

FY 2009 PROCESSING AND FILING FEE TABLE—Continued

Document/action	FY 2009 fee
Shasta and Trinity hardrock mineral lease .....	25
Renewal of existing sand and gravel lease in Nevada .....	25
Multiple Use; Mining (part 3730):	
Notice of protest of placer mining operations .....	10
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870):	
Application to open lands to location .....	10
Notice of location* .....	15
Amendment of location .....	10
Transfer of mining claim/site	10
Recording an annual FLPMA filing .....	10
Deferment of assessment work .....	100
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands .....	25
Mineral patent adjudication ...	2,760 (more than 10 claims)
	1,380 (10 or fewer claims)
Adverse claim .....	100
Protest .....	60

\* To record a mining claim or site location, you must pay this processing fee along with the initial maintenance fee and the one-time location fee required by statute. (43 CFR part 3833).

[FR Doc. E8-22255 Filed 9-22-08; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 635

[Docket No. 070801432-8663-02]

RIN 0648-AV92

Atlantic Highly Migratory Species; Atlantic Tuna Fisheries; Pelagic and Bottom Longline Fisheries; Gear Authorization and Turtle Control Devices

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS authorizes green-stick gear for the harvest of Atlantic tunas, including bluefin tuna (BFT), and requires a sea turtle control device in

Atlantic Highly Migratory Species (HMS) pelagic longline (PLL) and bottom longline (BLL) fisheries. At this time, NMFS is not authorizing harpoon gear for the harvest of Atlantic tunas in the Highly Migratory Species (HMS) Charter/Headboat (CHB) category as originally proposed. The purpose of this final rule is to ensure fishermen harvest Atlantic tunas within quotas, size limits, or other established limitations and to distinguish green-stick fishing gear from current definitions of other authorized gear types. This final rule also addresses use of sea turtle control devices in the PLL and BLL fisheries to achieve and maintain low post-release mortality of sea turtles thus maintaining consistency with the 2004 Biological Opinion (BiOp) for the Atlantic PLL fishery and to increase safety at sea for fishermen when handling sea turtles caught or entangled in longline fishing gear. NMFS also has revised its list of equipment models that NMFS has approved as meeting the minimum design specifications for the careful release of sea turtles caught in hook and line fisheries.

**DATES:** The amendments to § 600.725; § 635.2; § 635.21 introductory text (first sentence), (c)(2)(v)(A), (c)(2)(v)(B), (c)(5)(iii)(C)(3), (e)(1)(ii), (e)(1)(iii), (e)(1)(v), (g); and § 635.71 are effective on October 23, 2008. The amendments to § 635.21 introductory text (second sentence), (c)(2)(v)(D), (c)(2)(v)(G), (c)(5)(i) introductory text, (c)(5)(i)(M), (c)(5)(ii)(A), and (c)(5)(ii)(C)(1) are effective on January 1, 2009.

**ADDRESSES:** For copies of the Final Environmental Assessment (EA), or other related documents, please write to the Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910, or call at (301)713-2347 or fax to (301)713-1917. Copies are also available on the HMS website at <http://www.nmfs.noaa.gov/sfa/hms/>.

**FOR FURTHER INFORMATION CONTACT:** Randy Blankinship, 727-824-5399, or Sarah McLaughlin, 978-281-9260.

**SUPPLEMENTARY INFORMATION:** Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement recommendations by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has

been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). The implementing regulations for Atlantic HMS are at 50 CFR parts 600 and 635.

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). Among other things, these regulations included a list of fishing gears authorized for harvest of HMS. On October 2, 2006, NMFS published in the **Federal Register** final regulations (71 FR 58058), effective November 1, 2006, implementing the “Final Consolidated Atlantic HMS Fishery Management Plan” (Consolidated HMS FMP), which consolidated the management of all Atlantic HMS (i.e., sharks, swordfish, tunas, and billfish) into one comprehensive FMP.

**Background**

Background information about green-stick gear authorization and sea turtle control device requirements was provided in the preamble to the proposed rule (73 FR 24924; May 6, 2008). Please see the proposed rule for complete background information. This final rule: (1) authorizes green-stick gear for the harvest of Atlantic tunas by Atlantic Tunas General category permitted vessels; (2) authorizes green-stick gear for the harvest of Atlantic tunas by HMS CHB permitted vessels; (3) authorizes green-stick gear for harvest of Atlantic tunas by Atlantic Tunas Longline category permitted vessels (but continues to restrict BFT retention to incidental retention only); and (4) requires possession and use of a sea turtle control device as an addition to the already existing requirements for sea turtle bycatch mitigation gear in PLL and BLL fisheries. This action is published in accordance with the framework procedures set forth in the Consolidated HMS FMP and is supported by the analytical documents prepared for the Consolidated HMS FMP. As described in the Response to Comments and Changes from the Proposed Rule sections of this document, NMFS has reconsidered the proposed rule preferred alternative regarding authorization of harpoon use on HMS CHB vessels and has decided to maintain the status quo for regulations regarding authorized harpoon use as Atlantic tuna fishing gear.

### **Fishing Gear Authorization— Green-Stick Gear**

Green-stick gear is used primarily to catch yellowfin tuna (YFT) and consists of a mainline with hooks on leaders or gangions trolled from a long fiberglass or bamboo pole. Baits used with green-stick gear may be artificial or natural. Green-stick gear has been used in the Atlantic commercial and recreational bigeye (BET), albacore, YFT, skipjack (collectively referred to as BAYS tunas), and BFT fisheries since the mid-1990s, but it was not originally included as a separate gear on the list of authorized HMS fishery gears in the 1999 FMP. Logbook records show that commercial catches of BAYS and BFT with green-stick gear continued in the Atlantic Tunas General, Atlantic Tunas Longline, and the HMS CHB categories and were classified either as “handgear” catches in the Atlantic Tunas General and HMS CHB categories or as “longline” catches in the Atlantic Tunas Longline category, depending on gear configuration. In recent years, public comments indicate that green-stick gear use, managed under those regulations, did not well suit the fishing methods and locations preferred by fishermen wanting to use the gear.

The most recent YFT stock assessment, conducted in 2003, indicated that the stock may be approaching an overfished condition. YFT is the principal species of tropical tuna landed by U.S. fisheries in the western North Atlantic.

The latest western Atlantic BFT stock assessment conducted in 2006 indicated

that the stock is overfished and overfishing is occurring. The ICCAT Standing Committee on Research and Statistics (SCRS) considered this and other information when making recommendations to ICCAT for setting total allowable catch (TAC) limits that would allow for stock rebuilding. The results of the 2008 SCRS BFT stock assessment will be available this fall.

NMFS intends with this final rule to allow harvest of Atlantic tunas within existing quotas, size limits, or other established limitations with a gear that is generally efficient in harvesting target species and, at the same time, is low in bycatch and bycatch mortality.

Allowing a gear with these characteristics may have benefits to target and non-target species over gear with higher bycatch and bycatch mortality levels. As described above, green-stick gear is used primarily for YFT; however, BFT is caught at times and represents a very low percentage of the catch with this gear.

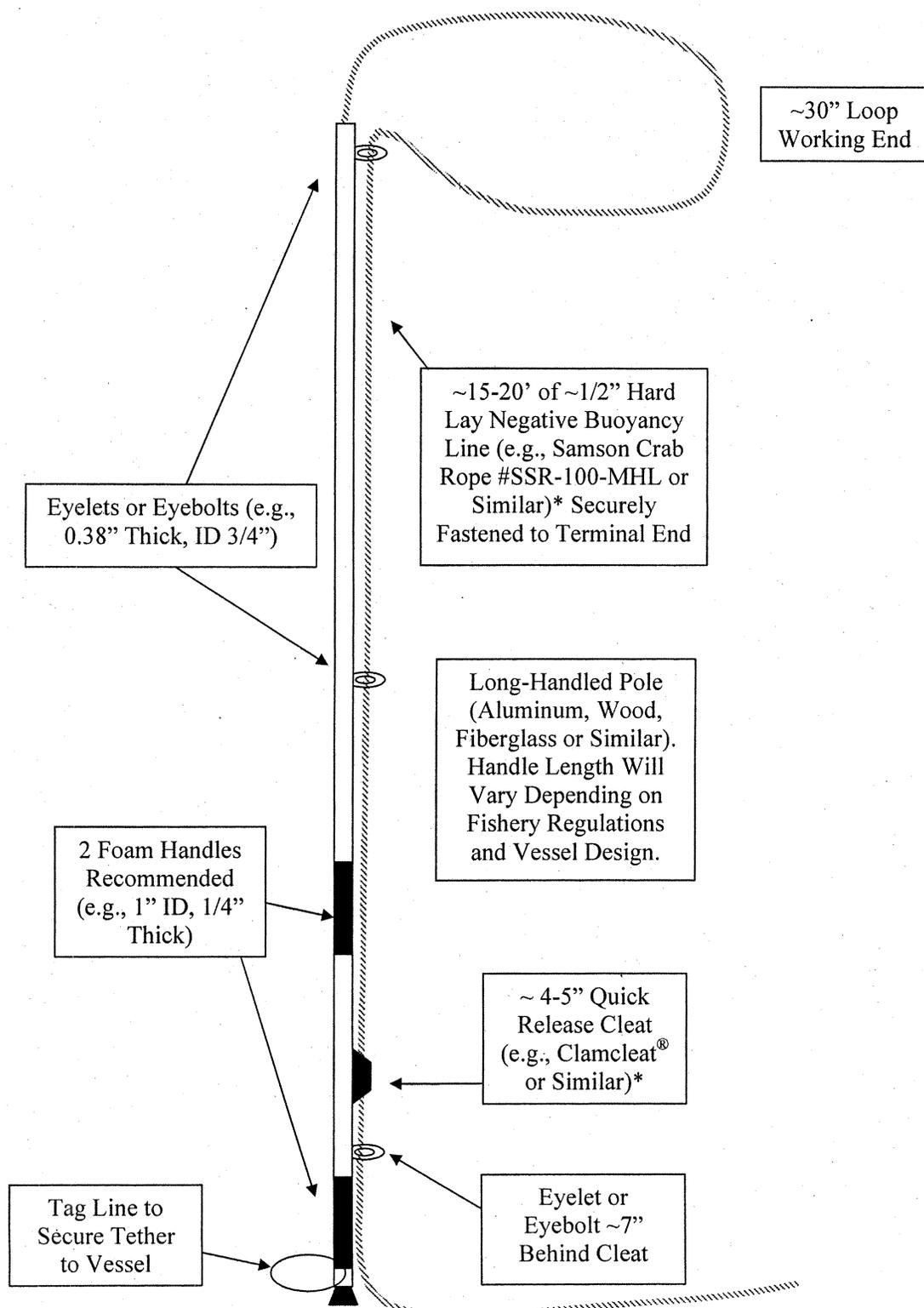
### **Sea Turtle Control Device**

The 2004 BiOp for the PLL fishery found that the long-term continued operation of the Atlantic PLL fishery as proposed was likely to jeopardize the continued existence of leatherback sea turtles, a species listed as endangered under the Endangered Species Act (ESA). Reasonable and prudent alternatives (RPAs) under section 7 of the ESA (50 CFR 402.02) were developed and implemented to avoid jeopardy by, among other things, reducing post-release mortality of

