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## 2.0 SUMMARY OF ALTERNATIVES

### 2.1 Bycatch Reduction

#### 2.1.1 Workshops

##### *2.1.1.1 Protected Species Safe Handling, Release, and Identification Workshops for Pelagic Longline, Bottom Longline, and Gillnet Fishermen*

These workshops are intended to reduce the mortality of sea turtles, marine mammals, and other protected species captured incidentally in the HMS pelagic longline (PLL), bottom longline (BLL), and gillnet fisheries. These workshops would disseminate information and demonstrate techniques specific to sea turtle safe handling and release protocols as per the current NMFS standards. Through these workshops, participants would be trained to safely disentangle, resuscitate, and release captured sea turtles, smalltooth sawfish, other protected species and non-target species, would teach participants how to properly identify protected species, and would provide information on key morphological characteristics, distribution, and basic life history to improve positive identification of protected species. Due to the nature of the workshop subject matter, hands-on training and interaction with the workshop leader is vital for initial skill development and certification. During these workshops, participants would be given a comprehensive hands-on examination, which, upon successful completion, would result in a multi-year certification. After the initial series of workshops, the Agency would continue to provide certification opportunities for permitted HMS fishery participants. Certification would be renewed on a specified timetable (*i.e.*, 2, 3, or 5-year timetable) to ensure that the latest techniques to disentangle, release, and identify protected species are used. Additional certification requirements may be warranted in the future based upon reinitiation of consultation with the NMFS Office of Protected Resources or the receipt of significant new information related to handling and release protocols. While the workshop alternatives may be mandatory for certain individuals, to the extent practicable, the workshops would be open to interested individuals who wish to receive the workshop certification on a voluntary basis.

Alternative A1 Voluntary protected species safe handling, release, and identification workshops for longline fishermen (No Action)

Under alternative A1, the No Action alternative, NMFS would continue to provide voluntary safe handling and release workshops for PLL and BLL fishermen and continue to distribute wheelhouse placards, protocols, and educational videos, as well as disseminate additional information through the activities of the NMFS PLL Point of Contact (POC). No mandatory requirements would be implemented under this alternative.

Alternative A2 *Mandatory protected species safe handling, release, and identification workshops and certification for all HMS pelagic or bottom longline vessel owners – Preferred Alternative*

Alternative A2 would require mandatory workshops and certification for all vessel owners that have pelagic or bottom longline gear on their vessel and that have been issued or are

required to be issued any of the HMS limited access permits (LAPs) to participate in HMS longline fisheries. Only HMS LAP owners with PLL or BLL gear on board their vessel are required to attend the workshop and receive a workshop certificate. These workshops would provide information and ensure proficiency with the safe handling, disentanglement, resuscitation, and release techniques for sea turtles, smalltooth sawfish, and other protected species. Additionally, the workshops would teach participants how to properly identify protected species, and provide information on key morphological characteristics, distribution, and basic life history to improve positive identification of protected species.

To receive their workshop certification, HMS LAP owners that fish with PLL or BLL gear would attend a workshop and demonstrate their understanding of the safe handling, disentanglement, resuscitation, release, and identification techniques. It is a refutable presumption that vessel owners and/or operators fish with longline gear if longline is on board the vessel; logbook reports indicate that longline gear was used on at least one trip in the preceding year; or in the case of a permit transfer to new owners that occurred less than a year ago, logbook reports indicate that longline gear was used on at least one trip since the permit transfer. HMS LAP(s) owners with PLL or BLL on board the vessel would be required to obtain their initial workshop certification prior to renewing their shark and swordfish limited access permit(s) in 2007. If the vessel owner holds multiple HMS LAPs, the owner would need to be certified prior to the earliest expiring shark or swordfish LAP in 2007.

For permit holders required to attend the workshop and receive a certificate, the permit holder must show a copy of their HMS permit, as well as proof of identification. If a permit holder is a corporation, partnership, association, or any other entity, the individual attending on behalf of the permit holder must show proof that he or she is the permit holder's agent and a copy of the HMS permit. The workshop certification would not be transferable to any other person and would state the name of the permit holder on the certificate. If acquiring an HMS LAP from a previous permit holder, the new owner would need to obtain a workshop certification prior to transferring the permit into the new owner's name. A copy of the owner's workshop certificate must be kept on board the vessel at all times.

The schedule for the protected species workshops would be available in advance to allow permit holders to select the workshop closest to them and most convenient to their schedule. If a permit holder is unable to attend a scheduled workshop, NMFS would consider granting one-on-one workshop training at the expense of the permit holder.

All owners that attended and successfully completed the industry-sponsored certification workshops, as documented by workshop facilitators, held on April 8, 2005, in Orlando, Florida, and on June 27, 2005, in New Orleans, Louisiana, would automatically receive valid protected species workshop certificates.

Alternative A3 *Mandatory protected species safe handling, release, and identification workshops and certification for vessel operators actively participating in HMS pelagic and bottom longline fisheries – Preferred Alternative*

Alternative A3 would require mandatory workshops and certification for vessel operators who intend to participate in HMS longline fisheries. Alternative A3 would ensure that at least

one person on board and directly involved with a vessel's fishing activities is certified in the release and disentanglement protocols and identification of protected species.

The initial operator certification would be linked to the renewal of the vessel's HMS shark and swordfish LAP(s) in 2007; therefore, an operator would need to attend a workshop and receive the certification prior to the owner renewing any of the vessel's HMS shark and swordfish LAP(s) in 2007. If the vessel owner holds multiple HMS LAPs, the operator would need to be certified prior to the earliest expiration date on either the shark or swordfish limited access permit in 2007. After the initial certification, the operator's certification is no longer linked to the renewal of a vessel's HMS LAPs and would need to be renewed prior to the expiration date on the operator's workshop certificate. The workshop certification would not be transferable to any other person and would have the operator's name on the certificate.

If the vessel's HMS LAP(s) has not yet expired in 2007, the operator has until the expiration of the vessel's HMS LAP(s) to continue operating the vessel without a workshop certification. If the vessel's shark or swordfish LAP has already been renewed in 2007, the operator would need to be certified and have a workshop certificate on board the vessel. After renewing the vessel's shark or swordfish LAP in 2007, operating a vessel with longline gear without a certified operator and a copy of the certificate on board would be illegal.

Operators are encouraged to transfer the knowledge and skills obtained from successfully completing the workshops to the crew members, potentially increasing the proper handling and release protocols, and identification of protected species. While crew members are not required to attend the workshops, to the extent practicable, the workshops would be open to anyone who wishes to attend and receive certification.

The schedule for the protected species workshops would be available in advance to allow operators to select the workshop closest to them and most convenient to their schedule. If an operator is unable to attend a scheduled workshop, NMFS would consider granting one-on-one workshop training at the expense of the individual.

All operators that attended and successfully completed the industry certification workshops, as documented by workshop facilitators, held on April 8, 2005, in Orlando, Florida, and on June 27, 2005, in New Orleans, Louisiana, would automatically receive valid protected species workshop certificates.

**Alternative A4** Mandatory protected species safe handling, release, and identification workshops and certification for all HMS longline vessel owners, operators, and crew

Alternative A4 would require mandatory protected species safe handling, release, and identification workshops and certification for all HMS longline vessel owners, operators, and crewmembers. Attendance and successful completion of a workshop would be linked to an owner's ability to renew an HMS permit. This alternative would allow the Agency to certify at least two individuals per vessel that would be associated with fishing activities on board the vessel. Unless the owners, operators, and crew attend and successfully complete the workshop,

an HMS permit would not be issued to the vessel. At least one trained person must be onboard during fishing activities to provide proof of certification.

Alternative A5 *Mandatory protected species safe handling, release, and identification workshops and certification for shark gillnet vessel owners and operators – Preferred Alternative*

Alternative A5 would require mandatory protected species safe handling, release, and identification workshops and certification for all shark gillnet vessel owners that have been issued a Federal directed or indirect shark permit, as well as gillnet vessel operators. It is a rebuttable presumption that vessel owners and/or operators fish with gillnet gear if a gillnet is on board the vessel; logbook reports indicate that gillnet gear was used on at least one trip in the preceding year; or in the case of a permit transfer to new owners that occurred less than a year ago, logbook reports indicate that gillnet gear was used on at least one trip since the permit transfer. These workshops would provide information and ensure proficiency with the safe handling and release techniques for sea turtles, smalltooth sawfish, and other protected species. Additionally, the workshops would teach participants the proper identification of protected species, and would provide information on key morphological characteristics, distribution, and basic life history to improve positive identification of protected species.

Attendance and successful completion of a workshop would be linked to an owner's ability to renew an HMS fishing permit. A copy of the owner's workshop certificate would need to be submitted with the HMS LAP renewal request as proof of successful completion of the protected species workshops. Shark gillnet vessel owners would be required to attend a workshop and receive a certification prior to the expiration date on their shark LAP in 2007 to renew their permit. For their initial certification only, an operator would also need to attend a workshop and receive the certification prior to renewing the vessel's shark permit in 2007. After the initial certification, the operator's certification is no longer linked to the renewal of the vessel's permit and would need to be renewed prior to the expiration date on the operator's workshop certificate.

For shark permit holders required to attend the workshop and receive a certificate, the permit holder must show a copy of their shark LAP, as well as proof of identification. If a permit holder is a corporation, partnership, association, or any other entity, the individual attending on behalf of the permit holder must show proof that he or she is the permit holder's agent and a copy of the shark LAP. The workshop certification would not be transferable to any other person and would state the name of the permit holder on the certificate. If acquiring a shark LAP from a previous permit holder, the new owner would need to obtain a workshop certification prior to transferring the permit into the new owner's name.

If the vessel's directed or indirect shark permit has not yet expired in 2007, the owner and operator would have until the expiration of the permit to continue operating the vessel without a workshop certification. If the vessel's shark permit has already been renewed in 2007, the owner and operator would need to have a workshop certificate on board the vessel. Both the owner's and operator's workshop certificate would need to be kept on board the vessel to verify successful completion of the safe release, disentanglement, and identification workshop. This alternative would ensure that at least one person on the vessel, who is directly involved with a

vessel's fishing activities, is certified in the safe handling and release protocols and identification of protected species.

The schedule for the protected species workshops would be available in advance to allow owners and operators to select the workshop closest to them and most convenient to their schedule. If an owner or operator is unable to attend a scheduled workshop, NMFS would consider granting one-on-one workshop training at the expense of the individual.

**Alternative A6** *Protected species safe handling, release, and identification certification renewal every 3-years – Preferred Alternative*

Alternative A6 would require the renewal of the mandatory protected species safe handling, release, and identification workshop certifications every three years. Permit holders employing longline or gillnet gear, including those grandfathered into these requirements, would be required to attain recertification every three years before renewing their shark and swordfish LAPs or tuna longline permits. Proof of the owner's valid workshop certification would need to be submitted to renew an HMS permit. Operators, including those grandfathered into these requirements, would need to renew the workshop certification every three years prior to the expiration date on the workshop certification.

Once the first round of certifications are complete, NMFS would explore alternative means for renewing permits, including online or mail-in options. The Agency also hopes to develop an online program that would serve as a medium for providing up-to-date information regarding protected species handling techniques. In addition to considering alternative timetables for certification renewal (*i.e.*, every two or five years), NMFS considered combining this alternative with each of the mandatory workshop alternatives listed above in the DEIS.

**2.1.1.2 HMS Identification Workshops**

Proper identification of HMS, as well as threatened and endangered species that fishermen may interact with while pursuing HMS, is paramount to the efficacy of HMS regulations and management. Permitted fish dealers and fishermen are responsible for accurately identifying HMS on the dealer reports and logbooks submitted to NMFS. These reports form the basis of quota monitoring activities and stock assessments. Misidentification of HMS can negatively impact stock assessments, calculation of season lengths, and influence the criteria used to designate certain species as prohibited. Identification workshops would help shark dealers and/or their proxies improve their shark identification skills. These workshops would be most effective if held at venues where live and/or freshly dead specimens could be displayed. After the initial series of workshops, the Agency would continue to provide certification opportunities for permitted HMS fishery participants. The preferred alternative would require the renewal of HMS identification certifications on a three-year timetable to ensure that the latest techniques to properly identify commonly caught HMS are used. While the workshop alternatives may be mandatory for certain individuals, to the extent practicable, the workshops would be open to interested individuals who wish to receive the workshop certification on a voluntary basis (*e.g.*, fishermen, dealers, law enforcement officials, and port agents).

Alternative A7 No HMS identification workshops (No Action)

Under alternative A7, the No Action alternative, NMFS would continue to support dissemination of information through the Guide to Sharks, Tunas, & Billfishes of U.S. Atlantic & Gulf of Mexico, to enhance fishery participant's ability to accurately identify species commonly caught in HMS fisheries. No mandatory requirements would be implemented under this alternative.

Alternative A8 Voluntary HMS identification workshops for dealers, all commercial vessel owners and operators, and recreational fishermen

Under alternative A8, NMFS would hold voluntary HMS identification workshops for dealers, commercial vessel owners and operators, and recreational fishermen. These workshops would be held in addition to the items listed under the No Action alternative (A7) above. No mandatory requirements would be implemented under this alternative.

Alternative A9 *Mandatory shark identification workshops for all shark dealers – Preferred Alternative*

Alternative A9 would require mandatory shark identification workshops for all Federally permitted shark dealers. Attendance and successful completion of a workshop would be linked to a dealer's ability to renew their Federal shark dealer permit. All Federally permitted shark dealers would have to successfully complete the shark identification workshop by December 31, 2007. The permit holder would be required to submit proof of a workshop certification when renewing the shark dealer permit. Also, proof of a workshop certification would need to be available at the dealer's place of business for inspection. Without a certificate indicating successful completion of the workshop, Federal shark dealer permit would not be issued. Shark identification workshops would be mandatory for Federally permitted shark dealers, but, to the extent possible, these workshops would be open to other interested individuals (*e.g.*, individuals participating in the shark fishery, port agents, law enforcement officers, state shark dealers, and recreational fishermen) on a voluntary basis.

If the permitted dealer is unable to attend or is not directly involved in species identification, then a proxy could be sent to meet mandatory attendance and certification requirements. The proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, or first receipt of fish as they are offloaded from a vessel; and is involved in filling out dealer reports. If a dealer opts to send a proxy, the dealer would be required to designate a proxy for each place of business covered by the dealer's permit. Only one certificate will be issued to each proxy. Under this alternative, Federally permitted shark dealers would be held accountable for ensuring that the appropriate individuals receive the proper training in shark identification. NMFS encourages shark dealers to send as many proxies as necessary to train the individuals responsible for shark species identification within the dealer's business. Multiple trained and certified proxies per shark dealer would ensure that the dealer has at least one person on staff with the workshop certification and skills to properly identify sharks.

For shark dealers required to attend the Atlantic shark identification workshop certificate, the dealer must show a copy of their HMS permit, as well as proof of identification. If a permit holder is a corporation, partnership, association, or any other entity, the individual attending on behalf of the permit holder must show proof that he or she is the permit holder's agent, as well as a copy of the HMS permit. For proxies attending on behalf of a shark dealer permit holder, the proxy must have documentation from the permit holder acknowledging that the proxy is attending the workshop on behalf of the Atlantic shark dealer permit holder and must show a copy of the Atlantic shark dealer permit. A dealer or the designated proxy would be required to bring a copy of the dealer permit to the workshop to guarantee that the dealer receives credit for the certification, as the workshop certification would be linked to the dealer's permit number.

The schedule for shark identification workshops would be available in advance to allow dealers and proxies to select the workshop closest to them and most convenient to their schedule. If a dealer and/or proxy are unable to attend a scheduled workshop, NMFS would consider granting one-on-one workshop training at the expense of the shark dealer permit holder. One-on-one training sessions could also accommodate the replacement of a proxy whose employment was terminated on short notice.

**Alternative A10** Mandatory HMS identification workshops for all swordfish, shark, and or/tuna dealers

Alternative A10 would require mandatory HMS identification workshops for all swordfish, shark, and/or tuna dealers. Attendance and successful completion of a workshop would be linked to a dealer's ability to renew a Federal dealer permit. If the permitted dealer was unable to attend or is not directly involved in dealer activities, then a proxy could be sent to meet mandatory attendance requirements. If a dealer opts to send a proxy, then the dealer must designate a proxy from each place of business covered by the dealer's permit. A proxy must be a person who is employed by a place of business, covered by a dealer's permit, a primary participant in identification, weighing, or first receipt of fish as they are offloaded from a vessel, and involved in filling out dealer reports. Without a certificate indicating successful completion of the workshop, no permit would be issued.

**Alternative A11** Mandatory HMS identification workshops for all commercial longline vessel owners

Alternative A11 would require mandatory HMS identification workshops for all vessel owners issued HMS LAPs and using longline gear. Attendance and successful completion of a workshop would be linked to an owner's ability to renew a HMS fishing permit. Without a certificate indicating successful completion of the workshop, a HMS permit or permit renewal would not be issued to a vessel that has logbook reports indicating longline use.

**Alternative A12** Mandatory HMS identification workshops for all commercial longline vessel operators

Alternative A12 would require mandatory HMS identification workshops for all commercial longline vessel operators. The initial operator certification would be linked to the

vessel's HMS permit renewal. An operator would need to attend a workshop and receive the certification prior to the renewal of the vessel's HMS permit in 2007.

Alternative A13 Mandatory HMS identification workshops for all commercial vessel owners (longline, CHB, General category, and handgear/harpoon)

Alternative A13 would require mandatory HMS identification workshops for all commercial vessel owners with an HMS permit. Attendance and successful completion of a workshop would be linked to an owner's ability to renew a HMS fishing permit. Without a certificate indicating successful completion of the workshop, a HMS permit would not be issued to the vessel.

Alternative A14 Mandatory HMS identification workshops for all commercial vessel operators (longline, CHB, General category, and handgear/harpoon)

Alternative A14 would require mandatory HMS identification workshops for all commercial vessel operators. The initial operator certification would be linked to the vessel's HMS permit renewal. An operator would need to attend a workshop and receive the certification prior to renewing the vessel's certification in 2007.

Alternative A15 Mandatory HMS identification workshops for all HMS Angling category permit holders

Alternative A15 would require mandatory HMS identification workshops for all HMS Angling permit holders, the largest category of HMS permit holders. Attendance and successful completion of a workshop would be linked to an owner's ability to renew a HMS Angling category fishing permit. Without a certificate indicating successful completion of the workshop, no HMS Angling category permit would be issued.

Alternative A16 *HMS identification certification renewal every 3-years – Preferred Alternative*

Alternative A16 would require renewal of mandatory HMS identification workshop certifications every three years. In conjunction with alternative A9, Federally permitted shark dealers would be required to recertify every three years before renewing their Federal dealer permits. Proof of a valid workshop certification would need to be submitted to renew their Federal dealer permit. If the dealer opts to send a proxy or proxies, a copy of a workshop certificate for every business covered by the dealer's permit must be included with the renewal application.

Due to the nature of workshop subject matter, hands-on training and interaction with the workshop leader is vital for initial skill development and certification. Once the first round of certifications are complete, NMFS would explore alternative means for renewing permits, including online or mail-in options. The Agency also hopes to develop an online program that would serve as a medium for providing up-to-date information regarding HMS identification. In addition to considering alternative timetables for certification renewal (*i.e.*, every two or five years), NMFS considered combining this alternative with each of the mandatory workshop alternatives listed above.

Other workshop alternatives considered but not further analyzed at this time

Alternative A17 Compliance With, and Understanding of, HMS Regulations

Constituents have expressed concern over the complexity of HMS regulations. Workshops providing a thorough explanation of HMS regulations and management history would likely be beneficial and may result in improved public relations on behalf of the Agency, improved compliance with regulations, and understanding of the HMS regulatory process.

During the scoping process for the Issues and Options Paper and Pre-draft for this document, NMFS received comments noting that workshops held by the agency should be prioritized. Furthermore, comments received were supportive of continuing to disseminate information pertaining to HMS regulations (*e.g.*, annual HMS Compliance Guide) rather than spending Federal dollars to hold workshops on regulations at this time. Advisory Panel members were supportive of focusing on mandatory requirements (*i.e.*, workshops required under Biological Opinions and other mandates) first and then following up with additional hard copy outreach materials to meet regulatory informational needs. Since NMFS already disseminates this type of information on a regular basis and given that this information can be distributed to participants attending either the handling/release and/or identification workshops, this alternative is not being further analyzed at this time. NMFS may reconsider this alternative in the future, if appropriate.

**2.1.2 Time/Area Closures**

The first time/area closure for HMS was implemented in the 1999 FMP with the Northeastern U.S. closure off New Jersey in June 1999 to reduce bluefin tuna (BFT) discards. Since then, additional closures have been implemented in the DeSoto Canyon (2000), Florida East Coast (2001), Charleston Bump, Northeast Distant (2001), and the Mid-Atlantic shark closed area (2005) (Figure 2.1). The goals of all of the HMS time/area closures are to: (1) maximize the reduction in bycatch; (2) minimize the reduction in the target catch; and (3) consider impacts on non-target HMS (*i.e.*, BFT) to minimize or reduce non-target catch levels.

These time-area closures have proven to be effective at reducing bycatch. However, despite these closures, several non-target HMS such as blue and white marlin, sailfish, and BFT are overfished with overfishing occurring, and protected species, such as leatherback and loggerhead sea turtles, continue to interact with HMS gears. As a result, NMFS considered additional closures to further reduce these interactions. However, possibly because of these closures, landings, such as swordfish, and pelagic longline (PLL) effort have decreased over the years. Therefore, NMFS considered modifications to existing closures as a means to increase the catch of Atlantic swordfish.

NMFS considered the following alternatives, ranging from the No Action alternative of maintaining existing closures to a complete prohibition of certain HMS gear types. Some of the alternatives are grouped according to the specific objectives of the closed areas. Thus, alternatives B2(a) through B2(k), B4, and B6 consider new closure areas for HMS to primarily address white marlin, BFT, sea turtle, and smalltooth sawfish bycatch, whereas alternatives B3(a) through B3(d) consider alternatives for modifying existing closures. Alternative B5

considers criteria for implementing new closures and/or modifying existing closure whereas alternative B7 considers prohibiting the use of PLL gear in HMS fisheries. For details on the methods used to consider alternatives and select alternatives for further analysis see Section 4.1.2 and [Appendix A](#).

Alternative B1 Maintain existing time/area closures; no new time/area closures (No Action)

This alternative would maintain the existing time/area closures. It would not implement any new time/area closures nor modify any existing closures. The current time/area closures are shown in Figure 2.1.

Alternative B2(a) Prohibit the use of PLL gear in HMS fisheries in the central portion of the Gulf of Mexico from May through November (7 months), annually

This alternative would prohibit the use of PLL gear by all U.S. flagged-vessels permitted to fish for HMS in the central portion of the Gulf of Mexico where blue and white marlin, sailfish, spearfish, BFT, and leatherback and loggerhead sea turtles have been observed and reported caught year-round, but with highest concentrations from May through November. This closure would encompass approximately 11,991 square nautical miles (nm<sup>2</sup>) and would be defined as the area within the following coordinates, beginning with the northeastern corner and proceeding clockwise: 27° 10' N. latitude (Lat.), 90° 29' W. longitude (Long.); 25° 47' N. Lat., 90° 29' W. Long.; 25° 47' N. Lat., 93° 10' W. Long.; 27° 10' N. Lat., 93° 10' W. Long. (Figure 2.2).

Alternative B2(b) Prohibit the use of PLL gear in HMS fisheries in an area of the Northeast during the month of June (1 month), each year

This alternative would prohibit the use of PLL gear by all U.S. flagged-vessels permitted to fish for HMS in a portion of the Northeast where large numbers of BFT is discarded during the month of June each year. This closure would encompass approximately 2,251 nm<sup>2</sup> and would be defined as the area within the following coordinates, beginning with the northern-most corner and proceeding clockwise: 41° 15' N. Lat., 66° 41' W. Long.; 40° 48' N. Lat., 66° 14' W. Long.; 39° 50' N. Lat., 67° 22' W. Long.; 40° 17' N. Lat., 67° 49' W. Long. (Figure 2.2).

Alternative B2(c) Prohibit the use of PLL gear in HMS fisheries in the central Gulf of Mexico from April through June (3 months), annually

This alternative would prohibit the use of PLL gear by all U.S. flagged-vessels permitted to fish for HMS in a central portion of the Gulf of Mexico from April through June (three months), annually. This area was mainly considered to protect BFT that spawn in the Gulf of Mexico. NMFS took into account information received in a petition for rulemaking to consider a closure to reduce BFT discards in a reported spawning area in the Gulf of Mexico (Blue Ocean Institute *et al.*, 2005; Block *et al.*, 2005). This closure would encompass approximately 101,670 nm<sup>2</sup> and would be defined as the area within the following coordinates, beginning with the northwest corner and proceeding clockwise: 28° 00' N. Lat., 96° 00' W. Long.; 28° 00' N. Lat., 92° 00' W. Long.; 29° 00' N. Lat., 92° 00' W. Long.; 29° 00' N. Lat., 86° 00' W. Long.; 28° 00'

N. Lat., 86° 00' W. Long.; 28° 00' N. Lat., 85° 00' W. Long.; 27° 00' N. Lat., 85° 00' W. Long.; 27° 00' N. Lat., 86° 00' W. Long.; 26° 00' N. Lat., 86° 00' W. Long.; 26° 02' N. Lat., 86° 17' W. Long.; following the EEZ until 26° 00' N. Lat., 96° 00' W. Long. (Figure 2.2).

Alternative B2(d) Prohibit the use of PLL gear in HMS fisheries in the Gulf of Mexico west of 86° W. Longitude year-round

This alternative would prohibit the use of PLL gear by all U.S. flagged-vessels permitted to fish for HMS in the Gulf of Mexico west of 86° W. Longitude year-round. This alternative would close an area where approximately 50 percent of all effort (Atlantic, Gulf of Mexico, and Caribbean) and 90 percent of all effort in the Gulf of Mexico has been reported in recent years (2001 – 2003). Closing this area would help reduce interactions for a number of different species. This closure would encompass approximately 162,181 nm<sup>2</sup> west of 86° 00' W. Long., 25° 00' N. Lat. between the State Territorial Sea and the EEZ boundary (Figure 2.2).

Alternative B2(e) Prohibit the use of PLL gear in HMS fisheries in an area of the Northeast to reduce sea turtle interactions year-round

This alternative would prohibit the use of PLL gear by all U.S. flagged-vessels permitted to fish for HMS in an area of the Northeast year-round. This area was primarily considered to reduce loggerhead sea turtle interactions, which occur with greater frequency in this area than in nearly all other areas. This closure would encompass approximately 46,956 nm<sup>2</sup> and would be defined as the area within the following coordinates, beginning with the western-most corner and proceeding clockwise: 39° 59' N. Lat., 71° 50' W. Long.; 41° 18' N. Lat., 66° 26' W. Long.; 40° 27' N. Lat., 66° 42' W. Long.; 37° 53' N. Lat., 70° 28' W. Long. (Figure 2.2).

