock rebuilds (an MSY level of 160,000 recruits). SCRS had no strong evidence to favor one scenario over the other and noted that both are reasonable (but not extreme) lower and upper bounds on rebuilding potential.

The outlook for bluefin tuna in the West Atlantic with the low recruitment scenario is similar to that from the 2006 assessment. The 2008 projections for the low recruitment scenario suggests that catch levels of 2,400 mt would have about a 50-percent chance of rebuilding the stock by 2019,

catches of 2,100 mt (the current TAC) would have a 71-percent chance, and catches of 2,000 mt or lower would have greater than a 75-percent chance of rebuilding. A TAC between 2,000 and 2,100 mt would have a 50-percent probability of ending overfishing by the end of 2010 and a TAC of 1,800 mt increases the probability to 75 percent. If the high recruitment scenario is correct, then the western stock would not rebuild by 2019 even with no catch, although catches of 1,500 mt or less are expected to immediately end overfishing and initiate rebuilding. SCRS also examined an alternative model that excluded the Canadian Gulf of St. Lawrence catch per unit of effort (CPUE) index, noting considerations of possible resource re-distribution, and the observation that the recent high values were difficult to reconcile with other available fisheries data, and could reflect the impact of a single or a limited number of strong year-classes. The levels of catch that lead to rebuilding with that alternative model are lower; 1,800 mt would have about a 50-percent chance and 1,500 mt would have a 75-percent chance.

SCRS again noted that evidence is accumulating which indicates that both the productivity of western Atlantic BFT and western BFT fisheries are linked to the eastern and Mediterranean stock. Therefore, management actions taken in the eastern Atlantic and Mediterranean are likely to impact the recovery in the western Atlantic, because even small rates of mixing from East to West can have significant effects on the West due to the fact that the Eastern plus Mediterranean resource is much larger than that of the West.

At the 2008 meeting, ICCAT adopted a recommendation to decrease the annual quota of BFT in the western Atlantic Ocean from 2,100 mt to 1,900 mt for 2008 and 1,800 mt for 2009, consistent with the rebuilding program for western Atlantic BFT established in 1998. An 1,800-mt TAC represents a 14-percent reduction from the current level and is intended to end overfishing with a 75-percent probability of success. A new SCRS stock assessment is expected to be conducted in 2010, and the ICCAT parties holding an allocation of western Atlantic BFT agreed to renegotiate the quota allocations for this stock in 2010.

3.2 Fishery Participants, Gear Types, and Affected Area

There are over 42,000 permitted vessels that may participate in the Atlantic tuna fisheries. Vessels permits are issued in five directed fishing categories and two incidental fishing categories (Table 5). Generally, permits are issued for a distinct fishery by 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, bandit gear, and greenstick (which is used primarily to harvest yellowfin tuna). Pelagic longline gear is not an allowed gear type for directed fishing on BFT; it is used to target other HMS species, primarily swordfish, bigeye, and yellowfin tuna. However, NMFS allocates a quota for landings of incidentally-caught BFT by longline and trap gear. Atlantic Tunas, HMS Charter/Headboat, and HMS Angling category permits are issued over the internet, telephone or mail. Regulations currently allow vessels to be permitted in one category per year and allow for only one permit category change to occur during the permit renewal period. For those applicants who selected an incorrect category, corrections must occur within 10 calendar days from the permit date of issuance; otherwise, applicants must wait until the following season to change the permit category.

U.S. landings of BFT for the 1996-2008 period are provided in Table 6. The historical level of landings has generally been determined by quotas since 1982. Commercial fisheries are focused on large medium (73 inches to less than 81 inches) and giant (81 inches or greater) BFT, while recreational fisheries are focused on large school/small medium BFT (47 inches to less than 73 inches), with allowances for school (27 inches to less than 47 inches), large medium, and giant BFT. 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.

The BFT fishery has been managed on a fishing year basis (June through May) versus a calendar year basis (January through December) starting with the implementation of the 1999 FMP in 2000 until January 2008, when management reverted to a calendar year basis per implementation of the Consolidated HMS FMP. The 2007 fishing year was June 1, 2007-December 31, 2007. Therefore, Table 6 landings are presented on a calendar year (versus fishing year) basis for 1996 through 1999, and for 2008.

The majority of BFT landings are taken by handgear fisheries in the commercial General category and recreational Angling and Charter/Headboat categories. The distribution of fishing activity for BFT is generalized in Table 7. General category fisheries are focused in New England during the summer and fall, and the South Atlantic during the winter. Recently however, the availability of commercial-sized BFT to the commercial fisheries, particularly off New England appears to have declined dramatically, while the recent Canadian commercial quota has been approached or met. The low level of U.S. commercial landings relative to quotas in the last several years led the SCRS to consider two plausible explanations in its 2009 stock assessment: (1) that availability of fish to the U.S. fishery has been abnormally low, and/or (2) the overall size of the population in the Western Atlantic declined substantially from the level of recent years. SCRS noted that while there is no overwhelming evidence to favor either explanation over the other, the base case assessment [which excluded the Canadian Gulf of St. Lawrence catch per unit effort (CPUE) index since inclusion might produce overly optimistic results] implicitly favors the first hypothesis (regional changes in availability) because a large recent reduction in spawning stock biomass is not estimated. Nevertheless, SCRS noted that substantial uncertainty remains on this issue and more research needs to be done.

Recreational fisheries are prosecuted by private vessels fishing in the Angling category and vessels for hire fishing under the Charter/Headboat category. The Consolidated HMS FMP notes that charter/headboats have been targeting school BFT off New York and New Jersey since the early 1900s. School BFT are recreationally targeted off Virginia, Delaware, and Maryland during the summer and off New Jersey and New York as the summer progresses. In recent years, school BFT have been increasingly available to southern New England fisheries, i.e., school BFT have been appearing and caught further north than in the past. Fishery landings and school BFT availability generally decline in the fall with colder water temperatures and degrading fishing conditions. Recreational fishing also takes place for large medium and giant BFT in the South Atlantic winter fishery, and the Consolidated HMS FMP notes that this fishery includes an active charter/headboat

fishery. Large school and small medium BFT are landed by private and charter/headboat fisheries in summer and early fall off Virginia, Delaware, Maryland, New Jersey, and Massachusetts, but are overall less accessible to New York, Connecticut and Rhode Island fisheries. Large school and small medium BFT are also available in the South Atlantic winter fishery. In general, BFT fisheries vary from year to year since the exact availability of BFT and the demand for fishing opportunities is unpredictable.

BFT movements throughout the Atlantic are the subject of much research and affect the availability of harvest for regional fisheries. Over the last few years, fishermen have noted a substantial decline in the availability of large medium and giant BFT in the New England area. Commercial landings by General category fishermen, Harpoon category fishermen, and Purse Seine category fishermen have also been suppressed relative to the end of the 1990s and early 200s, resulting in large underharvests of commercial quotas (Table 6). In 2007, purse seine activity for BFT was very low and in 2008, no BFT were landed using this gear type. Conversely, the ratio of landings to quota has been very high for the Angling category, relative to that for other categories, particularly in 2007 and 2008, 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, the 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 proposed action and specifies terms and conditions which must be met to mitigate impacts on ESA-listed species. The primary gear types used for directed BFT fisheries are handgear and purse seine gear, which were covered under the 2001 BiOp for HMS fisheries and are not likely to jeopardize the continued existence of

endangered or threatened species, including seas turtles. A 2004 BiOp determined that the continued operation of the pelagic longline fishery (for which direct BFT fishing is not permitted but for which incidental BFT retention is permitted) is not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley seas turtles, but is likely to jeopardize the continued existence of leatherback sea turtles. See Section 4.4 for further discussion of consultations and BiOps issued for HMS Fisheries.

The MMPA is the one of the principal Federal statutes that guide marine mammal species protection and conservation policy. Under MMPA requirements, 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 (e.g., pelagic longline);

- Category II fisheries are those with occasional serious injury or mortality (e.g., shark gillnet); and

- Category III fisheries are those with remote likelihood of serious injury or mortality to marine mammals (e.g., 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. 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 (hook-and-line and harpoon) 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, longline gear is 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. On June 24, 2008 (73 FR 35623), the Office of Protected Resources published a proposed rule intended to reduce marine mammal takes by pelagic longline vessels in the Atlantic.

Please refer to Sections 3.8 and 3.9.9 of the Consolidated HMS FMP for additional information on potential interactions of Atlantic HMS fisheries with protected species and marine mammals. Sections 3.9.9.1 and 3.9.9.2 specify the 22 cetacean species of concern that occur off the Atlantic and Gulf coasts, including six endangered whale species.

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 Consolidated HMS FMP. 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 (IRFA).

4.1 Issue 1: Allocation of BFT quota among domestic fishing categories

Ecological Impacts

Under Alternative A1, the no action alternative, NMFS would not implement the 2008 ICCAT BFT quota recommendation, and would instead implement the baseline U.S. TAC that has been in effect since 2007, and apply the quota allocation scheme established in the Consolidated HMS FMP, consistent with the 2006 ICCAT recommendation. Alternative 1 would be inconsistent with the Consolidated HMS FMP, ATCA, and the 2008 ICCAT recommendation. The 2009 fishery would be based on the level of quota allocated from ICCAT under the 2006 recommendation (i.e., 1,190.12 mt, which is 155 mt higher than the level currently recommended to allow stock rebuilding), and underharvest from the 2008 fishing year. As a result, Alternative A1 could have more negative ecological impacts on BFT than Alternative A2. Alternative A1 could delay rebuilding of the western Atlantic BFT stock and the likelihood of ending overfishing within 2 years would be less than 50 percent.

Alternative A2, the proposed action, would be expected to result in long term positive impacts to BFT stocks because it is consistent with the ICCAT BFT rebuilding plan and with NMFS' efforts to end BFT overfishing within 2 years. The decreased quota contained in Alternative A2 would have more positive ecological impacts on BFT than the quota implemented for 2007 and 2008 (under Alternative A1), and would be consistent with the Consolidated HMS FMP, ATCA, and the 2008 ICCAT recommendation. The 2008 ICCAT recommendation and these proposed 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. Beginning with the 2004 fishing year, the amount of the U.S. quota underharvest has been large, and the implications of continued underharvests on stock have been considered by ICCAT and NMFS. In its 2008 BFT recommendation, ICCAT specified that after 2010 (i.e., effective for the 2011 fishing year), carryforward of underharvest shall not exceed 10 percent of the U.S. TAC.