leatherback turtles. The RPAs included several measures to accomplish these goals, one of which was to require the use of gear removal measures to maximize post-release survival. On July 6, 2004, NMFS published the final rule (69 FR 40736) implementing sea turtle bycatch and bycatch mortality mitigation measures for the PLL fishery and provided for additional rulemaking and non-regulatory actions, as necessary, to implement any other management measures required under the 2004 BiOp.

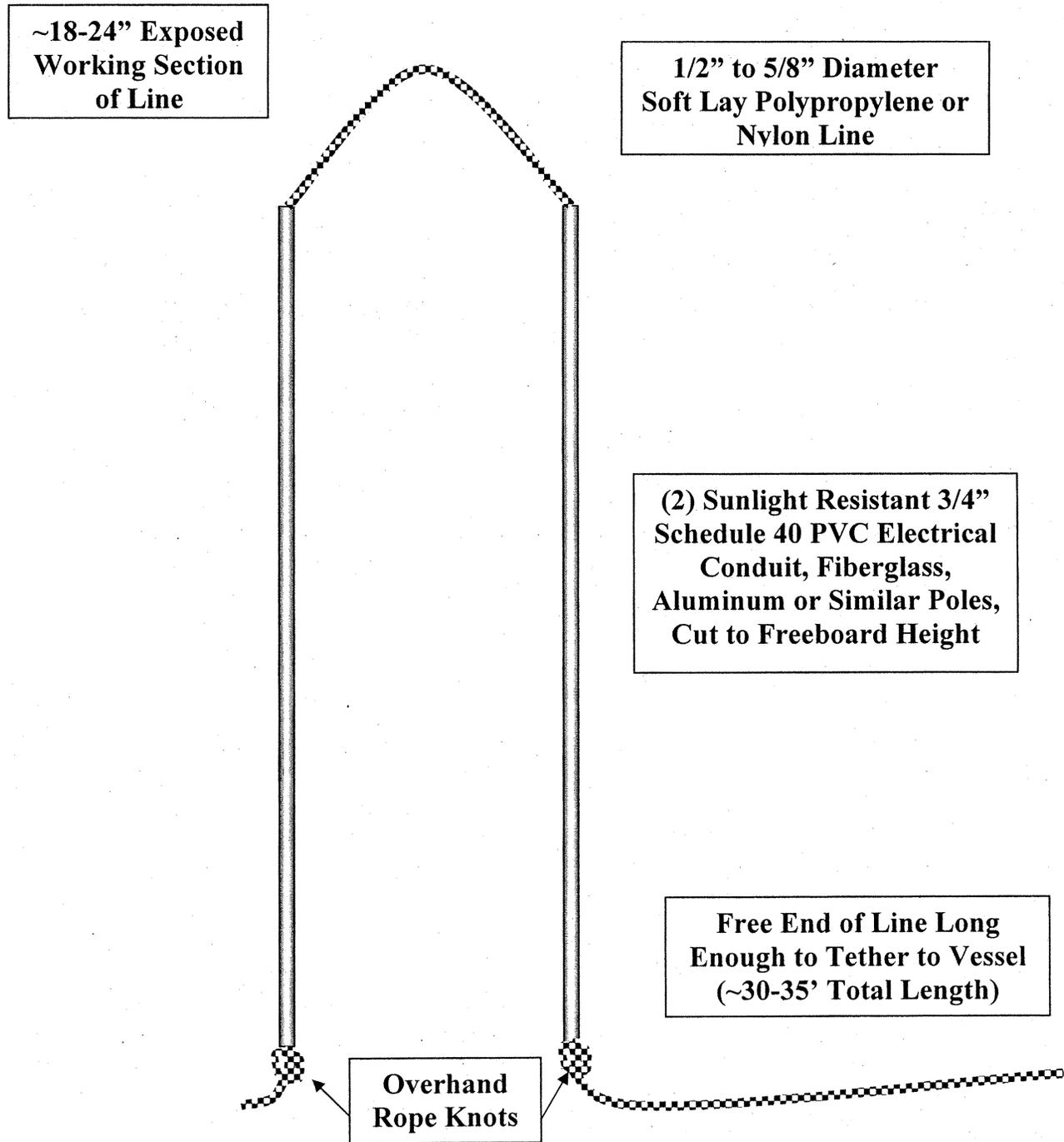
This final rule requires possession and use of a sea turtle control device as an addition to the already existing requirements for sea turtle bycatch mitigation gear. Two types of sea turtle control devices, the Turtle Tether and T&G Ninja Sticks (Figures 1 and 2), whether purchased or constructed, are approved to meet this requirement. These devices were developed by fishermen in the PLL fishery in response to safety concerns for fishing vessel crew members and for incidentally captured sea turtles, as well as to facilitate the likelihood of maximum gear removal and reducing post-release mortality. Subsequently, information collected by the NMFS Southeast Fisheries Science Center showed that use of these two types of sea turtle control devices better enabled fishermen to remove fishing hooks and line from sea turtles by better controlling the animals, thus likely reducing post-release hooking mortality of sea turtles.

Figure 1. Turtle Tether



\* The use of Samson Crab Rope and Clamcleat® are by reference only and no endorsement or affiliation is implied.

Figure 2. T&G Ninja Sticks



The function of a turtle control device is to control the front flippers of the sea turtle so that the animal can be controlled at the side of the vessel while the gear is removed. Restraint is most effective when a pair of turtle control devices is used (two sets of turtle tethers, two sets of T&G ninja sticks, or one of each style). This rule requires

that one turtle control device be possessed and used onboard; however, NMFS strongly recommends that two devices be possessed and used if vessel and crew size allow.

See Table 1 for a revised list of equipment models that NMFS has approved as meeting the minimum design specifications for the careful

release of sea turtles caught in hook and line fisheries. The list includes both the required gears and NMFS-approved models of equipment that may be used as options to meet the requirements for gear that must be carried on board vessels participating in the Atlantic PLL and BLL fisheries (50 CFR 635.21(c)(5)(i) and (d)(3)(i)). Equipment

may also be fabricated and used by individuals according to the minimum design specifications (50 CFR 635.21(c)(5)(i)). The benefit of using these gears is to maximize safe and efficient gear removal from incidentally captured sea turtles thereby minimizing the potential for serious injury or mortality of the sea turtles.

TABLE 1. NMFS-APPROVED MODELS FOR EQUIPMENT NEEDED FOR THE CAREFUL RELEASE OF SEA TURTLES CAUGHT IN HOOK AND LINE FISHERIES

Required Item	NMFS-Approved Models
(A) Long-handled line cutter, with one set of replacement blades*	LaForce Line Cutter; or Arceneaux Line Clipper
(B) Long-handled dehooker for ingested hooks*	ARC Pole Model Deep-Hooked Dehooker (Model BP11) <sup>1</sup> ; or NOAA/Bergmann Dehooker <sup>2</sup> on long-handle
(C) Long-handled dehooker for external hooks <sup>3</sup> *	ARC Model LJ6P (6 ft (1.83 m)); or ARC Model LJ36; or ARC Pole Model Deep-Hooked Dehooker (Model BP11) <sup>1</sup> ; or ARC 6 ft (1.83 m) Pole Big Game Dehooker (Model P610); or Robey Dehooker on long-handle; or NOAA/Bergmann Dehooker on long-handle
(D) Long-handled device to pull an "inverted V" <sup>4</sup> *	ARC Model LJ6P (6 ft.) (1.83 m); or Davis Telescoping Boat Hook to 96 in. (2.44 m) (Model 85002A); or West Marine # F6H5 Hook and # F6-006 Handle
(E) Dipnet**	ARC 12-ft. (3.66-m) Breakdown Lightweight Dip Net Model DN6P (6 ft. (1.83 m)); or ARC Model DN08 (8 ft.(2.44 m)); or ARC Model DN 14 (12 ft. (3.66 m)); or ARC Net Assembly & Handle (Model DNIN); or Lindgren-Pitman, Inc. Model NMFS Turtle Net
(F) Standard automobile tire**	Any standard automobile tire free of exposed steel belts

TABLE 1. NMFS-APPROVED MODELS FOR EQUIPMENT NEEDED FOR THE CAREFUL RELEASE OF SEA TURTLES CAUGHT IN HOOK AND LINE FISHERIES—Continued

Required Item	NMFS-Approved Models
(G) Short-handled dehooker for ingested hooks**	ARC 17-inch (43.18-cm) Hand-Held Bite Block Deep-Hooked Turtle Dehooking Device (Model ST08) <sup>1</sup> ; or NOAA/Bergmann Dehooker <sup>2</sup> on short-handle
(H) Short-handled dehooker for external hooks <sup>5</sup> **	ARC Hand-Held Large J-Style Dehooker (Model LJ07); or ARC Hand-Held Large J-Style Dehooker (Model LJ24); or ARC 17-inch (43.18-cm) Hand-Held Bite Block Deep-Hooked Turtle Dehooking Device (Model ST08) <sup>1</sup> ; or Scotty's Dehooker; or Robey Dehooker on short-handle; or NOAA/Bergmann Dehooker on short-handle
(I) Long-nose or needle-nose pliers**	12-in. (30.48-cm) S.S. NuMark Model # 030281109871; or any 12-inch (30.48-cm) stainless steel long-nose or needle-nose pliers
(J) Bolt cutter**	H.K. Porter Model 1490 AC
(K) Monofilament line cutter**	Jinkai Model MC-T
(L) Two of the following mouth openers and mouth gags**	
(L1) Block of hard wood	Any block of hard wood meeting design standards (e.g., Olympia Tools Long-Handled Wire Brush and Scraper (Model 974174))
(L2) Set of (3) canine mouth gags	Jorvet Model #4160, 4162, and 4164
(L3) Set of (2) sturdy dog chew bones	Nylaboner® (a trademark owned by T.F.H. Publications, Inc.); or Gumaboner® (a trademark owned by T.F.H. Publications, Inc.); or Galileor® (a trademark owned by T.F.H. Publications, Inc.)

