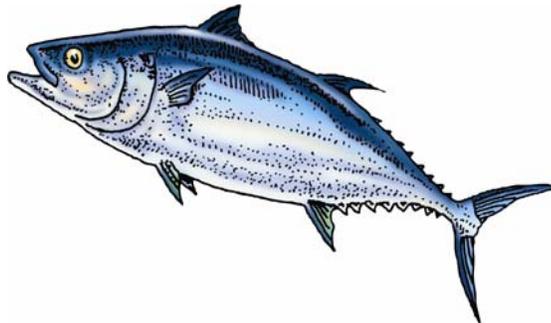


*Environmental Assessment,  
Regulatory Impact Review,  
and  
Final Regulatory Flexibility Analysis*

for a Final Rule to Establish

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



United States Department of Commerce  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
Office of Sustainable Fisheries  
Highly Migratory Species Management Division  
May 2009

## ABSTRACT

- Final Action:** Establish 2009 fishing year Atlantic bluefin tuna (BFT) quotas for all domestic fishing categories and establish General and Angling category effort controls.
- Type of statement:** Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA)
- Lead Agency:** National Marine Fisheries Service (NMFS): Office of Sustainable Fisheries
- For further information:** Highly Migratory Species Management Division (F/SF1)  
NMFS -Northeast Regional Office  
55 Great Republic Drive  
Gloucester, MA 01930  
Phone: (978) 281-9260; Fax: (978) 281-9340
- Abstract:** In October 2006, NMFS finalized the Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) and issued implementing regulations, including regulations for the Atlantic bluefin tuna fishery, to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This final action is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) pursuant to the Atlantic Tunas Convention Act (ATCA) and to achieve domestic management objectives under the Magnuson-Stevens Act. This action would allocate the ICCAT-recommended total U.S. BFT quota, adjust the 2009 quotas for each category as necessary based on landing underharvests from 2008 (consistent with the ICCAT recommendation to cap carryover of underharvest at 50 percent of the overall quota), address a revised ICCAT 10-percent tolerance recommendation regarding school BFT, and establish retention limits for the General and Angling categories. These measures would be consistent with the Consolidated HMS FMP, including the BFT rebuilding program.

## **FINDING OF NO SIGNIFICANT IMPACT**

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

National Marine Fisheries Service

National Oceanic and Atmospheric Administration Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains NOAA's procedures for implementing the National Environmental Policy Act (NEPA), including criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations implementing NEPA at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant in making a finding of no significant impact and has been considered individually, as well as in combination with the others. The findings below are supported by the Environmental Assessment (EA) for "Atlantic Bluefin Tuna Quota Specifications and Effort Controls for the 2009 Fishing Year" and other analyses described below. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

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

The action is not expected to jeopardize the sustainability of BFT, which is the primary target species of fishing operations affected by this action, except for pelagic longline fishing operations where BFT is caught incidentally only. Fishing patterns and behavior are not expected to change as a result of this action.

NMFS would implement the annual U.S. BFT quota in the western Atlantic management area of 1,034.9 mt (a decrease of 155.2 mt from the previous quota of 1,190.12 mt), which includes an annual allocation of 25 mt to account for incidental catch of BFT by pelagic longline vessels fishing in the Northeast Distant Area (NED); adjust the 2009 fishing category quotas consistent with the 2008 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) (ICCAT Recommendation 08-04) and the 2006 Consolidated HMS FMP (NMFS 2006b); and establish retention limits for the General and Angling categories. Because the recommended quota is consistent with ICCAT's western BFT rebuilding plan and intended to end overfishing by the end of 2010, the action is not expected to jeopardize the sustainability of BFT. In addition, while preparing this EA, NMFS considered information contained in the Final Environmental Impact Statement (FEIS) associated with the Consolidated HMS FMP and in the final EA prepared for the December 31, 2007 final rule (72 FR 74193) implementing BFT 2008 quota specifications and General and Angling category effort controls. This EA is consistent with the analyses and conclusions contained in the Consolidated HMS FMP FEIS.

2) Can the proposed action reasonably be expected to jeopardize the sustainability of any non-

target species?

The action is not expected to jeopardize the sustainability of any non-target fish species. The primary fishing gears used to target BFT (i.e., rod and reel and purse seine) allow for the live release of non-target species to a great degree. The quotas for these sectors of the fishery account for more than 85 percent of the total U.S. annual quota. Primary non-target fish species caught by vessels targeting BFT include yellowfin tuna, bigeye tuna, and other large pelagic species.

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

NMFS has already implemented rebuilding plans, as appropriate, and fishing controls for non-target species. Goals of the Consolidated HMS FMP include implementing rebuilding plans, minimizing bycatch and bycatch mortality for overfished stocks, and managing healthy stocks for optimum yield. Bycatch reduction measures are in place under the HMS Bycatch Reduction Implementation Plan (discussed in Section 3.8 of the Consolidated HMS FMP). Section 3.9.9.1 of the Consolidated HMS FMP lists the 22 marine mammal species that are or could be of concern with respect to potential interactions with HMS fisheries. Section 3.9.9.2 discusses interactions and the Endangered Species Act, including six endangered whale species. The response to Question 4, below, summarizes the finding that marine mammals and ESA-listed species' sustainability would not be jeopardized by the action.

This action is not expected to significantly alter fishing patterns and/or behavior, and therefore should not have adverse impacts on non-target species beyond those considered in the 2001 and 2004 BiOps and in the Consolidated HMS FMP. Relative to the 2006 ICCAT recommendation, the 2008 ICCAT recommendation decreased the total U.S. BFT quota by 155.2 mt; therefore, a reduction in overall effort relative to the 2007-2008 level could be expected. In the last few years, commercial effort and landings have greatly declined because of decreased availability of BFT and other factors.

3) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH) as defined under the Magnuson-Stevens Act and identified in FMPs?

EFH is present in the action area. This action is not expected to change BFT fishing patterns or impacts on EFH, or to allow substantial damage to ocean and coastal habitats and/or EFH. The primary fishing gears used to harvest BFT (hook and line and purse seine) are pelagic

in nature and have little impact on coastal resources or bottom substrate. Water column features also are identified as EFH; as supported by the EA, there is no evidence that physical effects caused by fishing for HMS are adversely affecting EFH to the extent that detrimental effects can be identified, and this action would not have adverse impacts to EFH.

4) Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?

The action is not expected to have substantial adverse impacts on public health and safety. Fishing practices or behavior would not change significantly, although the amount of fishing effort may decrease slightly as a result of this action in combination with recent evidence of an overall decrease in BFT availability on the historical fishing grounds. Since the action would not change the current fishery practices, no significant effects to public health and safety are anticipated from its implementation.

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

See response to Question 2 regarding findings of the 2001 and 2004 BiOps. As supported by the EA, implementation of reasonable and prudent alternatives, reasonable and prudent measures and terms and conditions of those BiOps is underway, and this action is consistent with those BiOps. Relative to the 2006 ICCAT recommendation (ICCAT Recommendation 06-06), the 2008 ICCAT recommendation decreased the total U.S. BFT quota by 155.2 mt; therefore, a reduction in overall effort relative to the level at the most recent consultation could be expected. There are restrictions on the BFT fishery, which include a closure on directed fishing in the Gulf of Mexico and daily retention limits for open access fisheries, and more specifically on the pelagic longline fishery, which is limited access and only allowed incidental retention of BFT. The measures in these 2009 quota specifications and effort controls are not expected to significantly alter current fishing practices or bycatch mortality rates, and therefore should not have adverse impacts on protected species, or have any further impacts on endangered species, listed marine mammals, or critical habitat beyond those considered in the 2001 and 2004 BiOps. In addition, the interactions with non-listed marine mammals are managed in accordance with the MMPA “List of Fisheries” categories for each appropriate sector (including pelagic longline incidental catch of BFT), and this action is not anticipated to change the effort in these fishery sectors in any manner that would increase the potential for interaction with non-listed marine mammals as previously analyzed in the Consolidated HMS FMP.

6) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

The action is not expected to have a significant impact on biodiversity and ecosystem function within the affected area, because the action is not expected to change fishing practices,

and/or interactions with non-target and endangered or threatened species. The action would not affect unique geographic areas. In addition, this action is not expected to introduce or spread non-indigenous species.

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

No. There are no significant natural or physical environmental effects associated with the action and no significant social or economic impacts interrelated with natural or physical environmental effects that would result from the action. The action is expected to have some short-term negative socio-economic impacts due to the decrease in quota and subquotas for 2009 relative to 2008 although actual impacts will depend on BFT availability to the various fishing gears. In the long-term, positive social and economic impacts can be expected as the fishery rebuilds. Further, the action is necessary to implement the ICCAT-recommended U.S. quota and is consistent with the ICCAT recommendation regarding the 10-percent tolerance of BFT measuring less than 115 cm (45 inches) and other management measures. See Section 6 for an analysis of the predicted economic impacts to the BFT fishery and small business entities.

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

The effects of this action on the human environment are not expected to be highly controversial because, while the action would slightly decrease the BFT quota specifications for 2009, all of the current management measures and controls considered in this analysis have been in place for several years. The action was made available for public comment via a proposed rule and availability of the Draft EA, and NMFS fully considered the comments received to support the finding that the effects of the action are not highly controversial. Many of the comments received were in regard to issues outside the scope of the proposed action, and a distinction of these 'other issues' is presented in the supporting Final EA to ensure a clear understanding for the public on the scope of the proposed action.