The decrease in quota available under Alternative A2 may result in a slight decrease in impacts to other nontarget species as a result of a potential slight decrease in fishing effort for handgear and purse seine fisheries; however, the amount of quota decrease is not expected to alter existing fishing patterns. NMFS does not expect a decrease in participation in open access BFT fisheries, or a decrease in effort for either open or limited access BFT fishermen that are already participants. Bycatch in HMS fisheries for both HMS and non-HMS species was addressed in Section 3.8.3 of Consolidated HMS FMP, and is not repeated here in detail. In summary, bycatch

impacts are expected to be minimal from the harpoon fishery because the target is identified as a BFT with reasonable certainty before the harpoon is thrown. 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 Pelagic 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 have not been collected, but discards are expected to be similar to recreational HMS fisheries since the same gear is employed in both fisheries. BFT are caught incidentally by the pelagic 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 in the 2001 and 2004 BiOps (see Section 4.5). Bycatch of non-target species is expected to be lower for Alternative A2 than Alternative A1 because of the decrease in quota available under A2.

As discussed in Section 2.1, the ICCAT BFT TAC recommendations include dead discards, and as such, the United States must deduct its reported discards from the 2009 U.S. TAC. In its recommendations that applied from 1999 through 2006, ICCAT historically recommended a deduction of 79 mt from the TAC as an allowance for dead discards, and the U.S. portion of this allowance was 68 mt. The 2006 ICCAT recommendation included neither a recommended dead discard allowance, nor specified a dead discard reporting methodology for compliance purposes. To be consistent with reports from the United States to the ICCAT Standing Committee on Research and Statistics for stock assessment purposes, NMFS reports dead discards as the estimate generated via extrapolation of pelagic longline vessel logbook tallies by pooled observer data; for 2007, the estimate is approximately 90 mt. These specifications also use this estimate. 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. Per the ICCAT recommendation, which specifies a U.S. quota that is inclusive of dead discards, and consistent with how NMFS has managed past incidents of dead discards exceeding the allowance, NMFS would deduct the 90 mt of estimated dead discards from the amount of quota available for the Longline category for the 2009 fishing year.

Table 2 presents the calculations to determine the 2009 fishing year quotas under the proposed action. The carryover of 517.5 mt of unused BFT quota from 2008 is consistent with the ICCAT recommendation. Given the anticipated quota needs of the Longline category for the 2009 fishing year (i.e., for both landings and discards, which must be accounted for), the proposed action is intended to provide sufficient quota (via allocation of some of the 2008 underharvest) to the Longline category to cover the anticipated landings and dead discards of the pelagic longline fishery during the 2009 fishing year. Again, no additional effort or change in commercial or longline-specific fishing pattern is expected. NMFS simply seeks to avoid a near-zero or negative quota for the Longline category, which would result after subtracting the best available dead discard estimate from the TAC and which could result in increased discards if the longline fishery were closed due to the Longline quota being met while fishing for other species. Specifically for 2009, because NMFS assigns the

dead discards to the Longline category, the resulting Longline quota would be only 4.4 mt (94.4 mt baseline-90 mt dead discards).

Consistent with the 2008 ICCAT recommendation, Alternative A2 also would 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, 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. NMFS would monitor and manage the pelagic longline fishery in this area, and account for the 25 mt, in concert with the ongoing Atlantic tuna dealer reporting mechanisms that are already in place. Per the regulations implementing the Consolidated HMS FMP, regardless of the amount of the NED set-aside harvested or used in a given year, the balance returns to 25 mt at the start of each fishing year, i.e., underharvest of the 2008 NED allocation is not carried forward to the allocation for the 2009 fishing year.

Neutral ecological impacts are predicted for BFT as a result of specifying the school BFT subquota in accordance with ICCAT new 2-year (reduced from 4-year) 10-percent tolerance limit. Ecological impacts of school BFT harvest are accounted for already in the ICCAT BFT rebuilding plan. Since harvest of the school quota is figured into the rebuilding plan, there is expected to be little ecological difference for BFT whether that harvest occurs in one year, two years, or four years. ICCAT's rebuilding plan was taken into account when quota adjustments in tonnage were provided for under the Consolidated HMS FMP.

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 2008 ICCAT recommendation, although the larger amount of quota available would provide greater fishing opportunities than Alternative A2, depending on the availability of BFT to the fishery.

Alternative A2 would have greater economic impacts to the United States and local economies compared to alternative A1 because of the decrease in quota. However, negative economic impacts from alternative A2 would be distributed among the recreational and commercial sectors and, and are expected to mirror the distribution of the quota allocation in percentages set forth in the Consolidated HMS FMP. Potential impacts from this alternative will depend upon the ability of the fishery to harvest the quota. In 2008, approximately 52 percent of the overall available quota was harvested, resulting in an underharvest of 705 mt. Per the 2008 ICCAT recommendation, only 50 percent of the total TAC, or 517.5 mt, of that underharvest will be carried over to the 2009 fishing year.

In Alternative A2, the 25 mt set-aside for BFT incidentally caught pursuant to pelagic longline fishing operations in the NED offsets slightly the negative impacts on the pelagic longline sector of the fleet. The set-aside cannot be transferred to other quota categories. There could be

negative social and economic impacts among other fishery sectors if they are closed upon achieving their quota and are unable to access available quota, via inseason transfers, from the NED set-aside. Given the low proportion of landings to quota overall since 2004, this situation would be unlikely.

Adding a substantial portion of the carryover to the Longline category quota is intended to ensure that the Longline category quota is not exceeded during the course of normal fishery operations. The Longline portion of the baseline quota is 81.8 mt, and information NMFS maintains from dealers, logbooks, and the observer program suggests that combined landings and dead discards could total 150 mt or more. Because NMFS must deduct estimated dead discards from the overall TAC available each fishing year, and because NMFS intends to account for dead discards against the quota category to which the discards are attributed, reallocation of the carryover among all categories (described in Section 2.1 and presented in Table 2) would minimize negative social and economic impacts to pelagic longline fishermen.

The 10-percent tolerance limit on school BFT over a 2-year period is not expected to have any negative social or economic impacts itself to fishermen who fish for school size class BFT. However, because the U.S. TAC is reduced, the maximum amount of school BFT that may be taken is also reduced. Based on the U.S. TACs for 2009 (1,034.9 mt) and 2010 (952.4 mt), school BFT landings would need to be limited to an average of 103.5 mt and 95.2 mt, respectively (i.e., 99.4 mt over the next two years). This represents a 20-mt (16 percent) reduction from the 2007-2008 average tolerance limit of 119 mt. NMFS has strived to not exceed the school BFT tolerance on an annual basis, even when the balancing period was 4 years, so that drastic reductions are not needed in the last year of the balancing period. This is particularly important considering the timing of recreational data availability.

Conclusion

Alternative A2 is the proposed action as it is consistent with the Consolidated HMS FMP, ATCA, and the 2008 ICCAT recommendation. Ecological impacts between the two analyzed alternatives are similar. Reducing the baseline quota and capping the carryover of underharvest has the potential to decrease BFT fishing effort, which would result in slightly lower impacts to other nontarget species. Overall, short-term economic and social impacts to fishermen may be negative for Alternative A2, particularly for Angling category participants as the recreational sector has been able to achieve its subquota over the last two years, although actual impacts will largely be attributable to the availability of BFT and ability of fishery participants to harvest the quota. In addition, the negative social and economic impacts of exceeding the TAC designed to rebuild the BFT fishery are reduced and, in the long term, may be positive for fishermen as the fishery begins to rebuild. Socio-economic impacts are expected to be negative for certain sectors of the recreational fishery that rely solely on school size class BFT. Under each 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.

4.2 Issue 2: Effort controls

Ecological Impacts

Effort controls in the General and Angling (handgear) categories are designed to have positive economic and social impacts overall, 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 defined 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. Alternatively, if not enough effort controls are implemented, the General and/or Angling category quotas could be met rapidly and these fisheries would close prematurely. Fishermen may then turn to other stocks to target, particularly other HMS species, with corresponding impacts to other elements of the ecosystem. Neither of these scenarios is expected to result from the alternatives considered here, because the proposed effort controls are moderate in nature and can be adjusted during the BFT season by inseason actions.

Economic and Social Impacts

General Category Retention Limits – The proposed action (Alternative B3) is to establish a three fish retention limit per vessel from the start of the General category fishing season through the first quota subperiod, which will end August 31, 2009. This alternative is expected to result in positive socio-economic impacts by providing the best opportunity to harvest the quota while avoiding oversupplying the market. Although a three fish retention limit resulted in an oversupply of the market and depressed ex-vessel prices for product in October 2003 (Table 10), landings at the beginning of the season (i.e., June-July) are usually much lower, and oversupply is considered unlikely. Additionally, since 2004, commercial landings of large medium and giant BFT have fallen well short of adjusted quotas. In 2008, approximately 42 percent of the baseline and 31 percent of the adjusted General category quota was landed. NMFS will continue to monitor landings closely and be prepared to reduce the retention limit if landings rates are higher than expected. Both the no action alternative and alternative B2 would provide lower retention limits, which may unnecessarily restrict the General category harvest and result in negative socio-economic impacts, including reduced gross revenues.

Angling Category Retention Limit – Prior to 2007, recreational BFT fishing activity was largely focused on fishing opportunities for school BFT (27 to less than 47 inches). However, recreational BFT fishing data and observations from 2007 forward indicate a recent shift in focus to the large school/small medium size class (47 to less than 73 inches), particularly to large school BFT (47 to less than 59 inches). In the last two fishing years, availability and landings of the recreational size classes has been high, and the 2007 and 2008 Angling category quotas are estimated to have been exceeded. It has become apparent to NMFS that the availability of recreational size fish is limited to a narrow size range or cohort, approximately age 4 in 2007 and age 5 in 2008, and thus the majority of these fish last year were in the large school size range. However, in 2009, NMFS anticipates these BFT will be approximately age 6 and will enter the small medium size class (59 to

less than 73 inches). NMFS manages the recreational BFT quota by size class, so as this cohort of fish grows in weight but remains under 73 inches, NMFS expects the large school/small medium subquota to be attained with fewer fish landed.

