

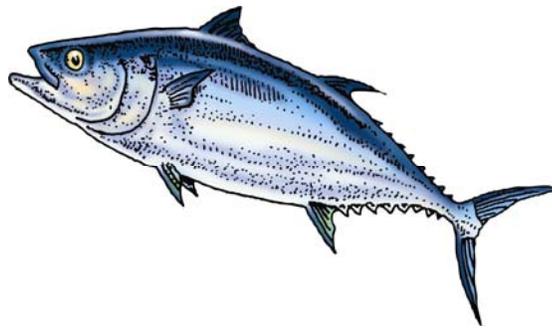
*Draft Supplemental Environmental Assessment,
Regulatory Impact Review,*

and

Initial Regulatory Flexibility Analysis

for the

Proposed 2010 Atlantic Bluefin Tuna Quota Specifications



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

November 2009

ABSTRACT

- Proposed Action:** Establish 2010 fishing year Atlantic bluefin tuna (BFT) quotas for all domestic fishing categories
- Type of statement:** Supplemental Environmental Assessment (SEA), 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 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 adjust the total U.S. BFT quota and subquotas for the 2010 fishing year based on the 2008 ICCAT recommendation for the western Atlantic bluefin tuna stock for 2010 (part of a two-year recommendation) and adjust the 2010 quotas for each category as necessary based on landings underharvests from 2009 (consistent with the ICCAT recommendation to cap carryover of underharvest at 50 percent of the overall quota). These measures would be consistent with the Consolidated HMS FMP, including the BFT rebuilding program.

DRAFT FINDING OF NO SIGNIFICANT IMPACT

Draft Finding of No Significant Impact for the 2010 Atlantic bluefin tuna (BFT) quota specifications

The Highly Migratory Species (HMS) Management Division of the Office of Sustainable Fisheries submits the attached Supplemental Environmental Assessment (SEA) for the Atlantic bluefin tuna fisheries for Secretarial review under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This document is a *supplemental* environmental assessment (EA) as the action would implement minor changes (a reduction of 57.5 mt) to the quotas implemented in the 2009 BFT Quota Specifications and Effort Controls (74 FR 26110, June 1, 2009) and analyzed in the Environmental Analysis/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) for that action. This SEA considers information contained in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), and was developed as an integrated document that includes a Regulatory Impact Review and Initial Regulatory Flexibility Analysis. The responses in the Finding of No Significant Impact statement are supported by the analyses in the SEA as well as in the other NEPA documents referenced. Copies of the SEA/Regulatory Impact Review/Initial Regulatory Flexibility Analysis are available at the following address:

Highly Migratory Species Management Division, F/SF1
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This action would adjust quotas for the 2010 fishing year based on:

- 1) the 2008 quota recommendation for the western Atlantic bluefin tuna stock for 2009 and 2010 by the International Commission for the Conservation of Atlantic Tunas; and
- 2) allocation of quota underharvest allowed to be carried forward from 2009 to 2010.

The 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 an action. In addition, the Council on Environmental Quality regulations at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of context and intensity. Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQs context and intensity criteria. These include: .

1. Can the action be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action?

No. The action is not expected to jeopardize the sustainability of BFT, which is the primary target species of fishing operations affected by this action. This action also affects incidental harvest of BFT in the pelagic longline fishery. Fishing patterns and behavior in these fisheries are not expected to change as a result of this action.

In this action, NMFS would implement the annual U.S. BFT quota in the western Atlantic management area of 977.4 mt for 2010, a decrease of 57.5 mt from the previous quota of 1,034.9 mt, which was analyzed in the original 2009 EA for the 2009 BFT specifications and effort controls (May 2009, hereafter referred to as the “parent EA”). The action includes an annual allocation of 25 mt to account for incidental catch of BFT by pelagic longline vessels fishing in the Northeast Distant Area (NED), and would adjust the 2010 fishing category quotas consistent with the 2008 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) (ICCAT Recommendation 08-04) and the 2006 Consolidated HMS FMP (NMFS 2006b). Because the recommended quota is consistent with ICCAT’s western BFT rebuilding plan that is intended to end overfishing, the action is not expected to jeopardize the sustainability of BFT. Further, the action implements a reduction in quota of 57.5 mt from the action analyzed in the parent EA, which was determined by NMFS to have no significant impact on the human environment, and not to jeopardize the sustainability of BFT.

The parent EA was prepared for the June 1, 2009 final rule (74 FR 26110) implementing 2009 BFT quota specifications and General and Angling category effort controls. As stated in the FONSI for the parent EA this SEA also incorporates the analyses and conclusions contained in the Final Environmental Impact Statement (FEIS) associated with the 1999 HMS FMP (64 FR 29090, May 28, 1999), and the Consolidated HMS FMP (71 FR 58058, November 1, 2006), which outlines the analytical and regulatory process for establishment of quota specifications via annual framework actions.

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

No. The action is not expected to jeopardize the sustainability of any non-target fish species or bycatch because it is expected to result in a decrease in fishing effort compared to 2009 levels. The impact of the effort for the 2009 fishing year, as analyzed in the parent EA, was not expected to jeopardize the sustainability of any non-target species. The overall base quota for 2010 would be 5.6 percent less than implemented for 2009, and each of the proposed subquotas would be slightly less than 2009 levels; therefore, a slight reduction in overall effort relative to the 2009 level could be expected. Additionally, in the last several years, commercial effort and landings have greatly declined because of decreased availability of BFT and other factors.

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 account for 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. NMFS has already implemented rebuilding plans, as appropriate, and fishing controls for the primary non-target species.