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

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

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

No. Effects on the human environment would be similar to those in similar annual actions since 1999, and have been considered in the Consolidated HMS FMP FEIS and in the EA analyzing this action. The BFT quota specifications allocate the 2008 ICCAT-recommended BFT quota consistent with the FMP and other ICCAT recommendations. The effort controls

considered here fall within the ranges established in the FMP and/or implemented in recent years.

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

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

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

No, the effects of this action would not apply to any sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural or historical resources.

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

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

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

No, the action is not likely to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration. The issuance of BFT fishing specifications is a routine procedure which occurs on an annual basis and is consistent with ICCAT's 2008 U.S. quota recommendation and the Consolidated HMS FMP. The HMS regulations at 50 CFR 635 lay out the approach and boundaries for the action; thus, the decisions involved are limited and unlikely to set precedent or represent a decision in principle about future ~~considerations~~.

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

considerations.

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

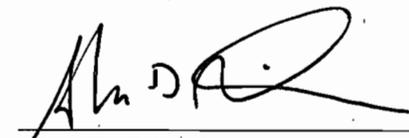
No, NMFS has determined that this action would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states on the Atlantic (including the Gulf of Mexico and Caribbean) that have approved coastal zone management programs. Letters were sent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

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

The action is not expected to result in cumulative adverse effects that could have a substantial effect on target species or non-target species. The action would implement the 2008 ICCAT recommendation and would be consistent with ongoing implementation of ICCAT's rebuilding plan for western Atlantic BFT and the objectives of the Consolidated HMS FMP as analyzed in the HMS FMP FEIS. No increase in fishing effort or change in current fishing practices is expected relative to recent fishing years; rather, a decrease is anticipated as analyzed in this EA. The 2008 ICCAT recommendation was made after consideration of scientific and statistical information, including the 2008 BFT stock assessment, and to guide cumulative future management actions of member countries.

## **DETERMINATION**

In view of the information presented in this document and the analysis contained in the supporting Environmental Assessment prepared for 2009 BFT Quota Specifications and Effort Controls (and in the FEIS for the Consolidated HMS FMP), it is hereby determined that implementation of alternatives A2, B3 and C2 will not significantly impact the quality of the human environment, as described above and in the supporting EA. All beneficial and adverse impacts of the action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.

  
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Alan D. Risenhoover  
Director, Office of Sustainable Fisheries

MAY 08 2009

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Date

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## 1.0 PURPOSE AND NEED FOR ACTION

### 1.1 Management History

Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and of the Atlantic Tuna Conventions Act (ATCA), which authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement recommendations of International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). On May 28, 1999, NMFS published in the Federal Register (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). The 1999 FMP included framework provisions to promulgate annual specifications for the BFT fishery, in accordance with ATCA and the Magnuson-Stevens Act, and to implement the annual recommendations of ICCAT. On October 2, 2006, NMFS published in the Federal Register (71 FR 58058) final regulations, effective November 1, 2006, implementing the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), which included slightly modified framework provisions.

At its 2008 meeting, ICCAT recommended a reduction in the Total Allowable Catch (TAC), set to allow for rebuilding of BFT in the western Atlantic through 2018, from 2,100 mt to 1,900 mt for 2009 and 1,800 mt for 2010 (including dead discards) (ICCAT Recommendation 08-04). These TACs are intended to end overfishing, as defined by the Magnuson-Stevens Act, by 2010. Note that decisions regarding the recommended TACs were made by ICCAT in November 2008 and that analyses of these decisions are not provided as part of this document. From these TACs, the following allocations were made: 4 mt for the United Kingdom (in respect of Bermuda), 4 mt for France (in respect of St. Pierre and Miquelon), 95 mt for Mexico (to allow incidental catch in the longline fishery in the Gulf of Mexico), and, for bycatch related to directed longline fisheries in the Northeast Distant gear restricted area (NED), 15 mt for Canada and 25 mt for the United States. These allocations are subtracted from the TAC (resulting in an 'adjusted TAC'); the adjusted TAC is allocated to certain ICCAT contracting parties. Note that the percentage and amount of that allocation depends on the total remaining TAC after adjustment. The resulting U.S. share of the adjusted TAC is 57.48 percent, or 1,009.9 mt for 2009; this is the baseline annual U.S. BFT quota analyzed in this EA. Accounting for the 25-mt NED allocation, the total U.S. quota is 1,034.9 mt for 2009. The previous (2006) ICCAT recommendation for a western Atlantic BFT TAC of 2,100 mt included a total U.S. quota of 1,190.12 mt (1,165.12 mt and 25 mt for the NED), which was effective for 2007 and 2008. The 2008 ICCAT recommendation also maintains a provision allowing a contracting party with an ICCAT allocation (i.e., a quota) to make a one-time transfer within a fishing year of up to 15 percent of its TAC allocation to other contracting parties with TAC allocations, consistent with domestic obligations and conservation considerations.

As a method for limiting fishing mortality on juvenile BFT, in 1991, ICCAT adopted a tolerance limit which allows the annual harvest of no more than eight percent of the quota as BFT measuring less than 115 cm. Note that the United States implements this provision by limiting the

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

## **1.2 Need for Action and Objectives**

This action is necessary to implement the 2008 ICCAT recommendation as necessary and appropriate pursuant to ATCA and to achieve domestic management objectives under the Magnuson-Stevens Act, including rebuilding stocks and ending overfishing. NMFS is committed to ending overfishing in the BFT fishery within two years, i.e., by the end of 2010. The objective of this action is to implement the 2008 ICCAT recommendation, distribute the U.S. BFT quota (adjusted for underharvest) among domestic fishing categories, implement a 10-percent tolerance limit on harvest of BFT measuring less than 115 cm, and implement General and Angling category effort controls (daily retention limits). Conservative Angling category effort controls will be needed in 2009 due to the convergence of several factors: the reduced U.S. quota and Angling category quota for 2009, the increasing rate with which the Angling category quota has been attained over the last 2 years (due to increased average weight of fish caught within the recreational size classes), the shorter timeframe for managing the school BFT fishery due to the new ICCAT recommendation, and the timing of availability of complete recreational landings data. NMFS is analyzing three alternatives that are as restrictive, or more restrictive, than the 2008 daily retention limits in order to ensure that the Angling category quota is not exceeded. As part of the proposed rule for this action, NMFS specifically sought comment on Angling category effort controls.

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

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

Note that the published Consolidated FMP is an integrated document that included a Final Environmental Impact Statement (FEIS). That FEIS evaluated the management program structure for Bluefin Tuna Quota management, and as one of the preferred alternatives (later selected as part of NMFS decision) analyzed the range of impacts of the annual BFT quota specification process in the

Consolidated HMS FMP (as opposed to a separate annual NEPA analysis), proposing that analytical documents would accompany the annual BFT quota specifications only if the analyses associated with the HMS FMP no longer applied (i.e., if ICCAT were to amend its recommendation regarding the total U.S. BFT quota). Through ICCAT Recommendation 08-04, ICCAT has amended its 2009 and 2010 BFT TAC recommendation. Therefore, in accordance with the approach described in the Consolidated HMS FMP, NMFS is preparing this National Environmental Policy Act (NEPA, 42 U.S.C. *et seq.*) Environmental Assessment (EA) to analyze the 2009 BFT specification action and alternatives. Note that 2010 BFT quota specifications and effort controls would be handled via a separate action, with subsequent NEPA analysis if warranted.

### **1.3 Public Involvement**

NMFS conducted extensive public outreach on this action, including an HMS Advisory Panel (AP) meeting on February 18, 2009. The draft of this EA was released with the proposed rule for public comment on February 18, 2009, and the comment period remained open for 30 days, closing on March 20, 2009. NMFS received approximately 150 comment letters or emails regarding the actions, and these comments were considered in refining the analyses in this Final EA. A summary of the key issues raised during the comment period is provided in Chapter 14, and any final rule issued for this action also would present comments and Agency response to comments received during the rulemaking process.

## **2.0 SUMMARY OF THE ALTERNATIVES**

This section describes the NMFS' alternatives for achieving the objectives identified in Section 1.2. Section 2.1 describes the alternatives NMFS developed for consideration of allocation of BFT quota among domestic fishing categories, and Section 2.2 presents alternatives regarding General and Angling category effort controls. For a summary table of the alternatives considered in this EA/RIR/FRFA, see Table 9.

### **2.1 Issue 1: Allocation of BFT quota among domestic fishing categories**

This section describes the three alternatives NMFS developed to analyze allocation of BFT quota among the commercial and recreational domestic fishing categories. The amount of annual quota available is determined by the ICCAT-recommended U.S. baseline BFT quota after consideration of overharvest/underharvest from the previous fishing year and accounting for estimated dead discards of BFT.

In recommendations that applied from 1999 through 2006, ICCAT historically recommended a deduction of 79 mt from the TAC as an allowance for dead discards, and the U.S. portion of this allowance was 68 mt. The 2006 ICCAT recommendation neither included a recommended dead discard allowance nor specified a dead discard reporting methodology for compliance purposes. Nevertheless, the United States must report dead discard estimates to ICCAT annually and account for this mortality as part of the domestic specification calculation process. To be consistent with reports from the United States to the ICCAT Standing Committee on Research and Statistics for stock assessment purposes, NMFS reports dead discards as the estimate generated via extrapolation of pelagic longline vessel logbook tallies by pooled observer data, as warranted. Since dead discard estimates for 2008 are not yet available, the 2007 estimate of 90 mt is used as a proxy. Estimates of dead discards from other gear types and fishing sectors that do not use the pelagic longline vessel logbook are unavailable at this time and thus are not included in this calculation. Use of the 2007 estimate as a proxy is appropriate because it is the best available and most complete information NMFS currently has regarding dead discards, and because no significant change to dead discards is expected for 2008. In accordance with the 2008 ICCAT recommendation, the United States must subtract 90 mt from its allocation of catch that can be retained. Per the ICCAT recommendation, which specifies a U.S. quota that is inclusive of dead discards, and consistent with the BFT quota regulations at 50 CFR 635.27(a), NMFS would subtract the 90 mt of estimated dead discards from the amount of quota available for the Longline category for the 2009 fishing year, regardless of the overall quota and the distribution of quota among categories. Table 2 presents the calculations to determine the 2009 fishing year quotas.