NMFS is aware as it considers alternatives for the 2009 Angling category daily retention limit, that results of recent fishing seasons under the associated retention limits are showing a trend in the recreational fishery toward heavier fish, particularly in the large school and small medium size classes (see Figure 1). Table 4a shows the adjusted Angling category quotas, landings, and daily retention limits for 2007 and 2008. Under a retention limit of one school BFT and two large school/small medium BFT in 2007, total Angling category landings were nearly double the adjusted Angling category quota, largely due to the landings of large school/small medium BFT. For the 2008 fishing year, NMFS lowered the daily retention limit to one school BFT and one large school/small medium BFT. Despite these lower retention limits, preliminary 2008 estimates indicate that the total Angling category quota was again exceeded (by approximately 30 percent), and although the school BFT landings fell well beneath the subquota in 2008, the landings of large school/small medium BFT were approximately two times the associated quota.

NMFS is considering three alternatives (see Table 4b) that are as restrictive, or more restrictive, than the 2008 daily retention limits in order to ensure that the Angling category quota is not again exceeded. Because of the reduced ICCAT-recommended BFT TAC and the resulting reduced U.S. TAC, all domestic quotas are decreased from the 2008 level. In order to constrain landings to the proposed adjusted Angling category quota (260 mt), NMFS must implement conservative retention limits. This is particularly important given the new 2-year balancing period for limiting the harvest of school-BFT and given that complete information regarding coastwide recreational BFT landings is available at the end of the calendar year. The United States is in compliance with the 2006 ICCAT recommendation to limit the average harvest of school BFT to less than 10 percent of the U.S. TAC (i.e., the 2007-2008 average was 105 mt, less than the 119-mt limit). All three alternatives would provide the same retention limit for both private and charter/headboat vessels. Given the limited amount of Angling category quota available and the likely availability of larger fish to recreational anglers, assigning higher retention limits to charter/headboats risks overharvest of the Angling category quota and subquotas.

The proposed action for Angling category retention limits (Alternative C1) is to maintain the current default daily retention limit (in effect since January 1, 2009) of one school, large school, or small medium BFT (i.e., one fish measuring 27 inches to less than 73 inches) per vessel. Although this alternative is the most restrictive of the three and will have short-term negative economic impacts relative to the 2008 fishing season, it is the one most likely to constrain landings to the adjusted quota, thereby providing the socio-economic benefit of full use of the adjusted Angling category quota without exceeding the quota. NMFS strives to ensure that BFT subquotas are not exceeded both to adhere to the current FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (e.g., fish caught at each age) that was assumed in the projections of stock rebuilding; deviation from this pattern could result in delays to stock rebuilding. As described for Alternative A2, long-term positive socio-economic impacts are expected as the fishery rebuilds. Alternative C1 would provide consistent daily retention limits throughout the

fishing season, providing a positive social benefit of equity among anglers over the geographic range of the fishery, and providing e a reliable schedule to facilitate planning for vessels fishing under the Angling category, including charter vessels.

Alternative C2 (one fish measuring 27 inches to less than 47 inches and one fish measuring 47 inches to less than 73 inches per vessel) would provide the same Angling category daily retention limit as implemented for 2008 and is the most liberal of the three analyzed alternatives. It is the most likely to result in overharvesting the quota, particularly because of potential landings (in weight) of large school/small medium BFT. Based on available LPS landings estimates and weight data of sampled BFT, NMFS anticipates that, to not exceed the adjusted 2009 large school/small medium subquota, the number of fish of this size class taken in 2009 needs to be reduced by more than 50 percent. Implementing the same daily retention limit as implemented for 2008 risks exceeding the adjusted subquota for this size class (149.1 mt) when data indicate that individual fish weight for these BFT will be higher in 2009 than in 2008. Like Alternative C1, this alternative would provide consistent daily retention limits throughout the fishing season, providing a positive social benefit of equity among anglers over the geographic range of the fishery. Socio-economic impacts of Alternative C2 are expected to positive relative to Alternative C1 (particularly for certain sectors of the recreational fishery that rely solely on school BFT) and Alternative C3. Alternative C2 may allow sufficient quota to be harvested to offset the cost of fishing trips, provide incentive for booking charters, and harvest an amount of quota that would provide a positive economic impact, but may result in quota overharvest.

Alternative C3 (one fish measuring 27 inches to less than 47 inches and, for certain periods, one fish measuring 47 inches to less than 73 inches per vessel) would be designed to constrain large school/small medium BFT landings to the available subquota and would be more restrictive with regard to retention of this size class than Alternative C2. Thus, this alternative would be more likely to constrain overall recreational landings to the Angling category quota than would Alternative C2. NMFS would seek specific suggestions regarding appropriate periods during the 2009 fishing season for retention of the additional one large school/small medium BFT. Because certain time periods will provide some geographic locations better fishing opportunities than others, there would likely be differential social benefits depending on fishing location. There would also be social and administrative negative impacts associated with NMFS needing to issue reminder notices during the season and with confusion regarding daily retention limits potentially leading to non-compliance.

Regardless of the alternative selected, announcing the retention limit for the entire season is expected to have positive socio-economic impacts for charter/headboats since they will be able to make bookings without concern about potential future reduction in retention limit.

Given that the proposed Angling category daily retention limit will expire on December 31, 2009, NMFS will consider the results of the 2009 fishing year, i.e., available landings information and the retention limits implemented for the 2009 recreational fishery, when selecting the proposed 2010 Angling category daily retention limits or preparing future recreational inseason actions.

Conclusion

The proposed action for the early season General category daily retention limit is three fish per vessel (Alternative B3). This preferred retention limit is expected to provide the greatest opportunity for the General category to harvest the quota, which includes some carryover from the 2008 season, providing positive socio-economic impacts. If catch rates increase rapidly, NMFS can reduce the retention limit in order to avoid oversupplying the market and the potential for negative economic impacts.

The proposed action for the Angling category retention limits for the entire season is Alternative C1, a category-wide daily retention limit of one school, large school, or small medium BFT (i.e., one fish measuring 27 inches to less than 73 inches), per vessel. This preferred alternative is expected to have short-term negative socio-economic impacts relative to the 2008 fishing season but have longer-term positive socio-economic impacts by preventing overharvest of the quota. In addition, this alternative will provide the positive social impact of perceived equality between recreational and charter/headboat vessels.

Finally, as with the other effort control alternatives considered here, the General and Angling category daily retention limits are not expected to have any negative ecological impacts based on the BFT 1998 rebuilding plan, as modified, particularly as considerations of fishing mortality at age and stock rebuilding are considered part of the rationale for conservative daily retention limits.

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 Consolidated HMS 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 Consolidated HMS FMP is still applicable, so further consultation is not necessary.

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 implementing the other RPMs in compliance with the 2004 BiOp. NMFS will undertake additional rulemaking and non-regulatory actions, as required, to implement any management measures that are required under the 2004 BiOp. On June 24, 2008 (73 FR 35623), the Office of Protected Resources published a proposed rule intended to reduce marine mammal takes by pelagic longline vessels in the Atlantic. For further information on HMS fishery interactions and protected species, including non-ESA listed marine mammals, see Section 3.9.9 of the Consolidated HMS FMP.

Relative to the 2006 ICCAT recommendation, the 2008 ICCAT recommendation decreased the U.S. BFT quota by 155.2 mt; therefore, a reduction in overall effort relative to the level at the most recent consultation could be expected. The measures in these proposed 2009 quota specifications and effort controls, including the allocation of 25 mt to the Longline category for the northeast distant area (for incidental BFT catch only), are not expected to alter current fishing practices or increase fishing effort, and therefore should not have adverse impacts on protected species, or have any further impacts on endangered species, marine mammals, or critical habitat beyond those considered in the 2001 and 2004 BiOps. Thus, the proposed action in this Draft EA/RIR/IRFA 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, and no further consultation is necessary.

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 proposed action would not have any effects on human health nor is it 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 proposed action implements a lower baseline U.S. quota and limit the amount of underharvested quota that may be carried forward, but also relieve restrictions and provide economic opportunities.

4.6 Coastal Zone Management Act (CZMA) Concerns

NMFS has determined that these proposed regulations are consistent to the maximum extent practicable with the enforceable policies of those coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have approved coastal zone management programs. Letters will be sent to those states requesting their concurrence.

4.7 Comparison of Alternatives

Table 9 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

Since 1999, management actions pertaining to BFT have had minor positive ecological impacts by continuing to limit BFT mortality by U.S. fishermen in accordance with the strict quota limits set by ICCAT. The 1999 FMP adopted ICCAT's 20-year stock rebuilding program for western Atlantic BFT, which includes, 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 Consolidated HMS FMP (NMFS 2006a) concluded that the cumulative long-term impact of the final implementing actions, including the BFT rebuilding program and annual quota allocation process, would be to establish sustainable fisheries for Atlantic HMS. These proposed 2009 BFT specifications would be consistent with the Consolidated HMS 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 end dates for the various fishing categories, in particular extending the General category through January (68 FR 74504, December 24, 2003). This action would be consistent with the 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 (NMFS 2004). Finally, this rule is also consistent with a regulatory amendment that added green-stick, which is used primarily to catch Atlantic yellowfin

tuna, to the list of authorized fishing gears for use in the Atlantic tuna fisheries (73 FR 54721, September 23, 2008)

On October 2, 2006, NMFS published final regulations, effective November 1, 2006, implementing the Consolidated HMS FMP, which consolidates the management of all Atlantic HMS (i.e., sharks, swordfish, tunas, and billfish) into one comprehensive FMP (71 FR 58058). These 2009 BFT specifications are proposed in accordance with the Consolidated HMS FMP.

ICCAT is scheduled to review the status of Atlantic BFT stocks during the first half of 2010 and to renegotiate the western Atlantic BFT TAC at the November 2010 ICCAT meeting. The stock assessment may result in recommended changes to the ICCAT BFT rebuilding plan in the foreseeable future, which may require a future domestic rulemaking. Any future domestic actions taken in regard to the BFT fishery would remain within the scope of ICCAT recommendations as well as established BFT TACs. Efforts are underway to determine the appropriateness of including BFT in a discussion of species to be listed under the Convention on International Trade in Endangered Species.

The proposed actions considered in this draft EA/RIR/IRFA, regarding implementation of the 2008 ICCAT recommendation regarding quota allocations and designation of effort controls are expected to have slightly negative social and economic impacts. The proposed measures in this action are not expected to change current fishing practices or increase fishing effort, and therefore should not cause biological impacts not previously considered in the 2001 and 2004 Biological Opinions and addressed in the Consolidated HMS FMP FEIS.

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. 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 proposed measures.