TABLE 1. NMFS-APPROVED MODELS FOR EQUIPMENT NEEDED FOR THE CAREFUL RELEASE OF SEA TURTLES CAUGHT IN HOOK AND LINE FISHERIES—Continued

Required Item	NMFS-Approved Models
(L4) Set of (2) rope loops covered with hose	Any set of (2) rope loops covered with hose meeting design standards
(L5) Hank of rope	Any size soft braided nylon rope is acceptable, provided it creates a hank of rope approximately 2 - 4 inches (5.08 cm - 10.16 cm) in thickness
(L6) Set of (4) PVC splice couplings	A set of (4) Standard Schedule 40 PVC splice couplings (1-inch (2.54-cm), 1 1/4-inch (3.175-cm), 1 1/2-inch (3.81-cm), and 2-inch (5.08-cm))
(L7) Large avian oral speculum	Webster Vet Supply (Model 85408); or Veterinary Specialty Products (Model VSP 216-08); or Jorvet (Model J-51z); or Krusse (Model 273117)
(M) Turtle control device***	Turtle Tether and extended reach handle; or T&G Ninja Sticks and extended reach handles

\*Items (A) - (D), and (M) are required for turtles not boated.

\*\*Items (E) - (L) are required for boated turtles.

\*\*\*Only one turtle control device is required, but NMFS recommends the use of two devices to secure both front flippers.

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<sup>1</sup>The pigtail portion of the ARC dehooker may be modified by creating a notch in the pigtail curl where the shank of the hook comes into contact with the dehooker when the line is tightly pulled parallel to the handle.

<sup>2</sup>The NOAA/Bergman dehooker should not be used to remove ingested J-hooks.

<sup>3</sup>The long-handled dehooker for Item B would meet the requirement for Item C.

<sup>4</sup>If a 6-ft (1.83 m) J-Style dehooker is used to satisfy the requirement for Item C, it would also satisfy the requirement for Item D.

<sup>5</sup>The short-handled dehooker for Item G would meet the requirement for Item H.

**Response to Comments**

A number of individuals and groups provided both written and verbal comments on the proposed rule during the 41-day comment period which ended on June 16, 2008. Six public hearings were held in Saint Petersburg, FL; Manteo, NC; Manahawkin, NJ; Gloucester, MA; Belle Chasse, LA; and Orlando, FL. Public comments were also

heard at meetings of the South Atlantic Fishery Management Council and the HMS Advisory Panel. These comments contributed to a change from the proposed rule, i.e., NMFS' decision to maintain the status quo regarding harpoon authorization for HMS CHB permitted vessels. The comments are summarized below together with NMFS' responses. The comments are grouped by major issue (green-stick gear authorization, harpoon authorization, and sea turtle control device) and are numbered consecutively, starting with 1, at the beginning of each issue.

#### 1. Green-Stick Gear Authorization

*Comment 1:* NMFS should authorize green-stick gear for Atlantic Tunas General, HMS CHB, and Atlantic Tunas Longline permitted vessels because green-stick gear is selective in what species fishermen catch, results in minimal bycatch and low bycatch mortality, and increases fishery operational flexibility in harvesting Atlantic tunas within established limitations. Comments included support from the North Carolina Division of Marine Fisheries, the South Atlantic Fishery Management Council, and representatives of several diverse constituencies on the HMS AP.

*Response:* NMFS considered these characteristics of green-stick gear when developing the alternatives. Green-stick gear is an actively trolled and tended gear. When fished, the hooks and baits are suspended at or above the surface of the water which reduces the likelihood of catching species that do not strike moving prey at or above the surface of the water. Since the gear is tended, animals that are caught are quickly retrieved to the vessel and either kept, if the species is desired, or released, if it is undersized or an unintended species. Quick retrieval and release of unwanted or unintended animals causes less physiological stress on an animal than some other gears such as longline and results in a higher likelihood of survival.

Increased operational flexibility in harvesting Atlantic tunas results from fishermen having another option or choice in the type of fishing gear they use, particularly when fishing for YFT. This flexibility may be beneficial to help offset increasing operational costs due to factors such as high fuel prices. The availability of green-stick gear as an option provides a gear that is low in bycatch and bycatch mortality and may be chosen by some fishermen for this reason.

*Comment 2:* Comments were received that NMFS is discriminatory against Longline category vessels if those

vessels that do not have longline gear onboard are still required to abide by the incidental catch requirements and if the BFT that they catch are not counted against the General category quota instead of the Longline quota. The premise of these comments is that an Atlantic Tunas Longline permitted vessel that does not have PLL or BLL gear onboard and is fishing with a gear that is also authorized in another permit category should be treated according to the regulations for that other category. In this case, the other category would be General category, thus allowing BFT to be targeted and counted against the General category's quota.

*Response:* The action to authorize green-stick gear for Atlantic tunas does so within existing quotas, size limits, or other established limitations. Currently established retention limits are some of the existing limitations of permit categories such as Atlantic Tunas Longline and are not modified by this action. This includes the incidental catch requirements described in the response to Comment 3.

The BFT management structure, developed in the 1999 FMP, created quota allocations, effort controls, retention limits, and size limits associated with the various quota categories in an effort to rebuild BFT while allowing for continued BFT harvest. The 1999 FMP also solidified the BFT Longline category as incidental by definition yet provided for limited retention of BFT bycatch. The directed BFT fishery is also managed with a suite of permits and associated regulations such as authorized fishing gears, retention limits, restricted fishing days, and limited access for Purse Seine category. NMFS manages fisheries throughout the United States with different permit types and various regulatory restrictions respective to those permit types in order to achieve the goals of applicable domestic fisheries laws and international agreements. The type of permit(s) that an individual holds may be changed at the discretion of the vessel owner, according to established regulations, among individual persons and/or vessels over time. As such, the distinctive management measures among permit types are not discriminatory.

*Comment 3:* Comments were received that the target catch requirements of the Atlantic Tunas Longline permit should not apply if a vessel is fishing with green-stick gear and without longline gear onboard.

*Response:* The action to authorize green-stick gear for Atlantic tunas does so within existing quotas, size limits, or

other established limitations. Currently established retention limits are one such existing limitation on permit categories such as Atlantic Tunas Longline and are not modified by this action. The Atlantic Tunas Longline permit allows for the take of BFT only as incidental to other targeted species. The target catch requirements of this permit are found at § 635.23(f), which states that one large medium or giant BFT per vessel per trip may be landed, provided that at least 2,000 lb (907 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold. Two large medium or giant BFT per vessel per trip may be landed, provided that at least 6,000 lb (2,727 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold. Three large medium or giant BFT per vessel per trip may be landed, provide that at least 30,000 lb (13,620 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold.

These existing target catch requirements, along with existing retention limits, quota management structure, size limits, restricted fishing days, and other established limitations, serve to constrain the harvest of, effort on, and bycatch of BFT. These constraints are necessary amid ongoing concerns about the overfished status of BFT and the continuing need to avoid increases in BFT bycatch and levels of directed effort that might negatively impact BFT stocks. The existence of these constraining regulations is a major factor in the decision to allow the use of green-stick gear as provided by this final rule. Additionally, modifying retention limits or target catch requirements as provided for at § 635.23(f)(2) was not within the scope of the proposed rule; therefore, adjustment of the target catch is not considered in this final rule.

*Comment 4:* NMFS should maintain the target catch requirements of the Atlantic Tunas Longline permit.

*Response:* As stated in the response to Comment 2, this action authorizes green-stick gear within existing quotas, size limits, or other established limitations. This action does not change the existing BFT incidental catch requirements of the Atlantic Tunas Longline Permit and thus, maintains the incidental nature of the Longline category. The existing target catch requirements will remain in effect and are listed in the response to Comment 2 above.

*Comment 5:* NMFS should avoid increasing directed fishing pressure on BFT.

*Response:* Directed fishing pressure on BFT is not expected increase beyond a minimal amount as a result of this rule. Green-stick gear is used primarily to harvest YFT, although catch of BFT also occurs at a much lower level. According to coastal and pelagic logbook reports, which include reports from Atlantic Tunas General, HMS CHB, and Atlantic Tunas Longline permitted vessels, YFT and BFT represent approximately 82 percent and 2 percent (or less) of the catch, respectively, both by number and weight. The use of green-stick gear by Atlantic Tunas General, HMS CHB, and Atlantic Tunas Longline permitted vessels has occurred since at least the mid-1990s. Any potential for an increase in directed fishing pressure on BFT as a result of this rule exists within the General category where directed BFT fishing is allowed. Both Atlantic Tunas General and HMS CHB (when selling BFT) permitted vessels operate within the BFT General category. Increases in directed fishing pressure on BFT are not expected in the Longline category due to the target catch requirements in place for Atlantic Tunas Longline permitted vessels as described in the response to Comment 3 above. Also, targeted fishing for BFT is not allowed in the Gulf of Mexico, an important BFT spawning area; therefore, increases in directed fishing pressure for BFT would not occur in the Gulf of Mexico as a result of this final rule.