Alternative B3(a) Modify the existing Charleston Bump time/area closure to allow the use of PLL gear in all areas seaward of the axis of the Gulf Stream

This alternative would modify the existing Charleston Bump time/area closure by moving the eastern boundary at 76° W. Long. to the west following the axis of the Gulf Stream from the existing northeast corner of the closure southwest to 31° N. Lat., 79° 16' Long. This alternative would reopen areas seaward of the axis of the Gulf Stream previously closed to PLL gear from February 1 through April 30. In particular, this alternative would provide additional opportunity to harvest North Atlantic swordfish, for which the quota has not been harvested in recent years (Figure 2.3).

Alternative B3(b) Modify the existing Northeastern U.S. time/area closure to allow the use of PLL gear in areas west of 72° 47' W. Long. during the month of June each year

This alternative would modify the existing Northeastern U.S. time/area closure boundary to allow PLL gear in areas west of 72° 47' W. Long. during the month of June each year. This alternative would reopen an area in which there were historically low numbers of BFT discards. This alternative would provide additional opportunity to harvest North Atlantic swordfish and other targeted HMS such as yellowfin tuna (Figure 2.3).

Alternative B4 *Implement complementary HMS management measures in Madison-Swanson and Steamboat Lumps Marine Reserves year-round – Preferred alternative*

This alternative would implement HMS management measures in the Madison-Swanson and Steamboat Lumps Marine Reserves to complement measures for these reserves recommended by the Gulf of Mexico Fishery Management Council (GMFMC). These reserves would prohibit all HMS fishing for all gear types year-round except for surface trolling only from May through October. The HMS management measures would expire on June 16, 2010, consistent with GMFMC recommendations. Both of these reserves are located shoreward of the Desoto Canyon Closed Area. The Madison-Swanson Marine Reserve is 115 nm<sup>2</sup> in size, rectangular-shaped, and is positioned southwest of Apalachicola, FL (29° 17' N. Lat., 85° 50' W. Long. to 29° 17' N. Lat., 85° 38' W. Long. to 29° 06' N. Lat., 85° 38' W. Long. to 29° 06' N. Lat., 85° 50' W. Long. to 29° 17' N. Lat., 85° 50' W. Long.). The Steamboat Lumps marine reserve is 104 nm<sup>2</sup> in size, rectangular-shaped, and is positioned due west of Clearwater, FL (28° 14' N. Lat., 84° 48' W. Long. to 28° 14' N. Lat., 84° 37' W. Long. to 28° 03' N. Lat., 84° 37' W. Long. to 28° 03' N. Lat., 84° 48' W. Long. to 28° 14' N. Lat., 84° 48' W. Long. (Figure 2.4)

Alternative B5 *Establish criteria to consider when implementing new time/area closures or making modifications to existing time/area closures – Preferred alternative*

This alternative would establish criteria for regulatory framework adjustments for implementing new time/area closures or making modifications to existing time/area closures. These criteria would provide greater transparency in the decision making process and allow fishermen more ability to plan for future changes. Consistent with the FMP, the Magnuson-Stevens Act and other applicable law criteria that were identified for consideration, included the following: any ESA-related issues, concerns, or requirements, including applicable Biological Opinions; bycatch rates of protected species, prohibited HMS, or non-target species both within the specified or potential closure area(s) and throughout the fishery; bycatch rates and post-release mortality rates of bycatch species associated with different gear types; new or updated landings, bycatch, and fishing effort data; evidence or research indicating that changes to fishing gear and/or fishing practices can significantly reduce bycatch; social and economic impacts; and the practicability of implementing new or modified closures compared to other bycatch reduction options. If the species is an ICCAT-managed species, NMFS would need to determine the overall effect of the United States' catch on that species before implementing time/area closures.

NMFS also considered modifying the current closed areas using these same criteria and GIS mapping techniques to better pinpoint areas of low bycatch within closed areas (based on catch data from pelagic logbooks collected before an area was closed) (see Section 4.1.2). The current time/area closures were not intended to be permanent. Rather, NMFS intended to modify existing closures, as appropriate, to allow utilization of a given fishery consistent with the FMP once the objective of the time/area closure had been met. Additionally, because fisheries, fishing gear, fishing practices, and stock status change over time, periodically NMFS must examine the continued need for existing time/area closures. One method of doing this would be for NMFS to conduct, fund, or support research, such as testing methods for reducing bycatch of protected, prohibited, and non-target species. Such research would need to be part of a scientifically

justified research plan, identifying the rationale, objectives, methodology, and experimental design of the research. The scope and magnitude in terms of ecological and socio-economic impact would be considered as part of any research proposal. Research in both open and closed areas may be warranted to collect data on the spatial and temporal relationship between target and bycatch species and to provide data for use in considering the criteria listed above. Such research could be cooperative in nature to include different stakeholders in the process.

Alternative B6 Prohibit the use of bottom longline gear in an area southwest of Key West to protect endangered smalltooth sawfish year-round

This alternative would prohibit the use of bottom longline gear by all U.S. flagged-vessels permitted to fish for HMS in an area southwest of Key West where smalltooth sawfish have been observed and caught year-round. This area would encompass approximately 49 nm<sup>2</sup> and would be defined as the area on the southwest tip of Key West, bordering the state waters with the following coordinates, beginning with the northwest corner and proceeding clockwise: 24° 29' N. Lat., 82° 06' W. Long.; 24° 29' N. Lat., 82° 02' W. Long.; 24° 24' N. Lat., 81° 58' W. Long.; 24° 23' N. Lat., 81° 58' W. Long., 24° 23' N. Lat. 82° 06' W. Long. (Figure 2.5)

Alternative B7 Prohibit the use of PLL gear in HMS fisheries in all areas

This alternative would prohibit the use of PLL gear in HMS fisheries in all areas to enhance the rebuilding of overfished stocks and reduce bycatch and bycatch mortality.

**Other time/area closure alternatives considered but not further analyzed at this time**

Below are a number of closure alternatives that were considered and eliminated from further consideration before being fully analyzed (Figure 2.6). The descriptions below include the reasons why the alternatives were not further analyzed at this time. More detail about these alternatives can be found in Appendix A. These alternatives may be considered in the future as needed.

Alternative B2(f) Prohibit the use of PLL gear in HMS fisheries in the central portion of the Gulf of Mexico in an area similar to, but larger than the area considered in alternative B2(a), from May through November (7 months), annually

Alternative B2(g) Prohibit the use of PLL gear in an area off the Northeast Atlantic coast from the 200 meter contour to the 2000 meter contour between the eastern tip of Georges Bank (66° 10' W. Long.) to Cape Hatteras (35° N. Lat.) from June through October, annually

Alternative B2(h) Prohibit the use of PLL gear in an area off the Southeast Atlantic coast from the 200 meter contour to the 2000 meter contour between Cape Hatteras (35° N. Lat.) and Cape Canaveral (29° N. Lat.) from March through November, annually

- Alternative B2(i) Prohibit the use of PLL gear in an area adjacent to the eastern boundary of the existing Florida East Coast closure from 29° N. to 28° 25' N. and seaward to the 2000 meter contour year-round
- Alternative B2(j) Prohibit the use of PLL gear in HMS fisheries in the Gulf of Mexico from the 200 meter contour to the 2000 meter contour from the Straits of Florida (82° W. Long.) to the border between the United States and Mexico (26° N. Lat.) year-round
- Alternative B2(k) Prohibit the use of PLL gear in HMS fisheries in the Caribbean from the 200 meter contour to the 2000 meter contour on the west coast of Puerto Rico during certain times of each year
- Alternative B3(c) Modify the Florida East Coast time/area closure to allow the use of PLL gear in the northeast and southwest corners of the existing closure
- Alternative B3(d) Modify the existing DeSoto Canyon time/area closure to allow the use of PLL gear in all areas seaward of the 2000 meter contour

Alternative B2(f) would prohibit the use of PLL gear by all U.S. flagged-vessels permitted to fish for HMS in a portion of the central Gulf of Mexico from May to November, annually. This is similar to, but larger than the area described in alternative B2(a), where blue and white marlin, sailfish, spearfish, BFT, and sea turtles have been observed and caught year-round, but with highest concentrations occurring from May through November. Without redistribution of fishing effort, this closure would result in a relatively large decrease in the number of discards for blue and white marlin (Tables A.1 and A.2 in Appendix A). This closure would encompass approximately 17,219 nm<sup>2</sup> and would be defined as the area within the following coordinates, beginning with the northeastern corner and proceeding clockwise: 27° 10' N. Lat., 89° 11' W. Long.; 25° 44' N. Lat., 89° 11' W. Long.; and following the EEZ boundary to 26° 10' N. Lat., 93° 10' W. Long., 27° 10' N. Lat., 93° 10' W. Long. (Figure 2.6)

When redistribution of fishing effort was considered, a seven-month closure for alternative B2(f) was predicted to result in an increase in the number of swordfish, BFT, and bigeye tuna discards (2,081, 219, and 150 discards over three years for the seven-month closure, respectively; Table A.5 in Appendix A). NMFS compared possible reductions and increases of discards and targeted catch with the redistribution of effort for B2(f) with results from other closures. For instance, B2(f) is larger in size than B2(a). Thus, NMFS would expect a greater ecological benefit in terms of bycatch reduction from the larger B2(f) closure rather than the smaller B2(a) closure. However, the model predicted comparable results in terms of bycatch reduction between B2(a) and B2(f) (Tables A.1 and A.2 in Appendix A). In addition, B2(a) would not have resulted in as many BFT discards or potentially had as large of a negative economic impact in terms of a reduction in retained catch as B2(f). B2(f) is also smaller than B2(d). However, NMFS choose to analyze the larger closure to better assess the ecological, social and economic impacts of a large B2(d) closure in the Gulf of Mexico. Therefore, by further analyzing B2(a) and B2(d), NMFS was able to analyze a range in terms of potential

ecological, social, and economic impacts with regard to the size of a closure in this area of the Gulf of Mexico.

Alternatives B2(g) – (k) were considered due to their overlap with existing EFH areas for white marlin and information indicating bycatch of non-target HMS species as well as sea turtles. NMFS specifically took into account five suggested white marlin time/area closures in the U.S. EEZ described on page 10 in a February 14, 2002, letter from the Biodiversity Legal Foundation, re: Atlantic White Marlin Critical Habitat Designation. NMFS agreed to take these five areas into account, among other things, as part of a settlement agreement in Center for Biological Diversity v. NMFS, Civ. Action No. 04-0063 (D.D.C.). Data from the Highly Migratory Species (HMS) logbook (*i.e.*, the logbook the PLL fleet uses) and pelagic observer program (POP) were analyzed for these specific areas to determine the percent reduction in discards with and without redistribution of fishing effort (described in detail in Chapter 4 and Appendix A). The analyses indicated that, while there may be some benefit from closures without the redistribution of fishing effort, in nearly all cases, bycatch increased with the redistribution of fishing effort in one or more of these areas, or other areas had higher rates of bycatch and produced larger ecological benefits with fewer social and economic impacts in the redistribution of fishing effort analyses. Additionally, because these alternatives follow contour lines, they would be difficult to enforce and difficult for fishermen to know if they were fishing inside a closed area or not. Therefore, while NMFS presents some analyses here and in Appendix A, alternatives B2(g) – (k) were not further analyzed in Chapter 4.

Alternative B2(g) would prohibit the use of PLL gear by all U.S. flagged-vessels permitted to fish for HMS in portions of the Northeast in areas where white marlin are concentrated during certain times of the year and have been observed and reported caught from June through October (Figure 2.6). This time period also corresponds to higher catches of all other species considered (blue marlin, sailfish, spearfish, leatherback and loggerhead sea turtles and BFT; Table A.10 in Appendix A). Without considering redistribution of fishing effort, closing B2(g) could result in a reduction in the number of discards for all species considered (Tables A.1 and A.2 in Appendix A). However, when redistribution of fishing effort was considered, there was a predicted increase in the number of discards for white marlin, blue marlin, sailfish, spearfish, leatherback and other sea turtles, with the largest increase in discards expected for blue marlin, sailfish, and spearfish (20.2, 23.2, and 14.5 percent, respectively; Table A.2 in Appendix A). Loggerhead sea turtles were the only species with an expected decrease in discards under the redistribution model. This closure followed contour lines from Maine to North Carolina. The temporal and spatial aspects of B2(g) are different than any other closures in this area. B2(b) and B2(e) are also located off the Northeast. A year-round closure for B2(e) could result in less of an increase in discards of blue marlin, sailfish, and spearfish with redistribution of effort (Table A.1 in Appendix A). In addition, B2(e) could result in a larger decrease in leatherback and loggerhead sea turtles, and BFT discards (Table A.1 in Appendix A). However, B2(e) was considered year-round whereas B2(g) was only considered for June through October. NMFS determined that a one month closure (June) for B2(b) may have a greater ecological benefit by decreasing the number of discards of white marlin, blue marlin, sailfish, and spearfish. In addition, it could reduce leatherback sea turtle discards as well as loggerhead sea turtles discards and have a comparable reduction in BFT discards as B2(g) (Table A.2 in

Appendix A). Given these results, alternatives B2(b) and B2(e) were further analyzed, while B2(g) was not.

Alternative B2(h) would prohibit the use of PLL gear by all U.S. flagged-vessels permitted to fish for HMS in portions of the Southeast where white marlin are concentrated during certain times of the year and have been observed and caught year-round (Figure 2.6). Without considering redistribution of fishing effort, the model predicted a small decrease in the percentage of discards, with the exception of sailfish (Tables A.2 in Appendix A). When redistribution of fishing effort was considered, the ecological impacts of B2(h) would likely be minor (the predicted decreases in the number of discards were small and typically less than eight percent; Table A.2 in Appendix A). There would be almost no decrease in the number of discards for blue marlin, a slight increase in the number of discards for white marlin, and a moderate increase in the number of discards of both leatherback and loggerhead sea turtles (Tables A.1 and A.2 in Appendix A). This closure did not spatially overlap any of the other closures further analyzed. However, given the minimal ecological benefits for some species and the negative ecological impact for white marlin and sea turtles, this alternative was not further analyzed.

Alternative B2(i) would prohibit the use of PLL gear by all U.S. flagged-vessels permitted to fish for HMS in portions of the east coast of Florida where white marlin are concentrated during certain times of the year and have been observed and caught year-round (Figure 2.6). As with B2(h), this closure did not spatially overlap with any of the other closures that were further analyzed. However, even without considering redistribution of fishing effort, the reduction in bycatch associated with B2(i) was small, with the highest expected reduction for blue marlin (316 fish for 3 years or 12.9 percent; Tables A.1 and A.2 in Appendix A). When redistribution of fishing effort was considered, the model predicted only slight decreases in discards of white and blue marlin, sailfish and loggerhead sea turtles, with all decreases less than ten percent (Table A.2 in Appendix A). However, there were predicted increases in spearfish, leatherback sea turtle, and BFT discards (Tables A.1 and A.2 in Appendix A). Thus, given the potential negative ecological impacts of this closure, this alternative was not further analyzed.

Alternative B2(j) would prohibit the use of PLL gear by all U.S. flagged-vessels permitted to fish for HMS in portions of the Gulf of Mexico where white marlin are concentrated during portions of the year and have been observed and reported caught year-round (Figure 2.6). Without considering redistribution of fishing effort, B2(j) could have decreased discards of all species considered, especially blue marlin, sailfish and spearfish (21.6, 43.1, 25.5 percent, respectively; Table A.2 in Appendix A). However, when redistribution of fishing effort was considered, the model predicted an increase in the number of discards, especially for loggerhead sea turtles (22.3 percent; Table A.2 in Appendix A). While there were predicted decreases in discards of sailfish and spearfish (Tables A.1 and A.2 in Appendix A), the net effect could be a negative ecological impact. This closure was a spatially large closure in the Gulf of Mexico that could also have a large economic impact, especially for a year-round closure. Given other closures in the Gulf of Mexico that were further analyzed (B2(a), B2(c), and B2(d)) varied in size and time period, this alternative was not further analyzed.

Alternative B2(k) would prohibit the use of PLL gear by all U.S. flagged-vessels permitted to fish for HMS in portions of the Caribbean where white marlin are concentrated and have been observed and caught during certain times of the year (Figure 2.6). Bycatch occurs primarily from December through April. As with B2(h) and B2(j), this closure did not spatially overlap with any of the other closures that were further analyzed. However, even without considering redistribution of fishing effort, the effort and reduction in bycatch associated with B2(k) was small, with the predicted reduction in the number of hooks and discards extremely low (less than one percent; Tables A.1 and A.2 in Appendix A). When redistribution of fishing effort was considered, there was only a slight decrease in the number of discards for white and blue marlin, and a slight increase in the number of discards for leatherback sea turtles and BFT discards (less than two percent; Table A.2 in Appendix A.2). Thus, the overall ecological impact due to this time/area closure would probably be relatively minor, resulting in no net decrease in discards for any of the species considered. Therefore, this alternative was not further analyzed.

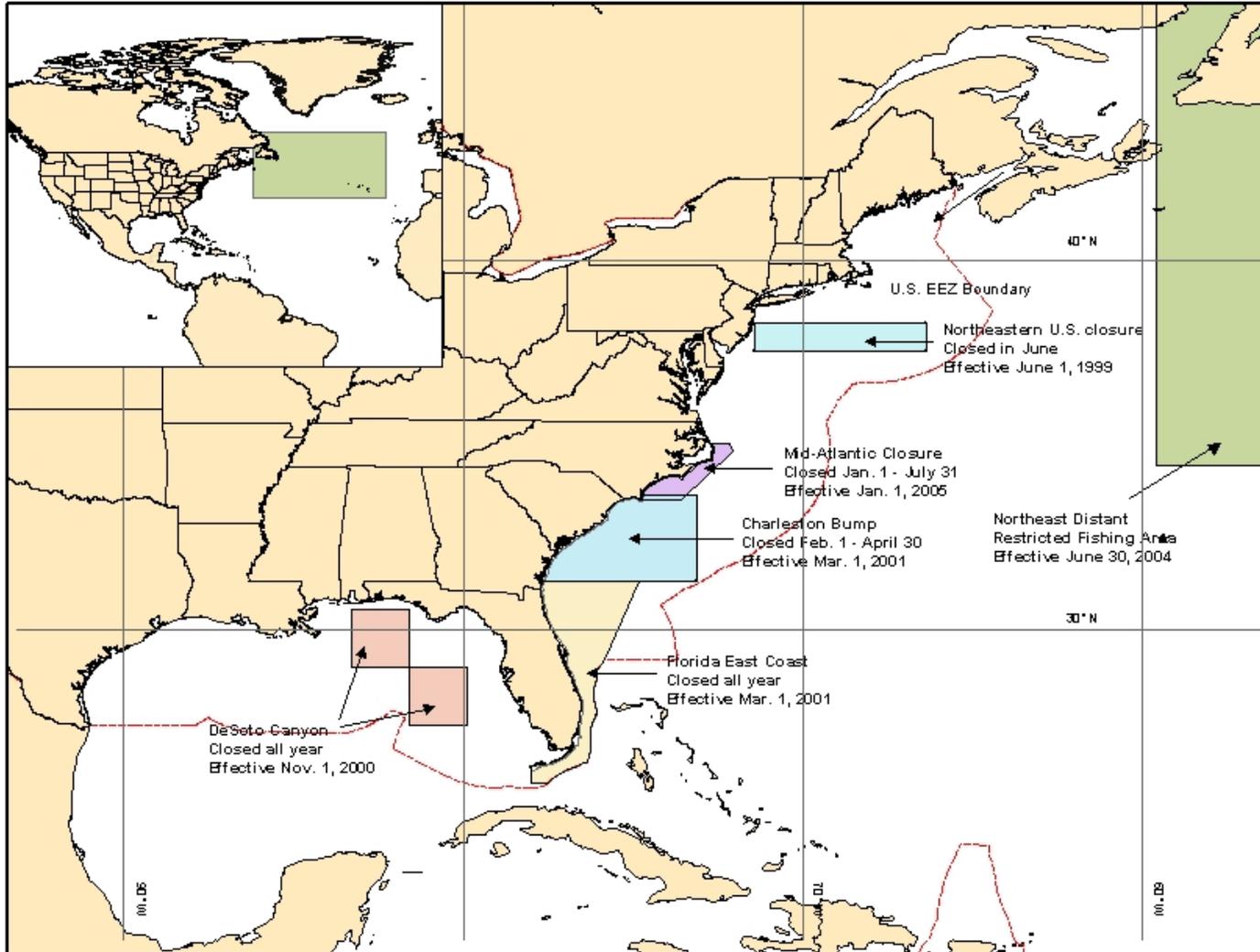
In addition to proposing new closed areas, NMFS considered modifying current or existing time/area closures (alternatives B3(a) through B3(d)). In general, closed areas considered for modification (*i.e.*, partial re-opening) were chosen based on examining the PLL and POP data from 1997 through 1999. The data were analyzed in GIS, allowing NMFS to identify areas associated with minimal bycatch within current time/area closures for re-opening. Alternatives B3(a) and B3(b) were chosen for further analysis whereas alternatives B3(c) and B3(d) were initially examined but not further analyzed based on the reasons outlined below.

Alternative B3(c) would modify the Florida East Coast time/area closure by moving the eastern boundary at 27° N Lat., 30' W Long. west to the axis of the Gulf Stream, and then following the axis of the Gulf Stream north to 31° N Lat., 79° 20' W. Long. B3(c) would also move the southernmost boundary of the Florida East Coast closure north from 24° 00' N Lat. to 24° 10' N. Lat. between 81° 47' and 81° 00' W. Long. (Figure 2.3). This alternative would reopen these areas to PLL gear year-round. Alternative B3(d) would modify the existing DeSoto Canyon time/area closure boundary to allow PLL gear in areas seaward of the 2000 meter contour from 26° N. Lat., 85° 00' W. Long., to 29° N. Lat., 88° 00' W. Long. (Figure 2.3). B3(d) would reopen this area to PLL gear year-round.

The proportion of discarded swordfish versus the number of swordfish kept varied among the modifications to existing time/area closures (Table A.25 in Appendix A). Both alternatives B3(c) and B3(d) could have resulted in a larger proportion of discarded swordfish than alternatives B3(a) or B3(b) (Table A.25 in Appendix A). Minimizing the number of swordfish caught in B3(d) is important because the average swordfish size was significantly smaller in the area to be reopened (average size was 108 cm LJFL in the portion considered for reopening;  $P = 0.03$ ; Table A.21 in Appendix A) compared to the area to remain closed (Figure A.2 in Appendix A; average size was 116 cm LJFL in the portion to remain closed; Table A.21 in Appendix A). In addition, the average swordfish size in B3(d) in the outside area was smaller than the minimum size limit of 119 cm LJFL (Table A.21 in Appendix A). There were also a lower proportion of BFT discards in the B3(a) and B3(b) modifications compared to B3(c) and B3(d) (Table A.25 in Appendix A). Although B3(c) could have resulted in an increase in the number of landed swordfish, yellowfin tuna, and bigeye tuna than either B3(a) or B3(b), it could

have also increased the number of swordfish, bluefin, yellowfin and bigeye tuna discards (Table A.25 in Appendix A).

In terms of bycatch, B3(c) or B3(d) could result in the highest bycatch levels of white and blue marlin, and sailfish; almost 2.5 times as many white marlin, at least four times as many blue marlin, and at least ten times as many sailfish could be discarded in the B3(c) and B3(d) modifications compared to the B3(a) or B3(b) modification (Table A.24 in Appendix A). Such high levels of bycatch associated with B3(c) or B3(d) may have a larger negative ecological impact compared to B3(a) or B3(b); thus, NMFS only analyzed alternatives B3(a) and B3(b) in Chapter 4.



**Figure 2.1 Existing time/area closures in HMS fisheries.** Inset shows extent of the Northeast Distant restricted fishing area. All closures except the Mid-Atlantic are applicable to pelagic longline gear only. The Mid-Atlantic Closure is applicable to bottom longline gear only. Note: the Northeast Distant (NED) was a closed area to all vessels as of 2001. It became the NED Restricted Fishing Area on June 30, 2004 when it was opened to those participating in the NED experiment.

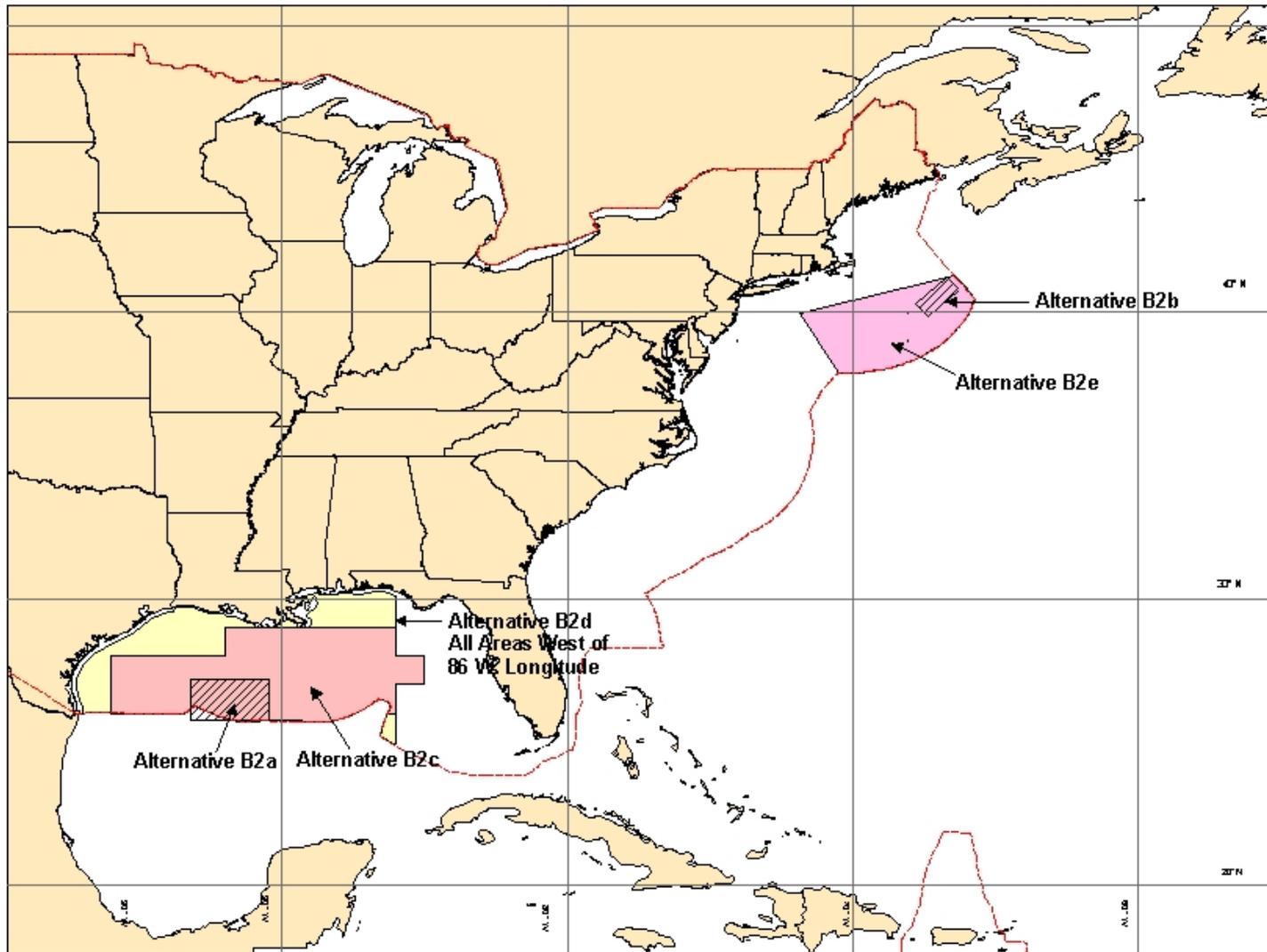


Figure 2.2 Map showing areas being considered for new time/area closures to reduce non-target HMS and protected species interactions.