Handgear and purse seine gear fisheries actions, 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. The analyses in the 2001 & 2004 BiOps were relevant for the Consolidated HMS FMP, which serves as the baseline FEIS for annual BFT specifications. The parent EA (2009 BFT Quota Specifications and Effort Controls) analyzed a reduction in quota that was not expected to significantly alter fishing patterns and/or behavior, and therefore was within the scope of the previous BiOps. Likewise, the small reduction in quota from this action is not expected to significantly alter fishing patterns and/or behavior, and therefore should not have adverse impacts on non-target species beyond those considered in the parent EA, 2001 and 2004 BiOps and the Consolidated HMS FMP.

Goals of the Consolidated HMS FMP include implementing rebuilding plans, minimizing bycatch and bycatch mortality for overfished stocks, and managing healthy stocks for 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), and this action would not change any of the bycatch measures in place under the Consolidated HMS FMP, or the effectiveness of those measures. 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. The response to Question 4, below, summarizes the finding that marine mammals and ESA-listed species' sustainability would not be jeopardized by this action.

3. Can the action be reasonably 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?

No, this action is not expected to cause substantial damage to the ocean and coastal habitats and/or EFH, as defined under the Magnuson-Stevens Act. The parent EA concluded that there would not be any substantial damage to the ocean, coastal habitats, or EFH from the 2009 BFT Quota Specifications and Effort Controls. Although EFH is present in the action area, because this action implements a 57.5 mt reduction in annual quota for the BFT fishery, it is not expected to change BFT fishing patterns or impacts on EFH from those analyzed in the parent EA, or to allow substantial damage to ocean and coastal habitats and/or EFH. As discussed in Chapter 10 of the Consolidated HMS FMP, the primary fishing gears used to harvest BFT (hook and line and purse seine) are fished in the water column and have little impact on coastal resources or bottom substrate. Water column features also are identified as EFH; as supported by the 2009 BFT Quota Specifications EA, 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, and this action would not have adverse impacts to EFH.

4. Can the action be reasonably expected to have a substantial adverse impact on public health and safety?

No. The parent EA for the 2009 BFT Quota specifications and effort controls concluded that the 2009 action was unlikely to have substantial adverse impacts on public health and safety. The small reduction in quota implemented by this action would not change this conclusion. Fishing practices or behavior would not change significantly, although the amount of 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. Because the action would not change the current fishery practices, no significant effects to public health and safety are anticipated from its implementation.

5. Can the 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. As supported by the parent EA for the 2009 BFT Quota Specifications, implementation of reasonable and prudent alternatives, reasonable and prudent measures and terms and conditions of those BiOps is underway, and this action is covered by the scope of those BiOps. The parent EA concluded that the 2009 BFT Quota Specifications and Effort Controls would not be reasonably expected to adversely affect endangered or threatened species, marine mammals, or critical habitat. This action would implement an overall BFT quota 5.6 percent less than the 2009 level, and 34 percent less than the 2004 level (1,489.6 mt). Therefore, a reduction in overall effort relative to the level at the most recent consultation could be expected, with the potential for a slight decrease in endangered or threatened species, marine mammals, and habitat interactions. The measures in these 2010 quota specifications are not expected to significantly alter current fishing practices or bycatch mortality rates from the level analyzed in the parent EA, and therefore should not have adverse impacts on protected species, or have any further impacts on endangered species, listed marine mammals, or critical habitat beyond those considered in the 2001 and 2004 BiOps. In addition, the interactions with non-listed marine mammals are managed in accordance with the MMPA "List of Fisheries" categories for each appropriate sector (including pelagic longline incidental catch of BFT), and this action is not anticipated to change the effort in these fishery sectors in any manner that would increase the potential for interaction with non-listed marine mammals as previously analyzed in the Consolidated HMS FMP.

6. Can the final 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.)?

No. The parent EA concluded that the 2009 Quota Specifications and Effort Controls was not expected to have a significant impact on biodiversity and ecosystem function within the affected area, because the action was not expected to change fishing practices, and/or interactions with non-target and endangered or threatened species. The parent EA also concluded that the 2009

action would not likely affect unique geographic areas or introduce or spread non-indigenous species. The same conclusions and reasons apply in this action since it would implement a small reduction in quota.

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

No. There are no significant natural or physical environmental effects associated with the action and no significant social or economic impacts interrelated with natural or physical environmental effects that would result from the action. The action is expected to have some short-term negative socio-economic impacts due to the decrease in quota and subquotas for 2010 relative to 2009 although actual impacts will depend on BFT availability to the various fishing gears. In the long-term, positive social and economic impacts can be expected as the fishery rebuilds. Further, the action is necessary to implement the ICCAT-recommended U.S. quota and is consistent with the ICCAT recommendation regarding the 10-percent tolerance of BFT measuring less than 115 cm (45 inches) and other management measures. See Section 6 of this document for an analysis of the predicted economic impacts to the BFT fishery and small business entities.

8. To what degree are the effects on the quality of the human environment expected to be highly controversial?

The effects of this action on the human environment are not expected to be highly controversial. The parent EA concluded that implementation of the 2009 BFT Quota specifications and effort controls was not likely to be highly controversial. The action covered by this SEA would slightly decrease the BFT quota specifications for 2010, which is also not expected to be highly controversial. The purpose of the quota specifications is to allocate the annual quota recommended by ICCAT to U.S. quota categories, and allocate overages or underages from previous years, which is usually not a highly controversial issue. The percentage shares assigned to each quota category which established the basis for this action were determined in the 1999 HMS FMP and associated FEIS.