#### **Alternative A1: No action**

Under this alternative, NMFS would not allocate the 2008 ICCAT quota recommendation among domestic fishing categories, defaulting to the quota allocated by the 2006 ICCAT recommendation, previously in effect. The quota allocation scheme established in the Consolidated HMS FMP would be applied to the U.S. baseline quota that has been in effect since 2007. The 2006

ICCAT BFT quota recommendation specified that any overharvest of U.S. quota be subtracted the following fishing year, and that underharvest could be carried forward to the following year but not to exceed 50 percent of the overall quota. Under the current regulations regarding annual quota adjustments, individual quota category carryovers may not exceed 100 percent of their baseline allocations, and the total of the adjusted category quotas and the Reserve must be consistent with ICCAT recommendations, including restrictions on landings of school BFT.

Quota and fishing levels prior to the 2008 ICCAT recommendation serve as baseline conditions for comparison and analytical purposes with the remaining alternatives and other issues. This approach satisfies the NEPA requirement to consider alternatives to an action, including a “No Action” alternative. This alternative would set the baseline quota for the 2009 fishing year at the pre-2008 U.S. quota of 1,190.12 mt. Dead discards would be deducted and the full amount of allowed underharvest from 2008, i.e., 50 percent of the pre-2008 U.S. quota (595 mt) would be added. From the quota rolled forward, 15 percent of the U.S. total BFT quota (178.5 mt) would be added to the baseline amount of Reserve. The total adjusted quota for the 2009 fishing year under this alternative would be 1,695.1 mt. This alternative would be inconsistent with ATCA, the Consolidated HMS FMP, and implementing regulations, which require that quotas be set consistent with ICCAT recommendations.

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

Under the final action, the percentage allocations determined in the Consolidated HMS FMP would be applied to the 2008 ICCAT recommended baseline U.S. BFT quota. The 2008 ICCAT recommendation concerning conservation of western Atlantic BFT reduced the TAC, set to allow for rebuilding of BFT in the western Atlantic through 2018, from 2,100 mt to 1,900 mt for 2009 and 1,800 mt for 2010 (including dead discards). These TACs also are intended to end overfishing by 2010. From these TACs, the following allocations are made: 4 mt for the United Kingdom (in respect of Bermuda), 4 mt for France (in respect of St. Pierre and Miquelon), 95 mt for Mexico (to allow incidental catch in the longline fishery in the Gulf of Mexico), and, for bycatch related to directed longline fisheries in the NED, 15 mt for Canada and 25 mt for the United States. As described in Section 1, the U.S. share of the adjusted TAC is 57.48 percent, or a baseline U.S. quota of 1,009.9 mt for 2009. Accounting for the 25-mt NED allocation, the total U.S. quota is 1,034.9 mt for 2009.

The current ICCAT recommendation allows a contracting party with a TAC allocation (i.e., an ICCAT BFT quota) to make a one-time transfer within a fishing year of up to 15 percent of its TAC allocation to other contracting parties with TAC allocations, consistent with domestic obligations and conservation considerations. The ICCAT recommendation stipulates that the quota transfer may not be used to cover overharvests, and that a contracting party that receives a one-time quota transfer may not retransfer that quota. For the United States, the 15-percent limit on quota transfer equals 155.2 mt. In considering whether or not the United States could enter into an arrangement with another ICCAT contracting party, several factors would need to be taken into account, including, but not limited to, the amount of quota to be transferred, the projected ability of

U.S. vessels to harvest the total U.S. BFT quota before the end of the fishing year, the potential benefits of the transfer to U.S. fishing participants (such as access to the EEZ of the receiving contracting party for the harvest of a designated amount of BFT), potential ecological impacts, and the contracting party's ICCAT compliance status. Analysis of a specific transfer of U.S. BFT quota is not provided in this document. Should NMFS consider a transfer of U.S. quota to another ICCAT contracting party, NMFS would publish a separate action in the Federal Register, which would provide the details of the transaction considered, including information regarding the factors above. As appropriate, additional NEPA analysis would be prepared, if warranted, to analyze any additional action.

Previous ICCAT recommendations specified that the harvest of BFT measuring less than 115 cm (45 inches) not exceed 10 percent over a 4-year balancing period. For the 2006 recommendation, this period was 2007-2010. The 2008 recommendation modified this time period to a two-year period of 2009-2010.

Under this alternative, NMFS would manage the recreational BFT fishery by setting the school BFT (measuring 27 to less than 47 inches) subquota at 10 percent of the total U.S. BFT quota, by making no adjustments to that subquota (i.e., not apply any underharvest to it), and by setting Angling category daily retention limits appropriate for the harvest of the limited amount of school BFT subquota. NMFS may adjust a subsequent year's school BFT subquota as needed to be consistent with the ICCAT recommendation.

Landings estimates (as of January 13, 2009, see Table 1) indicate 2008 underharvests, in all categories, of approximately 700 mt. However, the 2008 ICCAT recommendation limits the amount of underharvest the United States may carry over for 2009 to 50 percent of the 2009 Total U.S. quota (i.e., 517.5 mt).

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

Specifically, NMFS would divide the 517.5 mt of quota carryover such that 155.2 mt (i.e., 15 percent of 1,034.9 mt) is placed in the Reserve category for potential ICCAT transfer purposes or to meet other domestic management objectives. NMFS also would assign a sufficient amount of the quota carryover (82.5 mt) to the Longline category, due to the revised dead discard accounting methodology, so that after accounting for the 90 mt of dead discards, sufficient quota is available to cover the anticipated landings and dead discards of the pelagic longline fishery during the 2009 fishing year. Making available additional landings quota in this manner likely will allow the fishery

to operate for the entire fishing year and avoid discards that could result if the BFT Longline category fishery were closed due to the quota being filled while longline vessels are still fishing for other species. Finally, NMFS would distribute the remainder of the quota carryover (279.8 mt) to the Angling, General, Harpoon, Purse Seine, and Trap categories consistent with FMP allocations. The Longline category baseline quota allocation (currently 8.1 percent of the baseline U.S. BFT quota) may need to be revisited in the future. Any change to the baseline allocation would require an amendment to the Consolidated HMS FMP and appropriate additional analysis under NEPA. The total adjusted quota for the 2009 fishing year under this alternative would be 1,462.4 mt.

As indicated above, the percentage allocations determined in the Consolidated HMS FMP would be applied to the 2008 ICCAT recommended (“baseline”) U.S. BFT quota of 1,009.9 mt. There would be no adjustment to the NED allocation (i.e., it would be 25 mt for the 2009 fishing year). Under this alternative, NMFS would set the harvestable school BFT Angling category subquota to 10 percent of the total U.S. quota (i.e., 103.5 mt), consistent with ICCAT’s recommended 2-year average 10-percent tolerance on harvest of BFT measuring less than 115 cm.

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

Alternative A3 would implement an allocation scheme other than the one established in the Consolidated HMS FMP for the purpose of specifying 2009 fishing year quotas. This alternative would implement the 2008 ICCAT recommendation and allocate the 1,034.9-mt total U.S. BFT quota in a manner other than what is stated in the Consolidated HMS FMP and implementing regulations. Similar to Alternative A2, the total adjusted quota for the 2009 fishing year under this alternative would be 1,462.4 mt.

This alternative could address issues relative to the changing nature of BFT fisheries and BFT distribution. These issues are in part characterized by the growth of a late season General category fishery, ongoing underharvested quota for several commercial categories, and recent full quota use and overharvests by the recreational Angling category. The Consolidated HMS FMP addressed several aspects of the changing BFT fishery and included modification to time period subquotas and authorized gear for use in BFT fisheries, among other things. Further consideration of the information provided by the 2008 BFT stock assessment, international deliberations at, and following the 2008 ICCAT meeting, and observed changes in the recreational fishery (e.g., increasing weight of available fish) may provide further insight into the larger fishery issues raised by this alternative, and could result in future regulatory or FMP amendments. For the purpose of this analysis, modifications to domestic management of BFT outside the limitations of the Consolidated HMS FMP, current ICCAT recommendations, and ATCA do not satisfy the purpose and need for the action; therefore, Alternative A3 was considered, but dismissed and is not analyzed further in this EA.

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

## **2.2 Issue 2: Effort controls**

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

### **2.2.1 General category retention limits**

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

NMFS considered the following three alternatives for General category retention limits for the resumption of the 2009 fishing season. Retention limits in the General category are designated as the number of large medium or giant BFT (73 inches curved fork length (CFL)) that may be retained on board a vessel with a General category Atlantic tunas permit. NMFS intends for this retention limit to go into effect prior to the start of the fishery on June 1, 2009, and to remain in effect until the end of the first General category subperiod on August 31, 2009, or until adjusted before that with an inseason action, if necessary (depending on several factors, including but not limited to catch rates and availability of quota as the year progresses). On September 1, 2009, the default retention limit of one large medium or giant BFT would go into effect, unless adjusted with an inseason action, if warranted based on consideration of certain factors. A three fish retention limit is the maximum General category retention limit allowed by Federal regulations (50 CFR 635.23).