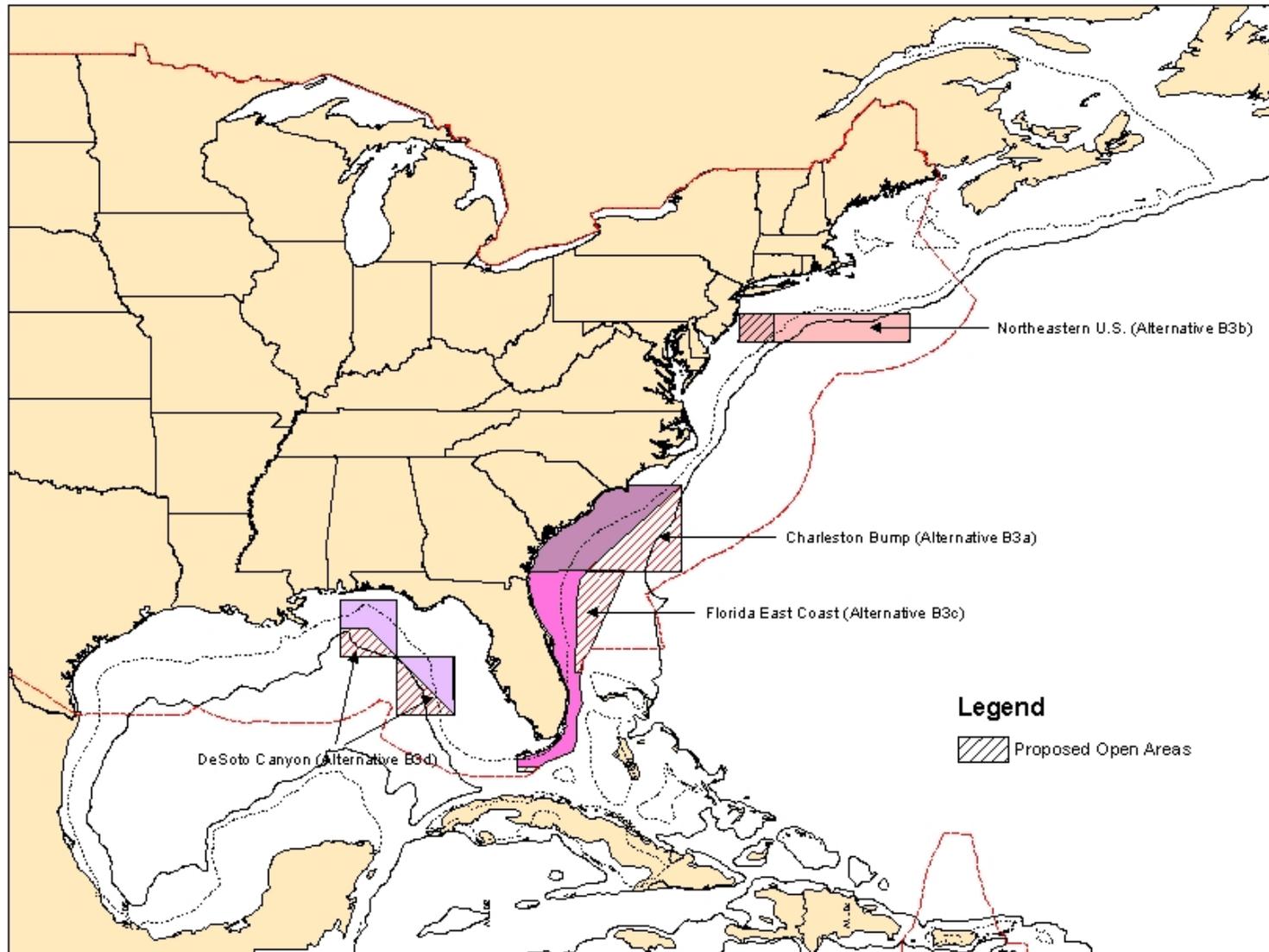
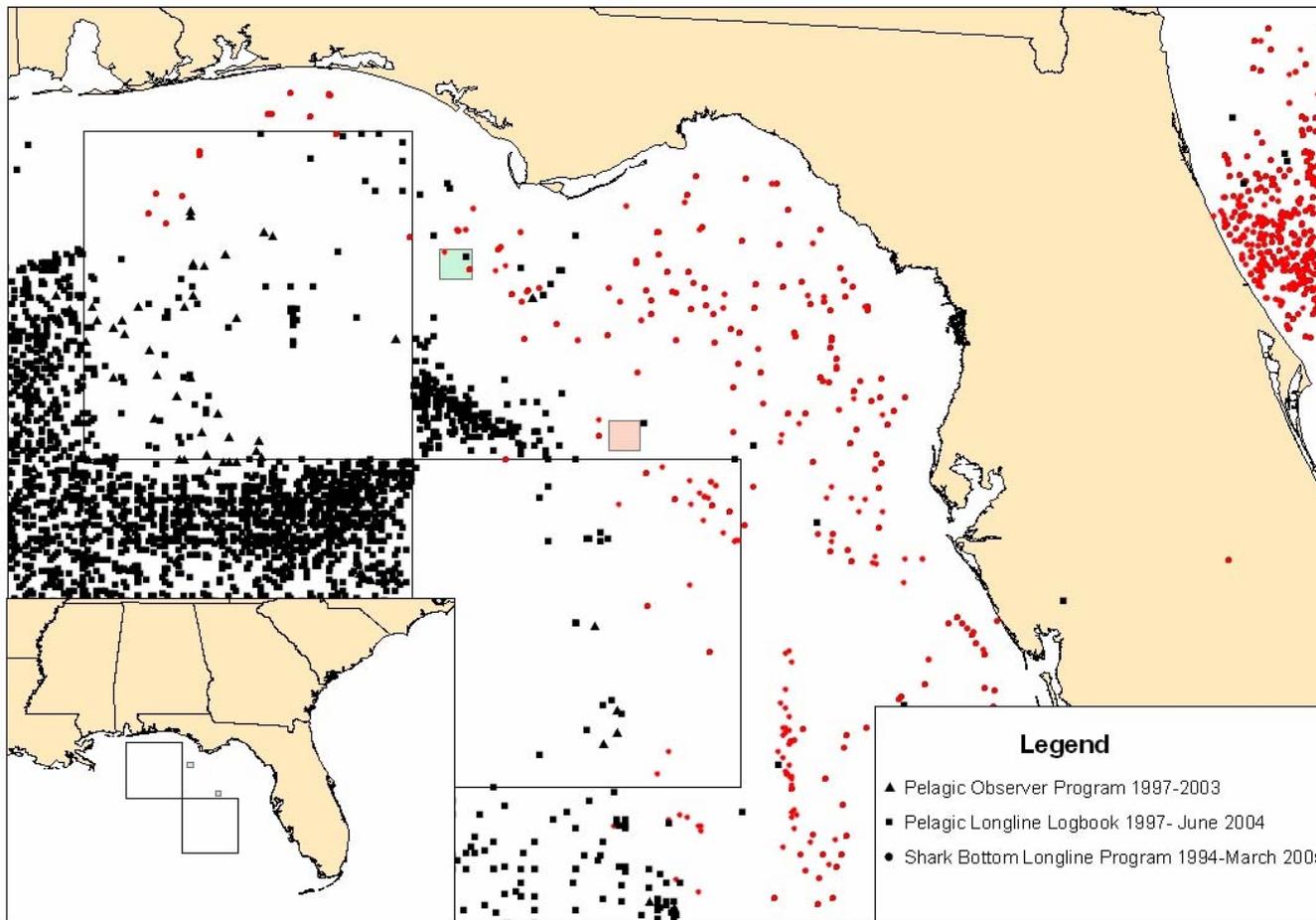
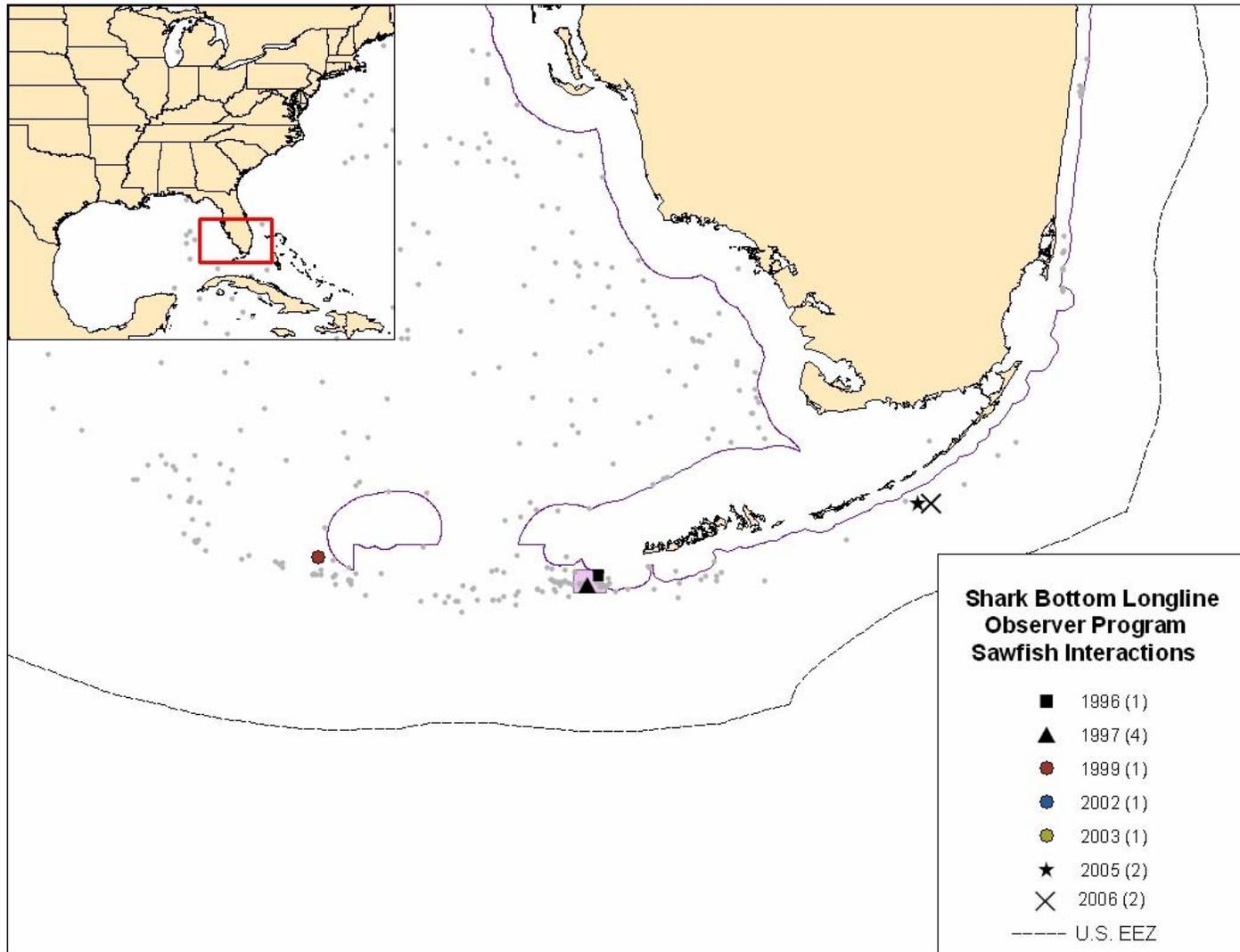


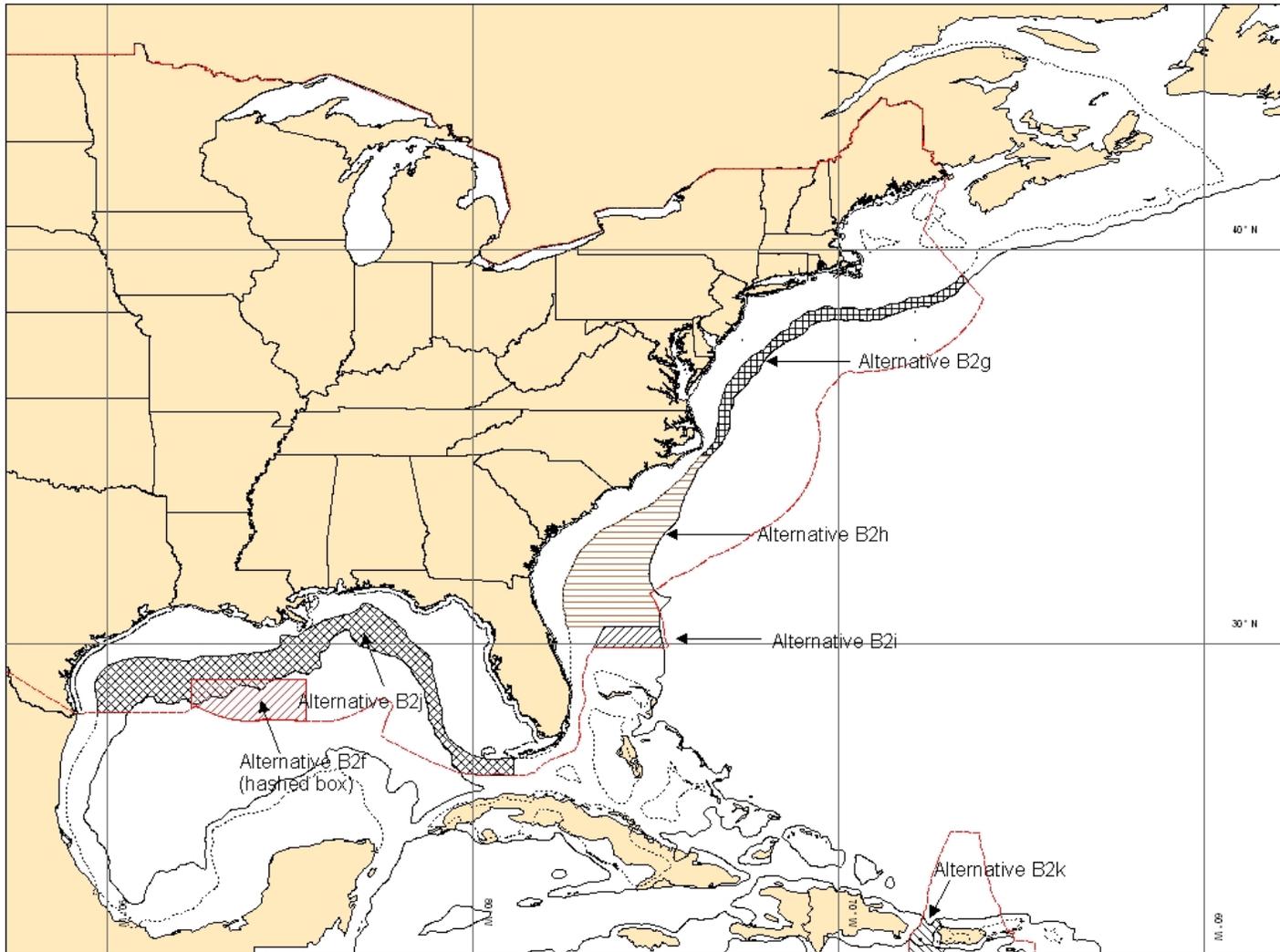
Figure 2.3 Map showing areas considered for modifications to existing closures. Note: only alternatives B3(a) and (b) were further analyzed.



**Figure 2.4 Pelagic and Bottom Longline Sets in the Madison-Swanson (upper left) and Steamboat Lumps (lower right) Marine Reserves.** Note: one set for the Commercial Shark Fishery Observer Program (CSFOP) was in 2005. Although not indicated, no new sets were recorded for the CSFOP in 2004. Source: HMS Logbook, Pelagic Observer Program, and CSFOP. The Desoto Canyon closure is also shown for reference.



**Figure 2.5** Map showing the potential closed area to bottom longline gear to reduce bycatch of endangered smalltooth sawfish. Grey dots are locations of observed bottom longline sets. Source: CSFOP 1994-2006.



**Figure 2.6** Map showing time/area closure alternatives considered but not further analyzed at this time to reduce white marlin and other protected species interactions.

## **2.2 Rebuilding and Preventing Overfishing**

### **2.2.1 Northern Albacore Tuna**

In the October 1999 Report to Congress on the Status of U.S. Fisheries, NMFS identified the northern albacore tuna stock as overfished. The Magnuson-Stevens Act requires NMFS to develop a rebuilding plan for overfished stocks. Alternatives for developing a rebuilding plan for northern albacore tuna were presented and discussed in a proposed rule issued on May 24, 2000 (65 FR 33519). The alternatives considered included; no action, a unilateral U.S. action plan, and a ten-year international rebuilding program negotiated through ICCAT. NMFS requested comment on those rebuilding alternatives and commenters noted that a rebuilding program for northern albacore tuna must reflect the magnitude of current landings and consider year-to-year variability in the U.S. commercial and recreational fisheries. In the final rule, NMFS indicated that, in establishing the foundation for an international rebuilding program, it would work through ICCAT to adopt a target stock size together with a time frame for rebuilding that included flexibility (65 FR 77523, December 12, 2000).

Since the final rule, the U.S. delegation to ICCAT has advocated a total allowable catch (TAC) for northern albacore tuna set at a level less than the current estimate of replacement yield (34,500 mt ww). Other ICCAT members have not shared the U.S. position that immediate catch reductions were needed to rebuild the spawning stock biomass to levels that would support MSY. Consequently, between 2000 and 2003, ICCAT adopted recommendations each year to set a TAC at the replacement yield level of 34,500 mt ww through 2006, together with country specific allocations in order to control compliance. In addition, the 1998 recommendation on limiting vessel capacity for northern albacore has remained in force. Irrespective of the established TAC, reported catches have been significantly below the replacement yield level in recent years. Major harvesters (European Union countries) have attributed the decline in catches to gear changes (shifting from banned gillnets to trolling) and to availability (fish concentrations further offshore under prevailing oceanographic conditions) rather than further declines in abundance. If true, the low catches in recent years may have allowed some rebuilding to occur.

As noted above, NMFS previously took comment on the following northern albacore rebuilding alternatives. Comments were again received on the following alternatives ending March 1, 2006.

**Alternative C1** Maintain compliance with the current ICCAT recommendation (No Action)

Under Alternative C1, NMFS would continue to monitor U.S. northern albacore tuna fisheries to stay in compliance with the ICCAT-recommended annual U.S. TAC of 607 mt ww, however; NMFS would not actively pursue the development of an international rebuilding plan, or seek to establish the foundation for such a plan at future ICCAT meetings.

Alternative C2     Unilateral proportional reduction of United States northern albacore tuna fishing mortality

Alternative C2 would establish a reduction in fishing mortality of northern albacore tuna in U.S. fisheries. This would be a unilateral action setting a proportional reduction below the current TAC in an effort to begin rebuilding the northern albacore stock. A variety of measures designed to reduce mortality would be examined, including but not limited to: seasonal closures, closed areas, quota restrictions, size limits, and retention limits. Those measures found to be appropriate would be implemented as domestic regulation through separate rulemaking.

Alternative C3     *Establish the foundation with ICCAT for developing an international rebuilding program – Preferred Alternative*

This measure would incorporate an ICCAT northern albacore rebuilding program into this consolidated HMS FMP. Depending on the results of the scheduled 2007 stock assessment, the United States would, if warranted, seek an international northern albacore tuna rebuilding program with a target stock level, a time table, and reference points for progress. In order to rebuild the stock, if the 2007 assessment indicates a similar level of stock abundance below  $B_{MSY}$ , ICCAT would likely have to set the TAC at replacement level or below. The U.S. landings alone, at around two percent, would likely not provide enough harvest reduction to rebuild the stock. Under alternative C3, the United States would continue to work through ICCAT to establish a stock size and rebuilding plan time frame consistent with the Magnuson-Stevens Act. Such an international rebuilding program should ensure rebuilding to a level capable of producing MSY with a target stock level, a timetable, and reference points. Once a plan was established, the United States would comply with ICCAT recommendation(s), with domestic regulatory action as necessary. Alternative C3 would not require any immediate domestic regulatory action.

### **2.2.2 Finetooth Sharks**

The following alternatives explore a range of management options available to address overfishing of finetooth sharks. The 2002 stock assessment for Small Coastal Sharks (SCS) found that overfishing was occurring on finetooth sharks. A more detailed description of the 2002 SCS assessment can be found in Section 3.2.5.

Alternative D1     Maintain current regulations (No Action)

This alternative would maintain fishing mortality at current levels. Finetooth sharks are managed for recreational and commercial fisheries within the SCS species complex. Commercial fisheries are managed under a limited access permitting system where new entrants to the fishery must obtain a previously held permit and transfer it to their vessel, subject to upgrading restrictions. There are five vessels that target sharks with drift gillnet or strikenet gear and these vessels are subject to extensive observer coverage. There is no SCS trip limit for directed permit holders; however, incidental permit holders are limited to 16 SCS and pelagic sharks combined per vessel per day. Between 1999 and 2004, commercial landings of SCS ranged from 204-330 mt dw, well below the quota established for SCS (Table 4.2). Most finetooth sharks are landed by vessels targeting species other than sharks, with gillnet gear, in the

South Atlantic region. Recreational anglers must possess an HMS Angling permit and are subject to a bag limit of one shark (including finetooth shark) greater than 54 inches FL (137 cm) per vessel per day. The Marine Recreational Fisheries Statistics Survey (MRFSS) and the Texas Parks and Wildlife Service estimated that 14,811 finetooth sharks were landed between 1999 and 2005.

Alternative D2    Implement commercial management measures to reduce fishing mortality of finetooth sharks

This alternative would implement management measures to reduce finetooth shark fishing mortality in commercial fisheries targeting sharks. These measures would affect all vessels in possession of a Federal limited access shark permit. These actions may include any combination of the following measures, including: a directed trip limit for SCS, gillnet gear restrictions, prohibiting the use of gillnet gear for landing sharks, reduced soak time for gillnets, and reducing the overall SCS quota.

Alternative D3    Implement recreational management measures to reduce fishing mortality of finetooth sharks

This alternative would implement measures aimed at reducing fishing mortality of finetooth sharks in HMS recreational fisheries. These measures would affect all vessels in possession of a Federal HMS Angling category permit, CHB permit, and/or General category permit that target finetooth sharks. This alternative may require the use of circle hooks when targeting SCS, and/or increasing the minimum size for retention of finetooth sharks. Currently, anglers may retain one shark over 54 inches (137 cm) per vessel per trip and are permitted to use circle and J-hooks. This alternative would not affect the minimum size for possession of other sharks.

Alternative D4    *Identify sources of finetooth fishing mortality to target appropriate management actions (Preferred Alternative)*

Landings data from dealer reports, compared to observer data from the Directed Shark Gillnet Fishery Observer Program (DSGFOP) indicate that the five vessels currently targeting sharks with drift or strike gillnets are not landing a significant portion of the total catch of finetooth sharks (Tables 4.1 and 4.2). Furthermore, most of these vessels also possess a Spanish mackerel permit. There are also additional vessels that are permitted to deploy gillnet gear and possess both a commercial shark limited access permit and a Spanish mackerel permit. These vessels were not previously considered to be targeting sharks and are not subject to observer coverage because they were either targeting non-HMS or not fishing gillnets in a strike or drift fashion.

This alternative would implement a plan to prevent overfishing of finetooth sharks that entails identifying sources of finetooth shark fishing mortality in commercial (gillnet and other) and recreational fisheries that may not be targeting sharks specifically, but landing them incidentally to other species. Furthermore, this alternative would also result in improved collaboration among management entities; this collaboration may be necessary to prevent

overfishing of finetooth sharks because fisheries managed by other management entities may be contributing to fishing mortality. Additional data collected may also be beneficial to the upcoming stock assessment for SCS beginning in 2007. Specific activities that may be included in the Agency’s plan for preventing overfishing and included in this alternative may include, but would not be limited to: contacting states, Regional Fishery Management Councils, and Interstate Marine Fisheries Commissions to determine which fisheries may be landing finetooth sharks; contacting state employees responsible for processing finetooth shark landings data to understand data management protocols and procedures between states and obtain additional landings data; including finetooth sharks as a select species for bycatch sub-sampling in the Gulf of Mexico shrimp trawl fishery; selecting vessels that deploy sink gillnet gear and/or target non-HMS for observer coverage under the DSGFOP; analyzing Federal logbook data to determine seasonality, locations, and which non-HMS are landed on trips that also harvest finetooth sharks; exploring collaborative management measures with the South Atlantic Fishery Management Council to address the overlap between shark and Spanish mackerel gillnet fisheries; and, implementing shark identification workshops (alternative A9) for dealers so that they might become more proficient at identifying finetooth sharks (Table 2.1).