9. Can the action 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. This action would not 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 because fishing effort would occur in open areas of the ocean. In addition, there is no park land, prime farmlands, wetlands, or wild and scenic rivers within the action area so there would be no adverse impacts on these 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 FEIS and in the 2009 BFT Specifications EA. None of the previous actions resulted in highly uncertain effects or unique or unknown risks. This action would allocate the 2010 ICCAT-recommended BFT quota consistent with the FMP and other ICCAT recommendations.

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

No. The proposed action is not expected to have additional impacts to those analyzed in the FEIS and the parent EA for the 2009 BFT Quota specifications and effort controls. There are no significant cumulative impacts associated with this action in combination with other past, present, or reasonable foreseeable future actions. This action would implement the 2008 ICCAT recommendation for BFT (made for 2009 and 2010) for the 2010 fishing year, and it would adjust the 1998 ICCAT BFT rebuilding plan originally implemented by NMFS in the 1999 FMP and analyzed in the associated FEIS and the FEIS for the Consolidated HMS FMP.

A proposed rule to provide a modest increase in fishing opportunities within the existing U.S. BFT quota and specifically the General and Harpoon category subquotas was published on November 4, 2009 (74 FR 57128). Because these categories have been underharvesting their allocated sub-quota of large medium and giant BFT for several years, the action proposes to increase the General category maximum daily retention limit and to allow the full January General category subquota to be reached, and to increase the Harpoon category daily incidental retention limit. The purpose of the action is to enable more thorough utilization of the available U.S. quota, while ending BFT overfishing by 2010, rebuilding the BFT stock by 2019, and minimizing bycatch and bycatch mortality to the extent practicable. There would not be any cumulative significant impacts from this action and the action covered by this FONSI. NMFS regulations provide tools for the agency to manage quota attainment during the season. Further, any quota overages or underages that might occur during the fishing year could be addressed in the BFT quota specifications for 2011.

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 and would be consistent with the rebuilding plan. Likewise, all actions in this rule are consistent with those proposed and consulted over in previous Biological Opinions issued under the Endangered Species Act.

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

No. The management measures would occur in inshore and offshore waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea and would not occur in any areas listed or eligible for listing in the National Register or Historic Places, and would not cause loss or destruction of significant scientific, cultural or historical resources because there are no significant scientific, cultural or historic resources within the action area.

13. Can the action reasonably be expected to result in the introduction or spread of a non-indigenous species?

No. The parent EA for the 2009 Quota specifications concluded that the 2009 action would not reasonably be expected to result in the introduction or spread of non-indigenous species. The current action is also consistent with that conclusion. The current action would reduce the annual BFT quota by 56 mt and would not result in any change to fishing patterns previously analyzed in the parent EA and FEIS for the Consolidated HMS FMP and 1999 FMP. Most vessels in the directed bluefin tuna fishery are small day boats that return to port each night and do not travel between ecologically different bodies of water or exchange ballast water.

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

No. The issuance of BFT fishing specifications is a routine procedure which occurs on an annual basis and is consistent with ICCAT's 2008 U.S. quota recommendation and the Consolidated HMS FMP. 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 set precedent or represent a decision in principle about future considerations. The management measures in this action would be in place from the effective date (expected to be in late January 2010) until December 31, 2010. A separate action would be taken to establish the 2011 BFT quota specifications and would not be dependent on this proposed action.

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

No. The action would be consistent with the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, and the regulations at 50 CFR 635. NMFS has preliminarily determined that the action would be implemented in a manner consistent 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. The proposed action would not be expected to violate any Federal, state, or local law or requirement imposed for the protection of the environment.

16. Can the action reasonably be expected to result in cumulative adverse effects that could have substantial effect on the target species or non-target species?

No. 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 would implement the 2008 ICCAT BFT recommendation for the United States and would be consistent with ongoing implementation of ICCAT's rebuilding plan for western Atlantic BFT and the objectives of the Consolidated HMS FMP as analyzed in the HMS FMP FEIS. No increase in fishing effort or change in current fishing practices is expected relative to recent fishing years; rather, a slight decrease is anticipated. 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 attached SEA prepared for the 2010 BFT Quota Specifications (and in the FEIS for the Consolidated HMS FMP), it is hereby determined that this action would not significantly impact the quality of the human environment as described above and in the SEA. In addition, all impacts to potentially affected areas, including national, regional and local, have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.

DRAFT

Alan D. Risenhoover
Director, Office of Sustainable Fisheries, NOAA

Date

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**Supplemental Environmental Assessment/Regulatory Impact Review/
Initial Regulatory Flexibility Analysis
for the 2010 Atlantic Bluefin Tuna Quota Specifications**

Section 1 Introduction

The 2010 Atlantic bluefin tuna quota (BFT) specifications would adjust quotas for the 2010 fishing year based on (1) the 2008 quota recommendation for the western Atlantic bluefin tuna stock for 2009 and 2010 by the International Commission for the Conservation of Atlantic Tunas, and (2) allocation of quota underharvest allowed to be carried forward from 2009 to 2010. This rulemaking would make minor adjustments to U.S. BFT quota and subcategory base quotas established in the 2009 BFT Quota Specifications and Effort Controls (74 FR 26110, June 1, 2009) and analyzed in its accompanying Environmental Analysis/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA).

Purpose and Need for the Action

Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and of the Atlantic Tuna Conventions Act (ATCA), which authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement recommendations of International Commission for the Conservation of Atlantic Tunas (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. 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 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), which included slightly modified framework provisions.

This action is necessary to implement the 2008 ICCAT recommendation as necessary and appropriate pursuant to ATCA and to achieve domestic management objectives under the Magnuson-Stevens Act, including rebuilding stocks and ending overfishing. The objective of this action is to implement the 2008 ICCAT recommendation and distribute the U.S. BFT quota (adjusted for underharvest) among domestic fishing categories.

