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1.0 INTRODUCTION

Atlantic Highly Migratory Species (HMS)¹ are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). Under the Magnuson-Stevens Act, the National Marine Fisheries Service (NMFS) must, consistent with the National Standards, manage fisheries to maintain optimum yield (OY) by rebuilding overfished fisheries and preventing overfishing. Under ATCA, NMFS is authorized to promulgate regulations, as may be necessary and appropriate, to implement the recommendations from the International Commission for the Conservation of Atlantic Tunas (ICCAT). Additionally, any management measures must also be consistent with other domestic laws including, but not limited to, the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Coastal Zone Management Act (CZMA).

Before this document, Atlantic tunas, swordfish, and sharks were managed under the 1999 Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks (and its 2003 amendment) and Atlantic billfish were managed under the 1988 Atlantic Billfish FMP (and its 1999 amendment). This final document consolidates the management of all Atlantic HMS into one comprehensive FMP (described Section 1.4), and combines and simplifies the objectives of the previous FMPs (described in Section 1.3).

Chapters 2 and 4 of this document provide a description of the alternatives and the analyses of the potential impacts. All of the preferred alternatives would likely be implemented in a final rule to be published shortly after this document. Chapter 3 provides a description of the fishery and contains the 2006 stock assessment and fishery evaluation report (SAFE report). Chapter 5 discusses any mitigating measures regarding the alternatives. Chapters 6, 7, and 8 fully analyze the economic impacts of the alternatives and address the requirements of a Regulatory Impact Review (RIR) and Final Regulatory Flexibility Analysis (FRFA). Chapter 9 provides the social impact analysis. Chapter 10 describes the first step in updating the descriptions of essential fish habitat. Appendix A provides the methodologies and analyses for the time/area closure alternatives described in Sections 2.1.2 and 4.1.2. Appendix B provides the maps for EFH as described in Chapter 10. Appendix C provides additional information related to domestic Atlantic billfish mortality contributions of the recreational sector and the pelagic longline fishery. Appendix D provides a summary of the comments received on the draft HMS FMP and proposed rule and NMFS' responses. Appendix E provides the peer reviews completed under the OMB peer review bulletin and NMFS' actions based on those reviews.

¹ The Magnuson-Stevens Act, at 16 U.S.C. 1802(14), defines the term "highly migratory species" as tuna species, marlin (*Tetrapturus* spp. and *Makaira* spp.), oceanic sharks, sailfishes (*Istiophorus* spp.), and swordfish (*Xiphias gladius*). Further, the Magnuson-Stevens Act, at 16 U.S.C. 1802(27), defines the term "tuna species" as albacore tuna (*Thunnus alalunga*), bigeye tuna (*Thunnus obesus*), bluefin tuna (*Thunnus thynnus*), skipjack tuna (*Katsuwonus pelamis*), and yellowfin tuna (*Thunnus albacares*).

1.1 Brief Management History

This section provides a brief overview of the major influences regarding HMS management and the existing FMPs. More detail regarding the management history of HMS can be found in Section 3.1.

In the 1980s, the Regional Fishery Management Councils were responsible for the management of Atlantic HMS. Thus, in 1985 and 1988, the five Councils finalized joint FMPs for swordfish and billfish, respectively. In 1989, the Councils requested that the Secretary of Commerce (Secretary) manage Atlantic sharks. NMFS finalized a Shark FMP in 1993. Atlantic tunas did not have an FMP until 1999.

On November 28, 1990, the President of the United States signed into law the Fishery Conservation Amendments of 1990 (Pub. L. 101-627). This law amended the Magnuson Fishery Conservation and Management Act (later renamed the Magnuson-Stevens Fishery Conservation and Management Act or Magnuson-Stevens Act) and gave the Secretary the authority (effective January 1, 1992) to manage HMS in the exclusive economic zone (EEZ) of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea under authority of the Magnuson-Stevens Act (16 U.S.C. §1811). This law also transferred from the Fishery Management Councils to the Secretary, effective November 28, 1990, the management authority for HMS in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea (16 U.S.C. §1854(f)(3)). The Secretary then delegated authority to manage Atlantic HMS to NMFS. In 1992, the HMS Management Division was created within NMFS to manage Atlantic HMS.

Under the Magnuson-Stevens Act, NMFS must maintain OY of each fishery by preventing overfishing and rebuilding overfished stocks. To do this, NMFS must, among other things, consider the National Standards, including using the best scientific information and considering impacts on residents of different States, efficiency, costs, fishing communities, bycatch, and safety at sea (16 U.S.C. §1851 (a)(1-10)). The Magnuson-Stevens Act also has a specific section that addresses preparing and implementing FMPs for Atlantic HMS (16 U.S.C. §1854 (g)(1)(A-G)). In summary, the section includes, but is not limited to, requirements to:

- Consult with and consider the views of affected Councils, Commissions, and advisory groups;
- Evaluate the likely effects of conservation and management measures on participants and minimize, to the extent practicable, any disadvantage to U.S. fishermen in relation to foreign competitors;
- Provide fishing vessels with a reasonable opportunity to harvest any allocation or quota authorized under an international fishery agreement;
- Diligently pursue comparable international fishery management measures; and,
- Ensure that conservation and management measures promote international conservation of the affected fishery, take into consideration traditional fishing patterns of fishing vessels, are fair and equitable in allocating fishing privileges among U.S. fishermen and do not have economic allocation as the sole purpose, and promote, to the extent practicable, implementation of scientific research programs that include the tagging and release of Atlantic HMS.

In addition to domestic management under the Magnuson-Stevens Act, Atlantic HMS are also managed internationally by ICCAT. ICCAT consists of 42 contracting parties as well as other cooperating parties that fish for tunas and tuna-like species throughout the Atlantic including Canada, the European Community, Japan, and China. Since 1966, ICCAT's stated objective has been to "cooperate in maintaining the populations of these fishes at levels which will permit the maximum sustainable catch for food and other purposes." To achieve this objective, ICCAT requires countries to collect catch data. In 1966, through a resolution, ICCAT urged all countries to begin to collect and process statistics and data on Atlantic tunas fisheries. In 1972, noting data deficiencies, ICCAT again urged countries to improve the collection and efficiency of Atlantic tunas catch-effort data and to make sure data are made available to ICCAT. These types of requests continue to be made, either as resolutions or recommendations, as the management and science needs for each fishery continue to expand.

The current conservation and management recommendations of ICCAT include total allowable catches, sharing arrangements for member countries, minimum size limits, effort controls, time/area closures, trade measures, compliance measures, and monitoring and inspection programs. If the United States accepts an ICCAT recommendation, ATCA provides the Secretary with the necessary statutory authority to issue regulations as may be necessary and appropriate to implement binding ICCAT recommendations to fisheries managed by the United States (16 U.S.C. §971 *et seq.*). However, no regulation promulgated under ATCA may have the effect of increasing or decreasing any allocation or quota of fish or fishing mortality level to which the United States agreed pursuant to a recommendation of ICCAT (16 U.S.C. §971 (c)). ICCAT recommendations can be found on the internet at <http://www.ICCAT.es>.