Across all of the alternatives and regardless of the duration of a fishing trip, the daily retention limit applies, per the regulations at 635.23(a)(3). For example, under preferred Alternative B3, whether a vessel that is fishing under the General category limit takes a two-day trip or makes two trips in one day, the limit of three fish overall applies and may not be exceeded. The General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessels permitted in the General category as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

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

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

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

Alternative B2 would establish a General category daily retention limit of two large medium or giant BFT for the June through August 2009 subperiod.

### **Alternative B3: Establish an initial General category daily retention limit of three fish (Preferred Alternative)**

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

### **2.2.3 Angling category retention limits**

Federal regulations at 50 CFR 635.23 allow the establishment and adjustment of Angling category retention limits via inseason actions, and NMFS has used inseason actions in the past for this purpose. However, as was done for 2008, NMFS developed alternatives for the proposed Angling category retention limits in the 2009 fishing year specifications in order to provide more opportunity for public comment on these alternatives and to improve the ability of charter/headboat businesses and recreational anglers to plan for the season in advance. Each of these alternatives balances the following considerations: limited overall Angling category quota compared to fleet size; the ICCAT school BFT landings tolerance limit; the different needs of private angler and charter/headboat sectors of the Angling category; and the varying availability of different size classes during different seasons and various areas of the U.S. Atlantic seaboard. Under each of these alternatives, the retention limit could be adjusted with an inseason action during the fishing year, if warranted; however, for Alternatives C1 and C2, NMFS' intent is to maintain the retention limits as presented in each alternative for the 2009 fishing year. See Table 4 for graphic presentation of the retention limit alternatives.

Across all of the alternatives and regardless of the duration of a fishing trip, the daily retention limit applies, per the regulations at 635.23(a)(3). For example, under preferred Alternative C2, whether a vessel that is fishing under the Angling category limit takes a two-day trip or makes two trips in one day, the limit of two fish overall applies and may not be exceeded.

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

Without an action to adjust the retention limit, the default daily retention limit under current regulations of one school, large school, or small medium BFT (i.e., one fish measuring 27 inches to less than 73 inches) per vessel would go into effect. This alternative was preferred in the Draft EA, but, based on further analysis of potential impacts to the BFT rebuilding program, additional information regarding expected fish availability, the range of public comment received regarding the potential impact of a one-fish daily retention limit, and other considerations, it is not preferred in the Final EA.

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

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

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

This alternative would establish a daily retention limit, for both the charter/headboat and the private sectors of the fishery, of one school BFT (27 to less than 47 inches) per vessel for the entire 2009 fishing year. Additionally, it would allow daily retention of one large school/small medium BFT (47 to less than 73 inches) per vessel for specific periods, i.e., date ranges. For example, NMFS could manage Angling category using the North/South line (39° 18' N. latitude, off Great Egg Inlet, NJ, currently used in dividing the Angling category quota) so that the fishery is open in the southern area for the early summer and for the northern area in the late summer/fall. This approach was used in managing the school BFT fisheries in 2006. This alternative would allow anglers the opportunity to retain a large school/small medium BFT during part or parts of the 2009 fishing season while reducing the risk of overharvest of the large school/small medium BFT adjusted subquota. In the proposed rule, NMFS sought specific suggestions regarding appropriate periods during the 2009 fishing season for retention of the additional one large school/small medium BFT, but no comments were received on this alternative.

### **3.0 DESCRIPTION OF AFFECTED ENVIRONMENT**

This section includes a brief summary of the status of the stocks, fishery participants and gear types, and affected area including habitat and protected species. For a complete description of the biology and status of BFT and the U.S. tuna fishery, including operations, catches, and discards, please see the 2008 HMS Stock Assessment and Fishery Evaluation (SAFE) Report (NMFS 2008), as well as the latest BFT Stock Assessment (SCRS 2008). Also, for information on interactions and concerns with protected species and the Atlantic tuna fisheries, please see Section 4 of the 2008 SAFE Report and the *2004 Final Supplemental Environmental Impact Statement (FSEIS) for a Final Rule to Implement Management Measures to Reduce Bycatch and Bycatch Mortality of Atlantic Sea Turtles in the Atlantic Pelagic Longline Fishery* (NMFS 2004). The action area is the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

#### **3.1 Status of the Stocks**

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

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

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

catches of 2,100 mt (the TAC in effect through 2008) would have a 71-percent chance; and catches of 2,000 mt or lower would have greater than a 75-percent chance of rebuilding. A TAC between 2,000 and 2,100 mt would have a 50-percent probability of ending overfishing by the end of 2010 and a TAC of 1,800 mt increases the probability to 75 percent. If the high recruitment scenario is correct, then the western stock would not rebuild by 2019 even with no catch, although catches of 1,500 mt or less are expected to immediately end overfishing and initiate rebuilding. SCRS also examined an alternative model that excluded the Canadian Gulf of St. Lawrence catch per unit of effort (CPUE) index, noting considerations of possible resource re-distribution, and the observation that the recent high values were difficult to reconcile with other available fisheries data, and could reflect the impact of a single or a limited number of strong year-classes. The levels of catch that lead to rebuilding with that alternative model are lower; 1,800 mt would have about a 50-percent chance and 1,500 mt would have a 75-percent chance.

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

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

### **3.2 Fishery Participants, Gear Types, and Affected Area**

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

U.S. landings of BFT for the 1996-2008 period are provided in Table 6. The historical level of landings has generally been determined by quotas since 1982. Commercial fisheries are focused on large medium (73 inches to less than 81 inches) and giant (81 inches or greater) BFT, while recreational fisheries are focused on large school/small medium BFT (47 inches to less than 73 inches), with allowances for school (27 inches to less than 47 inches), large medium, and giant BFT. Commercial categories are monitored by a census of landing cards, whereas the recreational catch is monitored primarily by survey, although the states of Maryland and North Carolina have implemented recreational census BFT tagging programs as well.

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

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

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

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

BFT migration throughout the Atlantic is the subject of much research and affects the availability of harvest for regional fisheries. Over the last few years, fishermen have noted a substantial decline in the availability of large medium and giant BFT in the New England area. Commercial landings by General category fishermen, Harpoon category fishermen, and Purse Seine category fishermen have also been suppressed relative to the end of the 1990s and early 2000s, resulting in large underharvests of commercial quotas (Table 6). In 2007, purse seine activity for BFT was very low and in 2008, no BFT were landed using this gear type. Conversely, the ratio of landings to quota has been very high for the Angling category, relative to that for other categories, particularly in 2007 and 2008, although time lags in receipt and analyses of survey data, and uncertainty inherent in estimation procedures, mean delayed calculation of final landings estimates.

### **3.3 Habitat**

The area in which this action is planned has been identified as Essential Fish Habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the HMS Management Division of NMFS. Generally, the target species of the HMS fishery management units are associated with hydrographic structures of the water column, e.g., convergence zones or boundary areas between different currents.

### **3.4 Protected Species under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA)**

The Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) Section 7 requires that federal agencies, in consultation with the responsible wildlife agency (specifically, the U.S. Fish and Wildlife Service and NMFS), ensure that proposed actions are not likely to jeopardize the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of a critical habitat (16 U.S.C. 1536 [a][2]). Regulations implementing the ESA require that consultation include those actions that “may affect” a listed species or destroy or adversely modify critical habitat. The ESA is, therefore, the primary Federal legislation governing interactions between fisheries and species whose continued existence is threatened or endangered. Through the Section 7 consultative process, Federal agencies evaluate proposed actions in light of the impacts they could have on these ESA-listed species. In the case of marine fisheries, the NMFS Office of Sustainable Fisheries consults with the NMFS Office of Protected Resources to determine what impacts major fishery management actions will have on endangered populations of marine species and what actions can be taken to reduce or eliminate negative impacts. Under the consultative

process, NMFS issues a Biological Opinion (BiOp) which evaluates expected impacts of the proposed action and, if it is found that the action will not jeopardize listed species under NMFS jurisdiction but may incidentally “take” (take is defined in the ESA as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct) listed species, NMFS BiOp may include an Incidental Take Statement (ITS) which exempts the action from the ESA’s prohibitions on take and specifies terms and conditions which must be met to minimize the take of ESA-listed species. The primary gear types used for directed BFT fisheries are handgear and purse seine gear, which were consulted on under the 2001 BiOp for HMS fisheries. The BiOp determined that operation of these fisheries as proposed is not likely to jeopardize the continued existence of endangered or threatened species, including sea turtles. A 2004 BiOp determined that the continued operation of the pelagic longline fishery as proposed (for which direct BFT fishing is not permitted but for which incidental BFT retention is permitted) is not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp’s ridley, or olive ridley seas turtles, but is likely to jeopardize the continued existence of leatherback sea turtles. Where a jeopardy finding is made, the BiOp may identify Reasonable and Prudent Alternatives (RPAs) that can be implemented and would avoid the likelihood of jeopardy. See Section 4.4 for further discussion of consultations and BiOps issued for HMS Fisheries, including more detail on implementation of the RPAs.

The MMPA(16 U.S.C. 1361 *et seq.*) established, with limited exceptions, a moratorium on the “taking” of marine mammals and is the one of the principal Federal statutes that guide marine mammal species protection and conservation policy. Under MMPA requirements, NMFS produces an annual List of Fisheries that classifies domestic commercial fisheries, by gear type, relative to their rates of incidental mortality or serious injury of marine mammals. The List of Fisheries includes three classifications:

- Category I fisheries are those with frequent serious injury or mortality to marine mammals (e.g., pelagic longline);
- Category II fisheries are those with occasional serious injury or mortality (e.g., shark gillnet); and
- Category III fisheries are those with remote likelihood of serious injury or mortality to marine mammals (e.g., rod and reel, purse seine, harpoon).