**Table 2.1 Summary and status of activities, anticipated results, and associated timelines for preventing overfishing of finetooth sharks.**

<b>Activity</b>	<b>Anticipated Results</b>	<b>Status</b>	<b>Timeline</b>
Send letters to Regional Fishery Management Councils and Interstate Marine Fisheries Commissions to determine sources of finetooth mortality	Expand information on fisheries that are landing finetooth sharks within the purview of Councils, Commissions, and state agencies; Obtain additional data for SCS assessment; attain points of contacts with the various Councils, states, and Commissions regarding identification of finetooth landings; understand how and where finetooth sharks are being reported and the availability of additional landings data	Contacts for ASMFC and GMFMC attained; additional information on fisheries landing finetooth sharks in Federal waters was obtained	06/2005 ( <i>letters sent to Gulf and South Atlantic Councils and Gulf and Atlantic States Marine Fisheries Commissions seeking data/information on finetooth landings</i> ) 04/2006 – ongoing ( <i>collaboration/follow-up with SAFMC initiated because of overlap between Spanish mackerel and shark fisheries; issues surrounding potential management of kingfish in Federal waters</i> )
Expand DSGFOP to include vessels targeting non-HMS and/or using sink gillnet gear	Increase landings information on finetooth sharks landed with gillnet gear in Federal waters of the South Atlantic, expand available data for SCS assessment	In 2005, 88 sets observed on 30 trips from 8 vessels not targeting HMS or fishing with sink gillnets	2005 ( <i>pilot program, expanded DSGFOP to include sink-gillnet fishermen, vessels not targeting HMS</i> ) 2006 - ongoing ( <i>continue inclusion of additional vessels in selection for coverage under DSGFOP</i> )
Contact individual states (TX to NC) to determine data management protocols, fisheries	Obtain additional information on finetooth shark landings, fisheries deploying gillnets in state waters, data management and reporting; Attain state	Contacted state employees in AL, TX, NC, FL, LA, MS, and GA, SC. Additional landings	2006 - ongoing ( <i>inclusion of finetooth sharks in any state observer program for bycatch sampling</i> )

Activity	Anticipated Results	Status	Timeline
interacting with finetooth, regulations, etc.	contacts for future measures to prevent overfishing of finetooth sharks	data attained from FL, AL, LA	
Include finetooth sharks as a select species in the Shrimp Trawl Fishery Observer Program in the Gulf of Mexico	Increase bycatch landings information in the GOM shrimp trawl fishery, expand bycatch data for SCS assessment	Included finetooth sharks as a select spp. for bycatch sampling on shrimp trawl vessels in GOM	2006 - ongoing
Implement identification workshops for shark dealers (Alternative A9)	Improve species identification skills; improve General Canvass (dealer) data reports	Implementation of Alternative A9 in 2007; include all Federal shark dealer permit holders	2007 - ongoing
SCS stock assessment	Update information on the status of finetooth sharks in the Atlantic Ocean	First data review workshop in early 2007	2007
Target appropriate management measures as necessary	Based on stock assessment and investigating other sources of mortality, implement commercial and/or recreational management measures as necessary to prevent overfishing		2007 - 2008

Other alternatives considered but not further analyzed at this time

Alternative D5 Prohibit landings of finetooth sharks in commercial and recreational fisheries.

This alternative would add finetooth sharks to the prohibited species list for commercial and recreational fisheries. Federally permitted commercial and recreational fishermen would not be able to land and/or possess finetooth sharks under this alternative. Finetooth sharks would need to meet at least two of the four criteria defined under 50 CFR Part 635 for inclusion of the species to the prohibited species list for Atlantic sharks. The existing criteria are: (1) there is sufficient biological information to indicate the stock warrants protection, such as indications of depletion or low reproductive potential or the species is on the ESA candidate list; (2) the species is rarely encountered or observed caught in HMS fisheries, (3) the species is not commonly encountered or observed caught as bycatch in fishing operations, or (4) the species is difficult to distinguish from other prohibited species (*i.e.*, look alike issue). Finetooth sharks do not meet any of the criteria necessary to be considered a prohibited species at this time.

During the development of Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks, the Agency considered the addition of finetooth to the list of prohibited species and concluded:

“This alternative would have limited ecological impacts as finetooth sharks are common bycatch in non-HMS fisheries and prohibiting them will not prevent their capture. A reduction in finetooth shark landings in HMS fisheries may not significantly reduce mortality because they are only a small component of total landings. This alternative may help to reduce mortality of this species but could also increase waste and discards...In regard to alternative I6 [prohibited species listing criteria], finetooth sharks are not depleted and are commonly caught in HMS and non-HMS fisheries. Therefore, this species does not appear to meet the criteria selected under alternative I6, at this time”.

The Agency does not have any new information at this time that would alter this conclusion. Thus, this alternative was not further analyzed at this time. As more information is collected, NMFS may re-consider if necessary.

### **2.2.3 Atlantic Billfish**

Atlantic blue and white marlins have been identified as overfished with overfishing continuing. West Atlantic sailfish are considered overfished. The status of blue and white marlin is characterized by reduced or severely reduced biomass levels and high fishing mortality rates. In 2002, NMFS conducted an Endangered Species Act (ESA) status listing review for Atlantic white marlin and determined that a listing was not warranted at that time. Another ESA status listing review for Atlantic white marlin is scheduled in 2007, and additional conservation steps taken in advance of that review would be relevant to status review deliberations. Domestically, directed billfish fishing effort has been reserved for the recreational fishing sector since 1988, when possession by pelagic longline vessels and sales of Atlantic billfish species were prohibited. Based on ICCAT data, the United States’ landings (landings and dead discards) of Atlantic blue and white marlin averaged 2.4 percent and 4.5 percent (respectively) of aggregate Atlantic-wide landings for these species, as reported to ICCAT for the period 1999-2004. U.S. landings of West Atlantic sailfish averaged 8.6 percent of aggregate West Atlantic-wide sailfish landings, as reported to ICCAT for the period 1999-2004.

The following alternatives represent the range of options that NMFS is considering to reduce the recreational fishery’s contribution to overfishing and to improve data collection. Please see section 2.1.2 for alternatives considered to address commercial billfish bycatch issues. The alternatives include gear restrictions, landings restrictions, and data collection requirements.

Alternative E1     Retain existing regulations regarding recreational billfish fishing, including permit requirements, minimum size limits, prohibited species, landing form, allowable gear, and reporting requirements (No Action)

Alternative E1 would maintain the *status quo* in the domestic Atlantic recreational billfish fishery. As such, this alternative retains all existing regulations regarding recreational billfish fishing in the Atlantic Ocean, including permit requirements, minimum size limits, prohibited species, catch and release fishery management program, landing form, allowable gear, and reporting requirements, unless specifically modified during this rulemaking.

Alternative E2      Effective January 1, 2007, limit all participants in Atlantic HMS recreational fisheries to using only non-offset circle hooks when using natural baits or natural bait/artificial lure combinations

Alternative E2 would require the use of non-offset circle hooks in all segments of HMS recreational fisheries, for all species, whenever natural baits or natural bait/artificial lure combinations are used, beginning on January 1, 2007. This includes HMS Angling category permitted vessels, Charter/Headboat permitted vessels on for-hire trips, and all General category permitted vessels participating in registered HMS tournaments. Circle hooks are defined in 50 CFR §635.2 as “a fishing hook originally designed and manufactured so that the point is turned perpendicularly back to the shank to form a generally circular, or oval, shape.” Natural bait/artificial lure combinations would include, but are not limited to, rigs such as natural baits used in combination with artificial hoods, heads, and/or skirts. This alternative would allow the use of J-hooks with artificial lures.

Alternative E3      *Effective January 1, 2007, limit all HMS permitted vessels participating in Atlantic billfish tournaments to deploying only non-offset circle hooks when using natural bait or natural bait/artificial lure combinations – Preferred Alternative*

Alternative E3 would require the use of non-offset circle hooks by anglers fishing from HMS permitted vessels, or vessels required to be permitted, participating in Atlantic billfish tournaments whenever natural bait or natural bait/artificial lure combinations are used, effective January 1, 2007. Any tournament that has an award category, or awards points or prizes for Atlantic billfish is considered a billfish tournament. Circle hooks are defined in 50 CFR §635.2 as “a fishing hook originally designed and manufactured so that the point is turned perpendicularly back to the shank to form a generally circular, or oval, shape.” Natural bait/artificial lure combinations would include, but are not limited to, rigs such as natural baits used in combination with artificial hoods, heads, and/or skirts. This alternative would allow the use of J-hooks with artificial lures in tournaments. This alternative includes a minor technical clarification relative to preferred alternative E3, as presented in the Draft Consolidated HMS FMP. As described more fully in Chapter 4, the changes are intended to clarify that circle hook use is only required aboard HMS permitted vessels participating in Atlantic billfish tournaments when deploying natural baits or natural bait/artificial lure combinations. The phrasing of alternative E3 in the Draft Consolidated HMS FMP was sufficiently vague to allow other interpretations of which anglers may be affected by this alternative. This technical clarification has no effect on the impacts of the alternative, as only permitted HMS vessels may fish for, catch, or retain Atlantic billfish, and alternative E3 in the Draft Consolidated HMS FMP was analyzed from the vantage point of applying only to HMS permitted vessels.

Alternative E4(a) Increase the minimum legal size for Atlantic white marlin to a specific size between 68 and 71 inches LJFL (172 - 180 cm)

Alternative E4(a) would increase the minimum legal size for Atlantic white marlin to a specific size between 68 and 71 inches LJFL (172 - 180 cm) to reduce U. S. landings and/or mortalities, as appropriate. The sizes presented represent the upper and lower bounds of the

sizes analyzed and available for selection, and as such, do not represent consideration of a “slot limit.”

Alternative E4(b) Increase the minimum size for blue marlin to a specific size between 103 and 106 inches LJFL (261 – 269 cm)

Alternative E4(b) would increase the minimum size for blue marlin to a specific size between 103 and 106 inches LJFL (261 – 269 cm) to reduce U.S. landings and/or mortalities, as appropriate. The sizes presented represent the upper and lower bounds of the sizes analyzed and available for selection, and as such, do not represent consideration of a “slot limit.”

Alternative E5 Implement a recreational bag limit of one Atlantic billfish per vessel per trip

Alternative E5 would implement a recreational bag limit of one Atlantic billfish per vessel per trip. No more than one Atlantic billfish would be allowed to be possessed, retained, or landed on, or by, a vessel regardless of the length of the trip.

Alternative E6 *Effective January 1, 2007, Implement ICCAT Recommendations on Recreational Marlin Landings Limits – Preferred Alternative*

Alternative E6 would codify ICCAT recommendations pertaining to recreational marlin landing limits and implement domestic compliance mechanisms. Specifically, this includes an annual landings-limit of 250 recreationally caught Atlantic blue and white marlin, combined, as per ICCAT recommendations 00-13 and 04-09. To provide for maximum utilization of the U.S. recreational Atlantic marlin landing limit without exceeding it, this alternative would allow NMFS to increase the legal minimum size of blue and/or white marlin, as appropriate. The anticipated effect of an in-season minimum size increase would be to slow landings, if necessary, and thereby prevent a shift to catch and release fishing only. Under this alternative, the proposed size range that would be made available to NMFS for in-season management actions is from 117 to 138 inches for Atlantic blue marlin and 70 to 79 inches for Atlantic white marlin. The need for action and the specific minimum size temporarily implemented would be based upon a review of observed landings, time remaining until conclusion of the current fishing year, current and historical landings trends, and any other relevant factors. As a backstop to ensure that the U.S.’s actions remain consistent with the ICCAT landing limit, the fishery would become catch and release only for the remainder of a fishing year if the landing limit were achieved. If marlin minimum sizes are increased to slow landings during a given fishing year, they would revert back to the previous minimum size at the start of the next fishing season. Consistent with ICCAT recommendations, NMFS would subtract any overharvest from the subsequent fishing year’s landing limit, and could carry forward any underharvest to the subsequent fishing year.

Alternative E7 Effective January 1, 2007 – December 31, 2011, allow only catch and release fishing for Atlantic white marlin

Alternative E7 would allow only catch and release fishing for Atlantic white marlin. Possession, retention, and landings of Atlantic white marlin would be prohibited at all times and under all circumstances. This provision would expire five years from the effective date unless

specifically extended by NMFS. This alternative was preferred in the Draft Consolidated HMS FMP. As further described in Chapter 4, NMFS is not selecting this alternative as a preferred alternative in the final Consolidated HMS FMP, but may consider it in a future rulemaking, as necessary and appropriate.

Alternative E8     Effective January 1, 2007 – December 31, 2011, allow only catch and release fishing for Atlantic blue marlin

Alternative E8 would allow only catch and release fishing for Atlantic blue marlin. Possession, retention, and landings of Atlantic white marlin would be prohibited at all times and under all circumstances. This provision would expire five years from the effective date unless specifically extended by NMFS

*Other billfish alternatives considered but not further analyzed at this time*

Alternative E9     Implement a mandatory Atlantic HMS tournament permit

Alternative E9 would replace the current tournament registration system with a mandatory tournament permit. A separate permit would be required for each tournament on an annual basis. Tournament permit applications would be required to be received 45 days in advance of the tournament to allow NMFS time to process the permit and select tournaments for reporting, if appropriate. This alternative would not alter reporting requirements. NMFS has determined that improvements to tournament registration, data collection, and enforceability that could be achieved under this alternative can be achieved with significantly less burden to the public and government through implementation of regulatory clarifications contained elsewhere in this document. Please see the Section 2.3.4 Regulatory Housekeeping for addition details. Therefore, this alternative is not further analyzed in this rulemaking, but maybe considered, if appropriate and necessary, in a future rulemaking.

## **2.3     Management Program Structure**

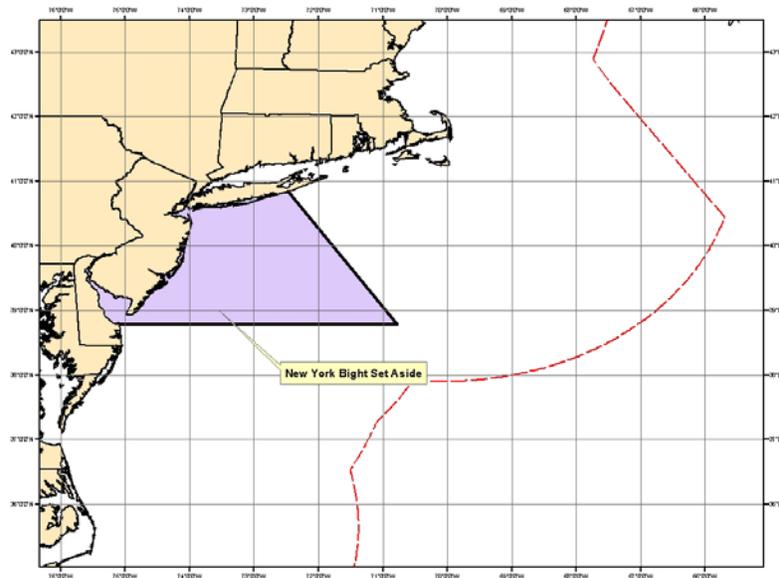
### **2.3.1     Atlantic Bluefin Tuna Quota Management**

#### ***2.3.1.1     BFT Quota Management in the General and Angling Categories***

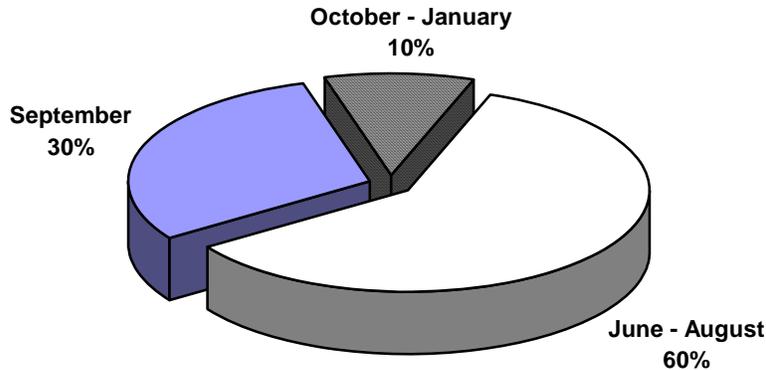
The following alternatives explore different possibilities for amending/clarifying the annual BFT quota allocation schemes in both the General and Angling categories. Currently, ICCAT recommends an annual Total Allowable Catch (TAC) of BFT for the United States in the western Atlantic management area. NMFS implements these ICCAT recommendations, as required by ATCA, by dividing the annual U.S. BFT TAC among several domestic quota categories based on allocation percentages established in the 1999 FMP. In some categories, including the General and Angling categories, NMFS further subdivides these domestic category allocations into subquotas (*i.e.*, on a temporal, geographic, and/or BFT size class basis) to further meet the objectives of the Magnuson-Stevens Act, ATCA, and the 1999 FMP. Not all of the alternatives described below are mutually exclusive.

Alternative F1 Maintain the time-periods, subquota allocations, and geographic set-asides for the General and Angling categories as established in the 1999 FMP (No Action)

This alternative would maintain the current General category time-period subquota allocation scheme, as stated in the 1999 FMP, and would require an FMP amendment to adjust the time-period subquota allocation percentages in the future. This sub-allocation scheme divides the annual General category quota in three distinct time-periods and one geographic set-aside. The New York Bight geographic set-aside (Figure 2.7) is allocated ten metric tons (mt) whole weight on an annual basis. Once this amount is deducted from the overall General category quota, the remaining quota is divided among three time-periods and is allocated to each time-period as follows: 60 percent to June through August, 30 percent to September, and 10 percent to October through January (Figure 2.8).



**Figure 2.7** The New York Bight set-aside is defined as an area comprising the waters South and West of a straight line originating at a point on the southern shore of Long Island, NY, at 72° 27' W. Long. (Shinnecock Inlet) and running South southeast 150° true, and north of 38° 47' N. Lat.

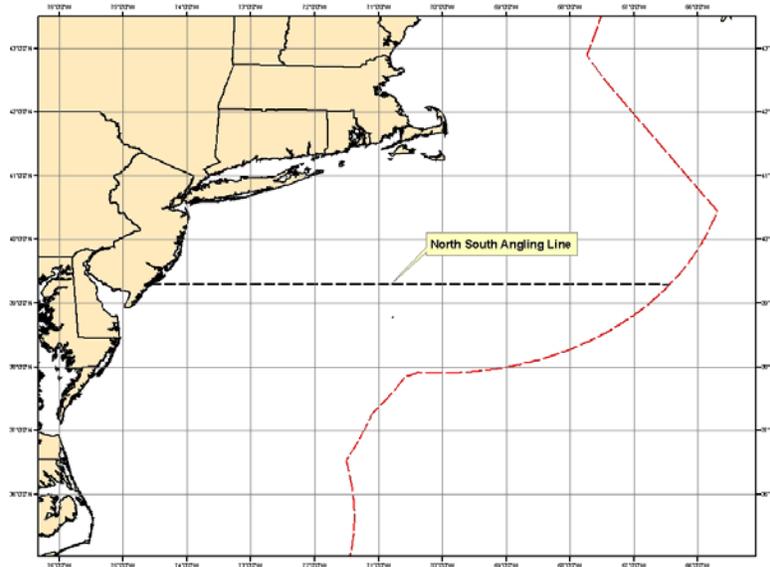


**Figure 2.8 Alternative F1: No Action. Suballocation of the BFT General Category Quota among the current three time-periods. New York Bight set-aside is subtracted from the General Category quota and then the time-period allocations are determined.**

This alternative would maintain the process NMFS currently uses to account for the ICCAT recommendations regarding the tolerance limit of school BFT and the Northeast Distant (NED) Statistical Area set-aside. The ICCAT recommendation regarding school BFT states that contracting parties, non-contracting parties, entities and fishing entities may grant tolerances to capture western Atlantic BFT either weighing less than 30 kg, or in the alternative having a fork length less than 115 cm provided they limit the take of these fish so that the average over each four-consecutive-year quota balancing period is no more than eight percent by weight of the total BFT quota on a national basis, and institute measures to deny economic gain to the fishermen from such fish. ICCAT has adopted an additional recommendation stating that the United States shall receive a quota (of catch that can be retained) of 25 mt to account for bycatch related to its directed longline fisheries in the vicinity of the management area boundary. NMFS defined “in the vicinity of the management area boundary” as the NED Statistical Area (68 FR 56783, October 2, 2003).

As the NED Statistical Area recommendation is more recent than the school BFT tolerance limit, NMFS has not accounted for this additional allocation in the calculations used to formulate the school tolerance BFT. Therefore, under this alternative, the United States would deduct the quota attributed to the NED Statistical Area before applying the eight percent school size-class BFT tolerance limit to the U.S. overall quota, rather than applying the eight percent to the total U.S. BFT quota.

This alternative would maintain the North/South Angling category dividing line (Figure 2.9). This dividing line is intended to provide a more equitable geographic and temporal distribution of recreational fishing opportunities by separating each BFT size-class subquota into two geographical regions, the northern area (allocated 47.2 percent of the size-class subquotas) and the southern area (52.8 percent of the size-class subquotas).



**Figure 2.9** The Angling category North/South dividing line, located at 39° 18' N. Lat. (Great Egg Inlet, NJ).

Alternative F2 Establish General category time-periods, subquotas, and geographic set-asides annually via framework actions

This alternative would amend the status quo process that establishes the General category time-periods and associated subquotas. Under this alternative, General category time-periods and/or the subquota allocated to each time-period, as well as any geographic set-asides, would be established annually via a regulatory framework action (versus an FMP amendment as described under Alternative F1). This alternative would revise the detailed language regarding General category time-periods, subquota allocations, and geographic set-asides contained in the 1999 FMP to be more general. The specific details pertaining to management of the General category would be established each year in the annual regulatory framework action. This alternative attempts to address the inherent variability in the General category BFT fishery from one year to the next, and would require the regulatory framework action to be finalized prior to the start of the season, thereby establishing General category time-periods and associated subquotas before the fishery commences.

Factors that would be considered prior to establishing the annual General category time-periods, associated subquotas, and/or geographic set-asides may include, but would not be limited to, protected species interactions and bycatch rates, historic landings, total landings reported at the end of the season, weather conditions, levels of effort, the amount of unharvested quota rolling over from the previous fishing year, and the projected ability of the vessels to harvest the subquotas.

Alternative F3 *Amend the management procedures regarding General category time-periods, subquotas, as well as geographic set-asides to allow for future adjustments to take place via a regulatory framework action – Preferred Alternative*

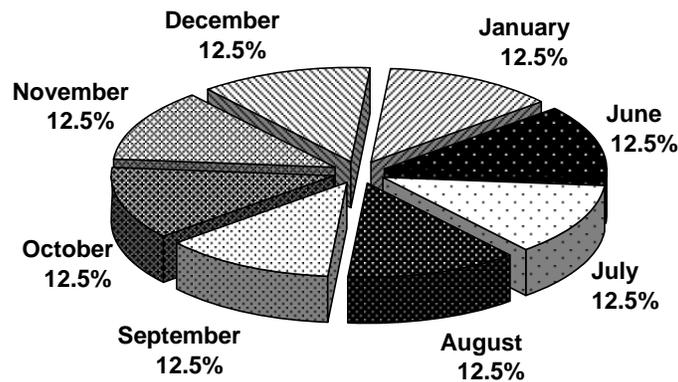
This alternative would amend the status quo management procedures which establish and adjust the General category time-periods, subquotas, as well as geographic set-asides. More specifically, this alternative would revise the detailed language regarding General category time-periods, subquota allocations, and geographic set-asides contained in the 1999 FMP to be more general, similar to Alternative F2. However, under this alternative, the specific details pertaining to management of the General category would be established in the regulatory text implementing the consolidated FMP, versus established annually (as in Alternative F2), thereby providing a level of consistency from one year to the next. By moving the specific language from the FMP to the implementing regulations, NMFS would be able to provide consistent time-periods and subquotas while also gaining the ability to amend these General category time-periods, subquota allocation percentages, and geographic set-asides, if deemed necessary, via a regulatory framework action, versus an FMP amendment.

Additionally, because the General category baseline quota, time-periods, and associated subquotas would be contained in the implementing regulations, the annual BFT specification process would not be necessary for the fishery to commence on the first day of the fishing year. Factors that may warrant future adjustments may include, but may not be limited to, ICCAT recommendations that modify BFT management measures, shifts in protected species interactions and bycatch rates, consideration of historic allocations and landings, stability and predictability of quotas, total landings reported, weather conditions, levels of effort, the amount of unharvested quota rolling from one year to the next, and the projected ability of the vessels to harvest the subquotas. If the specific management measures contained in the regulatory text need to be changed, then an appropriate analytical document (*i.e.*, EA or EIS, RIR, IRFA, etc.) may need to accompany the proposed and final rule in the regulatory amendment. However, as long as the ICCAT recommended annual U.S. BFT quota remains consistent, and the established General category time-period subquota allocation percentages are specified in whole weight, the regulatory, environmental, social, and economic analyses conducted for the consolidated HMS FMP would constitute the supporting documentation for the annual regulatory framework action.

This alternative would also amend the actual General category time-periods as well as the corresponding subquota allocation percentages for each time-period. These subalternatives would support the preferred alternative in Section 2.3.2, which would adjust management of all HMS fisheries to a calendar year basis, by providing separate time-period subquota for December and January, ensuring that the time-periods do not span two calendar years. The status quo General category time-periods and subquotas are described in Alternative F1. The range of sub-alternatives analyzed in this document are intended to further meet the objectives of the Magnuson-Stevens Act, ATCA, as well as the consolidated HMS FMP, and are drafted in accordance with the preferred CY/FY alternatives contained in Section 2.3.2. These alternatives specifically address public comments received during the scoping period of this action as well as the North Carolina Department of Marine Fisheries' (NCDMF) Petition for Rulemaking (see Notice of Receipt of Petition, 67 FR 69502, November 18, 2002). The sub-alternatives are as follows:

Alternative F3(a) Establish equal monthly General category time-periods and subquotas (June-Jan; 12.5 percent each)

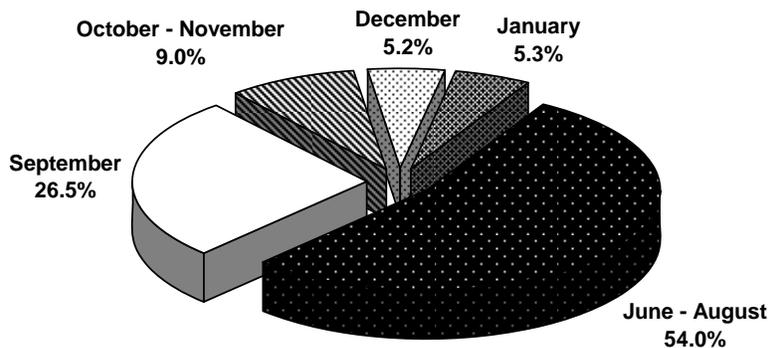
This sub-alternative would remove the New York Bight set-aside allocation and divide the coast-wide General category season into eight distinct time-periods that correspond to each month from June through January. The coast-wide General category quota would be allocated in equal amounts among all eight time periods, specifically 12.5 percent to each time-period (Figure 2.10). This alternative was designed to provide an opportunity to harvest an equal amount of quota during all eight months of the General category BFT season.



**Figure 2.10** Alternative F3a: Equal General category subquota allocation percentages for each month of the BFT fishing season.

Alternative F3(b) Revise General category time-periods and subquotas to allow for a formalized winter fishery (June-Aug, 54 percent; Sept, 26.5 percent; Oct-Nov, 9 percent; Dec, 5.2 percent; and Jan, 5.3 percent)

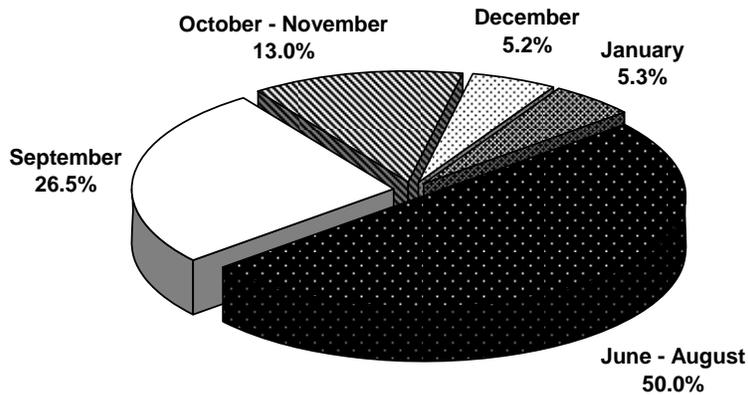
This sub-alternative would remove the New York Bight set-aside allocation and divide the coast-wide General category season into five distinct time-periods that correspond with traditional fishing patterns in the New England region, yet are slightly modified to reflect recent trends in the fishery and provide for a formal winter fishery in the South Atlantic region. Historically, the coast-wide General category BFT fishery was prosecuted in the waters off New England during the summer and early fall months. However, recent trends in this coast-wide fishery reflect a shift in the availability of commercial size BFT, both geographically and temporally, to the South Atlantic area. This alternative is intended to achieve optimum yield from the General category quota while providing fair and equitable fishing opportunities to General category participants regardless of geographical location. The time-periods would consist of June through August, September, and October through November, December, and January. This alternative would also establish time-period subquota allocation percentages as follows: 54 percent (June through August), 26.5 percent (September), 9 percent (October through November), 5.2 percent (December) and 5.3 percent (January) (Figure 2.11).