While the potential for an increase in directed or incidental effort on BFT exists considering the increase in number of hooks allowed, such increases in effort over existing practices are expected to be minor because the gear is already being used and has been used since the mid-1990s. There is potential for additional vessels not currently using green-stick gear to begin to do so as more fishermen become aware of green-stick gear efficiency in catching Atlantic tunas and of the high quality of fish product that can be delivered to the dock resulting in higher ex-vessel value. Green-stick gear could also be deployed at times and in ways that enable more hooks to be fished during a trip, such as while a vessel is in transit between fishing locations where other authorized gears may be deployed. Such increases in effort, if they were to occur, are expected to be minor as green-stick gear use has developed to its current level over a period of several years. The growth of green-stick gear use is somewhat constrained by the capital

investments involved in rigging a vessel to use green-stick gear. A green-stick rig with fiberglass pole and hydraulic haul-back capability is estimated to cost \$5,300 to \$9,300.

If directed use of green-stick gear for YFT or BFT increases above its current level, there may be benefits in improved bycatch mortality compared to some other fishing gears. Bycatch mortality of released fish is anticipated to be low given that baits on green-stick gear are trolled at high speed and deployed at or slightly above the surface of the water. Fish are hooked as they strike the baits which most frequently results in hooking locations in the jaw or other mouth area and does not often result in deep-hooking. Additionally, because green-stick gear is usually rigged with power haul-back capability, the mainline can be quickly retrieved, thereby enabling undersized or non-target fish to be released with a minimum of stress and physical trauma. Due to this characteristic of green-stick gear, NMFS anticipates that there may be beneficial effects for target and non-target species when compared to other fishing gears, such as longline and rod and reel, because improving post-release survival of fish reduces overall fishing mortality. Finally, while authorization of green-stick gear is not expected to result in a great increase in BFT landings, if an increase were to occur, repeated quota under-harvests in recent years indicate that sufficient quota exists to allow for some additional landings despite the latest bluefin tuna stock assessment that indicates that the stock is overfished.

*Comment 6:* NMFS should maintain enforceability of PLL closed areas by ensuring that PLL gear is not onboard vessels fishing with green-stick gear in PLL closed areas.

*Response:* This final rule does not change the requirement that PLL or BLL gear be removed from an Atlantic Tunas Longline permitted vessel when the vessel is in a PLL or BLL closed area. Green stick gear will, however, be allowed in the closed area. The rule distinguishes green-stick gear from PLL and BLL by defining it as "an actively trolled mainline attached to a vessel and elevated or suspended above the surface of the water with no more than 10 hooks or gangions attached to the mainline. The suspended line, attached gangions and/or hooks, and catch may be retrieved collectively by hand or mechanical means. Green-stick does not constitute a PLL or a BLL as defined in this section or as described at § 635.21(c) or § 635.21(d), respectively." The distinguishing characteristics that separate the gears are that green-stick

gear is actively trolled and does not have floats capable of supporting the mainline, as with PLL gear, nor weights and/or anchors capable of maintaining contact between the mainline and the ocean bottom, as with BLL gear. NMFS believes that these characteristics are recognizable and, with the definition and distinctions made between the gears, enforceability of longline restrictions in the closed areas will be maintained.

*Comment 7:* NMFS should maintain the enforceability of the circle hook requirement on PLL vessels.

*Response:* This action does not change the requirement that only circle hooks may be used on PLL gear. It does provide for the possession of up to 20 J-hooks for use only with green-stick gear if green-stick gear is onboard. NMFS believes that the definition of green-stick gear allows the gear to be recognized by enforcement agents and distinguishes it from PLL, thus enabling enforcement agents to know when the possession of 20 J-hooks is allowed.

*Comment 8:* NMFS should maintain enforceability of the live bait prohibition in the Gulf of Mexico.

*Response:* This action does not change the live bait prohibition in the Gulf of Mexico. In order to enhance enforcement capability of the live bait prohibition and prevent the use of bait catching rigs such as "sabiki" rigs (which use small hooks) under the guise of green-stick gear, a minimum hook size is established for J-hooks that are allowed to be used with green-stick gear onboard Atlantic Tunas Longline Permitted vessels. Under this provision, the use of J-hooks less than 1.5 inch (38.1 mm, approximately the size of a standard 2/0 to 3/0 J-hook), when measured in a straight line over the longest distance from the eye to any other part of the hook, is prohibited.

*Comment 9:* NMFS should require that any BFT caught on green-stick gear in the GOM be released regardless of permit category in order to protect BFT in the spawning area.

*Response:* This action authorizes green-stick gear for Atlantic tunas within existing quotas, size limits, or other established limitations. Directed fishing for BFT remains prohibited in the GOM. This action does not change existing provisions to protect BFT in the GOM. Green-stick gear is authorized for use by Atlantic Tunas General, HMS CHB, and Atlantic Tunas Longline permitted vessels. Atlantic Tunas General category vessels may not retain BFT in the GOM. Atlantic-wide, when selling BFT, HMS CHB permitted vessels operate under the rules for General category, and General category

vessels may not retain BFT in the GOM. This means that HMS CHB vessels may not retain BFT for commercial purposes in the GOM. For recreational fishing in the GOM, which also applies to HMS CHB permitted vessels, one "trophy" BFT (73 in CFL) is allowed to be retained per vessel per year only as incidental to targeted fishing for other species.

*Comment 10:* Comments were received in support of increased data collection on green-stick gear fishing to include designating a green-stick gear code. Also, comments were received in support of improved data collection on green-stick gear fishing that would allow for appropriate monitoring of effort and landings to enable changes or problems in the fishery to be addressed as soon as possible. In addition, improved data collection could show benefits of green-stick gear such as low bycatch and the possible elimination of protected species interactions.

*Response:* NMFS has designated a gear code which will facilitate improved gear-specific data collection via dealer reporting through trip tickets in the southeast and dealer reporting systems in the northeast. The gear code may also aid in improved gear-specific data collection via logbooks. Data collection on green-stick gear and other gears is important for assessing the need for and appropriateness of future management measures.

#### Harpoon Authorization

*Comment 1:* NMFS received a wide range of comments on authorization of harpoon gear for use by HMS CHB permitted vessels, from full support to complete opposition. The majority of comments received on the harpoon authorization issue opposed the action, as described below. Comments in support of harpoon use authorization for all HMS CHB trips included: 1) the BFT fishing industry needs all the help it can get and NMFS should do all it can to maximize fishing opportunities within current quotas, particularly because harpoon fishing is already limited by the need for good weather conditions; 2) the action would provide fishermen the flexibility of gear choice, which would be beneficial given current high operating costs, and would increase opportunities to harvest BFT within the General category daily retention limit (currently 3 BFT/vessel); and 3) authorization of harpoon gear on HMS CHB vessels would not significantly increase competition for current HMS CHB permit holders as very few vessel owners would make the large capital investment to outfit their vessels to use harpoon gear in the HMS CHB category.

Comments supporting harpoon authorization for HMS CHB vessels on non-for-hire trips only include: 1) this alternative would work well for HMS CHB captains and crew, who could harpoon BFT in the early season (when BFT are more readily caught at the water's surface in the Gulf of Maine) and switch to rod and reel use in the late summer for use on charter trips; and 2) there is no reason for harpoons to be used on charter trips with paying passengers aboard.

The majority of comments received on the harpoon authorization issue opposed the action. Comments include: 1) NMFS needs to take a more precautionary approach in regard to the BFT fishery, which is overfished, and in which overfishing is occurring; 2) this action would be inconsistent with efforts to rebuild BFT; 3) new measures should not be adopted in the name of quota utilization; 4) the action could lead to shorter seasons and lower retention limits for HMS CHB vessels; and 5) the action could lead to disruption by new harpooners of Harpoon category fishing activities, and/or dilution of the historical HMS CHB business by historical harpooners (contradicting the rationale NMFS used in establishing a separate HMS CHB permit category).

*Response:* NMFS has considered these comments, some of which were also made at the April 2008 HMS Advisory Panel meeting. Based on the relative lack of public support, and on consideration of the various concerns raised by NMFS and the public, including concerns about bycatch, enforcement and safety (discussed further in responses below), and BFT stock status generally, NMFS has decided, at this time, to maintain the status quo regarding authorized harpoon use, i.e., authorized harpoon use by the General and Harpoon categories only.

*Comment 2:* NMFS received several comments specifically regarding potential increases in BFT dead discards, bycatch (of undersized fish), and bycatch mortality that may result from the proposed harpoon authorization. Comments expressed concern that now is not the time to increase fishing effort on BFT as it could further strain the resource. Examples of this resource strain were increased mortality of BFT that are harpooned and lost, undersized BFT that are harpooned unintentionally by less experienced crew while targeting commercial-sized BFT, or BFT that are discarded in the process of highgrading. Comments from those supportive of the action stated that authorization of harpoon gear on HMS CHB vessels would not

significantly increase BFT bycatch and bycatch mortality as effort is unlikely to substantially increase due to the large capital investment for owners to outfit their vessels to use harpoon gear in the HMS CHB category.

*Response:* NMFS does not have information with which to estimate quantitatively the potential increase in discards, bycatch, and bycatch mortality that could result from HMS CHB harpoon use. NMFS anticipates that the number of HMS CHB operators that would outfit their vessels with harpoon gear would be low. However, to the extent that inexperienced users may inadvertently strike an undersized BFT, bycatch and bycatch mortality likely would increase with the proposed authorization. NMFS believes that harpoon use by HMS CHB vessels could result in increased discard mortality of BFT over the discard mortality that occurs with gear currently authorized for HMS CHB use (rod and reel, bandit gear, and handline) and green-stick gear to be authorized by this final rule.