Fishermen participating in Category I or II fisheries are required to register under the MMPA and, if selected, to carry an observer aboard their vessels. Vessel owners or operators, or fishermen, in Category I, II, or III fisheries must report all incidental mortalities and injuries of marine mammals during the course of commercial fishing operations to NMFS. Incidental take by recreational fishermen is not authorized (i.e., it is illegal). Thus there is no reporting requirement. At the 2008 meeting, ICCAT adopted the SCRS recommendation to decrease the annual quota of BFT in the western Atlantic Ocean from 2,100 mt to 1,900 mt for 2009 and 1,800 mt for 2010, consistent with the rebuilding program for western Atlantic BFT established in 1998. An 1,800-mt TAC represents a 14-percent reduction from the current level and is intended to end overfishing with a 75-percent probability of success. A new SCRS stock assessment is expected to be conducted in 2010, and the

ICCAT parties holding an allocation of western Atlantic BFT agreed to renegotiate the quota allocations for this stock in 2010. NMFS does require reporting and authorizes takes by charter/headboat fishermen (considered “commercial” by the MMPA). No takes have been reported to NMFS to date.

The purse seine fishery and handgear (hook-and-line and harpoon) fisheries are currently listed as a Category III fisheries under the MMPA. Strict control and operations of these fishing gears means these gear types are not likely to result in mortality or serious injury of marine mammals (or sea turtles, as described above). The pelagic longline fishery is listed as a Category I fishery. As mentioned above, longline gear is known to present potential dangers to listed sea turtles and marine mammals, and the activity of the fishery is regulated by the terms of the BiOp dated June 1, 2004. On June 24, 2008 (73 FR 35623), the Office of Protected Resources published a proposed rule intended to reduce marine mammal takes by pelagic longline vessels in the Atlantic.

Please refer to Sections 3.8 and 3.9.9 of the Consolidated HMS FMP for additional information on potential interactions of Atlantic HMS fisheries with protected species and marine mammals. Sections 3.9.9.1 and 3.9.9.2 specify the 22 cetacean species that are or could be of concern with respect to potential interactions with HMS fisheries.

## **4.0 ENVIRONMENTAL CONSEQUENCES OF ANALYZED ALTERNATIVES**

The impacts of alternatives identified in Section 2 are discussed separately in the following subsections by issue and in the context of the relevant Magnuson-Stevens Act National Standards and the objectives of the Consolidated HMS FMP. The economic impacts of each alternative are briefly summarized in the following sections, and are described more fully in Sections 6, 7 (RIR), and 8 (IRFA).

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

#### Ecological Impacts

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

Consistent with the 2006 ICCAT recommendation, Alternative A1 also would allocate a 25 mt set-aside of BFT to the Longline North subcategory “in the vicinity of the management area boundary” (i.e., the NED). As BFT caught and landed under this quota would be caught incidentally to directed pelagic longline fisheries on other species, there would not be any additional mortality or ecological impacts to the BFT stock from this alternative. There would be no additional impacts to other species as this alternative would not significantly alter existing fishing patterns or effort of pelagic longline vessels. NMFS would monitor and manage the pelagic longline fishery in this area, and account for the 25 mt, in concert with the ongoing Atlantic tuna dealer reporting mechanisms that are already in place. Per the regulations implementing the Consolidated HMS FMP, regardless of the amount of the NED set-aside harvested or used in a given year, the balance returns to 25 mt at the start of each fishing year, i.e., underharvest of the 2008 NED allocation is not carried forward to the allocation for the 2009 fishing year.

Alternative A2, the preferred alternative for Issue 1, would result in long term positive impacts to BFT stocks because it is consistent with the ICCAT BFT rebuilding plan and with NMFS’ efforts to end BFT overfishing within 2 years. The lower quota contained in Alternative A2 would have more positive ecological impacts on BFT than the quota implemented for 2007 and 2008 (under Alternative A1), and would be consistent with the Consolidated HMS FMP, ATCA, and the 2008 ICCAT recommendation. The 2008 ICCAT recommendation and these proposed quota specifications comprise a step in a longer-term stock rebuilding program designed to stabilize fishing

pressure and allow the stock to rebuild to higher levels. Beginning with the 2004 fishing year, the amount of the U.S. quota underharvest has been large, and the implications of continued underharvests on stock have been considered by ICCAT and NMFS. In its 2008 BFT recommendation, ICCAT specified that after 2010 (i.e., effective for the 2011 fishing year), carryforward of underharvest shall not exceed 10 percent of the total U.S. quota.

The decrease in quota available under Alternative A2 may result in a slight decrease in negative impacts to other nontarget species as a result of a potential slight decrease in fishing effort for handgear and purse seine fisheries; however, the amount of quota decrease is not expected to significantly alter existing fishing patterns. NMFS does not expect a decrease in participation in open access BFT fisheries, or a decrease in effort for either open or limited access BFT fishermen that are already participants. Bycatch in HMS fisheries for both HMS and non-HMS species was addressed in Section 3.8.3 of Consolidated HMS FMP, and is not repeated here in detail. In summary, bycatch impacts are expected to be minimal from the harpoon fishery because the target is identified as a BFT with reasonable certainty before the harpoon is thrown. NMFS' analysis of bycatch in the purse seine fishery has found dead discards to be limited to tunas; however, ratios of discards to harvested tuna are not available. Some bycatch estimates for recreational HMS fisheries have been recorded by the Large Pelagic Survey (NMFS 1999); however, the sample size has not been large enough to expand data to annual estimates, and the data collected are from all HMS fisheries, not just BFT fisheries. That being said, the species that were discarded dead most frequently according to these data were BFT and skipjack tuna. Data for General category fisheries have not been collected, but discards are expected to be similar to recreational HMS fisheries since the same gear is employed in both fisheries. BFT are caught incidentally by the pelagic longline fishery, and are allowed to be retained if within the tolerance limits of set amounts of target catches. In addition, Alternative A2 is not expected to increase adverse impacts to marine mammals or to ESA-listed species beyond those previously analyzed in the 2001 and 2004 BiOps (see Section 4.5). Bycatch of non-target species is expected to be lower for Alternative A2 than Alternative A1 because of the decreased quota available under A2.

As discussed in Section 2.1, the ICCAT BFT TAC recommendations include dead discards, and as such, the United States must deduct its reported discards from the 2009 total U.S. BFT quota. In its recommendations that applied from 1999 through 2006, ICCAT recommended a deduction of 79 mt from the TAC as an allowance for dead discards, and the U.S. portion of this allowance was 68 mt. The 2006 ICCAT recommendation included neither a recommended dead discard allowance, nor specified a dead discard reporting methodology for compliance purposes. To be consistent with reports from the United States to the ICCAT Standing Committee on Research and Statistics for stock assessment purposes, NMFS reports dead discards as the estimate generated via extrapolation of pelagic longline vessel logbook tallies by pooled observer data; for 2007, the estimate is approximately 90 mt. These specifications also use this estimate. Use of the 2007 estimate as a proxy is appropriate because it is the best available and most complete information NMFS currently has regarding dead discards, and because no significant change to dead discards is expected for 2008. Estimates of dead discards from other gear types and fishing sectors that do not use the pelagic longline vessel logbook are unavailable at this time and thus are not included in this calculation. Per the ICCAT recommendation, which specifies a U.S. quota that is inclusive of dead discards, and

consistent with how NMFS has managed past incidents of dead discards exceeding the allowance, NMFS would deduct the 90 mt of estimated dead discards from the amount of quota available for the Longline category for the 2009 fishing year.

Table 2 presents the calculations to determine the 2009 fishing year quotas under the preferred alternative. The carryover of 517.5 mt of unused BFT quota from 2008 is consistent with the ICCAT recommendation. Given the anticipated quota needs of the Longline category for the 2009 fishing year (i.e., for both landings and discards, which must be accounted for), the preferred alternative is intended to provide sufficient quota (via allocation of some of the 2008 underharvest) to the Longline category to cover the anticipated landings and dead discards of the pelagic longline fishery during the 2009 fishing year, and avoid discards that could result if the BFT Longline category fishery were closed due to the quota being filled while longline vessels are still fishing for other species. Again, no additional effort or change in commercial or longline-specific fishing pattern is expected.

Consistent with the 2008 ICCAT recommendation, Alternative A2 also would allocate a 25 mt set-aside of BFT to the Longline North subcategory “in the vicinity of the management area boundary” (i.e., the NED). As BFT caught and landed under this quota would be caught incidentally to directed pelagic longline fisheries on other species, there would not be any additional mortality or ecological impacts to the BFT stock from this alternative. There would be no additional impacts to other species as this alternative would not significantly alter existing fishing patterns or effort of pelagic longline vessels. NMFS would monitor and manage the pelagic longline fishery in this area, and account for the 25 mt, in concert with the ongoing Atlantic tuna dealer reporting mechanisms that are already in place. Per the regulations implementing the Consolidated HMS FMP, regardless of the amount of the NED set-aside harvested or used in a given year, the balance returns to 25 mt at the start of each fishing year, i.e., underharvest of the 2008 NED allocation is not carried forward to the allocation for the 2009 fishing year.

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

### Economic and Social Impacts

Alternative A1 would not significantly alter current economic impacts to the United States and to local economies relative to the distribution and scale of those implemented in the last several years, although the larger amount of quota available would provide greater fishing opportunities and thus, greater positive short-term impacts than Alternative A2, depending on the availability of BFT to the fishery.