**Figure 2.11** Alternative F3b: Proposed General category time-period subquota allocation percentages.

Alternative F3(c) *Revise General category time-periods and subquotas to allow for a formalized winter fishery (June-Aug, 50 percent; Sept, 26.5 percent; Oct-Nov, 13 percent; Dec, 5.2 percent; and Jan, 5.3 percent) – Preferred Alternative*

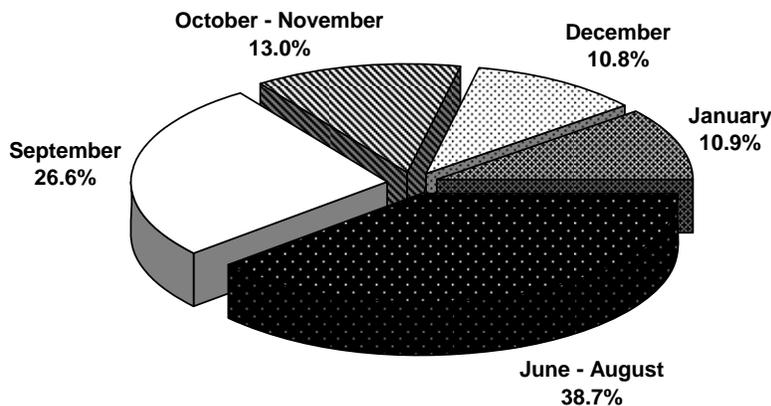
This sub-alternative would remove the New York Bight set-aside allocation and divide the coast-wide General category season into five distinct time-periods, June through August, September, October through November, December, and January. This alternative would shift slightly more quota from the start of the season to the October through November fishery (relative to Alternative F3(b)) where demand has been increasing in recent years, and to the December and January time-periods (relative to Alternative F1) providing for a formal winter BFT fishery in the South Atlantic region. As described in Alternative F3(b), the historical General category BFT fishery was primarily prosecuted in the waters off New England during the summer and early fall months. This resulted in a General category time-period and subquota allocation scheme heavily weighted to the New England fishery (*i.e.*, See Alternative F1 for the status quo). The time-periods, and associated subquotas, of this alternative would allocate fishing privileges to further achieve optimum yield without excluding traditional participants in the fishery. Thus, this alternative would establish time-period subquota allocation percentages as follows: 50 percent (June through August), 26.5 percent (September), 13 percent (October through November), 5.2 percent (December), and 5.3 percent (January) (Figure 2.12).



**Figure 2.12** Alternative F3c: Proposed General category time-period subquota allocation percentages.

Alternative F3(d) Revise General category time-periods and subquotas to allow for a formalized winter fishery (June-Aug, 38.7 percent; Sept , 26.6 percent; Oct-Nov, 13 percent; Dec, 10.8 percent; and Jan, 10.9 percent)

This sub-alternative would also remove the New York Bight set-aside allocation and divide the coast-wide General category season into the same five distinct time-periods referred to in sub-alternatives F3(b) and F3(c). However, this alternative's time-period subquota allocation percentages would provide the greatest opportunity for the winter BFT fishery and specifically embody the subquota allocation requested in the NCDMF Petition for Rulemaking. This alternative would establish time-period subquota allocation percentages as follows: 38.7 percent (June through August), 26.6 percent (September), 13 percent (October), 10.8 percent (December), and 10.9 percent (January) (Figure 2.13).



**Figure 2.13** Alternative F3d: Proposed General category time-period subquota allocation percentages embodying the NCDMF Petition for Rulemaking.

Alternative F4 *Clarify the procedures for calculating the Angling category school size-class BFT subquota allocation – Preferred Alternative*

This alternative would clarify the procedure for calculating the ICCAT-recommended school size-class BFT tolerance for the Angling category quota. The eight percent tolerance limit would be calculated from the U.S. BFT quota to determine the school size-class allowance for the Angling category. Then, the NED Statistical set-aside allocation would be deducted from the remaining U.S. BFT quota. This clarification would implement procedures for calculating the eight percent tolerance limit to be more consistent with the actual language from the ICCAT recommendation and would result in a slight increase of the school size class BFT quota by approximately 0.02 percent.

This alternative has been slightly modified from that proposed in the draft HMS FMP. This preferred alternative modifies the proposed alternative in the draft FMP by retaining the North/South Angling category dividing line located at 39° 18 minutes N. latitude (Great Egg Inlet, NJ) (Figure 2.9). This dividing line is intended to provide a more equitable geographic and temporal distribution of recreational fishing opportunities by separating each BFT size-class subquota into two geographical regions, the northern area (allocated 47.2 percent of the size-class subquotas) and the southern area (52.8 percent of the size-class subquotas). This management tool was originally intended to ensure reasonable recreational fishing opportunities in all geographic areas without risking overharvest of the Angling category quota. While this line allows NMFS to allocate different retention limits based on the migratory pattern of BFT, the effectiveness of this management tool depends on NMFS gathering recreational BFT landings information in a timely fashion to support real-time management decisions.

### ***2.3.1.2 Annual BFT Quota Adjustments***

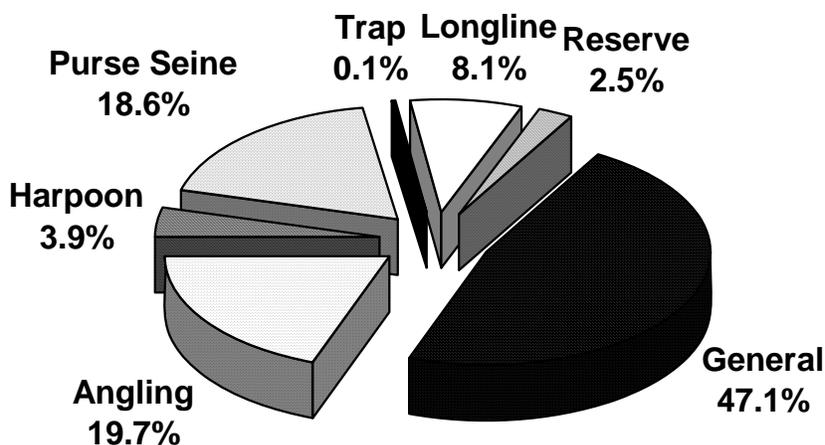
In 1991, ICCAT recommended that if the catch of a Contracting Party exceeds its annual or biannual scientific monitoring quota, then in the biannual period or year following reporting of that catch to ICCAT, that Contracting Party will reduce its catch to compensate in total for that overage. Such a reduction will be applied to the domestic catch category of the applicable Contracting Party of the overage (ICCAT 91-1). This recommendation was revised in 1998 to state that unused quota or overage from the previous year shall be added or subtracted, as appropriate, to the current year's catch that can be retained (ICCAT 98-7). The intent of the following alternatives is to streamline the annual BFT quota adjustment process, including the allocation of baseline quotas as well as adjusting those quotas based on the previous years under/overharvests.

The U.S. BFT quota is allocated to specific domestic quota categories via allocation percentages contained in the 1999 FMP. The annual BFT specifications quantify the baseline allocation for each domestic quota category, measured in whole weight (metric tons), by calculating the allocation percentages against the recommended U.S. BFT quota. These percentage shares were based on allocations that had been developed by NMFS over several years. Under all of the subsequent alternatives, the allocation of the U.S. BFT quota will remain consistent with those baseline percentages established in the 1999 FMP. These percentages are as follows: General - 47.1 percent; Angling - 19.7 percent; Harpoon - 3.9 percent; Purse Seine - 18.6 percent; Longline - 8.1 percent; and Trap - 0.1 percent. The remaining 2.5 percent of the

BFT landings quota will be held in the Reserve category (Figure 2.8). These domestic quota category percentages will remain unchanged as codified in the consolidated HMS FMP and would require an FMP amendment to change them in the future. However, revisions to the General category time-period subquota allocation scheme are being considered in Section 2.3.1.1.

**Alternative F5** Maintain the annual BFT quota specification process and the under/overharvest procedures within individual domestic quota categories and individual vessels in the Purse seine category (No Action)

This alternative would maintain the annual BFT quota specification process established in the 1999 FMP, which allocates the ICCAT-recommended U.S. BFT quota annually to domestic user groups. This alternative would require NMFS to draft proposed annual BFT quota specifications and appropriate supporting analytical documents, collect public comment on those proposed specifications, and then, after responding to comments received, finalize the initial BFT quota specifications via a final rule published in the Federal Register. This process would establish the baseline domestic quota category allocations in weight, as well as any applicable subquota allocations, and account for any under/overharvests from the previous fishing year.



**Figure 2.14** Alternative F5: No Action. U.S. BFT Domestic Quota Category Allocation Percentages.

This alternative would maintain and implement annual adjustment procedures, which include accounting for unused quota or an overage from the previous year, within individual domestic quota categories, via the current annual specification process. These annual adjustments would be based on landings statistics and other available information, and consideration of which BFT quota in any category or, as appropriate, subcategory has been exceeded or has not been reached, with the exception of the Purse seine category due to the IFQ nature of this category. Any overharvest would be subtracted from, or the underharvest would be added to, that same quota category for the following fishing year, provided that the total of the adjusted category quotas and the Reserve remained consistent with ICCAT recommendations, the tolerance of school BFT, and the allowance for dead discards. For the Purse seine category, annual adjustments would be based on landings statistics and other available information for that specific purse seine vessel's allocation. Adjustments would then be considered based on

calculations of whether a purse seine vessel's allocation, as adjusted, has been exceeded or has not been reached, in which case the overharvest would be subtracted from, or underharvest would be added to, that vessel's allocation for the following fishing year. Under this alternative, there would be no limit on the amount of quota that could be carried forward from one year to the next in any domestic quota category.

This alternative would implement annual adjustment procedures to allocate any quota in the Reserve category at the end of a fishing year to account for overharvests in any fishing category, provided such allocation is consistent with the criteria specified in Section 2.3.1.3. This alternative would also maintain the authority to perform inseason actions within a fishing year, such as adjusting daily retention limits, quota transfers among categories or, as appropriate, subcategories, and performing interim closures. These inseason actions would be determined based on the consideration of the criteria stipulated in Section 2.3.1.3.

This alternative would maintain the default General and Angling category BFT retention limits as articulated in the regulations implementing the 1999 FMP. The default coast-wide General category BFT retention limit is one large medium or giant BFT, measuring 73 inches curved fork length (CFL) or greater, per vessel per day/per trip. The default Angling category BFT retention limit is one school, large school, or small medium BFT, measuring 27 inches to less than 73 inches CFL per vessel per day/trip. NMFS has the ability to change the default retention limits via an inseason action. For further details regarding inseason actions, please see Section 2.3.1.3.

Lastly, this alternative would maintain the procedure for establishing Restricted Fishing Days (RFDs) in the General category BFT fishery, by proposing them in the annual BFT quota specifications. An RFD means a day beginning at 0000 hours and ending 2400 hours local time, during which a person aboard a vessel for which a General category permit for Atlantic tunas has been issued may not fish for, possess, or retain BFT. RFDs are intended to extend the General category BFT season, reduce market gluts, and further achieve optimum yield. A designated RFD may be waived if it is determined that it would impede the attainment of a time-period subquota or an RFD may be introduced if it is determined that it is needed to avert a premature time-period closure. NMFS has the ability to alter the RFD schedule via an inseason action. For further details regarding inseason actions, please see Section 2.3.1.3.

Alternative F6 *Revise the annual BFT quota specification process to refer back to the supporting analytical documents of the consolidated HMS FMP and include seasonal management measures in annual framework actions – Preferred Alternative*

This alternative is similar to Alternative F5, in that BFT quota specifications would be conducted on an annual basis; however, the range of impacts associated with annual BFT specifications would be analyzed in the appropriate analytical documents of the consolidated HMS FMP, as opposed to a separate EA or EIS. The consolidated HMS FMP analyses would then be referred to and used in subsequent quota specifications as the supporting analytical documents for regulatory, environmental, social, and economic impact analyses. 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 TAC). Currently, ICCAT recommendations for BFT TACs cover multiple years, and usually coincide with the most recent BFT stock assessment. The ICCAT-recommended U.S. BFT TAC would be allocated to the domestic quota categories per the allocation percentages listed in the consolidated HMS FMP (see introductory paragraph for Section 2.3.1.2). The equivalent quota tonnage associated with these percentages would be specified in the regulatory text implementing the consolidated HMS FMP, therefore formally establishing annual baseline quotas, in whole weight, for each of the domestic quota categories and therefore removing the need to analyze them on an annual basis as they would remain consistent.

The baseline quota percentages, for each domestic quota category, would remain in the consolidated HMS FMP, while the corresponding quota allocation for each quota category, denoted in metric tons, would be specified in the regulatory text implementing the consolidated HMS FMP. These baseline quota allocations may be adjusted on an annual basis to account for under/overharvests that occur in the previous year, per ICCAT recommendations. The range of these quota adjustments would also be analyzed in the supporting analytical documents of the consolidated HMS FMP and referred to in the annual BFT specifications (see Section 4.3.1.1, Alternative F8). This alternative would implement annual adjustment procedures that provide NMFS the authority to allocate any quota remaining in the Reserve category at the end of a fishing year to any fishing category, provided such allocation is consistent with the applicable determination criteria currently listed in the regulations. Section 2.3.1.3 addresses the multiple sets of determination criteria listed in the current regulations and the preferred alternative of this section which would consolidate the multiple lists for consistency purposes. As any annual quota transfers from the Reserve category are similar to an inseason quota transfer, the determination criteria discussed in Section 2.3.1.3 would also be addressed prior to conducting an annual transfer from the Reserve category.

This alternative would also include seasonal management measures in the annual framework rulemaking. Under the No Action alternative (*i.e.*, in comparison to Alternative F5), inseason management is conducted separately from the annual rulemaking. These seasonal management measures may include, but would not be limited to, establishing recreational daily BFT retention limits and their duration and General category effort controls, such as RFDs and daily BFT retention limits. Including seasonal management measures in the annual BFT specifications would provide prior notice of, and an opportunity for the public to comment on any proposed actions. Subsequent inseason actions would likely still be necessary to close fisheries, alter seasons, and/or alter retention limits as changing fishery conditions warrant them. This alternative would also maintain the inseason action authority as discussed under Section 2.3.1.3.

Alternative F7      Eliminate unharvested quota carryover provisions and return unharvested quota to the resource, while maintaining status quo overharvest provisions

This alternative would implement an annual adjustment provision that would not allow unharvested quota to be carried forward from one fishing year to the next, but would start each fishing year with the baseline domestic quota category allocations. This alternative would

maintain the overharvest provision and annual adjustment procedures as described in Alternative F5.

**Alternative F8**     *Establish an individual quota category carryover limit of 100 percent of the baseline allocation (i.e., no more than the annual baseline allocation may be carried forward), except for the Reserve category, and authorize the transfer of quota exceeding the 100 percent limit to the Reserve or another domestic quota category, while maintaining status quo overharvest provisions – Preferred Alternative*

This alternative would implement similar carryover provisions described in Alternative F5, but may apply a limit to the amount of quota each domestic quota category could carry forward from one fishing year to the next. This limit may be applied to all domestic quota categories, except for the Reserve category. The intent of this alternative is to prevent "stockpiling" of unharvested quota in a particular domestic quota category due to multiple successive years of underharvest. This alternative would implement a carryover cap of 100 percent of the baseline allocation for each domestic quota category, except for the Reserve category, such that no more than two years worth of quota allocation may be held by a particular domestic quota category at the start of the fishing year. For example, the Harpoon category is allocated 3.9 percent of the U.S. BFT quota. Using the current ICCAT BFT quota recommendation, this equates to an annual baseline allocation of approximately 57.1 mt. Under this alternative, the Harpoon category would be allowed to carry forward 57.1 mt of unharvested quota from one year to the next. Combining the Harpoon category annual baseline allocation of 57.1 mt with the unharvested quota that may be carried forward, 57.1 mt, and the Harpoon category quota would be limited to 114.2 mt. Any quota that exceeds the 100 percent carryover limit would then be transferred to either the Reserve category or to another domestic quota category. This preferred alternative would not preclude NMFS from transferring additional quota from the Reserve back to a category that has reached the rollover limit via an inseason action. Section 2.3.1.3 addresses the multiple sets of determination criteria listed in the current regulations and the preferred alternative of this section which would consolidate multiple criteria lists for consistency purposes. As any quota transfers associated with exceeding the 100 percent rollover limit would be similar to an inseason quota transfer, the determination criteria discussed in Section 2.3.1.3 would also need to be addressed prior to transferring quota under this alternative. This alternative would maintain the overharvest provisions as stipulated in Alternative F5.

### ***2.3.1.3 Inseason Actions***

The following alternatives set forth the basis for NMFS' management of BFT inseason actions, including, but not limited to adjusting daily retention limits, inseason quota transfers, and fishery closures/reopenings.

**Alternative F9**     **Maintain inseason action procedures (No Action)**

This alternative would maintain and implement the status quo regulatory authority to provide for maximum utilization of the BFT quota by authorizing increases or decreases to the General category daily retention limit of large medium and giant BFT over a range from zero to

a maximum of three per vessel via the use of inseason management actions that are published in the final rule section of the Federal Register. These actions would be based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. General category retention limit adjustments are not effective until at least three calendar days after a notification is filed with the Office of the Federal Register for publication. The one exception corresponds to previously designated RFDs. RFDs may be waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct catch-and-release or tag-and-release fishing for BFT under § 635.26.

This alternative would maintain and implement the existing regulatory authority to provide for maximum utilization of the Angling category BFT quota, by authorizing adjustments that may increase or decrease the recreational retention limit for any size-class BFT or change a vessel trip limit to an angler limit and vice versa. Such adjustments would be based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. Also, such adjustments to the retention limits may apply separately for persons aboard a specific vessel type, such as private vessels, headboats, or charterboats. Recreational retention limit adjustments are not effective until at least three calendar days after a notification is filed with the Office of the Federal Register for publication.

This alternative would maintain and implement regulations that authorize quota transfers among categories or, as appropriate subcategories, within a fishing year after considering the following factors:

- (A) The usefulness of information obtained from catches in the particular quota category for biological sampling and monitoring of the status of the stock;
- (B) The catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no allocation is made;
- (C) The projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year;
- (D) The estimated amounts by which quotas for other gear categories of the fishery might be exceeded;
- (E) Effects of the transfer on BFT rebuilding and overfishing;
- (F) Effects of the transfer on accomplishing the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks.

If it was determined, based on these criteria and the probability of exceeding the total quota, that vessels fishing under any category or subcategory quota were not likely to take that quota, NMFS could conduct an inseason transfer of any portion of the remaining quota of that fishing category to any other fishing category or to the Reserve.

This alternative would maintain and implement regulations to close a domestic quota category, other than the Purse Seine category quota due to the IFQ nature of this category, based on when that quota was reached, or was projected to be reached. The closure would be effective for the remainder of the fishing year or for a specified period as indicated in the closure notice published as an inseason action in the final rule section of the Federal Register.

This alternative would also maintain and implement the regulations to close and reopen the Angling category BFT fishery by accounting for variations in seasonal distribution, abundance, or migration patterns of BFT, or catch rates in one area, which may have precluded anglers in another area from a reasonable opportunity to harvest a portion of the Angling category quota. The Angling category BFT fishery, or a part of the fishery, may be reopened at a later date if it is determined that BFT migrated into the other area. In determining the need for any such interim closure, the following criteria would be considered:

- (A) The usefulness of information obtained from catches of a particular geographic area of the fishery for biological sampling and for monitoring the status of the stock;
- (B) The current year catches from the particular geographic area relative to the catches recorded for that area during the preceding four years;
- (C) The catches from the particular geographic area to date relative to the entire category and the likelihood of closure of that entire category of the fishery if no interim closure or area closure is effected; and
- (D) The projected ability of the entire category to harvest the remaining amount of BFT before the anticipated end of the fishing season.

Alternative F10 *Revise and consolidate criteria considered prior to performing inseason and certain annual BFT management actions – Preferred Alternative*

This alternative would revise and consolidate the sets of criteria that NMFS considers for any and all inseason management actions, as well as certain annual management actions, including, but not limited to adjustments in daily retention limits, annual quota adjustments to/from the Reserve, inseason quota transfers, fishery closures, and interim fishery closure/reopenings. This alternative would enhance the flexibility and consistency regarding the determination criteria analyzed prior to conducting inseason management actions and/or some annual management actions as discussed in the previous alternatives. The criteria listed below are in no particular order of importance and in some circumstances not all criteria would be relevant in the decision making process.

This alternative would also move the determination criteria from § 635.27(a)(7) into a stand-alone section. Thus, this alternative would implement the following consolidated criteria:

- (A) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock;

- (B) The catches of the particular category quota, and/or subquota, to date and the likelihood of closure of that segment of the fishery if no interim closure or quota allocation is made;
- (C) The projected ability of the vessels fishing under the particular category quota and/or subcategory quota to harvest the remaining and/or additional amount of BFT before the end of the fishing year;
- (D) The estimated amounts by which quotas for other gear categories of the fishery might be exceeded;
- (E) Effects of the action on BFT rebuilding and overfishing;
- (F) Effects of the action on accomplishing the objectives of the consolidated HMS FMP;
- (G) Review of variations in seasonal distribution, abundance, or migration patterns of BFT;
- (H) Effects of catch rates in one area, precluding participants in another area from having a reasonable opportunity to harvest a portion of the category quota; and
- (I) Review of dealer reports, daily landing trends, and/or availability of the species on the fishing grounds.

This alternative would maintain and implement regulations to close a domestic quota category, other than the Purse seine category quota due to the IFQ nature of this category, based on when that quota is reached, or is projected to be reached. The closure would be effective for the remainder of the fishing year or for a specified period as indicated in the closure notice published as an inseason action in the final rule section of the Federal Register.

#### Alternative F11 Eliminate BFT inseason actions

This alternative would eliminate NMFS' authority to perform inseason actions such as daily retention limit adjustments, inseason quota transfers, or interim closures. Domestic BFT quotas would be established as outlined in Section 0, and would be amended annually due to carryover provisions as outlined in Section 2.3.1.2. This alternative was designed to provide BFT fishery participants certainty in the rules and regulations throughout the BFT season for the purpose of consistency and at the expense of flexibility.

### **2.3.2 Timeframe for Annual Management of HMS Fisheries**

Many aspects of HMS fisheries are managed on an annual cycle, including, but not limited to, quota distribution, permit issuance, and fishery specifications. Currently, sharks are managed on a calendar year cycle (January 1 to December 31) while tunas, swordfish, and billfish are managed on a fishing year cycle (June 1 to May 31). For example, the 2005 annual quotas recommended by ICCAT for the U.S. tuna and swordfish fisheries are implemented for

the fishing year from June 1, 2005 to May 31, 2006, and the annual 2005 domestic shark fishery quotas are based on a fishing year from January 1, 2005 through December 31, 2005 (ICCAT does not currently make recommendations for annual shark quotas). The following alternatives present options for shifting the management cycle timeframe in order to simplify the management program for HMS fisheries and improve the United States' basis for negotiations at international forums.

Alternative G1     Maintain the current management cycle for all HMS (No Action)

This alternative would maintain the current management timeframe for all managed HMS. Atlantic tunas, swordfish, and billfish would continue to be managed on a fishing year from June 1 to May 31, whereas Atlantic sharks would continue to be managed on a calendar year. This alternative would not require any re-allocation of the sub-quotas used to manage BFT, sharks, or swordfish.

Alternative G2     *Shift the management cycle to January 1 to December 31 for all HMS – Preferred Alternative*

Under this alternative, the preferred alternative for the Draft HMS FMP, all of the HMS management programs would be implemented on a calendar year cycle. The Atlantic shark management timeframe would maintain the status quo, whereas tunas, swordfish, and billfish would shift from a fishing year to a calendar year. The calendar year for billfish would be implemented on January 1, 2007 via this action. To transition from a fishing year to a calendar year, an abbreviated fishing year would be established via a separate action for BFT and swordfish to cover the months between the end of the fishing year (May 31, 2007) and the start of the new calendar year (January 1, 2008). This alternative has been refined relative to the Draft HMS FMP by shifting the effective date for BFT and swordfish from January 1, 2007 to January 1, 2008. The shift in the management timeframe would require some alteration to the BFT seasonal allocations because a domestic BFT subquota and time-period currently spans two calendar years. Section 2.1.1.1 discusses management alternatives for BFT, including all the subalternatives under alternative F3, which would address this issue by providing separate subquota time periods for December and January.

Alternative G3     Shift the management cycle to June 1 to May 31 for all HMS

This alternative would move all HMS to a June 1 to May 31 fishing year management cycle. The management timeframe for Atlantic tunas, swordfish, and billfish would maintain status quo, whereas shark management would shift from the calendar year to a fishing year. The shark management program's trimesters and sub-quotas would be modified to fit within a fishing year management regime, and a bridge period would be required to cover the months between the end of the calendar year (December 31, 2006) and beginning of the fishing year (June 1, 2007).

### **2.3.3 Authorized Fishing Gear**

Innovative fishing gears and techniques are essential to increasing efficiency and reducing bycatch in fisheries for Atlantic HMS. As current or traditional gears are modified and

new gears are developed, NMFS needs to be cognizant of these advances to gauge their potential impacts on target catch rates, bycatch rates, and protected species interactions, all of which can have important management implications. New gears and techniques need to be evaluated by NMFS for qualification as authorized gear types. In this document, NMFS is considering the definition and authorization of speargun gear, green-stick gear, and buoy gear, as well as clarifying the allowable use of handheld cockpit gears.