At its 2008 meeting, ICCAT recommended a reduction from the 2,100-mt western Atlantic BFT Total Allowable Catch (TAC) to 1,900 mt for 2009 and 1,800 mt for 2010 (including dead discards) (ICCAT Recommendation 08-04). These TACs are intended to end overfishing, as defined by the Magnuson-Stevens Act. From these TACs, the following allocations were made: 4 mt for the United Kingdom (in respect of Bermuda), 4 mt for France (in respect of St. Pierre and Miquelon), 95 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. These allocations are subtracted from the TAC (resulting in an ‘adjusted TAC’); the adjusted TAC is allocated to certain ICCAT contracting parties. The resulting U.S. share of the adjusted TAC is 57.48 percent, or 1,009.9 mt for 2009 and 952.4 mt for 2010; the latter is the *baseline* annual U.S. BFT quota analyzed in this Supplemental EA. Accounting for the 25-mt NED allocation, the *total* U.S. quota was 1,034.9 mt for 2009 and is 977.4 mt for 2010 (i.e., a decrease of 57.5 mt or 5.6 percent from the 2009 total U.S. quota).

The current ICCAT recommendation also maintains a provision allowing a contracting party with an ICCAT allocation (i.e., a quota) 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. Further, as a method for limiting fishing mortality on juvenile BFT, ICCAT has recommended a tolerance limit on the annual harvest of BFT measuring less than 115 cm to no more than 10 percent of the total bluefin quota per contracting party over the 2009-2010 period. The United States implements this provision by limiting the harvest of school BFT (measuring 27 to less than 47 inches) as appropriate to not exceed the 10-percent limit over the 2-year period.

Because BFT quotas and allocations are codified in the HMS regulations at § 635.27, a regulatory amendment is necessary to modify the baseline U.S. quota from 1,009.9 mt to 952.4 mt 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.

Note that the Consolidated FMP is an integrated document that included a Final Environmental Impact Statement (FEIS). That FEIS evaluated the management program structure for annual BFT quota management, and as one of the preferred alternatives (later selected as part of NMFS decision implemented on October 2, 2006 (71 FR 58058), analyzed the range of impacts of the annual BFT quota specification process in the Consolidated HMS FMP as opposed to a separate annual NEPA analysis). The final action specifies that analytical documents would accompany the annual BFT quota specifications only if the analyses associated with the Consolidated HMS FMP no longer applied (i.e., if ICCAT were to amend its recommendation regarding the total U.S. BFT quota). After reviewing the proposed action, NMFS has determined that the action described below falls within the purpose and need of the 2006 Consolidated HMS FMP, as well as the scope and effect of activities analyzed in the 2009 BFT Quota Specifications and Effort Controls EA/RIR/FRFA, except for the small change in impacts associated with a slightly reduced 2010 quota of 57.5 mt. Therefore, NMFS prepared a Supplemental Environmental Assessment (SEA)/RIR/IRFA to analyze those specific impacts related to the proposed action that are outside the scope of those analyzed in the parent 2009 EA.

NMFS plans to make daily retention limit adjustments, if and as needed for the 2010 fishing year, via Federal Register notices separate from the final specifications. Federal regulations at 50 CFR 635.23 allow the establishment and adjustment of General and Angling category retention limits via inseason actions, and NMFS has used inseason actions in the past for this purpose.

Section 2 Preferred Alternative: Description of Proposed Action

Consistent with how NMFS implemented the 2009 BFT Quota Specifications, NMFS is proposing to establish the 2010 U.S. baseline quota at the ICCAT-recommended level (Table 1) and to carry over the full amount of BFT underharvest allowed by ICCAT from the 2009 fishing year to the 2010 fishing year quota, and distribute that underharvest to: (1) ensure that the Longline category has sufficient quota to operate during the 2010 fishing year after the required accounting for BFT dead discards; (2) maintain 15 percent of the 2010 U.S. quota in Reserve for potential transfer to other ICCAT Contracting Parties and other domestic management objectives, if warranted; 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.

ICCAT Recommendation 08-04 limits the amount of unused quota a contracting party may carry over for 2010 to 50 percent of its total quota (488.7 mt for the United States). One provision of Recommendation 08-04 that is specific for 2010 involves an agreement between Canada, Mexico, and the United States. This portion of the recommendation states that Mexico will transfer a portion of its BFT underharvest to Canada such that Canada's initial allocation is 480 mt, and that if such a transfer results in an initial Canadian allocation of less than 480 mt, then a transfer of underharvest from the United States will be used to bring Canada's initial 2010 allocation to 480 mt. At this time there is no indication that Mexico will not be able to fulfill this agreement with Canada (i.e., no U.S. quota transfer is currently under consideration).

Although landings estimates will not be complete until the end of the calendar fishing year (i.e., December 31, 2009), NMFS is planning to set quotas to be effective on January 1, 2010, or when the final rule becomes effective if after that date. This planning is possible because, based on commercial landings reports through October 21, 2009, and anticipated recreational landings estimates for 2009 (based on recent annual estimates), NMFS anticipates a large amount of 2009 quota underharvest, i.e., an amount that exceeds the ICCAT limitation on the carryforward of unharvested quota. Thus, for the purposes of this proposed rule and for the reasons described above, NMFS assumes that the United States will be able to carry forward the full 488.7 mt to 2010.

The United States must report dead discard estimates to ICCAT annually and account for this mortality as part of the domestic specification calculation process. To be consistent with U.S. reports 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. 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. NMFS is applying the 2008 dead discard estimate as a proxy for the 2009 level as it is the best available and most complete information NMFS currently has regarding dead discards, and because no significant change to dead discards is expected for 2009.