Alternative A2 would have slightly negative short-term economic impacts to the United States and local economies compared to alternative A1 because of the decrease in quota. However, negative short-term economic impacts from alternative A2 would be distributed among the recreational and commercial sectors and, and are expected to mirror the distribution of the quota allocation in percentages set forth in the Consolidated HMS FMP. Potential socio-economic impacts from this alternative would depend upon the ability of the fishery to harvest the quota. In 2008, approximately 52 percent of the overall available quota was harvested, resulting in an underharvest of 704 mt. Per the 2008 ICCAT recommendation, only 50 percent of the total U.S. quota, or 517.5 mt, of that underharvest will be carried over to the 2009 fishing year, and the opportunity to harvest the remaining 186.5 mt of underharvest has been lost. In the long term, positive socio-economic impacts would be expected as the fishery begins to rebuild.

In Alternatives A1 and A2, the 25 mt set-aside for BFT incidentally caught pursuant to pelagic longline fishing operations in the NED would slightly offset the negative impacts on the pelagic longline sector of the fleet. The set-aside cannot be transferred to other quota categories as it is specifically for bycatch related to directed longline fisheries. There could be negative short-term social and economic impacts among other fishery sectors if they are closed upon achieving their quota and are unable to access available BFT quota, via inseason transfers, from the NED set-aside.

Adding a substantial portion of the carryover to the Longline category quota is intended to ensure that the Longline category quota is not exceeded during the course of normal fishery operations. For Alternative A2, the Longline portion of the baseline quota is 81.8 mt, and information NMFS maintains from dealers, logbooks, and the observer program suggests that combined landings and dead discards could total 150 mt or more. Because NMFS must deduct estimated dead discards from the overall quota available each fishing year, and because NMFS intends to account for dead discards against the quota category to which the discards are attributed (the Longline category), reallocation of the carryover among all categories (described in Section 2.1 and presented in Table 2) would minimize the potential negative short-term social and economic impacts to pelagic longline fishermen.

Under Alternative A2, the 10-percent tolerance limit on BFT measuring less than 115 cm over a 2-year period is not expected to have any negative social or economic impacts itself to fishermen who fish for school size class BFT. However, because the U.S. total quota is reduced, the maximum amount of school BFT that may be taken is also reduced. Based on the U.S. total quotas for 2009 (1,034.9 mt) and 2010 (952.4 mt), school BFT landings would need to be limited to an average of 103.5 mt and 95.2 mt, respectively (i.e., 99.4 mt over the next two years). This represents a 20-mt (16 percent) reduction from the 2007-2008 average tolerance limit of 119 mt. NMFS has aimed to not exceed the school BFT tolerance on an *annual* basis, even when the balancing period was 4 years, so that drastic reductions are not needed in the last year of the balancing period. This is particularly important given that complete information regarding coastwide recreational BFT landings is not available until the end of the calendar year. NMFS plans to continue this management approach under the 2-year tolerance limit.

Conclusion

Alternative A2 is the preferred alternative as it is consistent with the Consolidated HMS FMP, ATCA, the BFT stock rebuilding timeframe and other Magnuson-Stevens Act requirements, and the 2008 ICCAT recommendation. Ecological impacts between the two analyzed alternatives are similar. Reducing the baseline quota and capping the carryover of underharvest has the potential to decrease BFT fishing effort, which would result in slightly lower impacts to other nontarget species. Overall, short-term economic and social impacts to fishermen may be negative for Alternative A2, particularly for Angling category participants as the recreational sector has been able to achieve its subquota over the last two years, although actual impacts will largely be attributable to the availability of BFT and ability of fishery participants to harvest the quota. In addition, the negative social and economic impacts of exceeding the TAC designed to rebuild the BFT fishery are reduced and, in the long term, may be positive for fishermen as the fishery begins to rebuild. Under each of the alternatives considered, there may be slight differences in the level of economic and social impacts experienced by the specific individuals of the BFT fishery, as well as by participants within a particular fishery sector.

## **4.2 Issue 2: Effort controls**

### Ecological Impacts

All of the effort control alternatives, including the no-action, in both the General and Angling (handgear) categories are designed to have positive economic and social impacts overall. The only potential ecological impacts would be related to BFT mortality. However, daily retention limits affect only when and where BFT mortality occurs, and not the magnitude. The magnitude of mortality has been defined by finite quotas established under a 20-year rebuilding plan for BFT (analyzed in the 1999 HMS FMP EIS), and other recommendations by ICCAT. The regulation of effort helps achieve optimum yield by considering the social and economic interests of the participants. The limited nature of these effort controls is therefore unlikely to have any differential impacts on the life history or overall biological distribution of the western Atlantic BFT stock. However, it is possible that if too many effort controls are implemented, effort may shift to other species or the pace of the fishery could be slowed. Alternatively, if not enough effort controls are implemented, the General and/or Angling category quotas could be met rapidly and these fisheries would close prematurely. Fishermen may then turn to other stocks to target, particularly other HMS species, with corresponding impacts to other elements of the ecosystem. Neither of these scenarios is expected to result from the alternatives considered here, because the proposed effort controls are moderate in nature and can be adjusted during the BFT season by inseason actions, which would fall within the scope of the Consolidated HMS FMP EIS.

## Economic and Social Impacts

*General Category Daily Retention Limits* – The preferred alternative (Alternative B3) would establish a three fish daily retention limit per vessel from the start of the General category fishing season through the first quota subperiod, which will end August 31, 2009 (the early season). This alternative is expected to result in positive socio-economic impacts by providing the best opportunity to harvest the quota while avoiding oversupplying the market. Although a three fish retention limit resulted in an oversupply of the market and depressed ex-vessel prices for product in October 2003 (Table 10), landings at the beginning of the season (i.e., June-July) are usually much lower than in the fall months, and therefore oversupply is considered unlikely. Additionally, since 2004, commercial landings of large medium and giant BFT have fallen well short of adjusted quotas. In 2008, approximately 42 percent of the baseline and 31 percent of the adjusted General category quota was landed. NMFS will continue to monitor landings closely and be prepared to reduce the retention limit if landings rates are higher than expected. Relative to the preferred alternative, both the no action alternative (Alternative B1) and alternative B2 would provide lower retention limits, which may unnecessarily restrict the General category harvest and result in negative socio-economic impacts, including reduced gross revenues.

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

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

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

Alternative C1, the no-action alternative for Angling category retention limits, would maintain the current default daily retention limit (in effect since January 1, 2009) of one school, large school, or small medium BFT (i.e., one fish measuring 27 inches to less than 73 inches) per vessel. This was the preferred alternative in the draft EA, but is not preferred in the final EA. Although this alternative is the most restrictive of the three and would have short-term negative economic impacts relative to the 2008 fishing season, it is the one most likely to constrain landings to the adjusted quota, thereby providing the socio-economic benefit of full use of the adjusted Angling category quota without exceeding the quota. NMFS manages the BFT subquotas so that they are not exceeded both to adhere to the current FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (e.g., fish caught at each age) that was assumed in the latest BFT stock status projections; deviation from this pattern could result in delays to stock rebuilding. As described for Alternative A2, long-term positive socio-economic impacts are expected as the fishery rebuilds. Alternative C1 would provide consistent daily retention limits throughout the fishing season, providing a positive social benefit of equity among anglers over the geographic range of the fishery, and providing a reliable schedule to facilitate planning for vessels fishing under the Angling category, including charter vessels.

Alternative C2 (one fish measuring 27 inches to less than 47 inches and one fish measuring 47 inches to less than 73 inches per vessel ) would provide the same Angling category daily retention limit as implemented for 2008 and is the most liberal in scope of the three analyzed alternatives. This alternative was not preferred in the draft EA but, after further consideration of anticipated school BFT landings in 2009, impacts to the rebuilding program, the needs of the fishery, public comments, and management objectives, is preferred in the final EA. In the draft EA, NMFS indicated that Alternative C2 was the alternative most likely to result in overharvesting the specific Angling category quota and subquotas, particularly because of potential landings (in weight) of large school/small medium BFT. Based on available Large Pelagic Survey (LPS) landings estimates and weight data of sampled BFT, NMFS anticipated that, to not exceed the adjusted 2009 large school/small medium subquota, the number of fish of this size class taken in 2009 needs to be

reduced by more than 50 percent. NMFS cautioned in the draft EA that implementing the same daily retention limit as implemented for 2008 may risk exceeding the adjusted subquota for this size class (149.1 mt) as data indicate that individual fish weight for these BFT will be higher in 2009 than in 2008.

Since publication of the draft EA, NMFS has further considered the recreational daily retention limit after taking additional information and several issues into consideration. First, NMFS has held internal and public discussions about the expected availability of school BFT to the fishery in 2009. After hearing from fishermen and reviewing catch size frequency data, NMFS predicts that 2009 landings will be similar to those in 2008 (which were 54.6 mt out of an adjusted 2008 quota of 119 mt). Thus, there is less concern than during preparation of the draft EA that the school BFT (27 to less than 47 inches) subquota for 2009 would be exceeded under Alternative C2. Second, NMFS has examined Alternative C2 in the context of stock rebuilding and has determined that a daily retention limit of one fish measuring 27 inches to less than 47 inches and one fish measuring 47 inches to less than 73 inches per vessel is likely to result in a pattern of fishing mortality (e.g., fish caught at each age) consistent with the one used in the last stock assessment. Thus, this recreational fishery retention limit would be consistent with the assumptions used in the latest BFT stock status projections, and would not be expected to affect the rebuilding timeframe.