5.0 MITIGATION AND UNAVOIDABLE ADVERSE IMPACT

5.1 Mitigating Measures

Under the proposed action, NMFS would implement the 2008 ICCAT recommendation in accordance with domestic legislation and the Consolidated HMS FMP and implementing regulations. Using its inseason management authority, NMFS will be able to monitor and make adjustments to the commercial fishery close to "real time." Since NMFS will continue to monitor the commercial fishery, any unpredicted increase in effort and landings of BFT, should they occur, could be addressed within a fishing season. NMFS also may adjust recreational effort controls inseason based on the best information available, but landings data are not available with the timing and frequency of commercial data (submitted within 24 hours to NMFS through required landings reports for each fish).

The ICCAT-recommended decrease in TAC, the shortened time period over which the school BFT tolerance applies, and the preferred Angling category daily retention limit may have negative direct, indirect, and cumulative economic and social impacts to certain sectors of the BFT fishery. Impacts to fishermen in south Atlantic winter fishery would be mitigated by the time period subquotas established in the Consolidated HMS FMP, which are designed to ensure General category quota is available late into the winter season. Implementing a consistent Angling category daily retention limit would mitigate impacts to recreational fishermen as the opportunity to retain a BFT would be spread throughout the fishing season.

5.2 Unavoidable Adverse Impacts

Although the proposed rule would result in a decrease in base quota, it is consistent with the ICCAT BFT rebuilding plan, the Consolidated HMS FMP, ATCA, and the Magnuson-Stevens Act. NMFS does not expect a change in current fishing patterns or an increase in fishing effort compared to pre-2008 levels. The specific action to allocate additional BFT quota to the Longline category for the NED 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 proposed measures in this Draft EA/RIR/IRFA 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 Irretrievable Commitment of Resources

No irreversible or irretrievable commitments of resources are expected from this proposed rule.

6.0 ECONOMIC EVALUATION

Note that all dollars are reported in nominal dollars, consistent with methods used in the Consolidated HMS FMP.

6.1 Prices and Markets

Over the past two and a half decades, the ex-vessel average price of BFT in the United States has increased substantially, from roughly $0.20 per pound up to nearly $9.00 per pound round weight in the late 1990s. 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 Consolidated HMS FMP 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 10 gives the average ex-vessel price of BFT per year for each category.

Ex-vessel prices (nominal values) per category have fluctuated over the last several years. Accounting for inflation, preliminary average ex-vessel prices for BFT in 2008 were lower for the Longline category and higher for the General and Harpoon categories relative to prices during 2007. Prices are influenced by the appreciation of the dollar relative to the yen over the last several years, as well as market supply conditions in Japan and consumer demand. In addition, the rapid growth of the Mediterranean BFT farming industry may influence prices, with over-supply of the market leading to reduced ex-vessel prices for U.S. fishermen.

6.2 Ex-vessel Gross Revenues

Ex-vessel gross revenues (nominal values) from recorded sales of BFT in all commercial categories for the last 13 years are presented in Table 12. Revenues for the General and Harpoon categories for 2008 were 75 percent higher and 95 percent higher, respectively, than for 2007, but were still very low compared to most of the time series. Total revenues are the third lowest in the time series, but higher than the two prior years. Revenues for the Purse seine category have fluctuated at a low level over the 2004-2007 period. Because the purse seine vessels did not land any BFT in 2008, there were no associated revenues. The combination of stable or reduced ex-vessel prices (Tables 10 and 11) and reduced commercial landings (Table 6) had a severe impact on ex-vessel gross revenues in 2006 and 2007, but increased overall ex-vessel prices and landings, particularly in the General category, led to a modest total increase in ex-vessel gross revenues in 2008. All categories have generally shown declines since 2001, with the exception of the incidental Longline category.

Before drawing conclusions on trends in gross revenues, it should be emphasized that this discussion focuses on gross revenues only, and not net revenues. Currently, only selected longline sector vessels are required to report cost-earnings data. Given the lack of cost information, it is difficult to draw conclusions concerning net revenues (or profits) to bluefin tuna 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 2008, 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 Consolidated HMS FMP highlights the need for further social and economic studies of HMS industries and fishing communities to assist in the calculation of adequate cost information. The more frequently and thoroughly this can be conducted, the better the estimates of the current net revenues.

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 may remain unused. Processors may also have to hire additional laborers during the season who 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. Future amendments to the Consolidated HMS FMP may consider individual transferable quotas for the

General and/or Harpoon category fisheries. 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, as modified, 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 prohibited 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 vessel 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.

Indirect income is also an important factor in understanding the economic impact of recreational fisheries to regional economies. This type of income could include shoreside facilities, marinas, gas, and fishing tackle expenditures. The economic value 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. A survey of daily charter rates advertised by Atlantic HMS Charter/Headboat permit holders which was included in the Consolidated HMS FMP estimated that the average rate for an all day trip in 2004 was $1,053. Assuming that the total number of trips in 2004 were 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 2005 through 2008 (Table 12), 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. Charter/headboat cost information has not been updated since preparation of the 1999 FMP, in which variable costs were estimated at $392 per trip. Producer surplus for operations targeting BFT was estimated at $408 per trip ($800 - $392).

According to the 1999 FMP, preliminary estimates of angler consumer surplus in the private BFT fishery were $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 angler consumer surplus is another important component as well. Angler consumer surplus 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 Consolidated HMS FMP and the 2008 SAFE Report and is not repeated here. However, Table 7 provides a summary of patterns of fishing activities and Table 5 indicates the number of vessels permitted during the 2008 fishing season, by category, to participate in the BFT fishery.

6.5 Bluefin Tuna Processing and Export

The Consolidated HMS FMP and the 2008 SAFE Report include a detailed discussion regarding the export, import, and re-export trade program and market for BFT. As noted above, over the last 6 years, total landings of BFT have generally declined, U.S. ex-vessel prices have fluctuated, and generally, ex-vessel gross revenues have declined. Although the proportion of BFT exported has shown a decreasing pattern since 1996, the majority of domestically harvested BFT was exported until 2004. The reduction in amount of exports and decrease in the ex-vessel value of landings since 2003 indicates a corresponding decrease in the value of exports, although these figures are not available for only Atlantic product. According to the Northeast Region BFT Landings Database, 85 mt (44 percent) of the 192 mt of commercial BFT harvested domestically in calendar year 2007 were exported, while 104.5 mt (54 percent) were sold on the U.S. market. During the 2007 fishing year, the United States imported approximately 514 mt of BFT harvested in the Atlantic Ocean, including the Mediterranean and Gulf of Mexico.

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 2007 or 2008 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 approximate those realized in 2007 and 2008 (Table 12). However, because there is variability in quota each fishing year due to the amount carried forward from the previous fishing year, the amount of available quota would likely not remain consistent with the level of a previous specific fishing year. Availability of BFT to the fisheries also would influence realized revenues. The alternative would not significantly alter ex-vessel prices or costs or change economic benefits accrued at a level from 2007 or 2008.

The proposed action, taken in accordance with the Consolidated HMS FMP and the 2008 ICCAT recommendation, would reduce the baseline quota by approximately 155 mt. Depending on the overall harvest, average ex-vessel value and average size of the fish caught per category, gross revenues may be reduced as a result of this quota decrease. Comparison of expected economic impacts under the proposed action against those realized in recent years is complicated by the relative unavailability of fish in the New England region (as discussed in Section 3.2); ex-vessel gross revenues for fishing years since implementation of the most recent (2006) ICCAT recommended TAC, were $3.7 million in 2007 and $5.0 million in 2008.

The effect of allocations based on the new ICCAT-recommend TAC of 1,009.9 mt (the baseline U.S. quota after deduction of the NED set-aside), i.e., the expected change in ex-vessel gross revenues, was estimated for each category. The General category is allocated 47.1 percent of the annual BFT TAC. Based on the 2008 ICCAT recommendation, the General category baseline allocation would decrease from the pre-2008 ICCAT recommendation level by 73 mt for the 2009 fishing year. Using the average ex-vessel price per pound in round weight for the 2008 fishing year of $8.44 (Table 10), this would result in a decrease of $1.36 million to the ex-vessel gross revenues for the category as a whole. Similar calculations show reductions for the other categories as follows: A reduction of 6 mt for the Harpoon category, which is allocated 3.9 percent of the annual BFT TAC, and for which the average ex-vessel price per pound in round weight for the 2008 fishing year was $6.36, would result in a decrease of $84,128 to the ex-vessel gross revenues for the category as a whole. A reduction of 12.6 mt for the Longline category, which is allocated 8.1 percent of the annual BFT TAC, and for which the average ex-vessel price per pound in round weight for the 2008 fishing year was $4.78, would result in a decrease of $132,779 to the ex-vessel gross revenues for the category as a whole. However, the additional set-aside quota of 25 mt to account for incidental BFT catch in the NED, would provide potential ex-vessel gross revenues of $263,450. A reduction of 28.9 mt for the Purse Seine category, which is allocated 18.6 percent of the annual BFT TAC, and for which the average ex-vessel price per pound in round weight for the 2007 fishing year (the last year

the purse seine fishery was active was $7.31, would result in a decrease of $465,742 to the ex-vessel gross revenues for the category as a whole (from 2007).

The recreational Angling category quota, which is allocated 19.7 percent of the annual BFT TAC, would decrease as a result of the 2008 ICCAT recommendation by 30.5 mt, and the school BFT subquota would decrease by 15.5 mt. 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. The region spanning from New York through Maryland region relies heavily on the school size class of BFT. In prior years, impacts of a reduced school BFT quota could be mitigated by shifting effort to large school and small medium size classes, if available. In the last 2 years however, the full Angling category quota has been exceeded, largely due to increased availability and weight of large school/small medium BFT. In regions dependent upon school BFT, shifting effort to other pelagic species (e.g. striped bass, bluefish) may be possible; however, the degree to which shifting effort might mitigate negative economic impacts is unknown.

6.6.2 Effort Controls

The economic value of effort controls are difficult to quantify and even more difficult to predict because of the unpredictable nature of fish availability and angler behavior. In addition, the economic value of effort controls may vary depending upon whether the fishery is commercial, recreational, or charter/headboat in nature. Despite the lack of quantitative economic data, particularly for recreational fisheries, effort controls are considered to be generally useful in achieving positive economic benefits for the BFT fishery.