Alternative H1     Maintain current authorized gears in Atlantic HMS fisheries (No Action)

The revised list of authorized fisheries (LOF) and the associated fishing gears became effective December 1, 1999 (64 FR 67511). The rule applies to all U.S. marine fisheries, including Atlantic HMS. As stated in the rule, “no person or vessel may employ fishing gear or participate in a fishery in the exclusive economic zone (EEZ) not included in this LOF without giving 90 days’ advance notice to the appropriate Fishery Management Council (Council) or, with respect to Atlantic HMS, the Secretary of Commerce (Secretary).” The LOF is updated periodically and can be found at 50 CFR § 600.725. Acceptable HMS fisheries and authorized gear types for Atlantic tunas, swordfish, and sharks include: swordfish handgear fishery - rod and reel, harpoon, handline, bandit gear; pelagic longline fishery - longline; shark drift gillnet fishery - gillnet; shark bottom longline fishery - longline; shark recreational fishery - rod and reel, handline; tuna purse seine fishery - purse seine; tuna recreational fishery - rod and reel, handline; and tuna handgear fishery - rod and reel, harpoon, handline, bandit gear. For Atlantic billfish, the only acceptable fishery and authorized gear type is recreational fishery - rod and reel. This alternative would maintain the status quo for authorized gears in all Atlantic HMS fisheries.

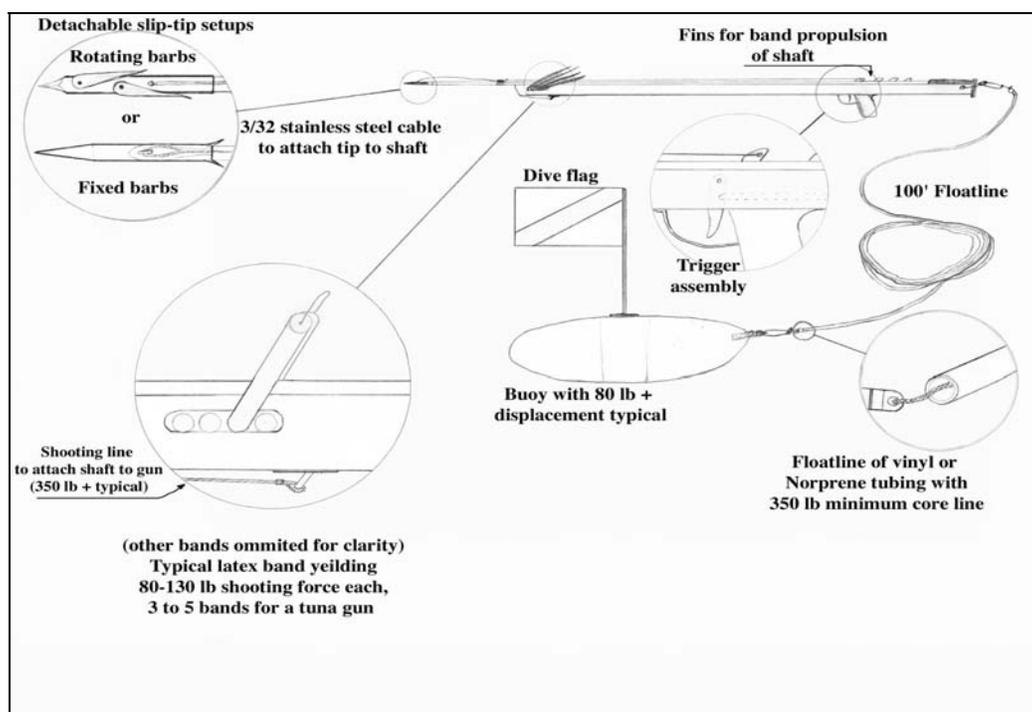
Alternative H2     *Authorize speargun fishing gear as a permissible gear type in the recreational Atlantic BAYS tuna fishery - Preferred Alternative*

Alternative H2 would define and authorize speargun fishing gear in the recreational Atlantic bigeye, albacore, yellowfin and skipjack (BAYS) tuna fishery (*i.e.*, all regulated HMS tuna species except for BFT). This is a slightly modified alternative from that proposed in the Draft Consolidated HMS FMP. This preferred alternative modifies the proposed alternative contained in the Draft Consolidated HMS FMP by not allowing BFT to be fished for, landed, or retained by fishermen using speargun gear. In addition, this revised alternative would not allow the sale of any BAYS tuna harvested with speargun gear, under any circumstances, including those landed by fishermen aboard a HMS CHB permitted vessel and regardless of whether the CHB permitted vessel is operating in a for-hire or non-for-hire manner. BFT would be excluded from the allowed list of target species by this new gear type due to the recent declining performance of the existing BFT fishery, recent quota limited situations within the recreational angling sector, and ongoing concerns over the status of the stock. All sale of tuna harvested with this gear type would be prohibited in order to clarify the intent of authorizing this gear type, which would be to allow recreational speargun fishermen an opportunity to use speargun gear to recreationally target BAYS tuna. Recreational spearfishermen would only be allowed to fish from vessels possessing valid HMS Angling or CHB category permits, and would be subject to all Federal management measures for recreational HMS fishing including retention limits for YFT, a minimum size of 27 inches for BET and YFT, and reporting requirements, as well as other measures. Speargun landings would be monitored using existing recreational monitoring

methods, including LPS. Under this alternative, no HMS would be allowed to be taken by speargun gear, other than Atlantic BAYS tunas.

Fishermen using speargun gear would be allowed to freedive, use SCUBA, or other underwater breathing devices, and would be required to be physically in the water when firing or discharging a speargun. Only free-swimming fish, not those restricted by fishing lines or other means, could be taken with a speargun.

Under alternative H2, speargun fishing gear would be defined as a muscle-powered speargun equipped with a trigger mechanism, a spear with a tip designed to penetrate and retain fish, and terminal gear. Terminal gear may include but would not be limited to trailing lines, reels, and floats. Muscle-powered spearguns store potential energy provided from the operator's muscles. Muscle-powered spearguns may only release that amount of energy that the operator has provided to it from his/her own muscles. Common energy storing methods for muscle-powered spearguns include compressing air and springs, and the stretching of rubber bands (IBSRC, 2005) (Figure 2.15). Powerheads, as defined at 50 CFR § 600.10, or any other explosive devices, would not be allowed to harvest or subdue BAYS tunas with this gear type.



**Figure 2.15** A Diagram of a Typical Speargun Fishing Gear Configuration (courtesy of Matthew Richards).

Alternative H3 Authorize speargun fishing gear as a permissible gear-type in the commercial tuna handgear and recreational Atlantic tuna fisheries

Alternative H3 would authorize the use of speargun fishing gear, as defined above, in the commercial tuna handgear and recreational Atlantic tunas fisheries. Recreational BFT speargun landings would be deducted from the Angling category quota and commercial BFT speargun

landings would be subtracted from the General category quota. As discussed in alternative H2, fishermen using speargun fishing gear would be allowed to freedive, use SCUBA, or other underwater breathing devices, and would be required to be physically in the water when firing a speargun. Only free-swimming fish, not those restricted by fishing lines or any other devices, could be taken. The use of powerheads, as defined at 50 CFR § 600.10, or any other explosive devices, would not be allowed to harvest or subdue tunas with this gear type. Under this alternative, no HMS would be allowed to be taken by speargun gear, other than Atlantic tunas.

Alternative H4     Authorize green-stick fishing gear for the commercial harvest of Atlantic BAYS tunas

Alternative H4 would add a definition of green-stick fishing gear to the Atlantic HMS regulations and add this gear to the list of authorized fishing gears for the commercial tuna handgear fishery for certain fishing permits. This alternative was preferred in the Draft Consolidated HMS FMP, however it is not preferred in the Final Consolidated HMS FMP. Under this alternative, green-stick gear would be distinguished from current definitions of existing gear types and individually defined as a line that is elevated, or suspended, above the waters' surface from which no more than 10 hooks or gangions may be hung. Possible technical configuration and use of the gear would be similar to that described below. The intent of this alternative would be to allow commercial tuna handgear fishermen, targeting BAYS with green-stick gear, to increase the number of hooks on their gear from two hooks to no more than 10 hooks. This alternative would also prohibit commercial vessels using or possessing green-stick fishing gear from retaining or possessing BFT on board. The primary impacted commercial fishing entities would be General category and HMS CHB permit holders, who are currently restricted to the handgear limit of two hooks or less per line, but are allowed to sell their BAYS catch, in accordance with other appropriate management measures (*e.g.*, size limits). Longline permit holders are currently allowed to use three hooks or more per line although they are restricted to the use of circle hooks only, among other restrictions (*e.g.*, closed areas). This alternative would not impact HMS recreational fishermen targeting BAYS as they are already not allowed to sell their catch.

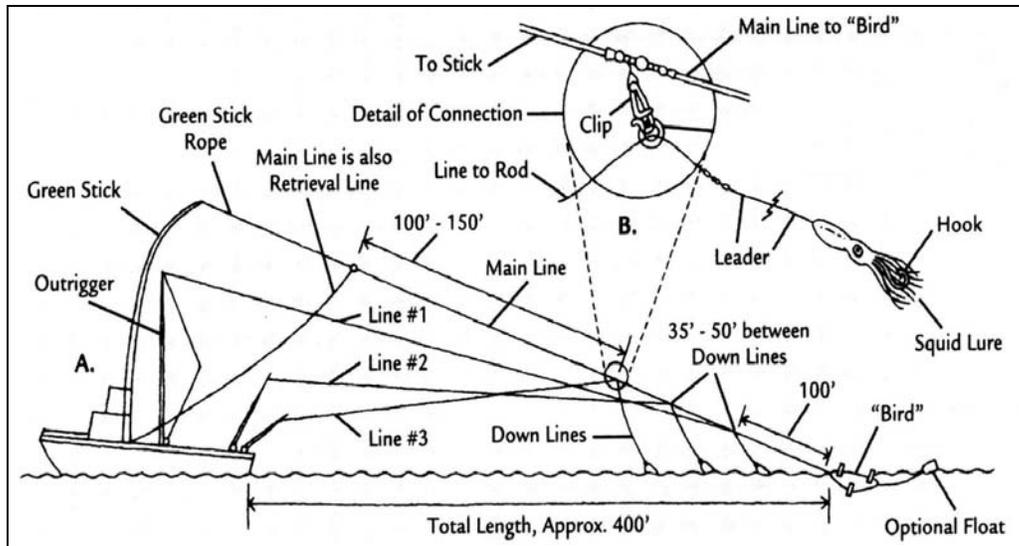
During the public comment period for the Draft Consolidated HMS FMP, commenters provided a range of opposition and support regarding this previously preferred alternative (to authorize green-stick gear for the commercial harvest of Atlantic BAYS tunas) including; considerable confusion over the current regulatory regime; concern over the need for better reporting, monitoring and overall data collection for this gear-type; and, the need for further understanding of the technical nature of the gear itself. Based on these comments, the Agency has determined it would be preferable to clarify the currently allowed use of the green-stick gear rather than proceed with authorization and definition of the gear-type in a manner that may further add to the confusion and have unintended negative consequences to the fishery and the resource.

Below is a brief discussion of the currently allowed and authorized use of green-stick gear in HMS fisheries. The gear is currently recognized to be configured in at least two different modes classified as "recreational" and "commercial." In either mode, the gear is actively trolled and configured so that the baits are fished on or above the surface of the water. The suspended

line, attached gangions, and catch may be retrieved collectively by hand or mechanical means. The discussion below is solely intended to further understanding of the technical nature and possible use of this gear. Despite the terminology of these modes, it is possible for the actual use of the gear, in either mode, to exist in the commercial or the recreational HMS fisheries in accordance with existing HMS and tuna permit requirements and HMS management measures.

In the “recreational” configuration, a fiberglass pole, or “green-stick”, serves as a vertical outrigger, elevating a line above the waters’ surface, allowing multiple anglers to fish individually tended lines suspended by the green-stick’s single line (Figure 2.16). At the end of the green-stick line, a floating decoy is attached. This decoy provides drag as the vessel moves forward and puts tension on the green-stick line. The individual fishing lines are connected to the green-stick line by rubber bands, outrigger clips, or other breakaway connections, and are allowed to hang down and brush across the surface of the water while trolled. When a fish takes one of the baits, the breakaway connection releases, and the angler tending that individual line fights and lands the fish. Some recreational fishermen have further modified the gear and suspend baits from a “high-line” attached to a flying bridge or tuna tower, and do not actually use the green-stick pole (Wescott, 1996).

It is believed that this “recreational” configuration is primarily used to target YFT, although BFT, other BAYS species, and possibly billfish can be captured via this method. So long as each separate and individual fishing line that is attached to the mainline only trails two hooks or fewer this configuration would fall under current HMS regulatory handgear definitions for rod and reel and handline. Rod and reel and handline gears are already authorized for either recreational or commercial fishing for HMS species under existing regulations. Fishermen wishing to use green-stick gear in this manner would need to possess any of the HMS permits that authorize the use of rod and reel or handline, including HMS CHB, HMS Angling, Atlantic tunas General category permits, or Swordfish and Shark limited access permits. Again, it is important to note that although the configuration may be termed “recreational,” HMS species landed under the HMS commercial permits (authorized for handgear) and using this configuration (*e.g.*, all except the HMS Angling permit) may be sold as normal, under existing regulations.



**Figure 2.16** A Diagram of the Recreational Configuration of Green-stick Fishing Gear. Source: Wescott, 1996

The “commercial” configuration of green-stick gear generally consists of a 10.7 - 13.7 m (35 - 45 feet) fiberglass pole mounted to the vessel. A heavy mainline (800-1,000-pound test line) housed in a spool is hoisted by a tether-rope mounted to the top of the pole. The mainline is connected to the tether-rope with a cotton breakaway cord. At the end of the mainline, a floating decoy is attached. This decoy provides drag as the vessel moves forward and puts tension on the mainline. Several leaders hang down from the mainline at regularly spaced intervals and suspend baits so that they brush across the top of the water (Figure 2.17). As this gear is towed, the baits attached to the mainline skip across the water’s surface and flex in the fiberglass pole produces a “jigging” action that attracts fish. This gear was designed so that the mainline breaks away from the tether rope when one or more fish are hooked. The mainline and all the fish are then retrieved together using the spool (Wescott, 1996).

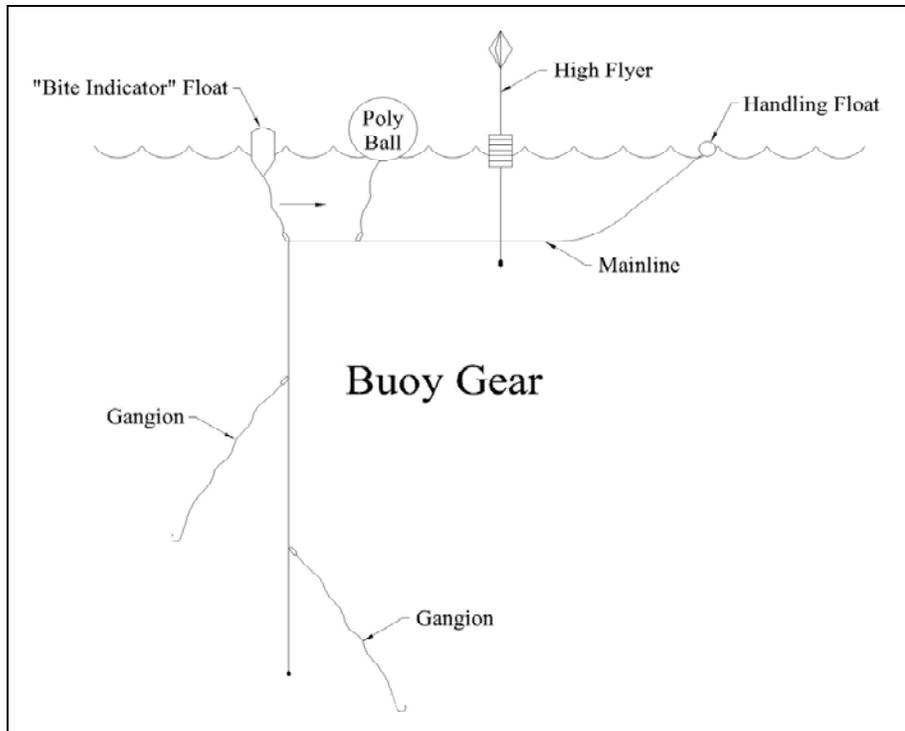
It was understood that the “commercial” configuration of green-stick gear was primarily used on vessels targeting YFT. However, since publication of the Draft Consolidated HMS FMP, public comments to the Agency, particularly from the North Carolina area, have made it clear that there is interest and potential activity targeting other species, including BFT. Theoretically, it is possible to use this “commercial” mode of configuration with a main line that only trails two hooks or less. In this case, it would also fall under current HMS regulatory handgear definitions for rod and reel and handline and is thus already authorized for either commercial or recreational fishing for HMS species under existing regulations. However, when fishing in this mode, it is likely that more than two hooks would be applied to the line. In cases where more than two hooks are attached to the mainline, the use of this gear would fall under the current HMS regulatory definition for longline gear. Fishermen wishing to use the commercial configuration with more than two hooks could still use this configuration of green-stick gear but would need to hold an Atlantic tunas longline permit and other necessary limited access permits depending on species and amounts targeted. An important note to consider under these circumstances is the relatively recent regulatory requirement (69 FR 40734, July 6, 2004) that



released and retrieved by hand. The current regulations do not limit the number of individual handlines/buoy gears that may be possessed or deployed and do not require that the lines be attached to a vessel. This gear (free-floating handlines) has been utilized with no limits on the number of gears by both recreational and commercial fishermen in many areas, including areas closed to pelagic longline fishing. Under alternative H5, only commercial swordfish fishermen possessing valid swordfish handgear or swordfish directed limited access permits would be authorized to utilize buoy gear and could only retain swordfish captured on this gear. Alternative H5 would maintain current limits of no more than two hooks per buoy gear and requirements that the gear be released and retrieved by hand; however, it would limit the number of individual floatation devices possessed or deployed to no more than 35 per vessel.

There is an existing definition of buoy gear at 50 CFR § 600.10 which states that “buoy gear means fishing gear consisting of a float and one or more lines suspended therefrom. A hook or hooks are on the lines at or near the end. The float and line(s) drift freely and are retrieved periodically to remove catch and rebait hooks.” The proposed HMS definition of buoy gear is consistent with this general definition; however, the Agency would provide a more specific definition for the use of buoy gear in the commercial swordfish handgear fishery. NMFS feels it is appropriate to include a refined definition of buoy gear at 50 CFR § 635 given the nature and characteristics of the swordfish fishery, as well as gear and techniques commonly utilized.

Under alternative H5, buoy gear would be defined as a fishing gear consisting of one or more floatation devices supporting a single mainline to which no more than two hooks or gangions are attached. Fishermen using buoy gear would be required to mark each floatation device with the vessel’s name, registration number, or HMS permit number, as per current regulations at 50 CFR § 635.6 (c). Under alternative H5, buoy gear would be required to be constructed and deployed so that the hooks would be attached to the vertical portion of the mainline. Floatation devices could be attached to one, but not both ends of the mainline, and no hooks or gangions could be attached to any floatation device or horizontal portion of the mainline. If more than one floatation device were attached to a buoy gear, no hook or gangion may be attached to the mainline between them (Figure 2.18). Individual buoy gears could not be connected together in any way and all buoy gears would be required to be released and retrieved by hand. Under this alternative, fishermen using this gear type would be required to affix gear monitoring equipment to each individual buoy gear to aid in recovery. Gear monitoring equipment could include, but would not be limited to, radar reflectors, beeper devices, lights, or reflective tape. If only reflective tape were used, the vessel deploying the buoy gear would be required to possess an operable spotlight capable of illuminating deployed buoys. If a gear monitoring device were positively buoyant and rigged to be attached to a fishing gear, it would be included in the 35 floatation device vessel limit and would need to be marked appropriately. Additionally, a floatation device would be defined as any positively buoyant object rigged to be attached to a fishing gear.



**Figure 2.18 A Diagram of a Buoy Gear with Four Floatation Devices Attached** (courtesy of Dave Meyer).

Alternative H6 Authorize buoy gear as a permissible gear type in the commercial swordfish handgear fishery; limit vessels employing buoy gear to possessing and deploying no more than 50 floatation devices, with each individual gear having no more than 15 hooks or gangions attached

Alternative H6 would authorize the use of buoy gear, as defined above, in the commercial swordfish handgear fishery. This alternative is similar to H5; however, it would limit vessels to possessing and deploying no more than 50 floatation devices, with each buoy gear having no more than 15 hooks or gangions attached. This alternative has been modified from the alternative proposed in the Draft Consolidated HMS FMP to allow the use of more than one floatation device per buoy gear. This modification was made to provide an appropriate comparison to alternative H5 which was modified in response to public comment. Additional detail regarding this change can be found in Chapter 4

Alternative H7 *Clarify the allowance of hand-held cockpit gears used at boat side for subduing HMS captured on authorized gears - Preferred Alternative*

In recent years, NMFS has become aware of some confusion regarding the allowable use of hand-held cockpit gears. Constituents have stated that they are unsure of whether they are allowed to possess cockpit gears, such as gaffs and dart harpoons, onboard their vessels if these gears are not specifically authorized in their particular fishery or permit category. This confusion stems from the Atlantic HMS regulations regarding authorized gears located at 50 CFR § 635.21(e). In this section, NMFS lists the authorized primary gear types that Atlantic HMS permit holders are allowed to use. The gear types are based on the species being targeted

and the permit category of the particular vessel. It is NMFS' intent to only authorize the primary gear types used to harvest HMS, meaning the gears used to bring an HMS to the vessel. This issue is being addressed to clarify the allowable use of secondary gears to subdue HMS after they are brought to the vessel using a primary gear type.

Alternative H7 would clarify the allowance of secondary hand-held cockpit gears by amending existing text at 50 CFR § 635.21 (b). The text would state that:

No person may fish for, catch, possess, or retain any Atlantic HMS other than with the primary authorized gears, which are the gears specifically authorized in this part. Consistent with paragraphs (a)(1) and (a)(2) of this section, secondary gears may be used to aid and assist in subduing, or bringing on board a vessel, Atlantic HMS that have first been caught or captured using primary gears. For purposes of this part, secondary gears include, but are not limited to, dart harpoons, gaffs, flying gaffs, tail ropes, etc. Secondary gears may not be used to capture, or attempt to capture, free-swimming or undersized HMS.

This alternative would acknowledge and account for the current regulations located at 50 CFR § 635.21(a), which state that an Atlantic HMS harvested from its management unit that is not retained must be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water. Under this alternative, cockpit gears would not be allowed to be used in any way to capture, or attempt to capture, free-swimming or undersized HMS, but only to gain control of legal-sized HMS brought to the vessel via an authorized primary gear type, with the intent of retaining that HMS.

#### **2.3.4 Regulatory Housekeeping**

This section addresses several items in the HMS regulations that need to be “cleaned up,” including minor corrections, clarifications, the removal or modification of obsolete cross-references, and minor changes to definitions and prohibitions that will improve the administration and enforcement of HMS regulations. Several of these items have been identified by constituents over the past few years or were raised during scoping hearings. Most of the corrections, clarifications, changes in definitions, and modifications to remove obsolete cross-references are consistent with the intent of previously analyzed and approved management measures. These changes would have no effect either individually or cumulatively upon the human environment. Under NOAA Administrative Order 216-6, actions that modify previously analyzed actions and that do not affect the human environment, minor technical additions, corrections, or changes to existing regulations are categorically excluded from the requirements of an EA or EIS. Changes that meet these criteria, and that are therefore exempt from the NEPA requirements, are described in Section 2.3.4.1 with the current regulation in the left column and the amendment in the right column. Other, more substantive, changes for which alternatives have been analyzed pursuant to NEPA, the Regulatory Flexibility Act, or other applicable laws are discussed in Section 2.3.4.2.

### 2.3.4.1 Proposed Regulatory Changes That Do Not Need Alternatives

Table 2.2 presents a list of the current regulations and the amendments to those regulations that will be effective in the final rule. The actual changes in the final rule may differ slightly from what is presented here due to overlap between these changes and changes due to other preferred actions in this document. However, the final rule will reflect the intent for the change, as described in the last column of the table.