In 1999, due in part to amendments to the Magnuson-Stevens Act in 1996 and additional information regarding the status of several Atlantic HMS, NMFS combined the FMPs for Atlantic swordfish and sharks and finalized the first FMP for Atlantic tunas. The result was the FMP for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). At this time, NMFS also amended the 1988 Billfish FMP. Since 1999, NMFS has changed a number of regulations either through framework actions, regulatory amendments, or FMP amendments. This includes, but is not limited to, implementation of time/area closures, implementation of gear requirements for pelagic longline fishery or gear, implementation of vessel monitoring systems for shark and pelagic longline fisheries, changes in retention limits, changes in permitting requirements for charter/headboat and recreational fishermen, handling and release gear requirements for non-target species (bycatch) in longline fisheries, and changes in reporting requirements for recreational fishermen. Additionally, the status of some Atlantic HMS has changed, the pelagic longline fishery has received several times determinations that the continuation of the fishery without additional actions could jeopardize the existence of certain sea turtles, and the swordfish and bluefin tuna fisheries are not currently catching their quotas. Thus, HMS fisheries, as described in the 1999 FMP and the 1999 Billfish Amendment, have changed.

1.2 Need for Action

As described above, since 1999, the regulations for HMS fisheries have changed for a variety of reasons. As such, the 1999 FMP and Amendment may no longer fully describe the current fisheries. The changes have been documented in the supporting documents for various rulemakings and in annual SAFE reports. However, this document represents the first time since

1999 that a majority of the HMS fisheries have been impacted in one rulemaking. These changes and the inclusiveness of this document have been a challenge. Both before and during scoping, the public and NOAA staff raised a number of management issues that merit additional consideration and examination. Some of these issues require an FMP amendment. Other issues would be more appropriately and efficiently addressed in conjunction with other regulatory actions. However, in order to complete action on some of the issues identified during the scoping process in a timely manner, NMFS decided to handle only a portion of them in this rulemaking. NMFS prioritized the issues and chose to consider those in this rulemaking that were required by law (*e.g.*, handling and release workshops are required under the 2004 Biological Opinion) and/or would improve the management of the fisheries (*e.g.*, amending the FMP for the bluefin tuna General Category should allow management to match changes in the fisheries on a more timely basis). Other issues will be considered, as appropriate, in future rulemakings (see Section 1.5). This section provides a succinct summary of some of the reasons for the management measures being considered in this rulemaking. More detail on the individual issues can be found in Chapters 2 and 4.

This section also describes the actions that are amending the FMP and the actions that are considered regulatory framework adjustments or actions under the FMP (Table 1.1). A framework action includes notice and comment rulemaking and amends implementing regulations but not the FMP itself. Both the 1999 FMP and the 1999 Billfish Amendment listed certain management measures that could be adjusted via framework action to meet the objectives of the FMP and the Magnuson-Stevens Act and that would not necessarily require amending the FMP (50 CFR §635.34). This list was modified with Amendment 1 to the 1999 FMP. The actions preferred in this document span a range of framework actions and amendments to the FMP. The list of the types of management actions that can be accomplished via a framework action is provided in Chapter 11 of this document. For more information regarding the differences between framework actions and FMP amendments, please see Chapter 3 of the 1999 Atlantic Tunas, Swordfish, and Shark FMP.

Table 1.1 Table indicating whether actions in this document are amending the FMP or are being taken as framework actions.

Major Issue	Framework or FMP Amendment
Reducing Bycatch: Workshops	FMP Amendment
Reducing Bycatch: Time/area closures	FMP Amendment and framework action
Rebuilding: Northern albacore tuna	FMP Amendment
Overfishing: Finetooth sharks	FMP Amendment
Rebuilding: Billfish	Framework action
Management Program: Bluefin tuna	FMP Amendment and framework action
Management Program: Timeframe for Annual Management	Framework action
Management Program: Authorized gears	Framework action
Management Program: Regulatory housekeeping	Framework action

The June 2004 Biological Opinion (BiOp) requires NMFS to conduct training workshops regarding the release of sea turtles from pelagic longline gear and to certify that fishermen have attended these workshops. The October 2003 BiOp requires a series of workshops that provide gear handling techniques and protocols that deal with entanglements and protected species, in

general, and including information on smalltooth sawfish and HMS requirements. Additionally, in Amendment 1 to the 1999 FMP, NMFS stated that if shark fishermen can show that they can correctly identify shark species and fish for specific species, then the Agency might consider using species-specific shark quotas in the future. In public comments received during the scoping period and on the Predraft, some fishermen commented that the data collection problem is not with the fishermen but with the dealers who often incorrectly identify shark species. These comments were considered when analyzing alternatives for workshops. Many of the needs for workshops and certifying that people are trained to handle and release fish or protected resources and to identify certain species are beyond what was considered in the 1999 FMP and Billfish Amendment. Thus, in this document, NMFS amends the 1999 FMP and Billfish Amendment and examines different types of workshops to meet these needs.

Since 1999, NMFS has implemented a number of time/area closures in order to reduce bycatch, to the extent practicable, consistent with National Standard 9. While preliminary analyses have been done in annual SAFE reports that examine the efficacy of these closures, a comprehensive analysis of the impact of the closures on bycatch rates, the fishermen, and the communities is contained in this document. Based on the results of this comprehensive analysis, in this rulemaking, NMFS examines the current time/area closures to determine if these closures are accomplishing the original goals of the closures or if changes are needed. NMFS also examines the need for additional closures to reduce bycatch in HMS fisheries of certain species including sea turtles, white marlin, and bluefin tuna. The 1999 FMP considered and allowed for the implementation of time/area closures as framework actions. However, in this action NMFS is considering a comprehensive mechanism regarding how to analyze the need for establishing, modifying, or removing time/area closures. Because this alternative is beyond the scope of the 1999 FMP, the preferred alternatives in this document recommend both amending the 1999 FMP and implementing closures under the framework mechanism.

Since the 1999 FMP, NMFS has determined that overfishing is occurring on finetooth sharks and that northern albacore tuna are overfished. NMFS addresses rebuilding and overfishing for these species in this action. For northern albacore tuna, because its rebuilding plan is not yet outlined in the FMP, any actions being considered would be an amendment to the FMP. Finetooth sharks do not require a rebuilding plan because they are not overfished but action is required to prevent overfishing. Because the actions being considered to address overfishing are contained in the list of framework actions (see Chapter 11), the actions being considered to address overfishing of finetooth sharks would be regulatory framework actions.

Despite the implementation of domestic and international management measures, the status of Atlantic blue and white marlin has continued to decline. Currently, the status of sailfish and spearfish is uncertain. Atlantic white marlin has been identified as one of the most severely overfished species of any stock under ICCAT's purview for the past four years, but nevertheless continues to be subjected to unsustainable levels of fishing mortality throughout the Atlantic. In 2002, the United States undertook a status review of white marlin pursuant to the ESA. While the status review team determined that white marlin stock status did not warrant a listing at that time, it concluded that "unless fishing mortality is reduced significantly and relatively quickly, the stock could decline to a level that would warrant ESA protection" (White Marlin Status Review Team 2002). NMFS will conduct another ESA listing review in 2007. Ultimately, the

declines in the status of blue and white marlin have diminished the likelihood of achieving domestic rebuilding goals and objectives outlined in the 1999 Billfish Amendment.