Per the ICCAT recommendation, which specifies a U.S. quota that is inclusive of dead discards, and consistent with the BFT quota regulations at 50 CFR 635.27(a), NMFS proposes to subtract the 172.8 mt of estimated dead discards from the amount of quota available for the Longline

category for the 2010 fishing year (Table 2). NMFS proposes to apply 170.7 mt of the total underharvest to the pelagic longline fishery in anticipation of both landings (approximately 75 mt) and projected discards, and thus allow the fishery to plan for operations for the entire 2010 fishing year.

Further, the proposed action also would place 146.6 mt (i.e., 15 percent of the *total* U.S. quota of 977.4) of 2009 fishing year underharvest in the Reserve; and distribute the remainder of the potential quota carryover (171.4 mt) to the Angling, General, Harpoon, Purse Seine, and Trap categories consistent with allocations in the Consolidated HMS FMP.

No Action Alternative

Under this alternative, NMFS would not allocate the ICCAT-recommended 2010 quota among domestic fishing categories, defaulting to the 2009 quotas established in June 2009 (74 FR 26110, June 1, 2009). The preferred BFT quota alternative for the 2009 quota specifications serves as the “No Action” alternative in this action. The 2009 quotas and the 2007 and 2008 fishing levels serve as baseline conditions for comparison and analytical purposes with the preferred alternative. Because the 2009 fishery remains underway for all categories, information regarding number of participants, ex-vessel values, catch rates, etc. for 2009 is not yet complete. Although the total U.S. base quota for 2007 and for 2008 was 155.2 mt (15 percent) higher than for 2009 (Table 1), landings potentially could approximate the 2007 or 2008 level, as there was substantial quota underharvest in those years. This approach satisfies the NEPA requirement to consider alternatives to an action, including a “No Action” alternative.

This alternative would set the baseline quota for the 2010 fishing year at the 2009 level of 1,034.9 mt. Dead discards would be deducted and the full amount of allowed underharvest from 2009, i.e., 50 percent of the 2009 U.S. quota (517.5 mt) would be added. From the quota rolled forward, 15 percent of the U.S. total BFT quota (155.2 mt) would be added to the baseline amount of Reserve. The total adjusted quota for the 2010 fishing year under this alternative would be 1,462.4 mt. This alternative would be inconsistent with ATCA, the Consolidated HMS FMP, and implementing regulations, which require that quotas be set consistent with ICCAT recommendations.

Section 3 Affected Environment

Ecological resources that generally may be affected and benefited by this proposed action are described in Chapter 3 of the 2009 BFT Quota Specifications and Effort Controls EA/RIR/FRFA.

Section 4 Impacts of the Preferred Alternatives

Ecological Impacts

The preferred alternative would reduce the baseline quota by 57.5 mt from 2009 to 2010 in accordance with the Consolidated HMS FMP and the 2008 ICCAT recommendation. Overall, ecological impacts are expected to be minimal. The reduction in quota could have a slightly more positive ecological impact on BFT than the “No Action” alternative. The preferred alternative would be more consistent with the rebuilding plan and could be more likely to end

overfishing within 2 years. Likewise, the reduction in quota might result in a slight decrease in negative impacts to other nontarget species (including protected species) as a result of a potential slight decrease in fishing effort. However, the amount of quota decrease is not expected to significantly alter existing fishing patterns. Section 4.1 in the parent EA qualitatively describes the potential ecological impacts for a larger, but still relatively small, reduction in BFT quota allocation for a fishing year. In the parent EA, the preferred alternative resulted in a baseline quota reduction of 156.12 mt. compared to the “No Action” alternative in the parent EA. In the current action, the reduction in BFT quota allocation (57.5 mt) is smaller than that analyzed in the parent EA, and the impacts of a reduced quota would be expected to be less than those described in the parent EA, which were classified as “slight” in that document. Impacts to habitat for the preferred alternative are expected to be negligible since there is little habitat impact from the fishing gears used in this fishery. For further information on habitat, please see Section 4.3 in the parent EA and Chapter 10 in the Consolidated HMS FMP. For further information on protected species impacts, please see Section 4.4 of the parent EA and Chapter 4.5 of the Consolidated HMS FMP.

Social and Economic Impacts

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 low landings and availability of fish in the New England region in recent years (as discussed in Section 3.2 of the 2009 BFT Quota Specifications and Effort Controls EA/RIR/FRFA). Ex-vessel gross revenues for fishing years since implementation of the previous (2006) ICCAT recommended U.S. quota, were \$3.7 million in 2007 and \$5.0 million in 2008; ex-vessel value information for 2009 is not yet available.

The effect of allocations based on the new ICCAT-recommend baseline quota of 952.4 mt (the total U.S. quota minus the 25-mt NED allocation), 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 baseline BFT quota. Based on the 2008 ICCAT recommendation, the General category baseline allocation would decrease from the 2009 level by 27.1 mt for the 2010 fishing year. Using the average ex-vessel price per pound in round weight for the 2008 fishing year of \$8.44 (Table 3, which provides the most recent and complete annual price data from 2008), this would result in a decrease of \$504,245 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 2.3 mt for the Harpoon category, which is allocated 3.9 percent of the annual baseline quota, 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 \$32,249 to the ex-vessel gross revenues for the category as a whole. A reduction of 4.7 mt for the Longline category, which is allocated 8.1 percent of the annual baseline quota, 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 \$49,529 to the ex-vessel gross revenues for the category as a whole. However, the additional allocation 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 10.6 mt for the Purse Seine category, which is allocated 18.6 percent of the annual BFT baseline quota, 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 and for which average

annual price information is complete) was \$7.31, would result in a decrease of \$170,826 to the ex-vessel gross revenues for the category as a whole (from 2007). The proposed rule would not result in any change to the Trap category quota of 1.0 mt. Because the directed commercial categories have underharvested their subquotas in recent years, the potential decreases in ex-revenue above overestimate the probable economic impacts to those categories relative to recent conditions. Additionally, there has been substantial interannual variability in ex-vessel revenues per category in recent years due to recent changes in BFT availability and other factors. Generally, the interannual differences in ex-vessel revenues per category have been larger than the potential impacts described above.