**Table 2.2 List of Proposed Regulatory Changes.**

Item Number	Current Regulation	Amendment	Rationale for Amendment
1	<p><b>§ 635.2 Definitions.</b></p> <p><i>ILAP</i> means an initial limited access permit issued pursuant to §635.4.</p>	<p><b>§ 635.2 Definitions.</b></p> <p>Remove the definition for ILAP.</p>	<p>Removes the definition of Initial Limited Access Permits (ILAPs), which are no longer issued.</p>
2	<p><b>§ 635.2 Definitions.</b></p> <p><i>Management unit</i> means in this part: * * * (5) For sharks, means all fish of these species in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, excluding those species listed in Table 2 of Appendix A.</p>	<p><b>§ 635.2 Definitions</b></p> <p><i>Management unit</i> means in this part: * * * (5) For sharks, means all fish of the species listed in Table 1 of Appendix A to this part, in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea.</p>	<p>Specifies the species that are part of the management unit, rather than those that are not part of the management unit.</p>
3	<p><b>§ 635.2 Definitions.</b></p> <p><i>Northeast Distant closed area</i> * * *</p>	<p><b>§ 635.2 Definitions.</b></p> <p><i>Northeast Distant gear restricted area</i> * * *</p>	<p>Amends title of the Northeast Distant closed area to reflect recent amendments to the regulations governing this area. The term is also replaced throughout the regulations.</p>
4	<p><b>§ 635.2 Definitions.</b></p> <p><i>Shark</i> means one of the oceanic species, or a part thereof, listed in tables 1 and 2 in Appendix A to this part.</p>	<p><b>§ 635.2 Definitions.</b></p> <p><i>Shark</i> means one of the oceanic species, or a part thereof, listed in Table 1 in Appendix A to this part.</p>	<p>Links the definition of “shark” to the definition of “management unit.”</p>
5	<p><b>Table 2 in Appendix A - List of Deepwater and other sharks</b></p>	<p>Revise <b>Table 2 in Appendix A by replacing it with another non-related table.</b></p> <p>NOTE – Table 2 is revised pursuant to measures described in Issue 1 in “Regulatory Housekeeping.”</p>	<p>Removes the table of deepwater and other shark species that were previously removed from the management unit. NMFS will continue to collect data on these species and may add them to the management unit in the future.</p>

Item Number	Current Regulation	Amendment	Rationale for Amendment
6	<p>§ 635.4(c)(2) A vessel issued an Atlantic Tunas General category permit under paragraph (d) of this section may fish in a recreational HMS fishing tournament if the vessel has registered for, paid an entry fee to, and is fishing under the rules of a tournament that has notified NMFS as required under § 635.5(d). When a vessel issued an Atlantic Tunas General category permit is fishing in such a tournament, such vessel must comply with HMS Angling category regulations, except as provided in 635.4(c)(3).</p>	<p>§ 635.4(c)(2) A vessel issued an Atlantic Tunas General category permit under paragraph (d) of this section may fish in a recreational HMS fishing tournament if the vessel has registered for, paid an entry fee to, and is fishing under the rules of a tournament that has registered with NMFS as required under § 635.5(d). When a vessel issued an Atlantic Tunas General category permit is fishing in such a tournament, such vessel must comply with HMS Angling category regulations, except as provided in 635.4(c)(3).</p>	<p>Clarifies the requirement that tournaments must be registered with NMFS, consistent with proposed revisions to § 635.5(d).</p>
7	<p>§ 635.4(d)(4) A person can obtain an Atlantic Tunas Longline category permit for a vessel only if the vessel has been issued both a limited access permit for shark and a limited access permit for swordfish. NMFS will issue Atlantic Tunas Longline category permits to qualifying vessels in calendar year 1999. Thereafter, such permits may be obtained through transfer from current owners consistent with the provisions under paragraph (l)(2) of this section.</p>	<p>§ 635.4(d)(4) A person can obtain an Atlantic Tunas Longline category permit for a vessel only if the vessel has been issued both a limited access permit for shark and a limited access permit other than handgear for swordfish. Limited access Atlantic Tunas Longline category permits may only be obtained through transfer from current owners consistent with the provisions under paragraph (l)(2) of this section.</p>	<p>Removes a reference to a date that has passed. Also, clarifies that handgear permit holders cannot have an Atlantic Tunas Longline category permit because they cannot use longline gear to catch swordfish.</p>
8	<p>§ 635.4(e)(1) As of July 1, 1999, the only valid Federal commercial vessel permits for sharks are those that have been issued under the limited access criteria specified in §635.16.</p>	<p>§ 635.4(e)(1) The only valid Federal commercial vessel permits for sharks are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.</p>	<p>Removes a date that has passed, and a cross-reference that has been removed.</p>

Item Number	Current Regulation	Amendment	Rationale for Amendment
9	<p>§ 635.4(e)(2) The owner of each vessel used to fish for or take Atlantic sharks or on which Atlantic sharks are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of two types of commercial limited access shark permits: Shark directed limited access permit or shark incidental limited access permit. See §635.16 regarding the initial issuance of these two types of permits. It is a rebuttable presumption that the owner or operator of a vessel on which sharks are possessed in excess of the recreational retention limits intends to sell the sharks.</p>	<p>§ 635.4(e)(2) The owner of each vessel used to fish for or take Atlantic sharks or on which Atlantic sharks are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of two types of commercial limited access shark permits: Shark directed limited access permit or shark incidental limited access permit. It is a rebuttable presumption that the owner or operator of a vessel on which sharks are possessed in excess of the recreational retention limits intends to sell the sharks.</p>	<p>Removes a cross-reference that has been removed.</p>
10	<p>§ 635.4(f)(1) The owner of each vessel used to fish for or take Atlantic swordfish or on which Atlantic swordfish are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of three types of commercial limited access swordfish permits: swordfish directed limited access permit, swordfish incidental limited access permit, or swordfish handgear limited access permit. See §635.16 regarding the initial issuance of these three types of permits.</p>	<p>§ 635.4(f)(1) The owner of each vessel used to fish for or take Atlantic swordfish or on which Atlantic swordfish are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of three types of commercial limited access swordfish permits: swordfish directed limited access permit, swordfish incidental limited access permit, or swordfish handgear limited access permit. It is a rebuttable presumption that the owner or operator of a vessel on which swordfish are possessed in excess of the recreational retention limits intends to sell the swordfish.</p>	<p>Removes a cross-reference that has been previously removed. Also, adds rebuttable presumption that swordfish possessed in excess of recreational retention limits are intended to be sold.</p>
11	<p>§ 635.4(f)(2) As of July 1, 1999, the only valid Federal vessel permits for swordfish are those that have been issued under the limited access criteria specified in §635.16.</p>	<p>§ 635.4(f)(2) The only valid Federal vessel permits for swordfish are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section..</p>	<p>Removes a date that has passed, and a cross-reference that has been previously removed.</p>

Item Number	Current Regulation	Amendment	Rationale for Amendment
12	<p>§ 635.4(h)(2) <i>Limited access permits for swordfish and shark.</i> See §635.16 for the issuance of ILAPs for shark and swordfish. See paragraph (l) of this section for transfers of ILAPs and LAPs for shark and swordfish. See paragraph (m) of this section for renewals of LAPs for shark and swordfish.</p>	<p>§ 635.4(h)(2) <i>Limited access permits for swordfish and shark.</i> See paragraph (l) of this section for transfers of LAPs for shark and swordfish. See paragraph (m) of this section for renewals of LAPs for shark and swordfish.</p>	<p>Removes references to Initial Limited Access Permits (ILAPs), which are no longer issued. Also, removes a cross-reference that has been previously removed.</p>
13	<p>§ 635.4(l)(2)(i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraph (l)(2)(ii) of this section and to the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section, an owner may transfer a shark or swordfish ILAP or LAP or an Atlantic Tunas Longline category permit to another vessel that he or she owns or to another person. Directed handgear ILAPs and LAPs for swordfish may be transferred to another vessel but only for use with handgear and subject to the upgrading restrictions in paragraph (l)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section. Incidental catch ILAPs and LAPs are not subject to the requirements specified in paragraphs (l)(2)(ii) and (l)(2)(iii) of this section.</p>	<p>§ 635.4(l)(2)(i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraph (l)(2)(ii) of this section and to the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section, an owner may transfer a shark or swordfish LAP or an Atlantic Tunas Longline category permit to another vessel that he or she owns or to another person. Directed handgear LAPs for swordfish may be transferred to another vessel but only for use with handgear and subject to the upgrading restrictions in paragraph (l)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section. Incidental catch LAPs are not subject to the requirements specified in paragraphs (l)(2)(ii) and (l)(2)(iii) of this section.</p>	<p>Removes references to Initial Limited Access Permits (ILAPs), which are no longer issued.</p>

Item Number	Current Regulation	Amendment	Rationale for Amendment
14	<p>§ 635.4(1)(2)(ii)(B) The vessel's horsepower may be increased only once subsequent to the issuance of a limited access permit, whether through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the horsepower of the vessel's baseline specifications, as applicable.</p>	<p>§ 635.4(1)(2)(ii)(B) Subsequent to the issuance of a limited access permit, the vessel's horsepower may be increased only once, relative to the baseline specifications of the vessel originally issued the LAP, whether through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the baseline specifications of the vessel originally issued the LAP.</p>	<p>Clarifies that the one allowable horsepower upgrade for vessels with limited access permits is relative to the baseline specifications of the vessel originally issued the LAP.</p>
15	<p>§ 635.4(1)(2)(ii)(C) The vessel's length overall, gross registered tonnage, and net tonnage may be increased only once subsequent to the issuance of a limited access permit, whether through refitting, replacement, or transfer. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. ***</p>	<p>§ 635.4(1)(2)(ii)(C) ) Subsequent to the issuance of a limited access permit, the vessel's length overall, gross registered tonnage, and net tonnage may be increased only once, relative to the baseline specifications of the vessel originally issued the LAP, whether through refitting, replacement, or transfer. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the baseline specifications of the vessel originally issued the LAP. * * *</p>	<p>Clarifies that the one allowable vessel size upgrade for vessels with limited access permits is relative to the baseline specifications of the vessel originally issued the LAP.</p>
16	<p>§ 635.4(1)(2)(viii) As specified in paragraph (f)(4) of this section, a directed or incidental ILAP or LAP for swordfish, a directed or an incidental catch ILAP or LAP for shark, and an Atlantic Tunas commercial category permit are required to retain swordfish. Accordingly, a LAP for swordfish obtained by transfer without either a directed or incidental catch shark LAP or an Atlantic tunas commercial category permit will not entitle an owner or operator to use a vessel to fish in the swordfish fishery.</p>	<p>§ 635.4(1)(2)(viii) As specified in paragraph (f)(4) of this section, a directed or incidental LAP for swordfish, a directed or an incidental catch LAP for shark, and an Atlantic Tunas longline category permit are required to retain swordfish. Accordingly, a LAP for swordfish obtained by transfer without either a directed or incidental catch shark LAP or an Atlantic Tunas longline category permit will not entitle an owner or operator to use a vessel to fish in the swordfish fishery.</p>	<p>Removes references to Initial Limited Access Permits (ILAPs), which are no longer issued. Changes general term "commercial" to "longline" to be consistent with the cross-reference to paragraph (f)(4).</p>

Item Number	Current Regulation	Amendment	Rationale for Amendment
17	<p>§ 635.4(1)(2)(ix) As specified in paragraph (d)(4) of this section, a directed or incidental ILAP or LAP for swordfish, a directed or an incidental catch ILAP or LAP for shark, and an Atlantic Tunas Longline category permit are required to retain Atlantic tunas taken by pelagic longline gear. Accordingly, an Atlantic Tunas Longline category permit obtained by transfer without either a directed or incidental catch swordfish or shark LAP will not entitle an owner or operator to use the permitted vessel to fish in the Atlantic tunas fishery with pelagic longline gear.</p>	<p>§ 635.4(1)(2)(ix) As specified in paragraph (d)(4) of this section, a directed or incidental LAP for swordfish, a directed or an incidental catch LAP for shark, and an Atlantic Tunas Longline category permit are required to retain Atlantic tunas taken by pelagic longline gear. Accordingly, an Atlantic Tunas Longline category permit obtained by transfer without either a directed or incidental catch swordfish or shark LAP will not entitle an owner or operator to use the permitted vessel to fish in the Atlantic tunas fishery with pelagic longline gear.</p>	<p>Removes references to Initial Limited Access Permits (ILAPs), which are no longer issued.</p>
18	<p>§ 635.4(m)(2) <i>Shark, swordfish, and tuna longline LAPs</i>. As of June 1, 2000, the owner of a vessel of the United States that fishes for, possesses, lands or sells shark or swordfish from the management unit, or takes or possesses such shark or swordfish as incidental catch or that fishes for Atlantic tunas with longline gear must have the applicable limited access permit(s) issued pursuant to the requirements in §635.4, paragraphs (e) and (f). However, any ILAP that expires on June 30, 2000, is valid through that date. Only valid limited access permit holders in the preceding year are eligible for renewal of a limited access permit(s). Limited access permits that have been transferred according to the procedures of paragraph (l) of this section are not eligible for renewal by the transferor.</p>	<p>§ 635.4(m)(2) <i>Shark, swordfish, and tuna longline LAPs</i>. The owner of a vessel of the United States that fishes for, possesses, lands or sells shark or swordfish from the management unit, or takes or possesses such shark or swordfish as incidental catch or that fishes for Atlantic tunas with longline gear must have the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section. Only persons holding a non-expired limited access permit(s) in the preceding year are eligible for renewal of a limited access permit(s). Limited access permits that have been transferred according to the procedures of paragraph (l) of this section are not eligible for renewal by the transferor.</p>	<p>Removes a date that has passed, and references to Initial Limited Access Permits (ILAPs), which are no longer issued. Also, replaces the word “valid” with “non-expired” to better clarify the intent of the paragraph.</p>

Item Number	Current Regulation	Amendment	Rationale for Amendment
19	<p>§ 635.5(a)(4) <i>Pelagic longline sea turtle reporting</i>. The operators of vessels that have pelagic longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, and tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico are required to report any sea turtles that are dead when they are captured or that die during capture to the NOAA Fisheries Southeast Fisheries Science Center Observer Program, at a number designated by NOAA Fisheries, within 48 hours of returning to port, in addition to submitting all other reporting forms required by this part and 50 CFR parts 223 and 224.</p>	<p>Remove § 635.5(a)(4), and redesignate subsequent sections as needed.</p>	<p>Removes a duplicative reporting requirement. Captured sea turtles would still be required to be reported in PLL logbooks, so no information is lost.</p>

Item Number	Current Regulation	Amendment	Rationale for Amendment
20	<p>§ 635.5(d) <i>Tournament operators</i>. A tournament operator must notify NMFS of the purpose, dates, and location of the tournament conducted from a port in an Atlantic coastal state, including the U.S. Virgin Islands and Puerto Rico, at least 4 weeks prior to commencement of the tournament. NMFS will notify a tournament operator in writing, when his or her tournament has been selected for reporting. The tournament operator that is selected must maintain and submit to NMFS a record of catch and effort on forms available from NMFS. Tournament operators must submit completed forms to NMFS, at an address designated by NMFS, postmarked no later than the 7th day after the conclusion of the tournament and must attach a copy of the tournament rules.</p>	<p>§ 635.5(d) <i>Tournament operators</i>. A tournament operator must register with the NMFS' HMS Management Division all tournaments that are conducted from a port in an Atlantic coastal state, including the U.S. Virgin Islands and Puerto Rico, at least 4 weeks prior to commencement of the tournament by indicating the purpose, dates, and location of the tournament. Tournament registration is not considered complete unless the operator has received a confirmation number from the NMFS' HMS Management Division. NMFS will notify a tournament operator in writing when his or her tournament has been selected for reporting. Tournament operators that are selected to report must maintain and submit to NMFS a record of catch and effort on forms available from NMFS. Tournament operators must submit the completed forms to NMFS, at an address designated by NMFS, postmarked no later than the 7th day after the conclusion of the tournament, and must attach a copy of the tournament rules.</p>	<p>Clarifies the specific line office that HMS tournament operators must notify and register with. Indicates that a confirmation number is necessary to complete the registration process.</p>
21	<p>§ 635.21(a)(2) If a billfish is caught by a hook, the fish must be released by cutting the line near the hook or by using a dehooking device, in either case without removing the fish from the water.</p>	<p>§ 635.21(a)(2) If a billfish is caught by a hook and not retained, the fish must be released by cutting the line near the hook or by using a dehooking device, in either case without removing the fish from the water.</p>	<p>Clarifies that billfish caught by a hook <i>and not retained</i> must be released using specified protocols. Without clarification, the implication may be that billfish caught by hook must always be released.</p>
22	<p>§ 635.21(c)(1) From August 1, 1999, through November 30, 2000, no person may deploy a pelagic longline that is more than 24 nautical mile (44.5 km) in length in the Mid-Atlantic Bight.</p>	<p><b>This paragraph is revised with new, non-related regulations.</b></p>	<p>Removes a requirement that has expired.</p>

Item Number	Current Regulation	Amendment	Rationale for Amendment
23	§ 635.21(c)(2)(ii) In the Charleston Bump closed area from March 1 through April 30, 2001, and from February 1 through April 30 each calendar year thereafter;	§ 635.21(c)(2)(ii) In the Charleston Bump closed area from February 1 through April 30 each calendar year;	Removes dates that have passed.
24	§ 635.21(c)(2)(iii) In the East Florida Coast closed area at any time beginning at 12:01 a.m. on March 1, 2001;	§ 635.21(c)(2)(iii) In the East Florida Coast closed area at any time;	Removes dates that have passed.
25	§ 635.21(c)(2)(iv) In the Desoto Canyon closed area at any time beginning at 12:01 a.m. on November 1, 2000;	§ 635.21(c)(2)(iv) In the Desoto Canyon closed area at any time;	Removes dates that have passed.
26	§ 635.21(c)(2)(v) In the Northeast Distant closed area at any time, unless persons onboard the vessel comply with the following: * * *	§ 635.21(c)(2)(v) In the Northeast Distant gear restricted area at any time, unless persons onboard the vessel comply with the following: * * *	Amends title of the Northeast Distant closed area to reflect recent amendments to the regulations governing the area.
27	Second sentence of § 635.21(e)(1) currently reads, “When fishing for Atlantic tunas other than BFT, fishing gear authorized for any Atlantic Tunas permit category may be used, except that purse seine gear may only be used on board vessels permitted in the Purse Seine category and pelagic longline gear may be used only on board vessels issued an Atlantic Tunas Longline category tuna permit as well as ILAPs or LAPs for both swordfish and sharks.”	Second sentence of § 635.21(e)(1) proposed to be amended as, “When fishing for Atlantic tunas other than BFT, primary fishing gear authorized for any Atlantic Tunas permit category may be used, except that purse seine gear may only be used on board vessels permitted in the Purse Seine category and pelagic longline gear may be used only on board vessels issued an Atlantic Tunas Longline category tuna permit and a LAP other than handgear for swordfish, and a LAP for sharks.” <b>NOTE</b> – The first sentence in this paragraph is modified pursuant to regulatory changes described in the “Authorized Fishing Gear” section.	Removes references to Initial Limited Access Permits (ILAPs), which are no longer issued. Consistent with existing regulations, reiterates that vessels issued swordfish handgear permits cannot be issued an Atlantic Tunas Longline category permit because the vessel cannot use longline gear to catch swordfish.

Item Number	Current Regulation	Amendment	Rationale for Amendment
28	<p>§ 635.21(e)(4)(iii) A person aboard a vessel issued a directed handgear ILAP or LAP for Atlantic swordfish may not fish for swordfish with any gear other than handgear. * * *</p>	<p>§ 635.21(e)(4)(iii) A person aboard a vessel issued or required to be issued a directed handgear LAP for Atlantic swordfish may not fish for swordfish with any gear other than handgear. * * *</p> <p><b>NOTE</b> – The remainder of this paragraph is modified pursuant to regulatory changes described in the “Authorized Fishing Gear” section.</p>	<p>Removes references to Initial Limited Access Permits (ILAPs), which are no longer issued.</p>
29	<p>The third sentence of §635.22(c) currently reads, “No prohibited sharks from the management unit, which are listed in table 1(d) of Appendix A to this part, may be retained.”</p>	<p>The third sentence of §635.22(c) is amended to be, “No prohibited sharks, including parts or pieces of prohibited sharks, from the management unit, which are listed in table 1 of Appendix A to this part under prohibited sharks, may be retained.”</p>	<p>Clarifies that parts and pieces of prohibited sharks may not be retained.</p>
30	<p>§ 635.23(f)(3) – For pelagic longline vessels fishing in the Northeast Distant closed area, as defined under §635.2, under the exemption specified at §635.21(c)(2)(v), all BFT taken incidental to fishing for other species while in the Northeast Distant closed area may be retained up to a maximum of 25 mt for all vessels so authorized, notwithstanding the retention limits and target catch requirements specified in paragraph (f)(1) of this section.</p>	<p>§ 635.23(f)(3) – For pelagic longline vessels fishing in the Northeast Distant gear restricted area under the exemption specified at §635.21(c)(2)(v), all BFT taken incidental to fishing for other species while in that area may be retained up to the available quota as specified in §635.27(a), notwithstanding the retention limits and target catch requirements specified in paragraph (f)(1) of this section. Once the available quota as specified in §635.27(a) has been attained, the target catch requirements specified in paragraph (f)(1) of this section apply.</p> <p><b>NOTE</b> – Much of the regulatory text in this paragraph is modified pursuant to Issue 10 in the “Regulatory Housekeeping” section.</p>	<p>Changes the title of the NED closed area to reflect recent amendments to the regulations governing the area.</p>
31	<p>§ 635.24(a)(1) Persons who own or operate a vessel that has been issued a directed ILAP or LAP for shark may retain, possess or land no more than 4,000 lb (1,814 kg), dw, of LCS per trip.</p>	<p>§ 635.24(a)(1) Persons who own or operate a vessel that has been issued a directed LAP for shark may retain, possess or land no more than 4,000 lb (1,814 kg), dw of LCS per trip.</p>	<p>Removes references to Initial Limited Access Permits (ILAPs), which are no longer issued.</p>

Item Number	Current Regulation	Amendment	Rationale for Amendment
32	§ 635.24(a)(2) Persons who own or operate a vessel that has been issued an incidental catch ILAP or LAP for sharks may retain, possess or land no more than 5 LCS and 16 SCS and pelagic sharks, combined per trip.	§ 635.24(a)(2) Persons who own or operate a vessel that has been issued an incidental catch LAP for sharks may retain, possess or land no more than 5 LCS and 16 SCS and pelagic sharks, combined, per trip.	Removes references to Initial Limited Access Permits (ILAPs), which are no longer issued.
33		Add a new paragraph at §635.24(a)(3) to read as follows, “Persons who own or operate a vessel that has been issued an incidental or directed LAP for sharks may not retain, possess, land, sell, or purchase a prohibited shark, including parts or pieces of prohibited sharks, which are listed in Table 1 of Appendix A to this part under prohibited sharks.”	Clarifies existing regulations regarding the retention, possession, sale and purchase of prohibited sharks by also including parts and pieces of prohibited sharks.
34	§ 635.24(b)(1) Persons aboard a vessel that has been issued an incidental ILAP or LAP for swordfish may retain, possess, or land no more than two swordfish per trip in or from the Atlantic Ocean north of 5° N. lat.	§ 635.24(b)(1) Persons aboard a vessel that has been issued an incidental LAP for swordfish may retain, possess, or land no more than two swordfish per trip in or from the Atlantic Ocean north of 5° N. lat.	Removes reference to Initial Limited Access Permits (ILAPs), which are no longer issued.
35	§ 635.24(b)(2) Persons aboard a vessel in the squid trawl fishery that has been issued an incidental ILAP or LAP for swordfish may retain, possess, or land no more than five swordfish per trip in or from the Atlantic Ocean north of 5° N. lat. * * *	§ 635.24(b)(2) Persons aboard a vessel in the squid trawl fishery that has been issued an incidental LAP for swordfish may retain, possess, or land no more than five swordfish per trip in or from the Atlantic Ocean north of 5° N. lat. * * *	Removes reference to Initial Limited Access Permits (ILAPs), which are no longer issued.
36	§ 635.27(a)(3) * * * In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant closed area, as defined under §635.2, under the exemption specified at §635.21(c)(2)(v).	§ 635.27(a)(3) * * * In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area as specified at §635.23(f)(3).	Changes title of the NED closed area to reflect recent regulatory changes to the area.
37	§ 635.71(a)(7) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 635.5(e) or § 635.32.	§ 635.71(a)(7) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 635.5(e) and (f), or § 635.32.	Adds an additional reference in this prohibition to § 635.5(f) – <i>Additional data and inspection.</i>

Item Number	Current Regulation	Amendment	Rationale for Amendment
38	§ 635.71(a)(8) Fail to make available for inspection an Atlantic HMS or its area of custody, as specified in § 635.5(g).	§ 635.71(a)(8) Fail to make available for inspection an Atlantic HMS or its area of custody, as specified in § 635.5(e) and (f).	Corrects an obsolete reference to § 635.5(g) and replaces with § 635.5 (e) and (f).
39	§ 635.71(a)(37) Fail to report to NMFS, at the number designated by NMFS, the incidental capture of listed whales with shark gillnet gear and sea turtle mortalities associated with pelagic longline gear as required by § 635.5.	§ 635.71(a)(37) Fail to report to NMFS, at the number designated by NMFS, the incidental capture of listed whales with shark gillnet gear as required by § 635.5.	Removes a duplicative reporting requirement. Captured sea turtles would still be required to be reported in PLL logbooks, so no information is lost.
40	§ 635.71(b)(22) As the owner or operator of a purse seine vessel, fail to comply with the requirements for weighing, measuring, and information collection specified in § 635.30(a)(2).	§ 635.71(b)(22) As the owner or operator of a purse seine vessel, fail to comply with the requirement for possession at sea and landing of BFT under § 635.30(a).	Revises language referencing a paragraph that has been removed by referencing the appropriate paragraph.
41	§ 635.71(d)(10) Retain, possess, sell, or purchase a prohibited shark, as specified under § 635.22(c) and § 635.27(b)(1) or fail to disengage any hooked or entangled prohibited shark with the least harm possible to the animal as specified at § 635.21(d)(3).	§ 635.71(d)(10) Retain, possess, sell, or purchase a prohibited shark, including parts or pieces of prohibited sharks, as specified under §§ 635.22(c), 635.24(a)(3), and 635.27(b)(1) or fail to disengage any hooked or entangled prohibited shark with the least harm possible to the animal as specified at §635.21(d)(3).	Adds a reference to a new paragraph at § 635.24(a)(3), which includes parts and pieces of prohibited sharks.
42	§ 635.71(d)(11) Falsify information submitted under § 635.16(d)(2) or (d)(4) in support of an application for an ILAP or an appeal of NMFS' denial of an ILAP for shark.	Revise § 635.71(d)(11) with regulatory language pursuant to "HMS Identification Workshops" section.	Removes a cross-reference that has been removed. ILAPs are no longer being issued, and appeals are complete.
43	§ 635.71(e)(11) Falsify information submitted under §635.16(d)(2) or (d)(4) in support of an application for an ILAP or an appeal of NMFS' denial of an initial limited access permit for swordfish.	Revise § 635.71(e)(11) with regulatory language pursuant to "Authorized Gears" section.	Removes a cross-reference that has been removed. ILAPs are no longer being issued, and appeals are complete.

Item Number	Current Regulation	Amendment	Rationale for Amendment
44	§ 300.182(d) <i>Duration</i> . Any permit issued under this section is valid until December 31 of the year for which it is issued, unless suspended or revoked.	§ 300.182(d) <i>Duration</i> . Any permit issued under this section is valid for the period specified on it, unless suspended or revoked.	Modifies the expiration date of the HMS International Trade Permit.
45	§ 635.22(b) <i>Billfish</i> . No longbill spearfish from the management unit may be possessed shoreward of the outer boundary of the EEZ.	§ 635.22(b) <i>Billfish</i> . No longbill spearfish from the management unit may be taken, retained, or possessed shoreward of the outer boundary of the EEZ.	Strengthens longbill spearfish regulations, and is consistent with similar language regarding other species.

### 2.3.4.2 Alternatives

The issues being addressed in this section include changes in definitions, clarifications, and amendments for which alternatives have been developed and analyzed. A description of each issue is provided, followed by a description of the alternatives being considered.

#### Issue 1: Definitions of Pelagic and Bottom Longline

The HMS time/area closures that are currently in effect apply specifically to either pelagic or bottom longline gear (*i.e.*, the Desoto Canyon, East Florida Coast, Charleston Bump, Mid-Atlantic Shark, and Northeastern United States Closed Areas). Therefore, to determine compliance with the closed area restrictions, it is optimal for the two gear types to be clearly differentiable. In the current regulations, the difference is articulated by general reference to the presence of weights/floats capable of anchoring/supporting the mainline on/in the seafloor/water column. Problems have arisen because bottom longline vessel operators sometimes possess and utilize floats on bottom longline gear, and pelagic longline vessel operators sometimes possess and utilize weights on pelagic longline gear. In these situations, it may be difficult to determine if the weights are capable of anchoring the mainline on the seafloor, or if the floats are capable of supporting the mainline in the water column. NMFS is considering amending the definitions for pelagic and bottom longlines at §§ 635.2, 635.21(c), and 635.21(d), or establishing additional restrictions or possession limits on these gears when fishing in any of the HMS time/area closures.

#### Alternative II(a) Retain current definitions for pelagic and bottom longline gears (No Action)

This alternative would retain the current definitions for pelagic and bottom longlines at §§ 635.2, 635.21(c), and 635.21(d). A pelagic longline is defined as a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom. For purposes of § 635.21(c), a vessel is considered to have pelagic longline gear onboard when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks are onboard. A bottom longline is defined as a longline that is deployed with enough weights and/or anchors to maintain contact with the ocean bottom. For purposes of § 635.21(d), a vessel is considered to have bottom longline gear on board when a power-operated longline hauler, a mainline, weights and/or anchors capable of maintaining

contact between the mainline and the ocean bottom, and leaders (gangions) with hooks are on board. There are currently no restrictions on the amount of pelagic species that may be possessed when fishing with bottom longline gear in PLL closed areas, and vice versa.