One economic benefit of effort controls which regulate the pace of commercial fishing activity (e.g., for the General category fishery) is to maximize product price by avoiding over-supplying the market. Another benefit could result from focusing fisheries seasonally when BFT are of the best quality. Maximizing these benefits must be balanced with other economic considerations such as providing economic benefits to all regions of the fishery, and the effect of fishing expenses such as gas and dockage fees on net revenues.

For recreational fisheries, economic benefits provided by effort controls include consideration of providing the greatest number of participants sufficient access (temporal and geographic) to the fishery without exceeding available quota. Like commercial fisheries, maximizing economic benefits for recreational fisheries in specific areas must be balanced with the consideration of providing economic benefits over the entire regional range of the fishery.

The economics of effort controls for charter/headboat fisheries are a hybrid of those for recreational and commercial fisheries, and include the considerations discussed above. In addition, the ability to plan is an important part of the charter/headboat business, since booking clients for charters may be affected by the ability of a charter/headboat business to advertise assurance of specific effort controls such as open seasons and adequate retention limits in advance of the fishery. Demand for charter/headboat trips could fall without assurance of adequate retention limits.

General Category Retention Limits

Alternatives for retention limits of one, two, and three fish per vessel per day are proposed for the first General category subperiod from the start of the season through August 31, 2009. Regardless of the alternative chosen, the retention limit could be adjusted during the fishing year with an inseason action if warranted. Situations that may warrant an inseason adjustment of retention limit include slow landings rates, which could warrant an increase in retention limit in order to increase gross revenues, or high landings rates which could warrant a reduction in retention limit in order to reduce oversupplying the market.

Both the no action alternative (Alternative B1) and Alternative B2, which would establish initial daily retention limits of one and two fish per vessel per day, respectively, could unnecessarily restrain the General category harvest in the early part of the season and result in a negative economic impact. The proposed 2009 General category quota includes a substantial amount of underharvest from 2008, which may be difficult for the General category to land during one fishing year, and landings in this category over the last few years have been extremely low relative to the annual quota. Until 2006, landings in the late season have been increasing over the last several years, while landings in the early part of the season have been decreasing (Table 8). Since then the pattern of landings before and after November 15 has returned to the pattern of the early 2000s. Because of slow early season landings in previous years, the retention limit for the General category was increased from one to two fish in early 2002 (67 FR 47470, July 19, 2002), 2003 (68 FR 35822, June 17, 2003), 2004 (69 FR 43535, July 21, 2004), and 2005 (70 FR 33040, June 7, 2005). The 2006 and 2008 final rules set the retention limit beginning June 1, to three fish (71 FR 30619, May 30, 2006 and 72 FR 74193, December 31, 2007). For the 2007 fishing season, an inseason action was needed to effect the three-fish retention limit beginning June 1 (72 FR 30297, May 31, 2007) and was extended through August 2007 via the final rule (72 FR 33401, June 18, 2007). The negative economic impact of limiting the General category early in the season (i.e., spring/summer) could be reduced gross revenues for the 2009 fishing year, particularly for the New England fishery where this early season fishery traditionally occurs.

The proposed initial retention limit of three fish for the General category is expected to result in positive economic benefits for the General category fishery by maximizing gross revenues during the early part of the season. As noted above, this alternative would be consistent with the historical approach used over the last 7 years. Providing a retention limit of three fish per vessel, which is the highest retention limit allowed under Federal regulations, is expected to increase the economic benefits that would accrue to the General category and maximize the opportunity for the General category to harvest the available quota during the 2009 fishing year.

There is some concern that a three fish retention limit could oversupply the market should landings suddenly increase. For example, a three fish retention limit provided to the General category in October 2003 (68 FR 56212, September 30, 2003) appeared to result in a decrease in ex-vessel prices (Table 11). However, this situation did not occur in 2008 and is not expected to occur during the early season of 2009 because BFT landings in the early season have not recently been as

extensive as in the fall. However, considering the experience of October 2003, it will be especially important for NMFS to monitor landings closely during the early season and be prepared to adjust the retention limit if oversupply of the market appears imminent.

Angling Category Retention Limits

The Angling category daily retention limits considered are consistent for all vessel types fishing under this category, i.e., private recreational and charter/headboats, and would provide opportunities to retain between one and two BFT per vessel throughout the fishing season. As discussed under the General category, regardless of which alternative is chosen, retention limits could be adjusted with an inseason action if warranted. However, NMFS' intent is to increase economic benefits by providing a reliable schedule of retention limits prior to the start of the season.

It is very difficult to predict economic impacts of Angling category retention limits for several reasons. First, as with the previous effort controls discussed, it is difficult to predict the availability of fish and the reaction of the fishery. In addition, very little information is available on the economics of the recreational and charter/headboat BFT fisheries.

From a simplistic qualitative perspective, it is assumed that the retention limit alternative that provides a consistent fishery and allows the largest amount of fish to the fishery without exceeding the quota would have the most positive economic impact for recreational fisheries. Remaining within the U.S. quota is economically important since ICCAT requires that quota overages be repaid with an additional penalty, and loss of quota in future years could be a negative impact to the recreational fishery. Economic factors that must be balanced with maximizing landings within the quota include distributing economic benefits across all regions of the fishery, the lowest retention limit for which an Angling category vessel is willing to make a fishing trip, and the need for predictability (particularly important for maximizing demand for charter/headboat fisheries). NMFS does not have any data that analyzes the degree of access to the BFT fishery in terms of the retention limits that would be necessary so that the benefits of participating in the fishery outweigh the costs, including opportunity costs. However, multiple fish retention limits have been requested by Angling category permit holders in the past.

The potential differences between charter/headboat and recreational fisheries are outlined in the introduction to this section which discusses the economic effects of effort controls. These differences include the commercial aspect of the BFT charter/headboat fishery, which is addressed under General category effort controls, since fishermen with HMS Charter/Headboat permits must abide by General category regulations when fishing commercially. Thus the only additional economic consideration for charter/headboats other than the economic considerations for private recreational fishermen is the need for business planning and potential need to attract clients with assured seasons and adequate retention limits. All of the proposed alternatives are intended to provide a reliable schedule of retention limits for the fishing year in order to facilitate planning for vessels fishing under the Angling category and to distribute economic benefits across the entire range of the fishery.

The proposed action (Alternative C1) would establish a one fish retention limit per vessel. It would be the most likely to overly restrict Angling category landings and result in a negative economic impact, since the quota might be underharvested. However, this alternative best balances the considerations of maximizing the opportunity to harvest the quota without overharvesting it, and providing the greatest economic benefits to the widest temporal and spatial range of participants. Thus, this alternative is expected to be most reliable in distributing maximum economic benefits throughout the range of the fishery. Alternative C3 also has the potential to overly restrict vessels by limiting them to one fish for a portion of the season and two fish for certain date ranges. Conversely, Alternative C2 would be most likely to result in negative economic impacts of allowing an overharvest of the Angling category quota since this alternative provides the most liberal retention limits for Angling category vessels. Because of the overharvest of 2007 and 2008 Angling category quota, the reduction in quota, and particularly because of the apparent increasing average weight of fish taken in the large school/small medium size range, NMFS feels it is necessary to implement conservative recreational daily retention limits that effect a substantial reduction in the number of large school/small medium BFT landed in 2009. As described in Section 4.2, it is important that NMFS constrain landings to BFT subquotas both to adhere to the current FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (e.g., fish caught at each age) that was assumed in the projections of stock rebuilding. NMFS will consider the results of the 2009 fishing year, i.e., available landings information and the retention limits implemented for the 2009 recreational fishery, when selecting the proposed 2010 Angling category daily retention limits or preparing future recreational inseason actions.

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 proposed action. The total amount of BFT landed and available for sale under the proposed action is expected to provide slight net positive economic impacts, particularly over the long-term, from fishing at a level that is expected to allow for rebuilding of the stock by 2018. Table 13 indicates the possible net economic benefits and costs of each alternative. The Western Atlantic BFT fishery TAC will be renegotiated in 2010.

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 proposed action described in this draft EA/RIR/IRFA does not meet the above criteria, for example, the economic impacts as reflected in this proposed 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 and Angling category effort controls in accordance with the processes established in the Consolidated HMS FMP, and is not expected to result in any inconsistency with other agency actions. Therefore, under E.O. 12866, the proposed action described in this document has 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 13.

8.0 INITIAL 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 Proposed Rule

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

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

This proposed action would apply to all participants in the Atlantic BFT fishery, all of which are considered small entities. As shown in Table 5, there are nearly 43,000 vessels that held an Atlantic HMS Charter/Headboat, Atlantic HMS Angling, or an Atlantic tunas permit as of December 31, 2008. 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 Proposed Rule, Including an Estimate of the Classes of Small Entities which will be Subject to the Requirements of the Report or Record

The proposed action does 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 Proposed Rule

This proposed 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 proposed alternatives would conflict with any relevant regulations, Federal or otherwise. Once the proposed 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 Proposed Rule that Accomplish the Stated Objectives of Applicable Statutes and that Minimize any Significant Economic Impact of the Proposed Rule on Small Entities

NMFS has prepared this IRFA to analyze the impacts on small entities of the alternatives for establishing 2009 fishing year BFT quotas for all domestic fishing categories and General and Angling category effort controls.

The IRFA 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 2009 BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories. As mentioned above, the 2006 ICCAT recommendation decreased the BFT quota allocation to 1,034.9 mt, to be distributed to the domestic fishing categories based on the allocation percentages established in the Consolidated HMS FMP. This quota allocation includes a 25-mt allocation to account for incidental catch of BFT related to directed longline swordfish and non-BFT tuna fisheries in the NED.

In 2008, the annual gross revenues from the commercial BFT fishery were approximately $5.0 million. Approximately 9,871 vessels are permitted to land and sell BFT under four commercial BFT quota categories (including charter/headboat vessels). The commercial categories and their 2008 gross revenues are General ($4.0 million), Harpoon ($313,781), Purse Seine ($0), and Longline ($722,016). The IRFA assumes that each vessel within a category will have similar catch and gross revenues to show the relative impact of the proposed action on vessels.