The recreational Angling category quota, which is allocated 19.7 percent of the annual baseline quota, would decrease from 2009 to 2010 by 11.4 mt, and the school BFT subquota (which may be no more than 10 percent of the total U.S. quota) would decrease by 5.8 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 2007 and 2008 however, the full Angling category quota was 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.

Mitigation

Under the preferred alternative, NMFS would implement the 2008 ICCAT recommendation for 2010 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 is intended to have long-term positive ecological benefits and rebuild the fishery by 2019, the end of the 20-year BFT rebuilding period.

Impacts of the No Action Alternative

Ecological Impacts

The no action alternative in the current action is the same as the preferred alternative, also called Alternative A2, in the parent EA. Section 4.1 of the parent EA describes the ecological impacts of the no action alternative for the current action.

Social and Economic Impacts

Under the no action alternative, fishery participants would experience positive economic impacts on a scale similar to 2009 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 4); although the total U.S. base quota for 2007 and for 2008 was 155.2 mt (15 percent) higher than for 2009, there was substantial underharvest in those years. At this time, NMFS assumes that the full allowed amount of 2009 underharvest will be carried forward to 2010. However, more complete information on 2009 landings and underharvest will be available at the final rule stage (anticipated to be December 2009). Availability of BFT to the fisheries in 2010 also would influence realized revenues. The alternative would not significantly alter ex-vessel prices or costs or change economic benefits accrued at the 2007 through 2009 levels.

Comparison of Alternatives

Based on the analyses here, the No Action alternative would not have any ecological, social or economic impacts other than those already analyzed in the 2009 BFT Quota Specifications and Effort Controls EA/RIR/FRFA. The preferred alternative could have slightly positive ecological impacts because of the slight reduction in quota and potential slightly positive impacts to BFT rebuilding and nontarget species. The preferred alternative could have slightly negative economic impacts in the short term relative to the No Action alternative due to decreased opportunities, but the impacts would depend on the ability of vessels to harvest the quota, which in turn depends on BFT availability to the fisheries among other factors. Because the quota has been underharvested in recent years, a slight reduction in quota for 2010 should have little or no effect. Social impacts of the preferred alternative would be overall positive as rebuilding the BFT fishery would provide additional long-term fishing opportunities. The preferred alternative also would also be consistent with ATCA, the 2008 ICCAT BFT Recommendation, and the Consolidated HMS FMP.

Section 5 Cumulative Impacts

Cumulative impacts are the impacts on the environment, which results from the incremental impacts of the action when added to other past, present, and reasonably foreseeable future actions. A cumulative impact includes the total effect on a natural resource, ecosystem, or human community due to past, present, and reasonably foreseeable future activities or actions of federal, non-federal, public, and private entities. Cumulative impacts may also include the effects of natural processes and events, depending on the specific resource in question. Cumulative impacts include the total of all impacts to a particular resource that have occurred, are occurring, and would likely occur as a result of any action or influence, including the direct and reasonably foreseeable indirect impacts of a federal activity. The goal of this section is to describe the cumulative ecological, economic and social impacts of past, present and reasonably foreseeable future actions with regard to the management measures presented in this document.

A full cumulative impacts analysis was included in the 2009 BFT Quota Specifications EA (Section 4.8). Subsections particularly relevant to the 2010 quota specifications follow.

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 2010

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 action considered in this SEA/RIR/IRFA, regarding implementation of the 2008 ICCAT quota recommendation, is expected to have slightly negative social and economic impacts (due to the baseline quota reduction from the 2009 level). The 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. Therefore, the cumulative effects analyses presented in the HMS FMP EIS, as supported by the cumulative effects analysis in the 2001 BiOp and 2004 BiOps, is hereby incorporated by reference.

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. Table 5 summarizes the determinations made above regarding social and economic impacts of the alternatives considered.

On October 14, 2009, the United States announced support of a proposal submitted by Monaco to list Atlantic bluefin tuna in Appendix I of the Convention on the International Trade in Endangered Species of Wild Flora and Fauna (CITES), which would prohibit international trade of the species. The announcement, issued by the U.S. Fish and Wildlife Service, indicated that unless ICCAT takes effective action regarding the eastern Atlantic and Mediterranean stock (halting overfishing, strengthening management and compliance measures, etc.) at its November 2009 annual meeting, it would continue to support the proposed listing when the CITES proposal comes to a vote in March 2010. At this time, it is premature to discuss potential impacts of a proposed CITES Appendix I listing.

Section 6 Regulatory Impact Review

The Regulatory Impact Review (RIR) is conducted to comply with Executive Order 12866 (E.O. 12866) and provides analyses of the economic benefits and costs of each alternative to the nation and the fishery as a whole. The information contained in Section 5, taken together with the data and analysis incorporated by reference, comprise the complete RIR.

The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits should be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

E.O. 12866 further requires Office of Management and Budget review of proposed regulations that are considered to be “significant.” A significant regulatory action is one that is likely to:

- 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, local or tribal governments of communities;
- Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the president’s priorities, or the principles set forth in this Executive Order.