The United States has led billfish conservation efforts internationally over the past decade. The effects of these efforts, while serving to move conservation forward in the policy arena, are as yet uncertain from a biological perspective. Additional information on this issue should be available in mid to late 2006 when the next ICCAT stock assessment for Atlantic marlin is finalized. While the United States cannot unilaterally reverse stock declines for these species given the international nature of the fishery, additional domestic management actions are possible and appropriate to augment steps that have thus far been unable to stem long-term downward population trends and/or increasing fishing mortality rates for Atlantic marlins. Failure of the United States to continue leading international efforts to rebuild marlin will likely result in this issue losing visibility and priority among international fishery managers, as marlin are generally taken incidental to directed fishing activities for more commercially valuable species. The rulemaking process and the management measures analyzed are a critical component of demonstrating such leadership. Reinforcing the need for action are new data suggesting that post-release mortality for white marlin from recreational catch-and-release fishing with traditional J-hooks may be considerably higher than previous estimates. New data and studies also indicate that in some years, the domestic recreational billfish fishery may be responsible for an equal or greater amount of billfish mortality than the domestic pelagic longline fishery, in some years. This appears to be the result of the significant size differential between the two fisheries. As such, in this document, NMFS reviews the current data and examines methods of reducing billfish mortality in both the commercial (*e.g.*, time/area closures) and recreational fisheries (*e.g.*, minimum sizes, circle hooks). Because the management measures specific to reducing billfish fishing mortality are being considered are within the scope of those allowed for framework actions, these measures would be taken as regulatory framework actions.

Over the years, BFT management has become increasingly complicated, and may no longer accurately reflect the needs of the fishery and goals of the 1999 FMP. These issues are evident on a daily basis from the number of constituent inquiries addressed by NMFS and the number of inseason management actions necessary throughout the season. In addition, NMFS has received a petition from the State of North Carolina for rulemaking to adjust the quota allocations to provide for a General category fishery off of North Carolina in the winter. NMFS is considering these requests and is also considering ways of clarifying BFT management. Some of the changes considered are within the scope of those that the 1999 FMP stated could be accomplished by framework actions. However, other alternatives are beyond the scope of a framework action and need to be accomplished by FMP amendment. Thus, this issue encompasses both framework actions and amendments to the FMP.

In the 1999 FMP and Billfish Amendment, NMFS established a fishing year for tunas, billfish, and swordfish that began on June 1 and went through the following May 31. This fishing year was established to allow NMFS time to implement recommendations from ICCAT before the fishing year began. The change to the fishing year, however, has been problematic given that many of the data infrastructures and reporting requirements both within the Agency and ICCAT are based on calendar year rather than fishing years. Thus, NMFS revisits this issue

during this rulemaking. Changes to the fishing year are within the scope allowed in the 1999 FMP and the 1999 Billfish Amendment. Thus, this issue is being taken as a framework action.

In 1999, NMFS published a list of authorized gears for all fisheries across the nation. Occasionally, NMFS receives requests to modify the list of authorized gears. Sometimes, these requests include gear that fishermen use in other oceans or elsewhere in the Atlantic to catch the same species; other times, the requests are due to additional groups requesting to use a gear that is approved for one permit, but not another. NMFS considers some of these requests pertaining to HMS, such as greenstick and speargun fishing gear, in this FMP. The use and restriction of gears is within the scope of management measures that can be modified through framework actions; thus, any changes to the authorized gears would be achieved via a framework action.

This FMP also considers a number of corrections and additions to the Atlantic HMS regulations at 50 CFR part 635 and other relevant sections in the CFR (*e.g.*, 50 CFR part 300 contains information regarding international trade) in order to clarify their intent, remove incorrect cross-references, remove dated regulations, as appropriate, and aid enforcement. These actions are all being taken as framework actions.

In addition, this consolidated HMS FMP continues the five-year review of HMS EFH consistent with the EFH guidelines. The Magnuson-Stevens Act requires the Secretary, through NMFS, to establish guidelines to assist in the description and identification of EFH in FMPs, among other things. The Agency set forth a schedule for the review and update of such EFH identifications based on new scientific evidence or other relevant information. The EFH guidelines articulate processes for determining the extent of EFH that encompasses each species and life-stage in a managed fishery. In addition, the EFH guidelines call for periodic review and revision of EFH identified areas based on available information, as well as a complete review of all EFH information at least once every five years. NMFS originally described and identified EFH for all HMS, including Atlantic billfish, in 1999, and recently updated the EFH for five shark species (blacktip, dusky, finetooth, nurse, and sandbar) in Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks, which was finalized in 2003. In this document, NMFS includes the information available for all HMS, including billfish, in order to aid in the determination of which species need updates to their EFH identifications. Any updates or resulting changes in management will be done in a future document.

1.3 Objectives

Consistent with the consolidated FMP objectives (see Section 1.4.4) and the National Standards, the specific objectives of this action are to:

- Better coordinate domestic conservation and management of the fisheries for Atlantic tunas, swordfish, sharks, and billfish, considering the multi-species nature of many HMS fisheries;
- Simplify management of Atlantic HMS, to the extent practicable;
- Update the ecological, economic, and social data regarding HMS fisheries;

- Reduce bycatch and bycatch mortality, to the extent practicable, while also minimizing the economic and social impacts on related fisheries;
- Reduce mortality, including dead discards and post-release mortality, to the extent practicable, of Atlantic HMS in directed and non-directed fisheries;
- Improve, to the extent practicable, data collections or data collection programs;
- Implement, to the extent practicable, the bycatch reduction strategy using the standardized bycatch reduction methodology; and,
- Begin the review process for updating EFH identifications for Atlantic HMS, as needed.

1.4 Combining Management for Atlantic HMS

As discussed above, NMFS issued two separate documents in April 1999 for the Atlantic HMS fisheries. The 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks, combined, amended, and replaced previous management plans for swordfish and sharks, and was the first FMP for tunas. Amendment 1 to the Billfish Management Plan updated and amended the 1988 Billfish FMP.