Alternative II(b) Establish additional restrictions on longline gear in HMS time/area closures by specifying a maximum and minimum allowable number of commercial fishing floats in order to qualify as a bottom or pelagic longline vessel, respectively

This alternative would retain the current definitions for pelagic and bottom longlines at §§ 635.2; 635.21(c); and 635.21(d). However, in addition, this alternative would establish limits on the number of commercial fishing floats that longline fishing vessels must possess onboard to qualify as either a bottom or pelagic longline vessel within the closed areas. Specifically, under this alternative, to be considered a bottom longline vessel in a PLL closed area, the vessel must possess no more than 70 commercial fishing floats onboard or deployed, combined. To be considered a pelagic longline vessel in a BLL closed area, the vessel must possess at least 71 commercial fishing floats onboard or deployed, combined. Examples of commercial fishing floats include bullet floats, poly balls, high flyers, and lobster pot buoys. This alternative was a preferred alternative in the Draft Consolidated HMS FMP.

Alternative II(c) *Differentiate between pelagic and bottom longline gear based upon the species composition of the catch onboard or landed – Preferred Alternative*

This alternative would retain the current definitions for pelagic and bottom longlines at §§ 635.2, 635.21(c), and 635.21(d). However, in addition, this alternative would establish a five-percent limit (by weight) on the allowable amount of pelagic “indicator” species that bottom longline vessels may possess or land from PLL closed areas, and establish a five-percent limit (by weight) on the allowable amount of demersal “indicator” species that pelagic longline vessels may possess or land from BLL closed areas (measured relative to the total weight of all pelagic and demersal “indicator” species). Specifically, to qualify as a bottom longline vessel when fishing in a PLL closed area, no more than five percent (by weight) of the species possessed or landed may be pelagic “indicator” species, as measured relative to the total weight of all pelagic and demersal “indicator” species. To be considered a pelagic longline vessel when fishing in a BLL closed area, no more than five percent (by weight) of the species possessed or landed may be demersal “indicator” species, as measured relative to the total weight of all pelagic and demersal “indicator” species. The indicator species are listed in Table 1 of Section 4.3.4.

Alternative II(d) Require time/depth recorders (TDRs) on all HMS longlines

This alternative would require TDRs (data loggers) at pre-specified intervals on all HMS longline fishing gear that is deployed. Under this alternative, the TDRs would have to be operational and able to accurately record the maximum and minimum fishing depths of HMS longline gear using an onboard TDR reader. Pelagic longline gear would be required to remain within the upper two-thirds of the water column while fishing, and bottom longline gear would be required to remain within the bottom third of the water column while fishing.

Alternative I1(e) Base HMS time/area closures on all longlines (PLL and BLL)

This alternative would not differentiate between pelagic and bottom longline gear in the establishment and enforcement of HMS longline closed areas. Specifically, if this alternative were adopted, all longline gear would be prohibited from all HMS longline closed areas.

Issue 2: Shark Identification

Species identification of sharks can be enhanced by the presence of fins. NMFS is considering amending the regulations governing commercial shark landings, possibly at § 635.30(c)(2) and at § 635.71(d)(6), to facilitate shark identification for enforcement and data collection purposes.

Alternative I2(a) Retain current commercial regulations regarding shark landing requirements  
(No Action)

By retaining the *status quo*, this alternative would allow for the removal of all shark fins prior to landing. Other regulations governing the landing of sharks and shark fins would remain unchanged, as well. As such, Federal commercial shark limited access permit holders would be allowed to eviscerate sharks and remove their heads and fins at sea as long as the ratio between the weight of fins and the weight of carcass does not exceed five percent.

Alternative I2(b) *Require that the 2<sup>nd</sup> dorsal fin and the anal fin remain on all sharks through landing – Preferred Alternative*

This alternative would mandate the retention of the 2<sup>nd</sup> dorsal fin and anal fin on all shark species through landing. Specifically, Federal commercial shark limited access permit holders would be required to have these fins attached to all sharks during offloading. Removal of these fins would only be permissible after the shark is offloaded.

Alternative I2(c) Require that the 2<sup>nd</sup> dorsal fin and the anal fin remain on all sharks through landing, except for lemon and nurse sharks

This alternative would mandate the retention of the 2<sup>nd</sup> dorsal fin and anal fin on all shark species, except for lemon and nurse sharks, through landing. Specifically, Federal commercial shark limited access permit holders would be required to have these fins attached to all sharks, except nurse and lemon sharks, during offloading. Removal of these fins would only be permissible after the shark is offloaded. Due to ease at which nurse and lemon sharks without 2<sup>nd</sup> dorsal and anal fins can be identified, these species would be exempt under this alternative.

Alternative I2(d) Require that all fins remain on all sharks through landing

This alternative would mandate the retention of all fins on all shark species through landing. Federal commercial shark limited access permit holders would be required to have all fins attached to all sharks during offloading. Removal of the fins would only be permissible after the shark is offloaded.

### Issue 3: HMS Retention Limits

Currently, HMS retention limits apply to “persons aboard a vessel” (*i.e.*, vessel owners and operators). NMFS is considering adding new prohibitions at § 635.71(a)(48) and § 635.71(a)(49) that would address the purchase and sale of HMS by dealers and fishermen in excess of the retention limits specified in § 635.23 and § 635.24. The intent of these prohibitions would be to improve compliance with HMS retention limits by extending the regulations to both of the parties involved in a transaction (*i.e.* “persons aboard a vessel” & buyers).

Alternative I3 (a) Retain current regulations regarding retention limits, with no new prohibitions (No Action)

This alternative would not implement any new prohibitions regarding the purchase and sale of HMS by dealers and fishermen in excess of the retention limits specified in §§ 635.23 and 635.24. As such, compliance with many of the HMS retention limits would remain solely incumbent upon “persons aboard a vessel” (*i.e.*, vessel owners and operators). Persons who purchase HMS that were offloaded from an individual vessel in excess of the retention limits would remain unaffected.

Alternative I3(b) *Add new prohibition at § 635.71(a)(48) making it illegal for any person to, “Purchase any HMS that was offloaded from an individual vessel in excess of the retention limits specified in §§ 635.23 and 635.24” – Preferred Alternative*

This alternative would implement a new prohibition at § 635.71(a)(48) making it illegal for any person to, “Purchase any HMS that was offloaded from an individual vessel in excess of the retention limits specified in §§ 635.23 and 635.24.” As such, dealers or buyers would be held responsible for purchases of HMS in excess of the commercial retention limits. This prohibition is intended to improve compliance with HMS retention limits by extending the regulations to both of the parties involved in a transaction. It would reinforce and clarify other existing regulations regarding landings of HMS in excess of commercial retention limits.

Alternative I3(c) *Add new prohibition at § 635.71(a)(49) making it illegal for any person to, “Sell any HMS that was offloaded from an individual vessel in excess of the retention limits specified in §§ 635.23 and 635.24” – Preferred Alternative*

This alternative would implement a new prohibition at § 635.71(a)(49) making it illegal for any person to, “Sell any HMS that was offloaded from an individual vessel in excess of the retention limits specified in §§ 635.23 and 635.24.” As such, vessel owners or operators would be held responsible for sales in excess of HMS retention limits. This prohibition would reinforce and clarify other existing regulations regarding landings of HMS by vessels in excess of commercial retention limits.

### Issue 4: Definition of East Florida Coast Closed Area

NMFS is considering amending the definition of the East Florida Coast closed area at § 635.2 by replacing the second coordinate (28° 17' N. Lat., 79° 12' W. Long.) with a new

coordinate (28° 17' 10" N. Lat., 79° 11' 24" W. Long.), so that the outer boundary of the closed area corresponds with the outer boundary of the EEZ, as originally intended. This area was initially described in the FSEIS (NMFS June 14, 2000) and the final rule prepared pursuant to implementation of the closed area (65 FR 47214, August 1, 2000). However, one of the current outer coordinates does not correspond exactly with the EEZ boundary, thus inadvertently leaving a small area open between the closed area and the EEZ. The outer coordinate being considered is approximately 1.02 km (0.55 nm) seaward (eastward) of the current coordinate.

Alternative I4(a) Retain current coordinates for the East Florida Coast closed area (No Action)

This alternative would retain the *status quo* coordinates for the East Florida Coast closed area. One of the outer coordinates does not correspond exactly with the EEZ boundary, thus leaving a small area open between the closed area and the EEZ. Pelagic longline vessels would continue to be allowed to fish in this small region between the closed area and the EEZ.

Alternative I4(b) *Amend the second coordinate of the East Florida Coast closed area to 28° 17' 10" N. Lat., 79° 11' 24" W. Long., so that it corresponds with the EEZ – Preferred Alternative*

This alternative would amend the second coordinate of the East Florida Coast closed area. If this alternative were selected, pelagic longline vessels would not be able to fish in the small area that is currently open between the closed area and the EEZ. This modification would meet the intent of the closed area to extend out to the EEZ.

#### Issue 5: Definition of Handline

Currently, a “handline” is defined as fishing gear consisting of a mainline to which no more than two leaders (gangions) with hooks are attached, and that is released and retrieved by hand, rather than by mechanical means. It has been brought to the Agency’s attention that some vessel operators, both commercial and recreational, may be deploying numerous handlines that are not attached to their vessel in areas that are closed to pelagic longlines and elsewhere. While these vessel operators may be technically compliant with current regulations, this practice may circumvent the original “concept” of handline gear, and could potentially diminish the conservation benefits associated with the PLL closed areas. Therefore, NMFS is considering amending the definition of “handline,” possibly at §§ 635.2 and 635.21.

Alternative I5(a) Retain the current definition of “handline” at § 635.2 (No Action)

The “No Action” alternative would retain the current definition of “handline,” as described above. As such, the practice of fishing with an unlimited number of unattached handlines would continue to be allowed.

Alternative I5(b) *Amend the definition of “handline” at § 635.2 by requiring that they be attached to, or in contact with, a vessel – Preferred Alternative*

Alternative I5(b) would define a handline as fishing gear that is attached to, or in direct contact with, a fishing vessel and consists of a mainline to which no more than two leaders

(gangions) with hooks are attached, and that is released and retrieved by hand, rather than by mechanical means. As such, the practice of fishing with unattached handlines would be disallowed for all HMS commercial and recreational fishing activities. Please see Section 2.3.3 of this document regarding an alternative that would add “buoy gear” to the list of authorized gears for the swordfish handgear fishery.

Alternative I5(c) Require that handlines remain attached to vessels when fishing recreationally and allow unattached handlines when fishing commercially

Alternative I5(c) would require that handlines remain attached to, or in direct contact with, a fishing vessel for all vessels possessing either an HMS Angling category permit; an HMS Charter/headboat permit when fishing on a for-hire trip; or, an Atlantic Tunas General category permit when fishing in a registered HMS tournament. As such, the practice of fishing with unattached handlines would be disallowed when conducting recreational fishing activities, but the practice would be allowed when fishing commercially.

#### Issue 6: Possession of Billfish on Vessels Issued HMS Commercial Permits

The Atlantic billfish fishery is a recreational fishery and the sale of Atlantic billfish is prohibited. Furthermore, Atlantic billfish may only be harvested by rod and reel, and persons may not currently possess, take, or retain billfish if pelagic longline gear is onboard the vessel. NMFS is considering amendments that would reinforce the recreational nature of the Atlantic billfish fishery by eliminating a minor loophole that exists, whereby the possession or retention of billfish is not prohibited if commercial gears other than pelagic longline are onboard a vessel. As such, persons aboard HMS-permitted vessels may potentially fish for and possess Atlantic billfish for non-commercial purposes using rod and reel when other commercial gear is onboard. Also, vessel operators might incidentally capture and possess billfish caught on other commercial gears and illegally retain the fish by indicating that it was caught using rod and reel. Therefore, NMFS is considering amendments to prohibit the possession or retention of billfish on all vessels issued HMS commercial permits.

Alternative I6(a) Retain current regulations regarding the possession of Atlantic billfish (No Action)

The “No Action” alternative would allow the possession or retention of billfish when commercial gears, other than pelagic longlines, are onboard the vessel. As such, persons may potentially fish for and possess Atlantic billfish for non-commercial purposes using rod and reel, when other commercial gear is onboard. The “No Action” alternative does not specify which permit holders may possess or retain an Atlantic billfish taken from its management unit.

Alternative I6(b) *Prohibit vessels issued HMS commercial permits and operating outside of a tournament from possessing, retaining, or taking Atlantic billfish from the management unit – Preferred Alternative*

Alternative I6(b) would prohibit the possession or retention of billfish on all vessels that have been issued HMS commercial permits. Only vessel owners possessing either an HMS Angling, HMS Charter/headboat permit, or an Atlantic Tunas General category (when fishing in

a registered HMS tournament) permit would be allowed to possess or retain an Atlantic billfish taken from its management unit with rod and reel. If this alternative were selected, the regulations for all HMS commercial fisheries would be consistent with current regulations in effect for the pelagic longline fishery. This alternative would further reinforce and clarify the recreational nature of the Atlantic billfish fishery.

#### Issue 7: Bluefin Tuna Dealer Reporting

NMFS is investigating alternative methods of BFT dealer reporting. Currently, BFT dealers are required to manually complete and submit as many as three individual BFT reports (BFT landing reports, bi-weekly BFT reports, and BFT statistical documents for international trade). These reports are then re-entered into databases by NMFS personnel. Recent advances in software technology and web-based applications provide opportunities for dealers to enter and report data with greater efficiency, and with potential reductions in administrative costs for both dealers and NMFS. For example, NMFS' Northeast Regional Office has transitioned to an electronic web-based dealer reporting system and continues to work with dealers to improve the system. Electronic capabilities could also be developed for an HMS BFT system to increase quality control and assurance capabilities, using cross-checks with other databases, data fields, and flags that would facilitate accurate data entry. However, current regulations regarding BFT dealer reporting and recordkeeping require that dealers submit written reports, either in the mail or via FAX transmittal. To provide additional electronic reporting flexibility, as described above, it is necessary to amend the HMS regulations to specify that BFT dealers may submit these reports electronically over the Internet if they choose to do so, or are required to do so.

#### Alternative I7(a) Retain the current regulations regarding bluefin tuna dealer reporting (No Action)

Under this alternative the regulations regarding BFT dealer reporting would remain unchanged. Potentially, dealers that have the capacity and interest to report electronically would not be able to do so because the current requirements specifically state that reports must be written and mailed or faxed (*i.e.*, fax for landing reports; fax or standard mail for bi-weekly reports; fax or standard mail for statistical documents accompanying imported BFT; standard mail for statistical documents accompanying exported BFT).

#### Alternative I7(b) *Amend the HMS regulations to provide an option for Atlantic tunas dealers to submit required BFT reports using the Internet – Preferred Alternative*

Under this alternative, the regulations would be slightly modified to add text under each BFT dealer reporting requirement so that dealers may also electronically submit the required report if they choose to do so, using an on-line tool or webpage. All *status quo* methods of providing hand-written reports and documentation via mail or fax would remain available and permissible. Electronic submission would be provided as an option, and would not be mandatory. Investigations are still underway regarding the feasibility and design of an electronic system and no dates for implementation have yet been set. However, when such a system has been designed, it would be useful to provide interested dealers with the opportunity to test the system and provide feedback for future enhancements. The preferred alternative would provide

dealers with the flexibility not only to test the system, but continue to use it should they choose to do so.

Alternative I7(c) Amend the HMS BFT dealer reporting regulations to require that Atlantic tunas dealers submit BFT reports electronically, with specific exceptions

This alternative proposes to adjust the regulations to require all BFT dealers, with some exceptions, to submit all BFT reports electronically either using a web-based application, or using software on a private computer with the data being transmitted over the Internet. The intent of this alternative would be to standardize reporting, reduce administrative burdens, and ensure the new system is used. All options to submit written reports via mail or fax would be eliminated with certain specific exemptions, such as for dealers falling below an established economic threshold, or for dealers who only report minimal numbers of fish on an infrequent basis.

#### Issue 8: “No-Fishing,” “Cost-Earnings,” and “Annual Expenditures” Reporting Forms

Presently, if commercial HMS permit holders (*i.e.*, HMS Charter/headboat, Atlantic Tunas, and commercial shark and swordfish permit holders) are selected for reporting, they are required to submit logbooks to NMFS postmarked within seven days of offloading any Atlantic HMS. NMFS supplies logbook forms to all selected vessels. These forms consist of a fishing report (catch, discards, effort and fishing area data), a “no-fishing” reporting form if no fishing took place during the preceding month, and trip and annual “cost-earnings” reporting forms. The reported information is used to conduct stock assessments, monitor quotas, prevent overfishing, and estimate the economic impacts of different management measures. There has been some confusion as to whether the “no-fishing” reporting form and the “cost-earnings” reporting forms are a required component of the logbook, and exactly when they must be submitted. Therefore, NMFS is considering amendments to require the submission of a “no-fishing” reporting form, and to specify that the report must be postmarked no later than seven days after the end of the month. Similarly, the “cost-earnings” and “annual expenditures” reporting forms would need to be submitted consistent with the instructions on the forms. The Paperwork Reduction Act (PRA) reporting burden for these information collections is currently approved under the PRA submission for Atlantic HMS vessel logbooks (OMB Control Number 0648-0371). A requirement to submit the “no-fishing” report form, and the trip “cost-earnings” and “annual expenditures” reporting forms within a certain timeframe would be new, however it is consistent with current HMS requirements and with other NMFS’ Southeast Regional regulations. These modifications would clarify HMS logbook reporting requirements.

Alternative I8(a) Maintain the existing regulations regarding submission of logbooks (No Action)

The “No Action” alternative would retain the existing regulations regarding the submission of HMS vessel logbooks at § 635.5(a)(1). There are currently no specific regulations to submit “no-fishing,” “cost-earnings,” and “annual expenditure” reporting forms to NMFS within a certain timeframe.

Alternative I8(b) *Require submission of “no-fishing” reporting forms for selected vessels if no fishing trips occurred during the preceding month, postmarked no later than seven days after the end of the month – Preferred Alternative*

Alternative I8(b) would amend the HMS regulations at § 635.5(a)(1) to require the submission of “no-fishing” reporting forms for selected vessels if no fishing trips occurred during the preceding month to be postmarked no later than seven days after the end of the month. This alternative would clarify HMS logbook reporting requirements and provide important information to conduct stock assessments, monitor quotas, and prevent overfishing.

Alternative I8(c) *Require submission of the trip “cost-earnings” reporting form for selected vessels 30 days after a trip, and the “annual expenditures” report form by the date specified on the form – Preferred Alternative*

Alternative I8(c) would amend the HMS regulations to require the submission of trip “cost-earnings” reporting forms for selected vessels 30 days after a trip, and the “annual expenditures” report form by the date specified on the form (presently January 31<sup>st</sup>). This alternative would better clarify HMS reporting requirement and provide important information to estimate the economic impacts of different management measures.

#### Issue 9: Non-Tournament Recreational Landings Reporting

HMS regulations currently specify that anglers are required to report non-tournament recreational landings of Atlantic billfish and swordfish, whereas other HMS regulations specify that vessel owners are required to report recreational landings of bluefin tuna under the Angling category. NMFS is considering clarifying that owners of vessels permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/headboat category (or their designee) must report all non-tournament recreational landings of billfish and swordfish. This action is being considered to remove inconsistencies in reporting requirements and to clarify NMFS’ intent that the vessel owner, rather than the angler, is responsible for reporting non-tournament recreational landings of Atlantic billfish and swordfish.

Alternative I9(a) Retain existing regulations at § 635.5(c)(2) requiring anglers to report non-tournament recreational landings of North Atlantic swordfish and Atlantic billfish (No Action)

Alternative I9(a) would retain existing HMS regulations that specify that anglers are required to report non-tournament recreational landings of Atlantic billfish and swordfish. These regulations are inconsistent with other HMS regulations specifying that vessel owners are required to report recreational landings of bluefin tuna under the Angling category.

Alternative I9(b) *Require vessel owners (or their designee) to report non-tournament recreational landings of North Atlantic swordfish and Atlantic billfish – Preferred Alternative*

Alternative I9(b) would amend the HMS regulations to specify that vessel owners (or their designee) are required to report non-tournament recreational landings of Atlantic billfish

and swordfish. The vessel owner would be responsible for reporting, but the owner's designee could fulfill the requirement. This alternative would be consistent with other HMS regulations specifying that vessel owners are required to report recreational landings of bluefin tuna under the Angling category.

#### Issue 10: Pelagic Longline 25 mt (ww) NED Incidental BFT Allocation

In November 2002, ICCAT recommended an annual U. S. Total Allowable Catch (TAC) of western Atlantic BFT of 1,489.6 mt (ww). A specific allocation of 25 mt (ww) was included in this TAC to account for the incidental catch of BFT by longline fisheries directed on other species "in the vicinity of the management boundary area" for the eastern and western BFT stocks. This area was defined by NMFS in the 2003 BFT annual specification as the Northeast Distant (NED) statistical reporting area (approximately the Grand Banks fishing grounds) (68 FR 56783, October 2, 2003). The regulatory text at 50 CFR 635.27(a)(3) was revised to include this additional allocation, and specifically states that "25 mt shall be allocated for incidental catch by pelagic longline vessel fishing in the NED."

As the language contained in the ICCAT recommendation is not explicit regarding application of any unharvested quota to the following year's quota, NMFS prefers to clarify the regulatory text and the procedures implementing that text, as it directly relates to this specific set-aside. Since the implementation of the 25 mt (ww) recommendation, NMFS has allocated an additional 25 mt (ww) for this incidental catch each year. However, because previous year's longline activity has not resulted in full incidental set-aside quota attainment, NMFS has carried forward un-utilized quota and added it to the subsequent fishing year's annual 25 mt (ww) allocation. This has resulted in revised totals that exceed 25 mt (ww). This accumulation of incidental quota has led to revised set-aside quotas exceeding that of the ICCAT recommended amount and therefore, may not fully reflect the intent of the recommendation. Several alternatives are presented below to clarify the amount of available incidental BFT quota for pelagic longline activity in the vicinity of the NED statistical reporting area.

Alternative I10(a): Retain the current regulations specifically referring to 25 mt (ww)  
(No Action)

Under this alternative, the status quo regulatory text implementing this ICCAT recommendation would remain unchanged and would indicate that 25 mt (ww) shall be allocated for incidental catch of BFT by pelagic longline vessels fishing in the NED. This alternative would not clarify the applicability of quota carry-over provisions to this set-aside quota, and may allow for implementing practices to not fully reflect the original intent of the recommendation. Under this alternative, NMFS would allocate 25 mt (ww) for this incidental catch on an annual basis. If the previous year's longline activity has not resulted in full incidental set-aside quota attainment, NMFS would carry forward un-utilized quota and add it to the subsequent fishing year's 25 mt (ww) allocation. If the previous year's longline activity has exceeded the incidental set-aside quota, NMFS would deduct the overharvest from the subsequent fishing year's 25 mt (ww) allocation. Thus, this alternative may result in a revised quota that differs from the 25 mt (ww).

Alternative I10(b): Modify the HMS regulations to state that “In addition, each year, 25 mt (ww) will be allocated for incidental catch by pelagic longline vessels fishing in the NED”

Under Alternative I10(b), the regulatory text would be modified to include the phrase “each year” to clarify that the annual baseline allocation equals 25 mt (ww), but the total available quota for a given year would not be limited and may be modified to account for under/overharvests from prior year’s activity. This alternative would clarify that carryover provisions apply to this set-aside quota. This was a preferred alternative in the Draft HMS FMP.

Alternative I10(c): *Conduct additional discussions at ICCAT regarding quota rollovers and adjust quotas allocated to account for bycatch related to pelagic longline fisheries in the vicinity of the management area boundary accordingly*  
*Preferred Alternative*

Under this alternative, the United States would conduct additional discussions at the annual ICCAT meeting regarding the long-term implications of allowing unused BFT quota from the previous year being added to the subsequent year’s allocation that can be retained. Depending on the results of any additional discussions at ICCAT, the regulations and operational procedures that account for BFT bycatch related to pelagic longline fisheries in the vicinity of the management area boundary may need to be further amended in the future. In the interim, NMFS would maintain the current regulatory text implementing the ICCAT recommendation, as described in alternative I10(a), but would amend the current practice of allowing under/overharvest of this set-aside allocation to be rolled into, or deducted from, the subsequent fishing year’s set-aside allocation. Therefore, regardless of the amount of the set-aside harvested or unused in a given year, the balance would return to 25 mt (ww) at the start of each fishing year. If landings were to exceed the 25 mt (ww) allotment, they would be accounted for via Longline category quota that applies to the entire Western Atlantic management area.

#### Issue 11: Permit Condition for Recreational Trips

In the HMS regulations, as a condition of their permits, vessels that have a commercial shark or swordfish permit must currently comply with Federal regulations regardless of where vessels are fishing, unless a state has more restrictive regulations (50 CFR § 635.4(a)(10)). However, vessels fishing recreationally for sharks, swordfish, billfish, and tunas in a few states are currently able to fish under state regulations while in state waters, and under Federal regulations when in Federal waters. This has generated confusion due to the differences between state and Federal regulations and the inability to verify whether or not a particular fish onboard a vessel was caught in state waters or Federal waters. The alternatives below consider modifying the *status quo* to remove this ambiguity.

Alternative I11(a) No permit condition for recreational trips (No Action)

Under this alternative, the regulations would remain as they currently are. Thus, vessels issued an HMS Angling permit, an Atlantic Tunas General Category permit that was participating in a registered tournament, or an HMS Charter/headboat permit that was on a for-

hire trip would fish under Federal requirements in Federal waters and under state requirements in state waters.

Alternative I11(b)     *Require recreational vessels with a Federal permit to abide by Federal regulations, regardless of where they are fishing, unless a state has more restrictive regulations - Preferred Alternative*

Under this alternative, vessels that have been issued an HMS Angling permit, an Atlantic Tunas General category permit that was participating in a registered tournament, or an HMS Charter/headboat permit on a for-hire trip would be required to fish for, retain, or possess Atlantic HMS in accordance with Federal regulations regardless of fishing location, unless the state where the fish is caught has more restrictive regulations. For example, if the Federal bag limit is three fish per vessel, and the state bag limit is two fish per vessel, a vessel with a Federal permit fishing in state waters would be limited to two fish per vessel. However, if the Federal bag limit is three fish per vessel, and the state bag limit is four fish per vessel, a vessel with a Federal permit fishing in state waters would be limited to three fish per vessel. Vessels that have not been issued a Federal permit that allows for recreational Atlantic HMS fishing would need to abide by state regulations when fishing for HMS in state waters. A vessel without a Federal permit cannot legally fish in Federal waters for Atlantic HMS.

## **CHAPTER 2 REFERENCES**

### **Reference for Section 2.1.2**

Blue Ocean Institute, Monterey Bay Aquarium, National Coalition for Marine Conservation, Natural Resources Defense Council, Oceana Inc., 2005. Petition for Immediate Rulemaking to Protect Spawning Atlantic Bluefin Tuna in the Gulf of Mexico. Submitted to Secretary of Commerce on June 8, 2005. 13 p.

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### **References for Section 2.3.3**

IBSRC. 2005. International Bluewater Spearfishing Records Committee Rules.  
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