*Comment 3:* NMFS received several comments regarding enforceability of the harpoon authorization. Comments opposing harpoon authorization stated that enforcement would be difficult if harpoons are authorized on non-for-hire trips only. Some of these comments further state that the proposed action may provide an incentive for captains to convert recreational trips to commercial trips and highgrade, or to use harpoon gear expressly for the satisfaction of paying passengers. Some indicated that harpoon authorization could exacerbate both the nonreporting of catch and landings and the illegal sale of BFT. A comment supportive of the action suggested that NMFS could require that the pulpit be stowed in the upright position while the vessel is on for-hire trips.

*Response:* Field and dockside enforcement of harpoon authorization for only certain HMS CHB trips would be more challenging than if the authorization applied to all HMS CHB trips. Although NMFS recognizes the possibility that harpoon authorization on for-hire trips would increase the incentive to discard and/or not report fish since HMS CHB crew may fill either the commercial or recreational retention limit on any given fishing day, it is not possible to estimate quantitatively the increase in discards and non-reporting that may occur. As NMFS is not taking action to authorize harpoon use on HMS CHB vessels at this time, consideration of specific gear stowage requirements is not necessary.

*Comment 4:* NMFS received a few comments regarding safety implications

of the proposed action. Some believed that liability and safety of passengers is the captain's responsibility, and as it would be very unlikely that a paid passenger would be allowed to use the harpoon gear, authorization of harpoon gear should be for all trips. A few commenters asked why NMFS raised safety concerns regarding HMS CHB use of harpoon gear but not of green-stick gear.

*Response:* NMFS must ensure that management measures, to the extent practicable, promote the safety of human life at sea. Authorization of harpoon gear on HMS CHB vessels, particularly if authorized on all trips, presents the possibility of charter passengers walking out to and standing on a pulpit and/or handling harpoon gear, which may be capable of passing an electric current. Therefore, it is appropriate for NMFS to consider safety concerns and to engage the public in a discussion of these issues. In the proposed rule, NMFS selected harpoon authorization as the preferred subalternative on non-for-hire trips only as it would reduce the incentive for both crew and passengers to use the gear for recreational-sized BFT fishing, thus reducing potential safety concerns. Green-stick gear has been used on charter vessels for several years, including on for-hire trips, and neither existing green-stick gear use or use of the gear as proposed raised novel or substantial safety concerns.

*Comment 5:* If NMFS authorizes harpoon gear use on HMS CHB vessels, NMFS should allow permit holders a category change (not currently allowed for the 2008 fishing year as the May 31 deadline has passed) so that vessels could make use of the HMS CHB harpoon authorization this year.

*Response:* As NMFS is not implementing the proposed HMS CHB harpoon authorization at this time, allowances for permit category changes are not needed at this time.

#### Sea Turtle Control Device

*Comment 1:* NMFS should require a sea turtle control device in PLL and BLL fisheries to achieve and maintain low post-release mortality of sea turtles.

*Response:* The proposed and final rule do require a sea turtle control device in the PLL and BLL fisheries to achieve and maintain low post-release mortality of sea turtles. The implementation of sea turtle bycatch mitigation measures in the PLL and BLL fisheries, in accordance with the 2004 BiOp, which includes the mandatory use of circle hooks in the PLL fishery, possession and use of sea turtle handling and release gears in the PLL

and BLL fisheries, and mandatory participation in protected species safe handling and release workshops, has reduced the post-release mortality of sea turtles. Sea turtle control devices have been recommended in these fisheries and are now required to better enable fishermen to remove fishing gear from sea turtles. Maximizing the removal of fishing gear from sea turtles results in improved post-release mortality.

*Comment 2:* NMFS should require two sea turtle control devices instead of one in order to better control sea turtles by securing both front flippers.

*Response:* NMFS considered requiring two sea turtle control devices instead of one in order to better control sea turtles by securing both front flippers, but did not prefer this as an alternative. Some BLL vessels are small and requiring two devices onboard is impractical, at this time, due to limited available space. Also, requiring the use of two devices when there are often only two crew members onboard raises concerns about safety at sea, especially in heavy seas and/or currents when one crew member must remain at the wheel while the other crew member retrieves the longline gear. In such circumstances, one crew member could reasonably be expected to use one sea turtle control device and remove fishing gear from the sea turtle, while the use of two devices and removal of the fishing gear would be an unreasonable expectation.

*Comment 3:* NMFS should not require a sea turtle control device in PLL and BLL fisheries because the shark fishing fleet cannot afford the device to meet the requirement.

*Response:* NMFS considered cost of the sea turtle control devices when developing this requirement and made options available for construction of the devices with inexpensive materials. The amount of time required for construction of these devices is minimal. Fishermen may already have many of these materials on hand. Construction costs for the T&G ninja sticks and turtle tether range from \$25 to \$85. Only one device is required to be carried onboard and used.

#### Changes from the Proposed Rule (73 FR 24922; May 6, 2008)

NMFS made seven changes to the proposed rule as outlined below.

1. Following requests from an organization representing a portion of the Atlantic tunas commercial handgear fishery and discussion by the HMS Advisory Panel at its October 2007 meeting, NMFS proposed authorization of harpoon gear for the commercial harvest of Atlantic tunas, including BFT, for HMS CHB permitted vessels.

NMFS requested public comment on the potential authorization of the gear, for both for-hire and non-for-hire fishing trips. After considering comment received during the comment period and discussions of the issue at the April 2008 HMS Advisory Panel meeting, both of which revealed little public support for the action, and the implications of authorizing a directed fishing gear that is used almost exclusively to target BFT, at this time, NMFS has decided to maintain the status quo regarding authorized harpoon gear use in the Atlantic tuna fisheries. For more information, please see the Response to Comments section. The selection of the status quo alternative regarding this subject does not preclude NMFS from taking future action regarding fishing gear authorization, in general or specifically regarding harpoon use.

2. In § 635.21, a clarification of how green-stick gear will be allowed for Atlantic Tunas Longline permitted vessels is made that establishes a minimum allowable hook size restriction for J-hooks used with green-stick gear. J-hooks used with green-stick gear onboard Atlantic Tunas Longline permitted vessels may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook. In the Gulf of Mexico, PLL vessels are prohibited from using live bait in order to reduce the incidental catch of Atlantic billfish. NMFS is concerned about the effect that the 20 J-hook allowance, as described above, may have on enforcement of the live bait prohibition because fishing rigs that catch live bait utilize small J-hooks. The possession of such J-hooks is currently prohibited. NMFS' concern is that bait catching rigs could be used under the guise of green-stick gear, thus making enforceability of the live bait prohibition more difficult. In the proposed rule, NMFS sought public comment on establishing a minimum hook size for J-hooks allowed with green-stick gear onboard Atlantic Tunas Longline permitted vessels and received comments in favor of such a restriction. The minimum size limit for J-hooks in specific units of length is necessary as hook sizes such as 1/0, 2/0, 3/0, etc. are not standardized among hook manufacturers. The 1.5 inch minimum length limit will prevent the use of small hooks used with bait catching rigs which are normally 1/0 sized hooks or smaller. A 1.5 inch J-hook is approximately the size of a 2/0 or 3/0 standard J-hook depending on the manufacturer and style. J-hooks used

with green-stick gear when fishing for Atlantic tunas (usually 7/0 to 11/0) are much larger than the 1.5 inch minimum size limit established by this action. This minimum J-hook size limit only applies to Atlantic Tunas Longline permitted vessels; however, it applies to these vessels throughout the Atlantic.

3. In § 635.71, a prohibition is established for the possession and use of J-hooks onboard a vessel that has pelagic longline gear onboard, except when green-stick gear is onboard. The addition of this prohibition is necessary to better distinguish between regulations that apply to PLL vessels when green-stick gear is or is not onboard and to establish the way that green-stick gear will be managed. Regulations requiring the possession and use of circle hooks were established at 69 FR 40734 (July 6, 2004). These regulations required vessels fishing in the Northeast Distant gear restricted area (NED) and that have PLL gear onboard to only possess and use 18/0 or larger circle hooks with an offset not to exceed 10 degrees and when fishing outside the NED and having PLL gear onboard, to only possess and use 18/0 or larger circle hooks with an offset not to exceed 10 degrees and 16/0 or larger non-offset circle hooks.

4. In § 635.71, a prohibition of the use of J-hooks with pelagic longline is established. This prohibition is established for the same reason described in change number 3 above.

5. In § 635.71, a prohibition of the possession of more than 20 J-hooks onboard a vessel when possessing both pelagic longline gear, as described at § 635.21 (c), and green-stick gear is established. This prohibition establishes the way that green-stick gear will be managed.

6. In § 635.71, a prohibition of the use of more than 10 hooks at one time with each green-stick gear is established. This prohibition establishes the way that green-stick gear will be managed.

7. In § 635.71, a prohibition of the possession and use of J-hooks smaller than 1.5 inch (38.1 mm) onboard Atlantic Tunas Longline permitted vessels is established for the same purpose as explained in change number 2 above.

#### Classification

This final rule is published under the authority of the Magnuson-Stevens Act and ATCA. NMFS has determined that this final rule is necessary for the management of Atlantic tunas and protection and conservation of sea turtles consistent with the Magnuson-Stevens Act, including the

national standards; the ESA; and other applicable law.

NMFS prepared an EA for this action and a notice of availability was published with the proposed rule on May 6, 2008 (73 FR 24922). This final rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not contain policies with federalism implications under E.O. 13132. There are no new information collection requirements proposed by this rule for Purposes of the Paperwork Reduction Act.

In compliance with 5 U.S.C. 604, a Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA analyzes the anticipated impacts of the final rule and any significant alternatives to the final rule that could minimize significant economic impacts on small entities. Each of the statutory requirements of section 604 has been addressed, and a summary of the FRFA is provided below.