Description of Management Objectives

Please see Section 1 for a full description of the purpose and need for the proposed rule and SEA/RIR/IRFA for the 2010 BFT quota specifications. This action is necessary to implement the 2008 ICCAT recommendation as necessary and appropriate pursuant to ATCA and to achieve domestic management objectives under the Magnuson-Stevens Act, including rebuilding stocks and ending overfishing. The objective of this action is to implement the 2008 ICCAT recommendation and distribute the U.S. BFT quota (adjusted for underharvest) among domestic fishing categories.

Description of Fishery

Please see Section 3 of this SEA/RIR/IRFA and Section 3 of the 2009 BFT Quota Specifications and Effort Controls EA/RIR/FRFA for a description of fishery and environment that could be affected by this rulemaking.

Statement of the Problem

Please see Section 1 for a full discussion of the problem and need for this management action. The proposed management measures are designed to implement the 2008 ICCAT BFT recommendation for the 2010 fishing year, as necessary and appropriate pursuant to ATCA and to achieve domestic management objectives under the Magnuson-Stevens Act, including rebuilding stocks and ending overfishing. Because BFT quotas and allocations are codified in the HMS regulations at § 635.27, a regulatory amendment is necessary to modify the baseline

U.S. quota from 1,009.9 mt (recommended for 2009) to 952.4 mt (recommended for 2010) 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.

Description of Each Alternative

Please see Sections 2 and 4 for a summary of the preferred and No Action alternatives and Section 6 for a complete description of each alternative and its expected impacts.

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 6 indicates the possible net economic benefits and costs of each alternative. The Western Atlantic BFT fishery TAC will be renegotiated in 2010.

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 action described in this SEA/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 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 final action described in this document has been determined to be not significant for the purposes of E.O. 12866.

Section 7 Initial Regulatory Flexibility Analysis

The Initial Regulatory Flexibility Analysis (IRFA) is conducted to comply with the Regulatory Flexibility Act (5 USC 601 et. seq.) (RFA). The goal of the RFA is to minimize the economic burden of federal regulations on small entities. To that end, the RFA directs federal agencies to assess whether the proposed regulation is likely to result in significant economic impacts to a substantial number of small entities, and identify and analyze any significant alternatives to the proposed rule that accomplish the objectives of applicable statutes and minimize any significant effects on small entities.

Description of the Reasons Why Action is Being Considered

Please see Section 1 for a full discussion of the need for action. Primarily, the action is needed to implement the 2008 ICCAT BFT recommendation for the 2010 fishing year. Because BFT quotas and allocations are codified in the HMS regulations at § 635.27, a regulatory amendment is necessary to modify the baseline U.S. quota from 1,009.9 mt (recommended for 2009) to 952.4 mt (recommended for 2010) 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.

Statement of the Objectives of, and Legal Basis for, the Proposed Rule

Please see Section 1 for a full description of the objectives of, and legal basis for, the proposed rule and SEA/RIR/IRFA for the 2010 BFT quota specifications. The proposed rule is necessary and appropriate pursuant to ATCA and to achieve domestic management objectives under the Magnuson-Stevens Act, including rebuilding stocks and ending overfishing.

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 7, there are nearly 34,000 vessels that held an Atlantic HMS Charter/Headboat, Atlantic HMS Angling, or an Atlantic tunas permit as of October 13, 2009. NMFS believes that the vast majority of vessels active during the 2009 fishing year have obtained vessel permits by this point. These permitted vessels consist of commercial, recreational, and charter vessels as well as headboats.

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.

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

The 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.

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

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in Sections 4, 5, and 6 of this document. Additionally, the Regulatory Flexibility Act (5 U.S.C. § 603 (c) (1)-(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. Use of performance rather than design standards; and
4. Exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting or compliance requirements (category two above). NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act.

The IRFA assesses the impacts of the alternatives on the vessels that participate in the BFT fisheries, many of which are considered small entities. In order to do this, NMFS has estimated the average impact that the alternative to establish the 2010 BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories. As mentioned above, the 2008 ICCAT recommendation reduces the U.S. BFT quota for 2010 to 977.4 mt. This quota allocation includes 25 mt to account for incidental catch of BFT related to directed longline fisheries in the NED. This action would distribute the adjusted (baseline) quota of 952.4 mt to the domestic fishing categories based on the allocation percentages established in the Consolidated HMS FMP.

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 a preferred alternative that would implement the 2008 ICCAT recommendation. Implementation of the preferred alternative would be in accordance with the Consolidated HMS

FMP and consistent with ATCA, under which the United States is obligated to implement ICCAT-approved quota recommendations, as necessary and appropriate. The preferred alternative would implement this quota and have slightly positive impacts for fishermen in the long-run as the stock rebuilds. The no action alternative would keep the quota at the 2009 levels (approximately 58 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 2009 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.

It is difficult to estimate average potential ex-vessel revenues to commercial participants, largely because revenues depend heavily on the availability of large medium and giant BFT to the fishery. Section 4 describes potential revenue losses per commercial quota category based on each category's proposed base quota reduction and price per pound information from 2008, i.e., \$504,245 for the General category, \$32,249 for the Harpoon category, \$49,529 for the Longline/Trap (incidental) categories, and \$170,826 for the Purse Seine category. As described in Section 4, because the directed commercial categories have underharvested their subquotas in recent years, the potential decreases in ex-revenue above overestimate the probable economic impacts to those categories relative to recent conditions. Additionally, there has been substantial interannual variability in ex-vessel revenues per category in recent years due to recent changes in BFT availability and other factors. Generally, the interannual differences in ex-vessel revenues per category have been larger than the potential impacts described above.