For the allocation of BFT quota among domestic fishing categories, NMFS analyzed a no action alternative and Alternative A2 (preferred alternative/proposed action) which would implement the 2008 ICCAT recommendation. NMFS considered a third alternative (A3) that would have allocated the 2008 ICCAT recommendation in a manner other than that designated in the Consolidated HMS FMP. Alternative A3 would result in a de facto quota reallocation among categories, and an FMP amendment would be necessary for its implementation. Per the Consolidated HMS FMP, NMFS prepares quota specifications annually for the upcoming fishing year. Preparation of an FMP amendment would not be possible in the brief period of time between receipt of the ICCAT recommendation, which occurred in late November 2008, and the start of the 2009 fishing year on January 1, 2009. Therefore, analysis of the impacts of Alternative A3 is not available. But, if an FMP amendment was feasible, positive economic impacts would be expected to result on average for vessels in permit categories that would receive a greater share than established in the FMP, and negative economic impacts would be expected to result on average for vessels in permit categories that would receive a lesser share than established in the FMP. Impacts per vessel would depend on the temporal and spatial availability of BFT to participants.

As noted above, Alternative A2 would implement the 2008 ICCAT recommendation in accordance with the Consolidated HMS FMP and consistent with ATCA, under which the United States is obligated to implement ICCAT-approved quota recommendations. The proposed action would implement this quota and have slightly positive impacts for fishermen. The no action alternative would keep the quota at pre-2008 ICCAT recommendation levels (approximately 155 mt more) and would not be consistent with the purpose and need for this action and the Consolidated HMS FMP. It would maintain economic impacts to the United States and to local economies at a distribution and scale similar to 2008 or recent prior years, and would provide fishermen additional

fishing opportunities, subject to the availability of BFT to the fishery, in the short term. In the long term, however, as stock rebuilding is delayed, negative impacts would result.

The proposed action also would implement the provision of the 2008 ICCAT recommendation that limits school BFT landings to 10 percent of the U.S. TAC, calculated on a two-year average, over 2009 and 2010. This is expected to have neutral impacts to fishermen who fish for school BFT, particularly those who rely exclusively on the school size class for BFT harvest, as NMFS has successfully managed the school BFT fishery since the 2006 recommendation so as to not exceed the school BFT tolerance on an annual basis.

The proposed three fish retention limit (measuring 73 inches or above) is the preferred alternative for the opening retention limit for the General category, which would be in effect June 1-August 31, 2009. It is expected to result in the most positive socio-economic impacts by providing the best opportunity to harvest the quota while avoiding oversupplying the market, thus maximizing gross revenues. Other considered alternatives were the no action alternative (one BFT 73 inches or above per vessel) and a retention limit of two BFT (73 inches or above per vessel). Both of these alternatives are expected to be too restrictive given the large amount of quota available for the General category during the 2009 fishing year and could result in the negative economic impact of lower gross revenues. Although early season landings seldom occur at a rate that could oversupply the market, NMFS will monitor landings closely to ensure that the increased retention limit does not contribute to an oversupply.

Three alternatives were considered for Angling category retention limits for the 2009 fishing year. The preferred alternative/proposed action/no action alternative (C1) is a daily retention limit of one fish measuring 27 inches to less than 73 inches per vessel for all sectors of the Angling category for the entire 2009 fishing year. The other alternatives that would provide a constant daily retention limit is Alternative C2 (one fish measuring 27 inches to less than 47 inches and one fish measuring 47 inches to less than 73 inches per vessel). This is not the preferred alternative as it could result in overharvest of the quota, based on the results of the 2008 season and the apparent trend in increasing fish weight in the large school/small medium BFT size range. Alternative C3 (one fish measuring 27 inches to less than 47 inches and, for certain periods, one fish measuring 47 inches to less than 73 inches per vessel) would be designed to constrain large school/small medium BFT landings to the available subquota and would be more restrictive with regard to retention of this size class than Alternative C2. However, this is not the preferred alternative as it may not be effective in constraining the recreational landings to the adjusted large school/small medium BFT subquota and may not provide consistent and equitable fishing opportunities to all users. The proposed action (Alternative C1) was selected to balance the intent of landing the Angling category quota without overharvesting and providing economic benefits to all regional sectors of the fishery.

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 Consolidated HMS FMP and updated in the 2008 SAFE Report. 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 and Brielle/Point Pleasant, NJ; Hatteras, NC; Wanchese, NC; and Venice and Dulac, LA.

The impacts of the proposed action will be minor in all of these communities. The action to provide the 2008 ICCAT recommended quota decreases potential fishing opportunities (and positive economic impacts) relative to quota levels prior to the 2006 ICCAT recommendation. However, in the long-term, these lower quotas may increase the likelihood of a sustainable fishery in the future. The retention limits for the General and Angling categories would allow for reasonable opportunities to harvest these quotas, and providing the alternatives for consideration would allow increased public participation in the management process.

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, as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act, and as set forth in the 50 CFR part 600 NS Guidelines.

This proposed 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 proposed action is based on the results of the 2008 ICCAT recommendation, it 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).

This proposed action does not discriminate against fishermen in any state (NS 4) nor does it alter the efficiency in utilizing the resource (NS 5). With regard to NS 6, the proposed action takes into account any variations that may occur in the fishery and the fishery resources. Additionally, NMFS considered the costs and benefits of these management measures economically and socially under NSs 7 and 8 in Sections 4, 5, and 6 of this document. The proposed action would minimize BFT bycatch to the extent practicable by reducing dead discards, accounting for dead discards taken in the pelagic longline fishery, and accounting for incidentally caught BFT in the NED against an ICCAT allowance quota (NS 9). Finally, the proposed action would not require fishermen to fish in an unsafe manner (NS 10).

10.2 Paperwork Reduction Act

The proposed 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 LIST OF PREPARERS

This EA/RIR/IRFA was prepared by Sarah McLaughlin, Brad McHale, Mark Murray-Brown, and Margo Schulze-Haugen 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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12.0 LIST OF AGENCIES AND PERSONS CONSULTED

Discussions relevant to the formulation of the preferred alternatives/proposed action and the analyses for this draft EA/RIR/IRFA involved input from several NMFS components and constituent groups, including: NMFS Southeast Fisheries Science Center, NMFS Northeast Regional Office, NMFS Office for Law Enforcement, NMFS Office of Science and Technology, and the members of the HMS AP (which includes representatives from the commercial and recreational fishing industries, environmental and academic organizations, state representatives, and fishery management councils). NMFS also has received numerous comments from individual fishermen and interested parties.

13.0 REFERENCES

NMFS. 1999. Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks. Highly Migratory Species Management Division, Silver Spring, MD.

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SCRS. 2008. Report on the Standing Committee on Research and Statistics, ICCAT Standing Committee on Research and Statistics, September 29-October 3, 2008.

14.0 TABLES AND FIGURES

Table 1. Atlantic Bluefin Tuna Adjusted Quotas and Landings (metric tons) by Category for the 2008 Fishing Year (January 1- December 31, 2008) as of January 13, 2009.

Category	Adjusted Quota	Landings
General	740	230
Harpoon	61.2	22
Longline	72.3	82
Trap	1.6	2
Purse Seine	292.2	0
Angling	309.5	436
Total	**1476.8**	**772**

2008 Fishing year landings figures (calculated as of January 13, 2009) are preliminary and subject to change. For the Angling category, landings were estimated using revised preliminary LPS information, reported trophy BFT landings, and North Carolina tagging program information. Commercial landings information is from the NERO dealer report database.

Table 2. Atlantic Bluefin Tuna Final Quota Specifications (in metric tons) for the 2009 Fishing Year (January 1-December 31, 2009)

Category (% share of baseline quota)	Baseline Allocation	Dead Discard Deduction	Adjustment to Baseline Quota[1]	Final 2009 Fishing Year Quota
Angling (19.7)	199.0 SUBQUOTAS: School 103.5 Reserve 19.1 North 39.8 South 44.5 Lg. Sch/Sm. Med 90.9 North 42.9 South 48.0 Trophy 4.6 North 1.5 South 3.1		61.6	260.6 SUBQUOTAS: School 103.5 Reserve 19.1 North 39.8 South 44.5 Lg. Sch/Sm. Med 151.1 North 71.3 South 79.8 Trophy 6.0 North 2.0 South 4.0
General (47.1)	Total: 475.7 SUBQUOTAS: Jan 25.2 Jun-Aug 237.8 Sept 126.1 Oct-Nov 61.8 Dec 24.7		147.4	623.1 SUBQUOTAS: Jan 33.0 Jun-Aug 311.5 Sept 165.1 Oct-Nov 81.0 Dec 32.4
Harpoon (3.9)	39.4		12.2	51.6
Purse Seine (18.6)	187.8		58.2	246.0
Longline (8.1)	81.8 SUBQUOTAS: North (-NED) 32.7 NED 25.0[3] South 49.1	-90.0	82.5[2]	74.3 SUBQUOTAS: North (-NED) 29.7 NED 25.0[3] South 44.6
Trap (0.1)	1.0		0.3	1.3
Reserve (2.5)	25.2		155.2[4]	180.4
Total (100)[5]	1,009.9	-90.0	517.5	1,437.4

(1) The distribution of 517.5 mt of underharvest (per ICCAT recommendation) to the quota categories is consistent with FMP allocations, after considerations as calculated below for the Longline category and the Reserve.
(2) Adjustment to Longline category quota is intended to provide sufficient quota for the 2009 fishing year. Proposed Longline category quota=81.8-90.0+82.5=74.3. Dead discard deduction consistent with § 635.27(a)(10).
(3) 25 mt to account for bycatch of BFT in directed longline fisheries in the NED. Not included in total baseline allocation, which is allocated according to the category percentages contained in the Consolidated HMS FMP.
(4) Allocation of 15% of the TAC (155.2 mt) to the Reserve for potential ICCAT transfer and other domestic management objectives.
(5) Totals are subject to rounding error.

Table 3: Comparison of the allocations under the two analyzed quota alternatives (Alternatives A1 and A2).

	Quota Alternative A1	Quota Alternative A2
ICCAT Recommendation	2006	2008
Allocation scheme	Consolidated HMS FMP	Consolidated HMS FMP
Western Atlantic Total Allowable Catch (TAC)	2,100 mt	1,900 mt
Annual Total U.S. TAC	1,190.12 mt	1,034.9 mt
Northeast Distant gear restricted area (NED) set-aside (for use by Longline category)	25 mt	25 mt
Baseline Annual U.S. TAC	1,165.12 mt	1,009.9 mt
Suballocations:		
Angling category	229.5 mt	199.0 mt
General category	548.8 mt	475.7 mt
Harpoon category	45.4 mt	39.4 mt
Purse Seine category	216.7 mt	187.8 mt
Longline category	94.4 mt	81.8 mt
Trap category	1.2 mt	1.0 mt
Reserve	29.1 mt	25.2 mt

Table 4a: Angling category BFT adjusted quotas, estimated landings, and daily retention limits, 2007-2008

	2007		2008		2009
	Adjusted Quota	Landings	Adjusted Quota	Landings	Adjusted Quota
School	119	155.2	119	54.6	103.5
Large school/Small medium	144	351	183.4	381.5	151.1
Large Medium/Giant	6.2	1.2	7.1	1.0	6.0
Total	269.2	507.4	309.5	437.1	260.6
	Daily retention limit: 1 school BFT and 2 large school/small medium BFT		Daily retention limit: 1 school BFT and 1 large school/small medium BFT		See alternatives in Table 4b

2008 Fishing year landings figures (calculated as of January 13, 2009) are preliminary and subject to change. Landings were estimated using preliminary LPS information and reported trophy BFT landings. North Carolina tagging program information not included in this draft (2007 landings represent 10 mt or less); 2008/2009 NC report not yet available.