In 1999, based on concerns expressed by Advisory Panel (AP) members about consolidating the FMPs for billfish and the other HMS, as well as the recreational nature of the domestic billfish fishery, NMFS chose to maintain separate FMPs and APs for these species. Nevertheless, over the past six years that these two FMPs have co-existed, there has been a growing recognition by NMFS of the interrelated nature of these fisheries and the need to consider management actions together. In addition, NMFS has identified some adverse ramifications stemming from separation of the plans, including unnecessary administrative redundancy and complexity, loss of efficiency, and public confusion over the management process. The following examples illustrate the closely intertwined nature of the fisheries and their management:

1. The Magnuson-Stevens Act defines highly migratory species as tuna species, marlin, oceanic sharks, sailfishes, and swordfish;
2. An HMS Angling or Charter/Headboat (CHB) permit is required to fish for billfish or other HMS recreationally;
3. Recreational fishermen target billfish and other HMS in the same season and often on the same trip;
4. Recreational fishermen can use rod and reel to fish for both billfish and other HMS;
5. Many of the primary management actions for addressing overfishing and bycatch issues for billfish are contained in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks;
6. Any potential management measures for billfish or other HMS are likely to impact the same communities;
7. The reporting requirements for billfish and other HMS fishermen overlap;

8. The regulations for Atlantic billfish and the other Atlantic HMS are all contained in 50 CFR part 635; and,
9. The Billfish and HMS Advisory Panels usually meet in a combined session².

As such, consistent with the fifth objective of Billfish Amendment 1³ and the ninth objective listed in the 1999 Tunas, Swordfish, and Sharks FMP⁴, NMFS is consolidating these FMPs into one comprehensive FMP to improve coordination of the conservation and management of the domestic fisheries for Atlantic swordfish, tunas, sharks, and billfish. The regulatory implications of consolidating the FMPs are negligible, as the regulations governing the fisheries for all Atlantic HMS have been consolidated in 50 CFR part 635 since 1999.

During the comment periods on the Predraft and Draft, some HMS and Billfish AP members, some Council members, and many recreational billfish fishermen objected to the consolidation of the FMPs. For the most part, they were concerned that: (1) two objectives from the 1988 Billfish FMP were identified for removal, on the basis that their core intent was thought to be adequately contained in objectives that would remain (this was a concern raised only for the Predraft); (2) commercial fisheries aim to utilize the specific quota while recreational fisheries, particularly billfish fisheries, aim to have the highest abundance of fish available because they are predominantly catch-and-release fisheries; (3) in a consolidated FMP, billfish would be considered only as a bycatch species and would not be a priority; and (4) billfish would lose representation on the AP. As a result of the first comment, NMFS kept those two objectives as they were originally drafted in the consolidated HMS FMP (Section 1.3). Regarding the second comment, NMFS agrees that commercial fishermen aim to fully utilize a quota and many recreational fishermen practice catch-and-release fishing. NMFS believes that this difference can be accommodated in a consolidated FMP just as they already are in the existing tunas, swordfish, and shark fisheries that are both commercial and recreational. Further, given the interconnected nature of the billfish fishery with other HMS fisheries, both on the water and in the regulatory and policy arenas, as well as the current permitting structure, changes in any of the non-billfish fisheries are likely to have impacts on the billfish fishery. Combining the FMPs would allow those changes to be analyzed more holistically with clearer links among the impacts and issues between fisheries. Regarding the third comment, NMFS believes that combining the FMPs will not change the priorities of managing HMS, which are dictated by the Magnuson-Stevens Act and other domestic law. Regarding the fourth comment, the composition of the APs in terms of representation by states and sectors (commercial, recreational, academic, or conservation) would not change as a result of combining the plans (Section 1.4.3).

Another group of constituents, including AP and Council members, objected to combining the FMPs because they felt that too many species and too much information had

² The Advisory Panels have met separately five times since their creation in 1997 (out of approximately 14 AP meetings total). In 1997, the Billfish AP met twice without the HMS AP because the HMS AP had not yet been created (July 7, 1997, 62 FR 36261; September 3, 1997, 62 FR 46483). At its first meeting, the HMS AP met alone (October 9, 1997, 62 FR 52692) and again after a joint meeting to discuss shark issues (July 20, 1998, 63 FR 38808). In 2003, the HMS AP met to discuss the proposed Amendment 1 to the 1999 FMP (August 27, 2003, 68 FR 51560).

³ To better coordinate domestic conservation and management of the fisheries for Atlantic tunas, swordfish, sharks, and billfish, considering the multispecies nature of many highly migratory species (HMS) fisheries, overlapping regional and individual participation, international management concerns, and other relevant factors.

⁴ To better coordinate domestic conservation and management of the fisheries for Atlantic tuna, swordfish, sharks, and billfish, considering the multispecies nature of many HMS fisheries, overlapping regional and individual participation, international management concerns, historical fishing patterns and participation, and other relevant factors.

already been combined in the existing FMPs. If anything, these parties felt that the species and management measures in the existing FMPs should be separated and that NMFS should manage on a more species-specific basis. NMFS believes that combining the FMPs for tunas, swordfish, and sharks, and the actual regulations for all HMS has led to a more holistic view of the fishery. This view has allowed the impacts of management measures on all sectors of HMS fisheries to be fully analyzed whereas before, the links may not have been seen or analyzed as readily. By combining the FMPs, NMFS is moving toward an ecosystem-based approach to the management of HMS. Such an approach could ultimately benefit the resource and the people involved. As an example, at several of the meetings on the Predraft, fishermen have noted that using circle hooks while trolling for blue marlin is impracticable. At those same meetings, tuna fishermen asked for the use of circle hooks on rod and reel. In many cases, the same fishermen fish for tunas and billfish. While NMFS could implement different regulations for tunas and billfish, more effective and appropriate management can only be done by considering the implications on both fisheries.

NMFS also received comments that other interested parties, including some recreational fishermen and AP members, feel the plan to consolidate the FMPs makes sense and is only logical, particularly given the overlapping nature of the fisheries. Some people, who supported the consolidation, noted that the customary joint meetings of the HMS and Billfish APs have resulted in an imbalance of representation favoring the recreational fishing sector. NMFS does not believe that the current APs are imbalanced. Combining the FMPs will not change the composition of the APs; however, NMFS may change the composition over time in order to preserve the balance between different interest groups.

A summary of all the comments received on the draft HMS FMP and NMFS' responses can be found in Appendix D.

1.4.1 Implications for Management Measures

The 1999 Tunas, Swordfish, and Sharks FMP integrated and replaced preexisting management measures for Atlantic tuna, swordfish, and shark fisheries. Amendment 1 to the Billfish FMP (1999) was developed in coordination with the Tunas, Swordfish, and Sharks FMP, but augmented rather than replaced the preexisting Billfish FMP, which had been finalized in 1988. The consolidated HMS FMP is intended to augment and combine the 1999 Atlantic Tunas, Swordfish, and Sharks FMP, Amendment 1 to the 1999 Atlantic Tunas, Swordfish, and Sharks FMP, the 1988 Billfish FMP, and Amendment 1 to the Billfish FMP into a single fishery management plan. To reiterate, upon issuance of this final document, there will be a single management plan for Atlantic tunas, swordfish, sharks, and billfish. Under this consolidated HMS FMP, "HMS" includes billfish in all references except where noted otherwise.

The consolidation itself would not change any existing management measures for Atlantic tunas, swordfish, sharks, and billfish that have been issued previously under the authority of ATCA and the Magnuson-Stevens Act. Neither would the consolidation change any of the threshold criteria that are used to determine the status of the stock (*e.g.*, overfishing is occurring if $F_{\text{year}} > F_{\text{MSY}}$). These threshold criteria are summarized briefly in Section 3.2. Should NMFS determine that further changes are necessary to the regulations or the threshold criteria, they will be made through the FMP amendment process or through rulemaking as described in

the framework provisions. Please see below (Section 1.4.4) for a discussion of the implications of combining the plans on the plan objectives.