Section 604(a)(1) requires the Agency to state the objective and need for the rule. As stated in the preamble of the final rule, the objective of this final rule is to ensure fishermen harvest Atlantic tunas within quotas, size limits, or other established limitations and to distinguish green-stick fishing gear from current definitions of other authorized gear types. Additionally, the final rule addresses sea turtle control devices in the PLL and BLL fisheries to achieve and maintain low post-release mortality of sea turtles thus maintaining consistency with the 2004 Biological Opinion (BiOp) for the Atlantic PLL fishery and to increase safety at sea for fishermen when handling sea turtles caught or entangled in longline fishing gear.

Section 604(a)(2) requires the Agency to summarize significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the assessment of the agency of such issues, and a statement of any changes made in the rule as a result of such comments. NMFS received several comments on the proposed rule and draft EA during the public comment period. A summary of these comments and the Agency's responses are included above. NMFS did not receive any comments specific to the Initial Regulatory Flexibility Analysis (IRFA). During the public comment period, NMFS received an economic comment that NMFS should not require a sea turtle control device in PLL and BLL fisheries because the shark fishing fleet cannot afford the device to meet the requirement. NMFS understands that there may be some negative economic impact from this

requirement and has attempted to minimize these impacts by allowing the devices to be constructed with low cost materials. Construction costs for the sea turtle control devices range from \$25-85 and may be constructed with materials that fishermen may already have on hand, thus reducing the construction cost. NMFS believes that the economic impacts to fishermen are not likely to be large with this final action. No changes were made to this final action as a result of this comment.

Section 604(a)(3) of the Regulatory Flexibility Act requires the Agency to describe and provide an estimate of the number of small entities to which the final rule will apply. The final rule to authorize green-stick fishing gear for the harvest of Atlantic tunas, including BFT, and require sea turtle control devices in Atlantic HMS PLL and BLL fisheries could directly affect 3,616 Atlantic Tunas General, 3,901 HMS CHB, and 218 Atlantic Tunas Longline category permit holders (permit numbers as of November 30, 2007). All of these permit holders are considered small business entities according to the Small Business Administration's standard for defining a small entity.

Section 604(a)(4) of the Regulatory Flexibility Act requires the Agency to describe the projected reporting, record keeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which will be subject to the requirements of the report or record. None of the alternatives considered for this final rule will result in additional reporting and recordkeeping requirements. New compliance requirements will occur under the action to require the possession and use of a sea turtle control device onboard PLL and BLL vessels; however, the economic impacts are not expected to be significant.

Section 604(a)(5) of the Regulatory Flexibility Act requires the Agency to describe the steps taken to minimize any significant economic impact on small entities consistent with the stated objectives of applicable statutes. NMFS believes that in regard to the portion of the final rule requiring a sea turtle control device, impacts on small entities are minimized through the development of options for fishermen to construct the device at minimal cost, thus simplifying compliance for all entities including small entities. Similarly, the design standards used to allow construction of a sea turtle control device at minimal cost satisfies the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act and ESA.

As described below, NMFS considered eight different alternatives to authorize fishing gear in Atlantic tuna fisheries to increase operational flexibility in the fishery while still achieving the objectives of the Consolidated HMS FMP; to allow harvest of Atlantic tunas with a gear that is generally efficient in harvesting target species and, at the same time, is low in bycatch and bycatch mortality; and to require a sea turtle control device in the PLL and BLL fisheries to achieve and maintain low post-release mortality of sea turtles. Below, NMFS provides justification for selection of the final action to achieve the desired objectives.

Alternative A1 is a no action, or the status quo alternative. This alternative would maintain existing regulations for harvesting Atlantic tunas, thereby allowing green-stick gear use only as allowed under the current definitions and regulations for longline or handgear based on the gear configuration. Under Alternative A1, there would be no change in the existing regulations and, as such, no change in the current baseline economic impacts.

The no action alternative would instead continue to consider green-stick gear as being within the longline definition if 3 or more hooks are attached and as handgear if 2 or fewer hooks are attached. The allowable use of the gear in this way impedes operational and economic efficiency in the Atlantic Tunas General category or HMS CHB category because fishermen have used green-stick gear rigged with up to 10 hooks historically for Atlantic tunas. Under alternative A1, the social and economic impacts are expected to be minimal, although unquantified social and economic impacts may occur to Atlantic Tunas General category and HMS CHB permitted vessel holders with the status quo because they would not be allowed to use green-stick gear with 3 hooks or more, as they have historically, unless they purchased an Atlantic Tunas Longline permit and other associated limited access permits for swordfish and shark. This alternative was not selected because other alternatives increase operational flexibility in the fishery while still achieving the objectives of the Consolidated HMS FMP and allow fishermen additional opportunities to fulfill U.S. quota allocations.

Under selected Alternative A2, which was preferred in the proposed rule, green-stick gear will be defined and authorized for use in the commercial Atlantic tuna fishery for BAYS and BFT by Atlantic Tunas General category vessels. Vessels fishing under the Atlantic Tunas General category will

continue to be subject to all current HMS regulations for that category (such as bag and size limits). NMFS does not anticipate greatly increased landings from Atlantic Tunas General category vessels as a result of this rule because green-stick gear has been used in HMS fisheries since at least the mid-1990s. While NMFS does not anticipate greatly increased landings, Alternative A2 could result in a minor increase of overall effort deployed by this category of permit holders. This could occur if additional fishermen become aware of green-stick gear efficiency in catching Atlantic tunas and of the high quality of fish product that can be delivered to the dock as a result. Higher quality fish product often commands high ex-vessel prices, and thus could potentially improve the profitability of trips. Under Alternative A2, authorization of green-stick gear use is expected to have generally positive social impacts as the gear is popular with Atlantic Tunas General category permit holders in areas of the Atlantic where it has been used.

The economic impacts under Alternative A2 are expected to be positive. Authorization of green-stick gear for harvest of Atlantic tunas will allow Atlantic Tunas General category permit holders additional opportunities for harvest. Tuna and other species harvested commercially with green-stick gear are usually high in quality and command higher prices due to the speed with which the fish are brought to the vessel, stored on ice, transported to the dock, and sold. Economic benefits may be realized through continued, and possibly increased, harvest of Atlantic tunas. Use of this gear may result in an unknown number of additional trips. The economic benefits may be minimal, however, as green-stick gear has been used in U.S. Atlantic tuna fisheries for several years and potential increases above existing levels of use as a result of this rule are expected to be minimal.

Green-stick gear ranges in cost from \$1,300-\$3,300 for the fiberglass pole. Completely outfitting a vessel with hydraulic spool and other tackle to use the gear would cost between \$4,000-\$6,000 depending on the size of the rig. Therefore, the total cost of outfitting a vessel to fish with green-stick gear would cost between \$5,300-9,300. Anecdotal information indicates that some fishermen may run mainlines from outriggers, a flying bridge, or a tuna tower, which would not be as costly. Outfitting costs are discretionary for fishermen as the gear is not required to participate in the fishery. This gear will be authorized for use from properly permitted vessels

only. The current cost of a Federal vessel permit is \$28.00 per year.

Under selected Alternative A3, which was a preferred alternative in the proposed rule, green-stick gear will be defined as in Alternative A2 above and authorized for use in the commercial Atlantic tuna fishery for BAYS and BFT by HMS CHB category vessels. This alternative will also authorize green-stick gear for recreational harvest of Atlantic tunas when an HMS CHB permitted vessel is on a for-hire trip. NMFS prefers this alternative because HMS CHB vessels may sell Atlantic tunas whether the vessel is for-hire or not-for-hire. Additionally, NMFS received public comment that HMS CHB vessels desired to have the option of using green-stick gear on for-hire trips. Vessels fishing under the HMS CHB category will continue to be subject to all current HMS regulations for that category. Alternative A3 is expected to have positive social and economic impacts similar to those described under Alternative A2 above, but with the added economic benefits associated with authorizing the use of green-stick gear for recreational harvest of Atlantic tunas even when an HMS CHB permitted vessel is on a for-hire trip.

Under selected Alternative A4, which was a preferred alternative in the proposed rule, green-stick gear will be defined, in this final rule, as in Alternative A2 and authorized for use in the directed commercial Atlantic BAYS tuna fishery and allow for the incidental retention of BFT by Atlantic Tunas Longline category vessels. Green-stick gear can currently be used with more than two hooks by Atlantic Tunas Longline permitted vessels under current target catch and gear (i.e., circle hook) requirements. Alternative A4 will distinguish green-stick gear from longline gear thus allowing green-stick gear to be fished in PLL and BLL closed areas if existing regulations for removal of PLL and BLL gear are met. These regulations state that a vessel is considered to have PLL gear onboard when it has onboard a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks. Likewise, a vessel is considered to have BLL gear onboard when it has onboard a power-operated longline hauler, a mainline, weights and/or anchors capable of maintaining contact between the mainline and the ocean bottom, and leader (gangions) with hooks. For closed areas respective to both PLL and BLL gear, removal of any one of these elements constitutes removal of the PLL or BLL gear. Atlantic Tunas Longline permitted vessels will continue to be

subject to current HMS PLL or BLL regulations, whichever is applicable, including the closed areas and circle hook requirements except that up to 20 J-hooks will be allowed onboard if green-stick gear is also onboard for use only with the green-stick gear. This provision to allow up to 20 J-hooks is intended to facilitate the high speed trolling methods used when fishing with green-stick gear. J-hooks possessed or used when green-stick gear is onboard may only be used with green-stick gear and may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook. Current requirements to use only circle hooks on PLL gear will remain unchanged.

Alternative A4 is expected to have positive social and economic impacts particularly for fishermen holding Atlantic Tunas Longline permits. Public and HMS Advisory Panel member support has been expressed for this alternative as described in chapter four of the Final EA. Authorization of green-stick for harvest of Atlantic tunas will allow Atlantic Tunas Longline category permit holders additional opportunities for harvest. Economic benefits may be realized in similar fashion to Alternatives A2 and A3 above through increased need for fish processing and the sale of additional fishing gear and supplies. The economic benefits for the fishing community may be minimal, however as green-stick gear has been and continues to be used in U.S. Atlantic tuna fisheries and increases beyond existing levels are expected to be minimal. Vessel outfitting costs are similar to those described in A2 above.