Table 4b: Summary of alternatives: Angling category BFT retention limits (per vessel per day/trip), proposed to apply through December 31, 2009, unless otherwise noted.

	Private vessels and Charter/Headboats	
Alternative	School (27-<47")	Large school/ Small medium (47-<73")
C1*	1	
C2	1	1
C3	1	1 during specific periods (date ranges) TBD

* Proposed action

Table 5: 2007/2008 Atlantic HMS and Atlantic tunas permits as of December 31, 2008.

Category	Number of Permits
General	4,721
Harpoon	26
Purse Seine	5
Incidental Longline/Trap	292
HMS Angling (Recreational)	32,938
HMS Charter/Headboat	4,827
Total	42,809

Due to the change to a calendar year fishing year that started on January 1, 2008, permits issued for the 2007 fishing year (June 1 –December 31, 2007) were effective through December 31, 2008.

Data Source: Atlantic HMS/Tunas Permit Database

Table 6: BFT landings (metric tons) by year and category, 1996 to 2008 (2008 fishing year landings as of January 13, 2009).

Category	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
General	575	679	706	714	725	933	898	595	344	234	160	122	230
Harpoon	58	53	60	59	53	68	41	53	30	23	22	12	22
Purse Seine	245	250	248	247	275	196	208	265	32	178	4	28	0
No. Longline	21	20	23	17	12	8	8	25	34	29	28	26	48
So. Longline	43	27	24	51	51	28	48	69	58	28	38	9	34
Trap	1	2	1	0	0	0	0	0	0	0	0	0	2
Angling	362	299	184	100	50	241	619	392	355	199	187	507	436
Total	**1,305**	**1,330**	**1,246**	**1,188**	**1,166**	**1,484**	**1,822**	**1,399**	**853**	**691**	**439**	**704**	**772**

The BFT fishery was managed on a fishing year basis (June through May) versus a calendar year basis (January through December) starting with the implementation of the 1999 FMP in 2000 until January 2008, when management reverted to a calendar year basis. Landings are presented on a calendar year (versus fishing year) basis for 1996 through 1999, and for 2008. The 2007 fishing year was June 1, 2007-December 31, 2007.

2008 Fishing year landings figures (calculated as of January 13, 2009) are preliminary and subject to change. For the Angling category, landings were estimated using revised preliminary LPS information, reported trophy BFT landings, and North Carolina tagging program information. Commercial landings information is from the NERO dealer report database.

Table 7. 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	*June-November*
		Medium	*August-October*
		School	*Summer (unpredictable)*
	Cape Lookout to Cape Cod	School	*June-October*
		Medium	*June-October*
		Large Medium and Giant	*December-March*
	Gulf of Mexico	Giant	*January-June*
Purse Seine	Cape Hatteras to Cape Cod	Large Medium and Giant	*July-October*
	Cape Cod Bay	Large Medium and Giant	*July-October*

Table 8: General category landings of BFT before and after November 15, 1996-2008 (2008 fishing year data as of January 13, 2009).

Year	Before November 15		November 15 and After	
	Metric Tons	Percentage of Total	Metric Tons	Percentage of Total
2008	207.4	90	23.3	10
2007	100.6	77	30.6	33
2006	105.7	66	55	34
2005	166.1	71	67.7	29
2004	251.0	73	93.2	27
2003	486.9	82	108.1	18
2002	824.7	92	73.2	8
2001	894.8	96	38.1	4
2000	677.5	93	47.4	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	**491.5**	**92.2**	**41.6**	**7.8**

The BFT fishery was managed on a fishing year basis (June through May) versus a calendar year basis (January through December) starting with the implementation of the 1999 FMP in 2000 until January 2008, when management reverted to a calendar year basis. Landings are presented on a calendar year (versus fishing year) basis for 1996 through 1999, and for 2008. The 2007 fishing year was June 1, 2007-December 31, 2007.

Data Source: 1996-2008 BFT Dealer Report Database

Table 9: Comparison of Impacts of Alternatives

Alternative	Ecological Impacts on BFT	Ecological Impacts on other fish species	Protected Species	Economic Impacts	Social Impacts	Administrative/ Legal/EJ/CZMA Considerations
Issue 1: BFT QUOTA ALLOCATION						
A1. No Action	Negative. Distributes quota according to 2006 ICCAT Rebuilding plan. Higher mortality inconsistent with current rebuilding plan.	No change in fishing patterns and no increase in effort	No change in fishing patterns and no increase in effort	Positive in the short term, due to greater potential gross revenues. Negative in the long term as stock rebuilding is delayed.	Overall positive in the short term. Provides fishing opportunities similar to 2008 level. Negative in the long term as stock rebuilding is delayed.	Inconsistent with the 2008 ICCAT Recommendation and ATCA
A2. Allocate TAC in accordance with 2008 ICCAT recommendation and Consolidated HMS FMP **(PREFERRED)**	Positive. Consistent with BFT rebuilding plan. Reduction of U.S. allocation by 155 mt expected to result in lower direct BFT fishing mortality.	No change in fishing patterns and no increase in effort	No change in fishing patterns and no increase in effort	Slightly positive, but lower than A1 due to decreased opportunities. Depends on ability of vessels to harvest quota.	Overall positive. Provide additional long-term fishing opportunities by rebuilding the fishery.	Consistent with ATCA, ICCAT 2008 Rec. and Consolidated HMS FMP. Estimated to end overfishing by end of 2010.
A3. Allocate TAC in accordance with 2008 ICCAT recommendation but not Consolidated HMS FMP	Not Analyzed	Not Analyzed	Not Analyzed	Not Analyzed	Not Analyzed	Not Analyzed
Issue 2: EFFORT CONTROLS						
GENERAL CATEGORY DAILY RETENTION LIMIT						
B1. No Action: Initial General category retention limit of one BFT (73"+) per vessel	Neutral	Neutral	Neutral	Negative; lowest gross revenues	Overall negative because of economic impacts	Retention limits can be increased using inseason action(s), if necessary
B2. A two BFT (73"+) initial General category retention limit per vessel	Neutral	Neutral	Neutral	More positive than B1; would increase gross revenues	More positive than B1 because of economic impacts	Retention limits can be liberalized or reduced using inseason action(s), if necessary
B3. A three BFT (73"+) initial General category retention limit per vessel **(PREFERRED)**	Neutral	Neutral	Neutral	Most positive; best alternative to maximize gross revenues	Most positive because of economic benefits	Retention limits can be reduced using inseason action(s), if necessary (e.g., to avoid oversupplying the market)

ANGLING CATEGORY DAILY RETENTION LIMIT						
C1. No Action: Initial Angling category retention limit of one 27-<73" BFT/ vessel **(PREFERRED)**	Neutral	Neutral	Neutral	Negative; lowest BFT retention opportunities; potential for underharvest of quota	Short-term negative because of economic impacts; facilitates planning; no perceived inequity between vessel types	Retention limits can be changed, if necessary, via inseason action(s)
C2. An Angling category retention limit of one 27-<47" BFT and one 47-<73" BFT/vessel	Neutral	Neutral	Neutral	Neutral relative to 2008 fishing year; provides more opportunity to harvest quota and; may be sufficient to offset costs	Neutral relative to 2008 fishing year; facilitates planning; no perceived inequity between vessel types	Retention limits can be changed, if necessary, via inseason action(s)
C3. An Angling category retention limit of one 27-<47" BFT and, for certain periods, one 47-<73" BFT/vessel	Neutral	Neutral	Neutral	Mixed; positive because of greater retention opportunities than default limit; may be sufficient in some areas to offset costs; negative because of risk of quota overharvest and NMFS' administrative costs associated with issuing reminder notices	Short-term negative because of economic impacts and confusion regarding daily retention limits could lead to non-compliance; however, facilitates planning and would not result in perceived inequity between vessel types	Retention limits can be changed, if necessary, via inseason action(s)

Table 10: Ex-vessel average price (per lb, round weight) for BFT by commercial fishing category, 1996-2008 (2008 fishing year data as of January 13, 2009).

Category	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
General	8.71	7.13	5.01	6.53	8.62	6.78	6.12	5.17	6.77	7.40	7.60	7.82	8.44
Harpoon	7.69	8.06	5.70	8.57	6.42	6.57	5.97	5.88	6.04	5.51	5.45	5.98	6.36
Incidental (Longline/Trap)	4.62	4.90	4.85	5.15	5.36	5.08	4.40	4.52	4.27	3.80	4.84	4.98	4.78
Purse Seine	8.61	8.33	5.78	6.36	6.58	6.17	5.79	4.01	4.73	2.73	4.28	7.31	--

Prices contained in the table reflect calendar year averages. The BFT fishery was managed on a fishing year basis (June through May) versus a calendar year basis (January through December) starting with the implementation of the 1999 FMP in 2000 until January 2008, when management reverted to a calendar year basis. Prices are presented on a calendar year (versus fishing year) basis for 1996 through 1999, and for 2008. The 2007 fishing year was June 1, 2007-December 31, 2007.

Prior to the 2007 BFT specifications, NMFS reported values as converted to 1996 dollars (using the Consumer Price Index Conversion Factors). In this table, all prices are presented as nominal dollars, consistent with methods used in the Consolidated HMS FMP.

There were no Purse Seine landings in 2008.

Data Source: 1996-2008 BFT Dealer Report Database

Table 11: Average monthly prices (per lb, round weight) for Atlantic bluefin tuna in the General Category, 1996-2008 (2008 fishing year data as of January 13, 2009).