1.4.2 Implications for the Exemption to the Billfish No Sale Provision

The 1988 Fishery Management Plan for Atlantic Billfish prohibited the sale or purchase of Atlantic billfish. Recognizing the existence of a traditional artisanal handline fishery in Puerto Rico that occasionally landed billfishes, primarily blue marlin, the 1988 Billfish FMP also included a limited exemption from the “no sale” provision to accommodate this fishery. The exemption to the “no sale” provision was subject to a number of conditions and restrictions, including:

- only fish caught on handlines having fewer than six hooks could be retained for sale;
- vessels retaining billfish for sale could not have a rod and reel onboard;
- fish could be sold only in Puerto Rico;
- a maximum of 100 billfish per year could be landed and sold;
- if more than 100 billfish per year were landed under the exemption, the Councils would consider removing the exemption;
- all existing fishermen wishing to sell billfish would be required to obtain a permit;
- the Caribbean Fishery Management Council, in cooperation with the Government of the Commonwealth of Puerto Rico, would develop and implement a system for tracking billfish landings under the exemption; and,
- The exemption would not be in effect until the permitting and tracking systems were operative, pending approval by the five involved Councils at that time.

The exemption from the “no sale” provision for the Puerto Rican handline artisanal fishery has never been implemented under Federal regulations, because the aforementioned conditions have never been met, either prior to or following transfer of the FMP to Secretarial authority. Given that Atlantic billfish are overfished, overfishing continues to occur, longlines (not handlines) are defined in 50 CFR part 635 as having three or more hooks, and non-fulfillment of conditions necessary to implement the exemption over nearly two decades, NMFS sought comment on the potential removal of the “no sale” exemption from the FMP during the scoping process for this document. Further, as the provision was developed and approved by the five Atlantic Fishery Management Councils prior to transfer of the FMP to Secretarial authority, NMFS specifically sought comment from the Regional Fishery Management Councils on this issue in November 2004.

Public comment on elimination of the exemption to the no sale provision as discussed in the Predraft document was mixed, with support for its elimination as well as limited support for maintaining the exemption. In response to direct outreach efforts to the Councils on this issue, NMFS received formal responses from the New England Council, the Mid-Atlantic Council, and the Caribbean Council. The New England Council responded with a formal “no comment” on the issue, as it had not been directly involved in HMS management issues since the inception of

Secretarial Authority. The Mid-Atlantic Council indicated that removal of the exemption was an appropriate action, and the Caribbean Council adopted a formal motion at its May 2005 meeting in St. Thomas, USVI, in support of removing the provision. At the draft stage, NMFS did not receive any comments in opposition to the removal of this exemption.

Based on the status of Atlantic billfish as overfished with continuing overfishing; non-fulfillment of the conditions necessary to implement the exemption to the no sale provision and resultant non-implementation of the provision over a period of 18 years; public comment at all stages of writing this document; and, support of the involved Regional Fishery Management Councils, specifically the Caribbean Council which would be most directly impacted by the potential elimination of the exemption provision, NMFS is not carrying forward the exemption to the no sale provision for the artisanal handline fishery in Puerto Rico into this final consolidated HMS FMP.

1.4.3 Implications for Highly Migratory Species and Billfish Advisory Panels

The HMS and Billfish Advisory Panels (AP) were established in 1997, pursuant to Magnuson-Stevens Act requirements (16 U.S.C. 1801 et. seq., as amended by the Sustainable Fisheries Act PL 104-297), to assist NMFS in the collection and evaluation of information relevant to the development of the 1999 Tunas, Swordfish, and Sharks FMP and Amendment 1 of the Billfish FMP. Nominations for initial membership on the APs were solicited in March and August of 1997 for the Billfish and HMS APs, respectively. The first meeting of the Billfish AP was in July 1997 and the first meeting of the HMS AP was in October 1997.

Membership for both panels is composed of representatives of the commercial and recreational fishing communities, as well as conservation and academic interests. When finalizing the members on each panel, NMFS attempts to achieve a balance among sectors, regions, and species. The five Regional Fishery Management Councils involved in Atlantic HMS management, the Atlantic and Gulf Coastal States, the U.S. Coast Guard, and the U.S. ICCAT Advisory Committee have *ex-officio* seats. In keeping with operating practices for appointments to Regional Fishery Management Councils, in recent years, appointments to the 24-member HMS AP have been selected on a staggered, three-year cycle with eight members appointed for a three-year term. For the Billfish AP, which consists of nine appointed members, terms are on a two-year cycle with four members appointed for each two-year term. Staggered terms were implemented to ensure that there is some institutional memory on the APs at all times. The terms of *ex-officio* seats do not expire and assignment and substitution of these AP representatives are at their discretion of the respective agencies.

With the consolidation of the APs under this FMP, NMFS expects to revise the AP standard operating procedures. With this revision, NMFS will consider, among other things, how long the terms of AP members should be. The terms of current AP members will not change as a result of this consolidation.

Composition of the existing HMS and Billfish APs, in terms of the number of seats and the percentage of seat allocation, is detailed in Table 1.2. With the completion of the FMP consolidation process, the memberships of the two panels will be combined into a single consolidated HMS AP that will advise NMFS on all HMS issues, including billfish. NMFS will

continue to balance representation based on species, sector, and regions, as necessary. Thus, the numbers presented in Table 1.2 may change over time, as needed.

Table 1.2 Current Advisory Panel Seat Allocation.

	Current HMS AP		Current Billfish AP		Combined AP	
	# of Seats	% Representation	# of Seats	% Representation	# of Seats	% Representation
Commercial	10	42	2	22.2	12	36.3
Recreational	8	33	4	44.4	12	36.3
Conservation	4	17	1	11.1	5	15.1
Academic	2	8	2	22.2	4	12.1
Totals	24	100	9	100	33	100

1.4.4 Implications for the FMP Objectives

Amendment and consolidation of the 1999 Tunas, Swordfish, and Shark and the Billfish FMPs and their amendments provides an opportunity to review the suitability and relevance of the HMS and Billfish FMP objectives. Both plans contain a detailed set of objectives, of which many overlap, complement, or otherwise reinforce each other. At the same time, a small number of objectives are unique to each plan, and may not logically apply to the other plan. NMFS has identified changes to the objectives of the previous FMPs that will remove redundancy and update some objectives. The objectives are finalized as outlined in Table 1.3.