Third, NMFS has received extensive public comment (at the February 2009 HMS Advisory Panel meeting, public hearings, and written comments on the proposed rule and Draft EA) regarding the potential impact of a one-fish daily retention limit on the charter sector. Many commenters participate in the HMS Charter/Headboat fishery and maintain that it is difficult for captains to attract customers with a daily limit of only one BFT and that loss of charter bookings would have a negative economic impact on their business and other shoreside businesses in coastal communities. Some suggest using the Reserve to cover any recreational overharvests. Lastly, landings over the last several years have been far below the total U.S. quota, and NMFS has not needed to make use of the Reserve, which is available for a variety of quota management purposes, including transfer to any quota category inseason or at the end of a fishing year. For 2009, there are over 180 mt available in the Reserve and NMFS does not currently intend or plan to make use of the ICCAT transfer provision to transfer BFT quota to another ICCAT Contracting Party in 2009. Therefore, NMFS has the flexibility to allocate some or all of the Reserve quota to the Angling category quota at the end of the year, if needed and as available, to cover potential overharvest of the Angling category quota.

However, it is important that NMFS consider closely the results of the 2009 fishing year, i.e., available landings information and the retention limits implemented for the 2009 recreational fishery, when selecting the proposed 2010 daily retention limit. The school BFT daily retention limit for 2010 will need to be set such that the United States is consistent with the ICCAT-recommended 2-year tolerance limit for BFT less than 115 cm over the 2009-2010 period.

Like Alternative C1, Alternative C2 would provide consistent daily retention limits throughout the fishing season, providing a positive social benefit of equity among anglers over the geographic range of the fishery. Socio-economic impacts of Alternative C2 are expected to be positive relative to Alternative C1 (particularly for certain sectors of the recreational fishery that rely

solely on school BFT) and Alternative C3. Alternative C2 may allow sufficient quota to be harvested to offset the cost of fishing trips, provide incentive for booking charters, and harvest an amount of quota that would provide a positive economic impact.

Alternative C3 (one fish measuring 27 inches to less than 47 inches and, for certain periods, one fish measuring 47 inches to less than 73 inches per vessel ) would be designed to constrain large school/small medium BFT landings to the available subquota and would be more restrictive with regard to retention of this size class than Alternative C2. Thus, this alternative would be more likely to constrain overall recreational landings to the Angling category quota than would Alternative C2. In the draft EA and proposed rule, NMFS sought specific suggestions regarding appropriate periods during the 2009 fishing season for retention of the additional one large school/small medium BFT, but did not receive any comments on that alternative. Because certain time periods will provide some geographic locations better fishing opportunities than others, there would likely be differential social benefits depending on fishing location. There would also be social and administrative negative impacts associated with NMFS needing to issue reminder notices during the season and with confusion regarding daily retention limits potentially leading to non-compliance.

Regardless of the alternative selected, announcing the retention limit for the entire season is expected to have positive socio-economic impacts for charter/headboats since booking clients for charters may be affected by the ability of a charter/headboat business to advertise assurance of specific effort controls such as open seasons and adequate retention limits in advance of the fishery.

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

## Conclusion

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

NMFS has summarized comments received on the Angling category daily retention limit in Section 14. NMFS has considered these comments, many of which also were made at the February 2009 HMS AP meeting, in the preparation of this final EA. Responding to this public comment and following consideration of other fishery management concerns, NMFS has reconsidered the proposed action to limit the Angling category daily retention limit to one BFT measuring 27 inches to less than 73 inches per vessel and instead prefers Alternative C2, which would establish the Angling category daily retention limit at one BFT measuring 27 inches to less than 47 inches and one BFT measuring 47 inches to less than 73 inches per vessel.

The preferred alternative is expected to have short-term positive socio-economic impacts relative to Alternative C1 (the no action alternative) and Alternative C3, but may have longer-term negative socio-economic impacts if the Angling category quota and subquotas are overharvested, because reductions could potentially be needed in 2010. NMFS retains the flexibility to make use of the Reserve to minimize the likelihood that future Angling category quotas (specifically the large school/small medium BFT subquota) would need to be reduced due to 2009 recreational fishery overharvest. Based on current projections and analyses, NMFS does not anticipate an overharvest of the school BFT subquota. In addition, this alternative will provide the positive social impact of perceived equality between recreational and charter/headboat vessels.

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

#### **4.3 Impacts on Essential Fish Habitat**

The Magnuson-Stevens Act established a program to promote the protection of EFH in the review of projects conducted by Federal agencies, or under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat. After the Secretary has identified EFH, Federal agencies are obligated to consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any EFH. In the Consolidated HMS FMP FEIS Record of Decision, NMFS concluded that there is no evidence that physical effects caused by fishing for HMS are adversely affecting EFH to the extent that detrimental effects can be identified on the habitat of fisheries. That analysis is incorporated by reference for the purposes of this EA. Because this action also would not significantly alter fishing gears or practices, it is anticipated that it would not have any adverse impacts to EFH, and the conclusion for the Consolidated HMS FMP is still applicable, so further consultation is not necessary.

#### **4.4 Impacts on Protected Species**

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under Section 7 of the ESA. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. This BiOp also concluded that the continued operation of the purse seine and handgear fisheries may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. NMFS has implemented the reasonable and prudent alternatives (RPAs) required by this BiOp.

Subsequently, based on the management measures in several proposed rules, a new BiOp on the Atlantic pelagic longline fishery was issued on June 1, 2004. The 2004 BiOp found that the continued operation of the fishery was not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. The 2004 BiOp identified RPAs necessary to avoid jeopardizing leatherbacks, and listed the reasonable and prudent measures (RPMs) and terms and conditions necessary to authorize continued take as part of the revised incidental take statement. On July 6, 2004, NMFS published a final rule (69 FR 40734) implementing additional sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with pelagic longline gear onboard. NMFS is implementing the other RPMs in compliance with the 2004 BiOp. NMFS will undertake additional rulemaking and non-regulatory actions, as required, to implement any management measures that are required to continue to manage the fisheries consistent with the 2004 BiOp.

Section 3.9.9.1 of the Consolidated HMS FMP lists the 22 marine mammal species that are or could be of concern with respect to potential interactions with HMS fisheries. Section 3.9.9.2 discusses interactions and the Endangered Species Act, including six endangered whale species. A summary of marine mammal interactions in the pelagic longline fishery from 1992 through 2005 is provided in Section 3.4.1.2 of the Consolidated HMS FMP and in the 2008 SAFE Report. On June 24, 2008 (73 FR 35623), the Office of Protected Resources published a proposed rule intended to reduce takes of pilot whales and Risso's dolphins by pelagic longline vessels in the Atlantic.

Relative to the 2006 ICCAT recommendation, the 2008 ICCAT recommendation decreased the total U.S. BFT quota by 155.2 mt; therefore, a reduction in overall effort relative to the level at the most recent consultation could be expected. The measures in these quota specifications and effort controls, including the allocation of 25 mt to the Longline category for the northeast distant area (for incidental BFT catch only), are not expected to significantly alter current fishing practices or increase fishing effort, would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or substantially alter current fishing practices or bycatch mortality rates. Therefore the final action in this EA/RIR/FRFA should not have adverse impacts on protected species, or have any further impacts on endangered species, marine mammals, or critical habitat beyond those considered in the 2001 and 2004 BiOps and in the Consolidated HMS FMP. Thus, no further consultation is necessary.

#### **4.5 Environmental Justice Concerns**

Executive Order (E.O.) 12898 requires that Federal agencies address environmental justice in the decision-making process. In particular, the environmental effects of Federal actions should not have a disproportionate effect on minority and low-income communities. This action would not have any effects on human health nor is it expected to have any disproportionate social or economic effects on minority and low-income communities. Any social or economic impacts are expected to be slightly positive in the long-term, and are anticipated to affect the fishing sectors and communities equally. This is anticipated because the proposed action implements a lower baseline U.S. quota and limits the amount of underharvested quota that may be carried forward, but also relieves restrictions and provides economic opportunities.

#### **4.6 Coastal Zone Management Act (CZMA) Concerns**

NMFS has determined that the regulations in this action are consistent to the maximum extent practicable with the enforceable policies of those coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have approved coastal zone management programs. Letters were sent to those states requesting their concurrence. The following states have concurred with the consistency determination: New Hampshire, Rhode Island, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, Alabama, and Mississippi. The remaining states did not respond; therefore, based on the time elapsed since the request for concurrence, consistency is inferred.

#### **4.7 Comparison of Alternatives**

Table 9 summarizes the determinations made above regarding ecological, social and economic impacts of all the alternatives considered, organized and subdivided by issue. A brief summary of the legal and administrative issues is also provided. As set forth above, no Environmental Justice (EJ) or CZMA issues were identified.