Alternative B1 would maintain the status quo regarding harpoon use in the Atlantic tuna fisheries. Under this selected alternative, the authorized gears for Atlantic tunas fishing by HMS CHB permitted vessels would remain the same. Harpoon use is currently authorized only for vessels permitted in the Atlantic Tunas General and Harpoon categories. Harpoon gear is selective gear that is used to capture only one large pelagic fish (primarily BFT, but also swordfish) at a time. Bycatch and bycatch mortality of commercial handgear is considered to be low, particularly for harpoons, which are thrown individually at a fish, determined by the fisherman to be greater than the minimum commercial size. There is no information or evidence of interactions between harpoon users targeting Atlantic tunas and threatened or endangered sea turtles, marine mammals, or other

protected resources. There were 3,901 HMS CHB permitted vessels as of November 30, 2007. Focusing on the area where harpoon gear has historically been used to capture commercial-sized BFT, there were 91 HMS CHB permitted vessels in Maine, 53 in New Hampshire, 644 in Massachusetts, and 159 in Rhode Island. Under Alternative B1, NMFS anticipates neutral impacts on permitted HMS vessels, which could continue to fish under the Atlantic Tunas General and Angling category regulations using existing authorized gear. Total Atlantic BFT General category revenues, which included sale of commercial-sized BFT by HMS CHB vessels, for the 2006 fishing year were approximately \$2.6 million. General category BFT revenues for 2005 and 2004 were approximately \$3.8 million and \$5.4 million, respectively (in nominal dollars). General category BFT fishing year quotas, adjusted as necessary for underharvest, have not been met since 2004, when landings amounted to 96 percent of the quota. Atlantic Tunas General category landings, as a percentage of adjusted General category quota, were 33 percent (234 mt out of 707.3 mt) for 2005, 14 percent for 2006 (165 mt out of 1,163.3 mt), and 19 percent for 2007 (121 mt out of 643.6 mt).

Alternative B2 would authorize harpoon gear for the commercial harvest of Atlantic tunas, including BFT, for HMS CHB permitted vessels. Available vessel trip report data indicate that for Atlantic tunas fishing, harpoon gear is only used to target BFT. Under this alternative, HMS CHB vessels would be able to use harpoon gear to fish for and retain BFT greater than 73 inches curved fork length. HMS CHB vessels may currently fish under the Atlantic Tunas General category regulations and may fill the daily retention limit for either the Atlantic Tunas General category or the HMS Angling category. The size category of the first BFT retained determines the fishing category applicable to the vessel that day. This alternative would not change the number or size of BFT allowed to be retained on an HMS CHB vessel, but would provide HMS CHB fishermen the opportunity to use harpoon gear in filling the Atlantic Tunas General category daily retention limit.

Sub-alternative B2a would allow harpoon gear use on all types of HMS CHB trips. Sub-alternative B2b, the preferred alternative in the proposed rule, would limit harpoon use to non-for-hire trips. It is NMFS' understanding that due to safety and liability concerns, only vessel captain and crew would be involved in harpoon

fishing (i.e., no other passengers would be offered the opportunity to use the gear). Under this alternative, there would be no incentive to harpoon a recreational sized fish (27 to less than 73 inches) to fill the Angling category retention limit (to satisfy expectations of individuals chartering the vessel). With effort focused on commercial-sized BFT, bycatch of undersized fish and associated fish mortality is expected to be minimal, particularly as the size of BFT targeted by for-hire HMS CHB vessels fall within the school and large school BFT size classes, i.e. (27-59 inches).

The General category quota and overall U.S. TAC are designed to allow for BFT rebuilding, and the General category BFT retention limit is specified to allow fishing opportunities over the duration of the General category season and in all areas, without exceeding the General category BFT quota. This alternative would not be expected to result in an expanded geographic area of harpoon use for BFT, which has historically been off New England, and primarily on the fishing grounds off Massachusetts, New Hampshire, and Maine. Therefore, authorization of harpoon gear in the HMS CHB category would not be expected to have ecological impacts beyond those previously analyzed in the Consolidated HMS FMP and in the 2007 Fishing Year Atlantic BFT Quota Specifications and Effort Controls EA.

Alternative B2 would have positive social and economic impacts, specifically for those vessels that have success harpooning BFT that may be available at the water's surface. To the extent that a fisherman could harpoon BFT at the surface when the fish are present at the water's surface, Alternative B2 could increase the potential of filling the General category daily retention limit and of gaining more ex-vessel revenue per trip. NMFS anticipated that the number of BFT that would be caught with harpoon gear by HMS CHB vessels would be low. Alternative B2 may have slightly negative social and economic impacts for existing HMS CHB operators due to the potential for Atlantic Tunas General or Harpoon category permit holders to change to the HMS CHB category, potentially increasing competition in the HMS CHB sector and potentially resulting in lower profits for existing permit holders. Alternative B2 was not selected because, based on public comment, NMFS has reconsidered the authorization of an additional directed fishing gear type for BFT in the HMS CHB category at this time. After consideration of recent HMS AP

discussion and public comment on the proposed action, NMFS believes that harpoon use by HMS CHB vessels could result in increased discard mortality of BFT over the discard mortality that occurs with gear currently authorized for HMS CHB use or with green-stick gear. Based on the relative lack of public support, and the concerns raised by NMFS and the public, including bycatch, enforcement, safety, and BFT stock status generally, NMFS has decided, at this time, to maintain the status quo regarding authorized harpoon use, i.e., authorized harpoon use by the Atlantic Tunas General and Atlantic Tunas Harpoon permit categories only.

Alternative C1, which is the status quo alternative, would continue existing ecological benefits of the current requirements for possession and use of sea turtle bycatch mitigation equipment such as low post-release mortality of sea turtles and other by catch species. Alternative C1 is not selected because it would not provide for additional post-release survival benefits that may be achievable under preferred Alternative C2. Currently one type of sea turtle control device, the turtle tether, is recommended for possession and use, but is not required. Under the status quo, the benefit of better control of large sea turtles not boated and improvements in hook and fishing gear removal that would result in reduced post-release mortality would not be fully realized, but NMFS is unable to quantify the number of sea turtle mortalities that might occur in the absence of this benefit.

Under Alternative C1, the social and economic impacts would be minimal as sea turtle bycatch mitigation gear is currently required in the PLL fishery and sea turtle control devices are recommended, but not required. Any safety-at-sea benefit from improved control of large sea turtles not boated would not be fully realized with Alternative C1.

Under selected Alternative C2, which was a preferred alternative in the proposed rule, social and economic impacts may be positive in that further reduction in sea turtle mortalities achieved by enabling fishing gear removal may aid in continuation of the PLL fishery. Reducing the mortality of sea turtles in the PLL fishery reduces the likelihood that the performance targets for incidental take and mortality of sea turtles in the PLL fishery that were established in the 2004 BiOp are exceeded. Exceeding the performance targets in the 2004 BiOp could result in closure of the PLL fishery in the Gulf of Mexico and/or reinitiation of Section 7 consultation under the Endangered

Species Act. Also, a safety-at-sea benefit from the use of sea turtle control devices will be realized as fishermen using the gear can more easily control large sea turtles while removing fishing hooks and lines. Other social and economic impacts of Alternative C2 are expected to be minimal. It is unknown how many vessels currently follow the recommendation to possess and use sea turtle control devices. Production models of the turtle tether cost from \$200-\$250 and may be constructed according to the design specifications for \$40-\$70. Production models of the T&G ninja sticks may be purchased for \$175 and may be constructed according to the design specifications for approximately \$25-\$85. It is difficult to determine the number of Atlantic HMS permitted vessels that use longline and will be affected by this requirement as users of longline gear may possess any one of three permits; however, not all holders of these permits use longline gear. To estimate the total cost of outfitting each boat in the longline fleet with one sea turtle control device, NMFS totaled the number of Atlantic Tunas Longline, Shark Directed, or Shark Incidental permits, which produced an overestimate of the actual number of permitted vessels affected by the requirement. Based on the number of Atlantic Tunas Longline, Shark Directed, or Shark Incidental permitted vessels as of November 2007, it is estimated that the cost of outfitting the longline fleet with one turtle control device would range from \$18,575, if all permit holders construct the least expensive device, to \$185,750, if all permit holders purchase the most expensive model produced.

**List of Subjects**

50 CFR Part 600

Fisheries, Fishing, Fishing vessels, Foreign relations, Penalties, Reporting and recordkeeping requirements.

50 CFR Part 635

Fish, Fisheries, Fishing, Fishing vessels, Reporting and recordkeeping requirements, Management.

Dated: September 17, 2008.

**Samuel D. Rauch III**

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For reasons set out in the preamble, 50 CFR parts 600 and 635 are amended as follows:

**Chapter VI**

**PART 600—MAGNUSON-STEVENS ACT PROVISIONS**

■ 1. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.725, paragraph (v) table, under the heading “IX. Secretary of Commerce,” entries 1.I and 2 are revised and entry 1.M is added to read as follows:

**§ 600.725 General prohibitions.**

\* \* \* \* \*  
(v) \* \* \*

Fishery	Authorized gear types
* * * * *	
IX. Secretary of Commerce	
1. Atlantic Highly Migratory Species Fisheries (FMP):	
* * * * *	
I. Tuna recreational fishery	I. Speargun gear (for bigeye, albacore, yellowfin, and skipjack tunas only); Rod and reel, handline (all tunas); green-stick gear (HMS Charter/Headboat Category only).
* * * * *	
M. Tuna green-stick fishery	M. Green-stick gear.
2. Commercial Fisheries (Non-FMP)	Rod and reel, handline, longline, gillnet, harpoon, bandit gear, purse seine, green-stick gear.
* * * * *	

**PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

■ 3. The authority citation for part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 4. In § 635.2, the definition for “Green-stick gear” is added in alphabetical order to read as follows:

**§ 635.2 Definitions.**

\* \* \* \* \*

*Green-stick gear* means an actively trolled mainline attached to a vessel and elevated or suspended above the surface of the water with no more than 10 hooks or gangions attached to the mainline. The suspended line, attached gangions and/or hooks, and catch may be retrieved collectively by hand or

mechanical means. Green-stick does not constitute a pelagic longline or a bottom longline as defined in this section or as described at § 635.21(c) or § 635.21(d), respectively.