Year	January	June	July	August	September	October	November	December
2008	$11.20	$4.86	$6.63	$7.37	$7.96	$8.87	$6.65	$14.24
2007	$10.01	$5.80	$5.77	$6.54	$7.36	$9.16	$11.57	$8.66
2006	$10.07	$4.15	$7.35	$6.36	$6.17	$7.54	$7.82	$8.27
2005	$9.84	$4.77	$6.28	$6.69	$6.29	$6.75	$7.51	$8.58
2004	$6.89	$6.08	$5.68	$5.00	$6.39	$6.34	$8.01	$7.89
2003	--	$4.36	$6.62	$6.66	$6.13	$3.96	$7.15	$6.15
2002	--	$5.80	$6.54	$6.79	$4.85	$6.85	$4.66	$6.52
2001	--	$4.86	$7.20	$6.67	$7.19	$6.83	$5.52	--
2000	--	$8.44	$11.26	$8.40	$8.32	$7.96	$8.03	$10.65
1999	--	$5.50	$8.05	$6.27	$6.39	$6.12	--	--
1998	--	$7.04	$4.80	$4.62	$4.75	$5.86	$9.99	--
1997	--	$7.09	$6.66	$7.74	$7.03	$8.06	$7.00	$2.39
1996	--	$7.81	$7.86	$8.55	$8.33	$9.97	$15.26	--

Prior to the 2007 BFT specifications, NMFS reported values as converted to 1996 dollars (using the Consumer Price Index Conversion Factors). In this table, all prices are presented as nominal dollars, consistent with methods used in the Consolidated HMS FMP.

Data Source: 1996-2008 BFT Dealer Report Database

Table 12: Ex-vessel gross revenues in the U.S. Atlantic bluefin tuna fishery by commercial fishing category, 1996-2008 (2008 fishing year data as of January 13, 2009)

Year	General	Harpoon	Incidental (Longline/Trap)	Purse Seine	Total
2008	$3,975,244	$313,781	$722,016	--	$5,011,041
2007	$2,259,194	$160,845	$807,954	$451,390	$3,679,383
2006	$2,526,052	$265,951	$558,022	$33,819	$3,383,844
2005	$3,815,068	$268,815	$675,297	$1,124,305	$5,883,484
2004	$5,444,735	$381,593	$998,201	$333,066	$7,157,595
2003	$6,027,760	$658,832	$691,496	$2,346,137	$9,724,224
2002	$12,199,803	$518,822	$486,793	$2,673,090	$15,878,508
2001	$14,070,209	$964,945	$398,401	$2,667,004	$18,100,558
2000	$13,686,456	$751,034	$731,340	$3,992,422	$19,161,253
1999	$9,858,771	$1,116,712	$758,650	$3,457,119	$15,191,252
1998	$7,462,669	$715,752	$474,631	$3,161,708	$11,814,759
1997	$10,618,105	$900,108	$458,074	$4,581,837	$16,558,123
1996	$10,781,387	$919,717	$647,634	$4,445,852	$16,794,591

Revenues contained in the table reflect calendar year summaries. The BFT fishery was managed on a fishing year basis (June through May) versus a calendar year basis (January through December) starting with the implementation of the 1999 FMP in 2000 until January 2008, when management reverted to a calendar year basis. Revenues are presented on a calendar year (versus fishing year) basis for 1996 through 1999, and for 2008. The 2007 fishing year was June 1, 2007-December 31, 2007.

Prior to the 2007 BFT specifications, NMFS reported values as converted to 1996 dollars (using the Consumer Price Index Conversion Factors). In this table, all prices are presented as nominal dollars, consistent with methods used in the Consolidated HMS FMP.

There were no Purse Seine landings in 2008.

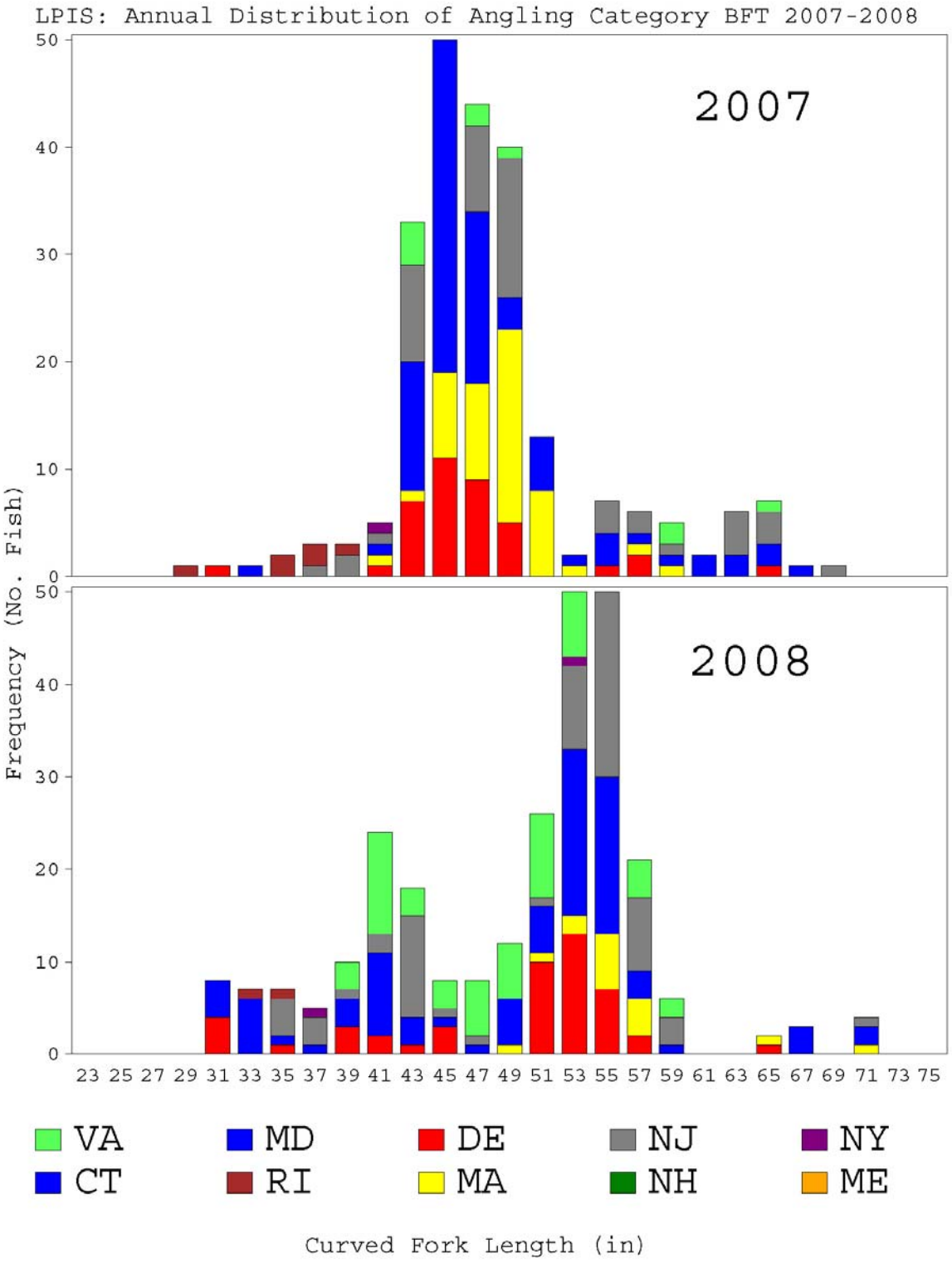
Data Source: 1996-2008 BFT Dealer Report Database

Table 13: 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 2008	Potential long-term cost of future reduced quota
A2. Implement ICCAT recommendation, including 25 mt for longline bycatch in NED **(PREFERRED)**	Less positive impacts than A1, but slightly positive net economic benefit from fishing per rebuilding plan	Opportunity cost of revenue foregone due to quota lower than that previously recommended by ICCAT recommendation
Issue 2: EFFORT CONTROLS		
GENERAL CATEGORY DAILY RETENTION LIMITS		
B1. No Action: Initial General category retention limit of one BFT (73"+) per vessel	Marginally positive if early season catch rates are very high; would avoid oversupplying market	Opportunity cost of revenue foregone if catch rates are similar to those of recent early seasons; would restrain ex-vessel revenues
B2. A two BFT (73"+) initial General category retention limit per vessel	Positive, by increasing ex-vessel gross revenues	Opportunity cost of revenue foregone if catch rates are similar to those of recent early seasons; would restrain ex-vessel revenues Potential costs resulting from oversupply of market if catch rates high, absent NMFS action to reduce retention limit
B3. A three BFT (73"+) initial General category retention limit per vessel **(PREFERRED)**	Most positive, by increasing ex-vessel gross revenues	Potential costs resulting from oversupply of market if catch rates high, absent NMFS action to reduce retention limit
ANGLING CATEGORY DAILY RETENTION LIMITS		
C1. No Action: Initial Angling category retention limit of one 27-<73" BFT/ vessel **(PREFERRED)**	Short-term negative because of reduced BFT retention opportunities but long-term positive impacts expected as the fishery rebuilds. Lowest risk of quota overharvest. Long-term positive impacts expected as the fishery rebuilds, including from increased recreational enjoyment of the resource.	Highest costs for charter/headboat because of lowest BFT retention opportunities. Greatest potential for underharvest of quota, but unlikely given recent fishery performance.
C2. An Angling category retention limit of one 27-<47" BFT and one 47-<73" BFT/vessel	Neutral relative to 2008. Provides highest retention limit among alternatives. Long-term positive impacts expected if the fishery rebuilds, including from increased recreational enjoyment of the resource.	Potential costs, including those associated with reduced ability to enjoy the resource, if quota is overharvested and subsequent year's quotas need to be reduced.

C3. An Angling category retention limit of one 27-<47" BFT and, for certain periods, one 47-<73" BFT/vessel	Short-term negative because of reduced BFT retention opportunities relative to 2008. Provides greater retention opportunities than C1 via a season that is adapted to fishery needs and based on public input. Long-term positive impacts expected as the fishery rebuilds, including from increased recreational enjoyment of the resource.	Potential costs for charter/headboats because of lower BFT retention opportunities relative to 2008. Potential costs, including those associated with reduced ability to enjoy the resource, if quota is overharvested and subsequent year's quotas need to be reduced. NMFS would incur administrative costs associated with issuing reminder notices

Figure 1: Distribution of Angling category BFT landings by size, 2007-2008



Source: NMFS Office of Science and Technology