Table 1.3 Previous and Final Objectives of the Atlantic Tunas, Swordfish, and Shark, Billfish, and Consolidated HMS FMPs. *Italicized text indicates the differences in objectives between the two previous FMPs.*

Obj. #	Tunas, Swordfish, and Shark FMP	Billfish FMP and Billfish Amendment	Final Consolidated FMP
1	To prevent or end overfishing of <i>Atlantic tuna, swordfish, and sharks</i> and adopt the precautionary approach to fishery management	Prevent and/or end overfishing of Atlantic <i>billfish</i> and adopt the precautionary approach to fishery management	Prevent or end overfishing of Atlantic tuna, swordfish, billfish, and sharks and adopt the precautionary approach to fishery management
2	To rebuild overfished fisheries <i>in as short a time as possible</i> and control all components of fishing mortality, both directed and incidental, so as to ensure the long-term sustainability of the stocks and promote stock <i>recovery of the management unit</i> to the level at which the maximum sustainable yield can be supported on a continuing basis	Rebuild overfished <i>Atlantic billfish stocks, and monitor</i> and control all components of fishing mortality, both directed and incidental, so as to ensure the long-term sustainability of the stocks and promote <i>Atlantic-wide stock recovery</i> to the level where MSY can be supported on a continuing basis	Rebuild overfished Atlantic HMS stocks, and monitor and control all components of fishing mortality, both directed and incidental, so as to ensure the long-term sustainability of the stocks and promote Atlantic-wide stock recovery to the level where MSY can be supported on a continuing basis

Obj. #	Tunas, Swordfish, and Shark FMP	Billfish FMP and Billfish Amendment	Final Consolidated FMP
3	To minimize, to the extent practicable, <i>bycatch of living marine resources and the mortality of such bycatch that cannot be avoided in the fisheries for Atlantic tuna, swordfish, and sharks</i>	Minimize, to the extent practicable, <i>release mortality in the directed billfish fishery, and minimize, to the extent practicable, bycatch and discard mortality of billfish on gears used in other fisheries</i>	Minimize, to the extent practicable, bycatch of living marine resources and the mortality of such bycatch that cannot be avoided in the fisheries for Atlantic HMS or other species, and minimize, to the extent practicable, post-release mortality in the directed billfish fishery
4	To establish a foundation for <i>international negotiation on conservation and management measures to rebuild overfished fisheries and to promote achievement of optimum yield for these species throughout their range, both within and beyond the exclusive economic zone. Optimum yield is the maximum sustainable yield from the fishery, reduced by any relevant social, economic, or ecological factors</i>	Establish a foundation for <i>the adoption of comparable international conservation and management measures, through international entities such as ICCAT, to rebuild overfished fisheries and to promote achievement of optimum yield for these species throughout their range, both within and beyond the EEZ</i>	Establish a foundation for international negotiation on conservation and management measures, through international entities such as ICCAT, to rebuild overfished fisheries and to promote achievement of optimum yield for these species throughout their range, both within and beyond the exclusive economic zone
5	To minimize, to the extent practicable, <i>economic displacement and other adverse impacts on fishing communities during the transition from overfished fisheries to healthy ones</i>	Minimize <i>adverse social and economic effects on recreational and commercial activities</i> to the extent practicable, <i>consistent with ensuring achievement of the other objectives of this plan, and with all applicable laws</i>	Minimize, to the extent practicable, <i>adverse social and economic impacts on fishing communities and recreational and commercial activities during the transition from overfished fisheries to healthy ones, consistent with ensuring achievement of the other objectives of this plan and with all applicable laws</i>
6	To provide the data necessary for assessing the fish stocks and managing the fisheries, including addressing inadequacies in <i>current collection and ongoing collection of social, economic, and bycatch data about HMS fisheries</i>	Provide the data necessary for assessing the fish stocks and managing the fisheries, including addressing inadequacies in <i>collection and ongoing collection of social, economic, and bycatch data on Atlantic billfish fisheries</i>	Provide the data necessary for assessing the fish stocks and managing the fisheries, including addressing inadequacies in <i>current collection and ongoing collection of social, economic, and bycatch data on Atlantic HMS fisheries</i>

Obj. #	Tunas, Swordfish, and Shark FMP	Billfish FMP and Billfish Amendment	Final Consolidated FMP
7	Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to <i>food production, providing recreational opportunities, preserving traditional fisheries</i> , and taking into account the protection of marine ecosystems	Consistent with other objectives of this <i>amendment</i> , manage Atlantic billfish fisheries for the continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to recreational opportunities and taking into account the protection of marine ecosystems. <i>Optimum yield is the maximum sustainable yield from the fishery, as reduced by any relevant social, economic, or ecological factors.</i>	Consistent with other objectives of this FMP, manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to providing food production for commercial fisheries, enhancing recreational opportunities, preserving traditional fisheries to the extent practicable, and/or taking into account the protection of marine ecosystems
8	To better coordinate domestic conservation and management of the fisheries for Atlantic tuna, swordfish, sharks, and billfish, considering the multispecies nature of many HMS fisheries, overlapping regional and individual participation, international management concerns, <i>historical fishing patterns and participation</i> , and other relevant factors	Better coordinate domestic conservation and management of the fisheries for Atlantic tunas, swordfish, sharks, and billfish, considering the multispecies nature of many highly migratory species (HMS) fisheries, overlapping regional and individual participation, international management concerns, and other relevant factors	Better coordinate domestic conservation and management of the fisheries for Atlantic tuna, swordfish, sharks, and billfish, considering the multispecies nature of many HMS fisheries, overlapping regional and individual participation, international management concerns, historical fishing patterns and participation, and other relevant factors
9	<i>To provide a framework, consistent with other applicable law, to take necessary action under ICCAT compliance recommendation</i>	<i>Coordinate domestic regulations and ICCAT conservation measures for controlling Atlantic-wide fishing mortality</i>	Provide a framework, consistent with other applicable law, to take necessary action under ICCAT compliance and/or conservation recommendations, including controlling Atlantic-wide fishing mortality
10	<i>To promote protection of areas identified as essential fish habitat for tuna, swordfish, and sharks</i>	<i>Maximize protection of areas identified as essential fish habitat for Atlantic billfish, particularly for critical life stages</i>	Promote conservation and enhancement of areas identified as essential fish habitat for Atlantic HMS, particularly for critical life stages
11	To simplify and streamline HMS management while actively seeking input from affected constituencies, the general public, and the HMS AP		Simplify and streamline HMS management while actively seeking input from affected constituencies, the general public, and the HMS AP

Obj. #	Tunas, Swordfish, and Shark FMP	Billfish FMP and Billfish Amendment	Final Consolidated FMP
12		Promote the live release of Atlantic <i>billfish</i> through active outreach and educational programs	Promote the live release and tagging of Atlantic HMS that are voluntarily released or cannot be legally landed through active outreach and educational programs
13		Maintain the highest availability of billfishes to the U.S. recreational fishery by implementing conservation measures that will reduce fishing mortality	Maintain the highest availability of billfishes to the U.S. recreational fishery by implementing conservation measures that will reduce fishing mortality
14		Optimize the social and economic benefits to the nation by reserving the billfish resource for its traditional use, which in the continental United States is almost entirely a recreational fishery	Optimize the social and economic benefits to the nation by reserving the Atlantic billfish resource for its traditional use, which in the United States is entirely a recreational fishery
15		Increase understanding of the condition of billfish stocks and the billfish fishery	Increase understanding of the condition of HMS stocks and HMS fisheries
16	To reduce latent effort and overcapitalization in HMS commercial fisheries		Delete.
17	To create a management system to make fleet capacity commensurate with resource status so as to achieve the dual goals of economic efficiency and biological conservation		Consistent with the other objectives of this FMP, create a management system to make fleet capacity commensurate with resource status so as to improve both economic efficiency and biological conservation, and provide access for traditional gears and fishermen
18	To develop eligibility criteria for participation in the commercial shark and swordfish fisheries based on historical participation, including access for traditional swordfish handgear fishermen to participate fully as the stock recovers		Combined with objective 17.