\* \* \* \* \*

■ 5. In § 635.21:

■ a. Paragraphs (c)(2)(v)(A), (c)(2)(v)(B), (c)(2)(v)(D), (c)(2)(v)(G), (c)(5)(i) introductory text, (c)(5)(ii)(A), (c)(5)(ii)(C)(1), (e)(1)(ii), (e)(1)(iii), and (e)(1)(v) are revised.

■ b. An introductory paragraph and paragraphs (c)(5)(i)(M), (c)(5)(iii)(C)(3), and (g) are added.

The revisions and additions read as follows:

**§ 635.21 Gear operation and deployment restrictions.**

The green-stick gear authorization requirements under paragraphs (c)(2)(v)(A), (c)(2)(v)(B), (c)(5)(iii)(C)(3), (e)(1)(ii), (e)(1)(iii), (e)(1)(v), and (g) of this section are effective on October 23, 2008. The sea turtle bycatch mitigation gear requirements under paragraphs (c)(2)(v)(D), (c)(2)(v)(G), (c)(5)(i) introductory text, (c)(5)(i)(M), (c)(5)(ii)(A), and (c)(5)(ii)(C)(1) of this section are effective on January 1, 2009.

\* \* \* \* \*

- (c) \* \* \*
- (2) \* \* \*
- (v) \* \* \*

(A) The vessel is limited to possessing onboard and/or using only 18/0 or larger circle hooks with an offset not to exceed 10 degrees. The outer diameter of the circle hook at its widest point must be no smaller than 2.16 inches (55 mm) when measured with the eye on the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis), and the distance between the circle hook point and the shank (i.e., the gap) must be no larger than 1.13 inches (28.8 mm). The allowable offset is measured from the barbed end of the hook and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side. The only allowable offset circle hooks are those that are offset by the hook manufacturer. If green-stick gear, as defined at § 635.2, is onboard, a vessel may possess up to 20 J-hooks. J-hooks may be used only with green-stick gear, and no more than 10 hooks may be used at one time with each green-stick gear. J-hooks used with green-stick gear may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook; and,

(B) The vessel is limited, at all times, to possessing onboard and/or using only whole Atlantic mackerel and/or squid

bait, except that artificial bait may be possessed and used only with green-stick gear, as defined at § 635.2, if green-stick gear is onboard; and,

\* \* \* \* \*

(D) Required sea turtle bycatch mitigation gear, which NMFS has approved under paragraph (c)(5)(iv) of this section, on the list of “NMFS-Approved Models for Equipment Needed for the Careful Release of Sea Turtles Caught In Hook and Line Fisheries,” must be carried onboard, and must be used in accordance with the handling requirements specified in paragraphs (c)(2)(v)(E) through (G) of this section; and,

\* \* \* \* \*

(G) *Non-boated turtles.* If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear, specified in paragraph (c)(2)(v)(D) of this section, must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in paragraph (c)(2)(v)(C) of this section. Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. A front flipper or flippers of the turtle must be secured, if possible, with an approved turtle control device from the list specified in paragraph (c)(2)(v)(D) of this section. All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using an approved line cutter from the list specified in paragraph (c)(2)(v)(D) of this section. If the hook can be removed, it must be removed using a long-handled dehooker from the list specified in paragraph (c)(2)(v)(D) of this section. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (c)(2)(v)(C) of this section, and the handling and resuscitation requirements

specified in § 223.206(d)(1) of this title, for additional information.

\* \* \* \* \*

(5) \* \* \*

(i) *Possession and use of required mitigation gear.* Required sea turtle bycatch mitigation gear, which NMFS has approved under paragraph (c)(5)(iv) of this section as meeting the minimum design standards specified in paragraphs (c)(5)(i)(A) through (M) of this section, must be carried onboard, and must be used to disengage any hooked or entangled sea turtles in accordance with the handling requirements specified in paragraph (c)(5)(ii) of this section.

\* \* \* \* \*

(M) *Turtle control devices.* Effective January 1, 2009, one turtle control device, as described in paragraph (c)(5)(i)(M)(1) or (2) of this section, is required onboard and must be used to secure a front flipper of the sea turtle so that the animal can be controlled at the side of the vessel. It is strongly recommended that a pair of turtle control devices be used to secure both front flippers when crew size and conditions allow. Minimum design standards consist of:

(1) *Turtle tether and extended reach handle.* Approximately 15-20 feet of 1/2-inch hard lay negative buoyance line is used to make an approximately 30-inch loop to slip over the flipper. The line is fed through a 3/4-inch fair lead, eyelet, or eyebolt at the working end of a pole and through a 3/4-inch eyelet or eyebolt in the midsection. A 1/2-inch quick release cleat holds the line in place near the end of the pole. A final 3/4-inch eyelet or eyebolt should be positioned approximately 7-inches behind the cleat to secure the line, while allowing a safe working distance to avoid injury when releasing the line from the cleat. The line must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or a minimum of 6 feet (1.83 m), whichever is greater. There is no restriction on the type of material used to construct this handle, as long as it is sturdy. The handle must include a tag line to attach the tether to the vessel to prevent the turtle from breaking away with the tether still attached.

(2) *T&G ninja sticks and extended reach handles.* Approximately 30-35 feet of 1/2-inch to 5/8-inch soft lay polypropylene or nylon line or similar is fed through 2 PVC conduit, fiberglass, or similar sturdy poles and knotted using an overhand (recommended) knot at the end of both poles or otherwise secured. There should be approximately

18-24 inches of exposed rope between the poles to be used as a working surface to capture and secure the flipper. Knot the line at the ends of both poles to prevent line slippage if they are not otherwise secured. The remaining line is used to tether the apparatus to the boat unless an additional tag line is used. Two lengths of sunlight resistant 3/4-inch schedule 40 PVC electrical conduit, fiberglass, aluminum, or similar material should be used to construct the apparatus with a minimum length equal to, or greater than, 150 percent of the freeboard, or a minimum of 6 feet (1.83 m), whichever is greater.

(ii) \* \* \*

(A) Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(A) through (D) of this section, must be used to disengage any hooked or entangled sea turtles that cannot be brought onboard. Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(E) through (M) of this section, must be used to facilitate access, safe handling, disentanglement, and hook removal or hook cutting of sea turtles that can be brought onboard, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines specified in paragraph (a)(3) of this section, and in accordance with the onboard handling and resuscitation requirements specified in § 223.206(d)(1) of this title.

\* \* \* \* \*

(C) \* \* \*

(1) Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. A front flipper or flippers of the turtle must be secured with an approved turtle control device from the list specified in paragraph (c)(2)(v)(D) of this section. All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using a line cutter as required by paragraph (c)(5)(i) of this section. If the hook can be removed, it must be removed using a long-handled dehooker as required by paragraph (c)(5)(i) of this section. Without causing further injury, as much gear as possible must be removed from the turtle prior to its

release. Refer to the careful release protocols and handling/release guidelines required in paragraph (a)(3) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title for additional information.

\* \* \* \* \*

(iii) \* \* \*

(C) \* \* \*

(3) If green-stick gear, as defined at § 635.2, is onboard, a vessel may possess up to 20 J-hooks. J-hooks may be used only with green-stick gear, and no more than 10 hooks may be used at one time with each green-stick gear. J-hooks used with green-stick gear may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook. If green-stick gear is onboard, artificial bait may be possessed, but used only with green-stick gear.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(ii) *Charter/Headboat.* Rod and reel (including downriggers), bandit gear, handline, and green-stick gear are authorized for all recreational and commercial Atlantic tuna fisheries. Speargun is authorized for recreational Atlantic BAYS tuna fisheries only.

(iii) *General.* Rod and reel (including downriggers), handline, harpoon, bandit gear, and green-stick.

\* \* \* \* \*

(v) *Longline.* Longline and green-stick.

\* \* \* \* \*

(g) *Green-stick gear.* Green-stick gear may only be utilized when fishing from vessels issued a valid Atlantic Tunas General, HMS Charter/Headboat, or Atlantic Tunas Longline category permit. The gear must be attached to the vessel, actively trolled with the mainline at or above the water's surface, and may not be deployed with more than 10 hooks or gangions attached.

- 6. In § 635.71:
- a. Paragraph (a)(23) is revised.
- b. Paragraphs (b)(36) through (40) are added.

The revision and additions read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(23) Fail to comply with the restrictions on use of pelagic longline, bottom longline, gillnet, buoy gear, speargun gear, or green-stick gear as specified in § 635.21(c), (d), (e)(1), (e)(3), (e)(4), (f), or (g).

\* \* \* \* \*

(b) \* \* \*

(36) Possess J-hooks onboard a vessel that has pelagic longline gear onboard, and that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, except when green-stick gear is onboard, as specified at § 635.21(c)(2)(v)(A) and (c)(5)(iii)(C)(3).

(37) Use or deploy J-hooks with pelagic longline gear from a vessel that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico.

(38) Possess more than 20 J-hooks onboard a vessel that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, when possessing onboard both pelagic longline gear, as described at § 635.21(c), and green-stick gear as defined at § 635.2.

(39) Use or deploy more than 10 hooks at one time on any individual green-stick gear.

(40) Possess, use, or deploy J-hooks smaller than 1.5 inch (38.1 mm), when measured in a straight line over the longest distance from the eye to any other part of the hook, when fishing with or possessing green-stick gear onboard a vessel that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico.

\* \* \* \* \*

[FR Doc. E8-22261 Filed 9-22-08; 8:45 am]  
BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 070817467-81179-04]

RIN 0648-AV90

**Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 19; Correcting Amendment**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS is correcting regulatory text implementing measures that were