Data on net revenues of individual fishermen are lacking, so the economic impact of the alternatives is averaged across each category. NMFS considers this a reasonable approach for BFT fisheries. More specifically, available landings data (weight and ex-vessel value of the fish in price/pound) allow NMFS to calculate the gross revenue earned by a fishery participant on a successful trip. The available data do not, however, allow NMFS to calculate the effort and cost associated with each successful trip (e.g., the cost of gas, bait, ice, etc.) so net revenue for each participant cannot be calculated. As a result, NMFS analyzes the average impact of the proposed alternatives among all participants in each category.

Success rates vary widely across participants in each category (due to extent of vessel effort and availability of commercial-sized BFT to participants where they fish) but for the sake of estimating *potential* revenue loss *per vessel*, category-wide revenue losses can be divided by the number of permitted vessels in each category (see Table 7). Because HMS Charter/Headboat vessels may fish commercially under the General category quota and retention limits, Charter/Headboat permitted vessels are considered along with General category vessels when estimating potential General category ex-vessel revenue changes. Resulting ex-vessel revenue losses would be as follows: General category (including Charter/Headboat vessels): \$63; Harpoon category: \$1,402; Longline/Trap (incidental): \$188; and Purse Seine category: \$56,942. These values likely overestimate potential revenue losses for vessels that actively fish and are successful in landing at least one BFT.

Table 1. Baseline ICCAT-recommended U.S. quotas from 2007-2010

2007	2008	2009	2010
1,165.12 mt	1,165.12 mt	1009.0 mt	952.4 mt

Table 2. Proposed Atlantic Bluefin Tuna Final Quota Specifications (in metric tons) for the 2010 Fishing Year (January 1-December 31, 2010)

Category (% share of baseline quota)	Baseline Allocation	Dead Discard Deduction	Proposed Adjustment to Baseline Quota ¹	Proposed 2010 Fishing Year Quota
Angling (19.7)	187.6 <u>SUBQUOTAS:</u> School 97.7 Reserve 18.1 North 37.6 South 42.1 Lg. Sch/Sm. Med 85.6 North 40.4 South 45.2 Trophy 4.3 North 1.4 South 2.9		37.8	225.4 <u>SUBQUOTAS:</u> School 97.7 Reserve 18.1 North 37.6 South 42.1 Lg. Sch/Sm. Med 122.5 North 57.8 South 64.7 Trophy 5.2 North 1.7 South 3.5
General (47.1)	Total: 448.6 <u>SUBQUOTAS:</u> Jan 23.8 Jun-Aug 224.3 Sept 118.9 Oct-Nov 58.3 Dec 23.3		90.3	538.9 <u>SUBQUOTAS:</u> Jan 28.6 Jun-Aug 269.4 Sept 142.8 Oct-Nov 70.1 Dec 28.0
Harpoon (3.9)	37.1		7.5	44.6
Purse Seine (18.6)	177.2		35.6	212.8
Longline (8.1)	77.1 <u>SUBQUOTAS:</u> North (-NED) 30.9 NED 25.0 ³ South 46.2	-172.8	170.7 ²	75.0 <u>SUBQUOTAS:</u> North (-NED) 30.0 NED 25.0 ³ South 45.0
Trap (0.1)	1.0		0.2	1.1
Reserve (2.5)	23.8		146.6 ⁴	170.4
Total (100)⁵	952.4	-172.8	488.7	1,268.3

(1) For the purposes of the proposed rule, NMFS assumes that the full amount of 2009 underharvest allowed to be carried forward to 2010 will be available at the end of the 2009 fishing year. The distribution of 488.7 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 2010 fishing year. Longline category quota=77.1-172.8+170.7=75 mt. Dead discard deduction consistent with § 635.27(a)(10).

(3) 25 mt to account for bycatch of BFT in pelagic 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 U.S. quota (146.6 mt) to the Reserve for potential ICCAT transfer and other domestic management objectives.

(5) Totals are subject to rounding error.

Table 3: Ex-vessel average price (per lb, round weight) for BFT by commercial fishing category, 1996-2008.

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	--

Data for the 2008 fishing year are as of January 13, 2009.

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: BFT Dealer Report Database

Table 4: Ex-vessel gross revenues in the U.S. Atlantic bluefin tuna fishery by commercial fishing category, 1996-2008.

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. Data for the 2008 fishing year are as of January 13, 2009.

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: BFT Dealer Report Database

Table 5: Comparison of impacts of alternatives. (+) denotes positive impact, (-) denotes negative impact, (0) denotes neutral impact. Other ecological impacts include EFH, non-target fish species, and protected species.

Alternative	Ecological Impacts to BFT	Other Ecological Impacts	Social Impacts	Economic Impacts
No Action. Maintain 2009 base quotas established in 74 FR 26110 (June 1, 2009)	+	0	+ (short-term) - (long-term)	+ (short-term) - (long-term)
<i>Implement the 2008 ICCAT BFT Recommendation for the 2010 fishing year. – Preferred Alternative</i>	+	0	+ (long-term)	- (short-term)

Table 6: Economic Analysis of Expected Effects of Each Alternative Relative to the Baseline (No Action)

Alternatives	Net Economic Benefits	Net Economic Costs
No Action. Maintain 2009 base quotas established in 74 FR 26110 (June 1, 2009)	Positive economic impacts on a scale similar to 2008	Potential long-term cost of future reduced quota
<i>Implement the 2008 ICCAT BFT Recommendation for the 2010 fishing year. – Preferred Alternative</i>	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 the quota recommended by ICCAT for 2009

Table 7: 2009 Atlantic HMS and Atlantic tunas permits as of October 13, 2009.

Category	Number of Permits
General	3,824
Harpoon	23
Purse Seine	3
Longline/Trap	263
HMS Angling (Recreational)	25,599
HMS Charter/Headboat	4,150
Total	33,862

Data Source: Atlantic HMS/Tunas Permit Database