1.5 Issues for Future Consideration and Outlook

Beyond the issues addressed and raised in this document, other new and unresolved matters have been identified by the general public, the HMS and Billfish Advisory Panels, and

NOAA staff as important to rebuilding and maintaining fisheries that are economically and biologically sustainable. Some of the main issues are identified below. This list is not comprehensive in nature, and NMFS may consider these issues or others in future rulemakings, possibly through framework actions. The issues are not listed in any priority. It is important to note that some of the issues are complicated, may require specific comments from the public for development (*e.g.*, scoping meetings and/or developmental workshops), and may take several years to complete.

- Bluefin Tuna Fishery Issues

During this rulemaking, NMFS heard many comments regarding the BFT fishery in general. There is growing concern regarding the status of BFT, protection of the spawning grounds in the Gulf of Mexico, the underharvests in recent years, overlap between the BFT and herring fisheries/habitat, and the current minimum size and trip limits. Purse Seine participants also continue to request changes to the current regulations that limit Purse Seine vessel landings of large medium bluefin tuna (73 inches to less than 81 inches) to no more than 15 percent, by weight, of the total amount of giant bluefin tuna landed during a fishing year. Angling category participants have concerns about the unit of measurement used by surveyors and the amount of quota available in their category. Charter/headboat fishermen continue to request the ability to fillet tunas at sea. Also, ICCAT is conducting a stock assessment in June 2006 that should provide additional information regarding the status of BFT and the current rebuilding plan. It is likely that in November 2006 ICCAT will finalize the stock assessment and recommend management actions for BFT. While NMFS cannot predict what the recommendation(s) will contain, many of the actions taken in this HMS FMP should help NMFS implement the new recommendations. For example, the time/area closure preferred alternative to implement criteria for the consideration of additional or modified closures for any gear type in order to protect BFT, if needed. NMFS may also consider closing an area of the Gulf of Mexico and opening it as an experimental fishery to test for ways of reducing bycatch of spawning bluefin tuna through such things as hook and bait combinations, environmental conditions, and/or temporal and spatial associations among different species. Also, amending the process to establish the General Category subperiod and subquotas could facilitate adjustments in a more timely manner, if necessary. Depending on ICCAT recommendation(s) and the status of BFT, it is possible that NMFS could include additional issues within an ICCAT implementation rule. However, NMFS will need to prioritize issues to ensure that international obligations are met and the rebuilding plan is progressing.

- Swordfish Fishery Issues

For the past several years, the domestic swordfish fishery has been unable to catch its full U.S. quota allocation. This is a change from the fishery in the 1990s where the quota was usually taken. In 1997, the quota was overharvested and the fishery was closed. There are a number of possible explanations and factors that may contribute to the inability of the domestic fleet to fully harvest the swordfish quota today including time/area closures to pelagic longline gear (the primary gear used to harvest swordfish), the reduction in permit holders through limited access, the restrictions on vessel upgrading, the incidental trip limits, the few number of swordfish reported landed by the recreational sector, and other economic factors (*e.g.*, fuel cost). Given the general anticipation that the North Atlantic swordfish stock will be identified as fully

rebuilt, per the pending September 2006 stock assessment, a number of fishermen and others have asked NMFS to assist in revitalizing this fishery. Options that have been raised include, but are not limited to, opening the time/area closures, allowing open access to swordfish handgear permits, removing or modifying the upgrade restrictions, removing or modifying the incidental trip limits, and improving recreational reporting. Many people are concerned that without a plan to revitalize the fishery, the quota will be taken from the United States and given to other countries, many of which appear to place a lower priority on conservation than does the United States. NMFS is also concerned about the status of this fishery and the U.S. quota. While this rulemaking was not intended to revitalize the swordfish fishery, many of the preferred alternatives would facilitate future actions. For example, NMFS did not modify any existing closures at this time but the preferred criteria would allow for modifications to the closed areas and/or experiments to test gears or other fishing methods in the closed areas. Additionally, NMFS is defining a “new” swordfish commercial gear type (*i.e.*, buoy gear) and clarifying the difference between this commercial gear and the primarily recreational gear of handline. Depending on the stock assessment, the takes of sea turtles and marine mammals by the pelagic longline fleet, the recommendations of the final Pelagic Longline Take Reduction Plan, and the upcoming ICCAT recommendations, NMFS expects to do rulemaking in the near future to aid in revitalizing the swordfish fishery. Such a rulemaking could, but may not necessarily, reconsider the time/area closures using the criteria established in this FMP and using circle hook data, consider changes to the upgrading restrictions and incidental trip limits, and modifications to the permitting program (described more below). Revitalizing this fishery may also require additional assistance such as creation of a Seafood Marketing Council (January 24, 2006, 71 FR 3797). Other factors that NMFS cannot control, such as fuel prices or the cost to upgrade vessels, may impact the revitalization effort. Over time, consistent with the objectives of this FMP, the Magnuson-Stevens Act, MMPA, and the ESA, NMFS intends to aid in revitalizing the fishery so that swordfish are harvested in a sustainable and economically viable manner and bycatch is minimized to the extent practicable.

- Billfish Fishery Issues

Blue and white marlin are overfished and overfishing is occurring. However, the United States is responsible for a small portion of the mortality compared to other countries in the Atlantic. NMFS received a petition under the ESA to list white marlin and intends to conduct a status review in 2007. Additionally, while Atlantic billfish cannot be sold, Pacific billfish can be. Thus, NMFS has a number of challenges to address regarding the billfish fishery and stock, much of which will depend on the results of the May 2006 stock assessment. In recent years, NMFS has implemented a number of time/area closures that have reduced the bycatch of billfish in the pelagic longline fishery. In this rulemaking, NMFS has considered several time/area closures in part to continue to reduce bycatch of billfish in the pelagic longline fishery. NMFS did not find a time/area closure that would reduce both billfish bycatch and bycatch of other species; however, the criteria could allow NMFS to continue considering this option based on circle hook data. In this rulemaking, NMFS also considered several alternatives that could reduce the post-release mortality of billfish in the directed recreational fishery. NMFS is preferring some of those alternatives and has analyzed alternatives that may, or may not, be considered by ICCAT in November 2006. NMFS is also closing potential loopholes for billfish mortality by limiting the landings or possession of billfish to Angling and Charter/Headboat category permit holders and to General category permit holders who are participating in a

tournament. Regardless of the permit combination (*e.g.*, Charter/Headboat and commercial shark limited access permit), no billfish may be possessed or retained on board vessels that have commercial quantities of other HMS on board. Depending on the recommendations by ICCAT in November 2006, the results of the 2006 stock assessment, and other priorities, NMFS may need to initiate a rulemaking regarding billfish in the near future. As part of this rulemaking, NMFS may consider standardized reporting requirements, particularly in regard to the Certificate of Eligibility (COE) for Pacific billfish. Such a step may improve compliance, facilitate enforcement, and improve the quality and quantity of information on Atlantic billfish harvest and Pacific billfish shipments.

- Shark Fishery Issues

Since initiation of the 2003 Amendment 1 to the 1999 Atlantic Tunas, Swordfish, and Shark FMP, there have been a number of new assessments and new information relating to sharks. ICCAT assessed blue and shortfin mako sharks in 2004. In 2004, Canada began considering listing porbeagle sharks as endangered under Canadian laws based on a 2001 stock assessment, and in 2005, Canada published an updated stock assessment for porbeagle sharks. Both fishermen and environmentalists have requested NMFS to lower the porbeagle shark quota and strengthen the regulations in response. In August 2005, the Atlantic States Marine Fisheries Commission agreed to develop a coast-wide shark fishery management plan for state waters. In October 2005, NMFS began the process to update the LCS stock assessment; this assessment should be done in 2006. Also in 2005, the Mid-Atlantic Fishery Management Council requested jurisdiction to manage smooth dogfish. NMFS has also conducted a species-specific stock assessment for dusky sharks that is undergoing internal review. NMFS expects to update the SCS stock assessment starting in early 2007. Based on these many stock assessments and changes, NMFS realizes there may be a need to adjust current quotas for certain species. Besides this information, public comments have continued to raise concerns over particular management measures. Thus, future rulemaking may also consider, as needed, other modifications including, but not limited to, the mid-Atlantic time/area closure, changes to the LCS trip limit, changes to the upgrading restrictions and/or incidental trip limits, changes to the prohibited species list, reporting for recreational fishermen, changes to authorized gear, and changes to the management unit. Additionally, in early 2006, a right whale calf was found dead with gillnet lacerations. Thus, the gillnet fishery in the right whale critical habitat was closed for the last part of the calving season through March 31, 2006 (February 16, 2006, 71 FR 8223). The Office of Protected Resources is currently considering this issue in light of the Marine Mammal Protection Act and the Atlantic Large Whale Take Reduction Plan. Given this and repeated requests by the State of Georgia and others, NMFS may need to conduct a rulemaking to reconsider the use of gillnet gear in Atlantic shark fisheries.

- HMS Permit Reform

In the 1990s, NMFS issued shark and swordfish permits that were essentially species-based but also allowed fishermen to catch tunas other than non-bluefin tuna. NMFS also issued bluefin tuna permits that were established by gear type. In 1999, NMFS established a limited access permit system for tuna longline, swordfish, and sharks. Since then, NMFS has also implemented two overarching permits for those fishermen fishing for any HMS: angling and charter/headboat. Thus, fishermen fishing for HMS now have a variety of required permits to

choose from, some of which are species-based and some of which are gear-based. Once the fisherman chooses to use one particular required permit, the fisherman must fish for that species with the particular gear authorized by that permit (*i.e.*, they are placed in a box). This has caused concern and has raised a number of complicated questions and answers. Thus, NMFS intends to conduct a rulemaking regarding HMS permits that could include, among other things, further rationalizing some segments of the HMS fisheries, streamlining or simplifying the permitting process, restructuring the permit program (gear-based, species-based, or both), reopening some segments of the limited access system to allow for the issuance of additional permits, modifying when permits are renewed (fishing year or birth month), and considering dedicated access privileges (*e.g.*, individual transferable permits).

- Recordkeeping, Reporting, and Monitoring

Timely and reliable data is critical for fishery management. Thus, NMFS is always striving to improve its data collection. Data for HMS fisheries is collected in a number of ways including through self-reported methods, such as logbooks or call-in systems, and through observers. Observer data are generally considered to be of higher quality; however, observer programs are expensive to operate and the majority of fishing effort is conducted without observers. Recent Biological Opinions pertaining to HMS fisheries require NMFS to collect observer information specific to sea turtles and marine mammals on pelagic longline vessels and commercial vessels participating in the Atlantic shark fisheries. Observer data collection in other HMS fisheries, including the recreational and Charter/Headboat fisheries, is voluntary at this time. Commercial fishermen in some HMS fisheries are required to submit logbooks. Many fishermen have asked for electronic or real-time reporting. Similarly, HMS dealers must submit dealer reports and many of them have asked for electronic reporting.

NMFS also collects commercial fisheries data via vessel monitoring systems (VMS). In HMS, pelagic longline, bottom longline, and gillnet fishermen are all required to use VMS during certain seasons. All VMS units need to be turned on and operating two hours before the vessel leaves port until the vessel returns to port. NMFS and fishermen have had problems with VMS not operating while the vessel is away from port. Some VMS units do not have any indicator light or other method for fishermen to see if the unit is working. Fishermen have also commented that certain brands appear to be unreliable. NMFS enforcement has indicated that hourly reporting may not be frequent enough for all of their needs.

Recreational fisheries are a major component of Atlantic HMS fisheries, and because recreational landings of Atlantic HMS are not marketed through commercial channels, it is not possible to monitor anglers' catches through ex-vessel transactions as in the commercial fishery. Instead, NMFS collects data through other means including the two primary statistical sampling surveys of the recreational fisheries: the Marine Recreational Fishery Statistics Survey (MRFSS) and the Large Pelagics Survey (LPS). Both surveys consist of a telephone survey to estimate effort and a dockside intercept program to collect CPUE data or landings information. The utility and accuracy of both surveys has been questioned in recent years. NMFS also uses other programs to collect information on recreational fisheries for Atlantic HMS, including tournament registration and reporting and angler self-reporting systems. Mandatory call-in systems were implemented in 1997 for bluefin tuna, and in 2003 for Atlantic billfish and swordfish. NMFS is also working cooperatively with individual states to develop more effective monitoring of

Atlantic HMS recreational fisheries. North Carolina and Maryland both employ catch card and body tag systems that may serve as a model for future recreational data collection efforts.

Despite these data collection systems, NMFS seeks to further enhance its commercial and recreational data collection efforts. NMFS believes that better administration and coordination of reporting programs and requirements for dealers and fishermen of HMS species can ultimately streamline reporting requirements and procedures, thereby ensuring that information necessary for the management of HMS species is collected more efficiently and with less burden on fishermen. As such, NMFS would like to explore methods to improve the accuracy of data, either through rules or through administrative methods. However, stakeholders must also realize that quality data is dependent on their cooperation and efforts, including submission of accurate commercial and recreational landings on a timely basis. Some of the preferred measures in this FMP will begin to facilitate this improvement of data collected from HMS fisheries (*e.g.*, shark identification dealer workshops and the ability in the future for BFT dealers to report electronically). Additional changes are possible in the future.