#### **4.8 Cumulative Impacts**

Since 1999, management actions pertaining to BFT have had minor positive ecological impacts by continuing to limit BFT mortality by U.S. fishermen in accordance with the strict quota limits set by ICCAT. The 1999 FMP adopted ICCAT's 20-year stock rebuilding program for western Atlantic BFT, which includes, among other things, authority for NMFS to implement ICCAT's BFT quota allocation on a yearly basis through a framework procedure. The FEIS for the Consolidated HMS FMP (NMFS 2006a) concluded that the cumulative long-term impact of the final implementing actions, including the ICCAT BFT rebuilding program and annual quota allocation process, would be to establish sustainable fisheries for Atlantic HMS. These 2009 BFT specifications would be consistent with the Consolidated HMS FMP and with rulemaking completed in 2003 that modified the target catch requirements for pelagic longline vessels to retain incidentally caught BFT (68 FR 32414, May 30, 2003), and a regulatory amendment to address aspects of the commercial BFT fishery, including start and end dates for the various fishing categories, in particular extending the General category through January (68 FR 74504, December 24, 2003). This action would be consistent with the publication, on July 6, 2004 (69 FR 40733), of a Final Supplemental EIS for a final rule to implement management measures to reduce bycatch and bycatch mortality of Atlantic sea turtles in the Atlantic pelagic longline fishery (NMFS 2004). Finally, this action is also consistent with a regulatory amendment that added green-stick gear, which is used primarily to catch Atlantic yellowfin tuna, to the list of authorized fishing gears for use in the Atlantic tuna fisheries (73 FR 54721, September 23, 2008)

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

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

The actions considered in this EA/RIR/FRFA, regarding implementation of the 2008 ICCAT recommendation regarding quota allocations and designation of effort controls are expected to have slightly negative social and economic impacts (due to the baseline quota reduction from the previous ICCAT recommendation). The measures in this action are not expected to change current fishing practices or increase fishing effort, and therefore should not cause biological impacts not previously considered in the 2001 and 2004 Biological Opinions and addressed in the Consolidated HMS FMP FEIS. Therefore, the cumulative effects analyses presented in the HMS FMP EIS, as supported by the cumulative effects analysis in the 2001 BiOp and 2004 BiOps, is hereby incorporated by reference.

NMFS' goal for HMS management has been to provide sustainable harvests that will provide the greatest economic benefits to the largest number of individuals. While certain actions have resulted in negative socio-economic impacts, all of the past, present, and reasonably foreseeable future actions are expected to ensure the long-term sustainability and continued economic viability of U.S. Atlantic HMS fisheries consistent with applicable law. Thus, NMFS considers that this action is consistent with past and current actions, and anticipates that it also will be consistent with future actions with no substantial adverse, cumulative impacts on the environment from the proposed measures.

## **5.0 MITIGATION AND UNAVOIDABLE ADVERSE IMPACT**

### **5.1 Mitigating Measures**

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

The ICCAT-recommended decrease in TAC is intended to have long-term positive ecological benefits and eliminate overfishing by 2010. However, the shortened time period over which the school BFT tolerance applies may have negative short-term direct, indirect, and cumulative economic and social impacts to certain sectors of the BFT fishery. Impacts to commercial handgear fishermen in south Atlantic winter fishery would be mitigated by the General category time period subquotas established in the Consolidated HMS FMP, which are designed to ensure General category quota is available late into the winter season. Implementing a consistent Angling category daily retention limit would mitigate impacts to recreational fishermen as the opportunity to retain a BFT would be spread throughout the fishing season.

### **5.2 Unavoidable Adverse Impacts**

Although the alternatives analyzed herein would result in a decrease in base quota, it is consistent with the ICCAT BFT rebuilding plan, the Consolidated HMS FMP, ATCA, and the Magnuson-Stevens Act. NMFS does not expect a change in current fishing patterns or an increase in fishing effort as compared to pre-2008 levels. The proposed action to allocate additional BFT quota to the Longline category for the NED would not alter current impacts on threatened or endangered species which have been previously analyzed in the 2001 and 2004 Biological Opinions. The action would not significantly modify fishing behavior or gear type, nor would it expand fishing effort because BFT are only allowed to be retained incidentally. Thus, the proposed action analyzed in this EA/RIR/FRFA would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or substantially alter current fishing practices or bycatch mortality rates. Therefore, no unavoidable adverse impacts are expected to result from this action.

### **5.3 Irreversible and Irretrievable Commitment of Resources**

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

## **6.0 ECONOMIC EVALUATION**

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

### **6.1 Prices and Markets**

Over the past two and a half decades, the ex-vessel average price of BFT in the United States has increased substantially, from roughly \$0.20 per pound up to nearly \$9.00 per pound round weight in the late 1990s. This increase over time is largely attributed to increased demand for fresh BFT in Japan, the principal consumer of U.S. BFT. The role of the Japanese market, and of quality and market structure considerations in the determination of BFT prices, is discussed in great detail in the Consolidated HMS FMP and is not repeated here. Many factors, including the yen/dollar exchange rate, market supply and demand, and fish quality may affect ex-vessel prices. Table 10 gives the average ex-vessel price of BFT per year for each category.

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

### **6.2 Ex-vessel Gross Revenues**

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

Before drawing conclusions on trends in gross revenues, it should be emphasized that this discussion focuses on gross revenues only, and not net revenues. Currently, only selected longline sector vessels are required to report cost-earnings data. Given the lack of cost information, it is difficult to draw conclusions concerning net revenues (or profits) to bluefin tuna fishermen. Individual vessels may have experienced an increase in net revenue even with lower gross revenues

reported for their fishing category. For example, an owner may have been forced to perform major repairs on a vessel in 2008, or could have landed fish in a month when market conditions were relatively poor. Thus, trends in gross revenues can only indicate the average trends in gross income and the effect on fishermen's net revenues if their costs remained relatively steady over the period examined. The Consolidated HMS FMP highlights the need for further social and economic studies of HMS industries and fishing communities to assist in the calculation of adequate cost information. The more frequently and thoroughly this can be conducted, the better the estimates of the current net revenues.

In a common property fishery, commercial fishermen individually act to maximize profits. Without clearly defined and enforceable property rights for fish in the sea, fishing effort levels expand until the rents (net revenue in excess of a normal return) generated by the fishery are dissipated. That is, fishermen enter the fishery until the last fisherman is just earning a normal return. This open-access equilibrium results in excess fishing effort directed at the fish stock. Stock sizes may well decline below the optimal level, and biological as well as economic overfishing may occur.

The imposition of a TAC may maintain harvest at levels below that which is sustainable by the BFT stock. If the TAC is designed to rebuild the stock and is not exceeded, the stock size increases. This increase in stock size causes catch per unit effort to increase. Total net revenues in the fishery increase and positive economic rents are generated. Without limited access, these rents will attract new entrants and the length of the fishing season will decline. In short, a race for fish or "derby" is continued. In the derby fishery, the most productive gear types will harvest the greater percentage of the TAC. For BFT, setting quotas by gear type eliminates the cross-gear race for the fish, although derby fishing conditions continue within the gear category.

Even if stocks improve as a result of restrictive quotas and rebuilding plans, derby fishery conditions continue. Society bears the costs of increased capital investment in the BFT fishery, increased idle capacity, and possibly a poorer quality product. In addition, short run supply overages in local markets can result in declines in ex-vessel price as dealers reach the limits of their storage capacity. Also, in the case of BFT which receives higher prices when marketed fresh on the Japanese market, further declines in ex-vessel prices may result because fresh inventory cannot be diverted to a frozen market without decreases in quality and price. To the extent that dealers might have to handle sudden increases in supply due to seasonal availability of BFT, processors may have to invest in refrigeration equipment to store supplies until markets can absorb the excess. After the season ends, this excess storage capacity may remain unused. Processors may also have to hire additional laborers during the season who are laid off after the landings season ends. This seasonal employment may have to be augmented by unemployment compensation and social welfare programs. However, insufficient information exists with which to estimate the magnitude of this problem.

Alternative management measures could improve net benefits in the BFT fishery. A control date was implemented on September 1, 1994, and limited access workshops were commenced to consider management regulations that create quasi-property rights in the fishery. The 1996 final rule established freely transferable purse seine quota, in whole or in part, among the seiners. Future amendments to the Consolidated HMS FMP may consider individual transferable quotas for the

General and/or Harpoon category fisheries. Even without additional limited access management in the U.S. fishery, restrictive quotas set internationally by ICCAT, as part of the ICCAT Rebuilding Plan recommended in 1998, as modified, should conserve the BFT stock and allow for its recovery.

### **6.3 Angling and Charter Boat Revenues**

NMFS has taken several steps to define and distinguish commercial, recreational, and charter/headboat fishermen. In 1992, a final rule prohibited the sale of BFT under 73 inches (57 FR 32905, July 24, 1992). A separate rulemaking (62 FR 30741, June 5, 1997) prohibited persons aboard vessels permitted in the General category from retaining BFT less than the large medium size class. Until 2002, anglers in the General category were allowed to land and sell a BFT 73 inches or above and recreationally fish on other HMS species. In fact, the large number of permit holders in the General category used to be explained by the purchase of permits by recreational anglers "in case" they land a commercial size BFT. However, in December 2002, a final rule required recreational vessels that do not sell their catch to obtain an HMS Angling category permit (67 FR 77434, December 18, 2002). A minor exemption was made in a final rule published on December 24, 2003 (68 FR 74504), which allows vessels that are permitted in the General category to participate in recreational HMS fisheries, so long as they are a participant in a registered HMS tournament, thus acknowledging their historical participation in HMS tournaments. These actions effectively separated the commercial and recreational fisheries and left the HMS Charter/Headboat category as the one permit under which both recreational and commercial HMS activities could take place, at any time, given the inherent dual nature of charter/headboat vessel operations. The same final rule that separated the commercial and recreational handgear operations in the tuna fishery also clarified and defined when HMS charter/headboat operations would be considered to be fishing under commercial and/or recreational regulations.

Given the prohibition on the sale of BFT under 73 inches in length, any direct income associated with the Angling category is limited to charter/headboat vessel operations. As with the commercial fishing categories, the ideal analysis would include calculation of costs and revenues to charter vessels such that producer surplus could be estimated. The economic importance of the recreational fisheries for Atlantic tunas is not limited to charter vessel producer surplus, however, nor does it necessarily depend upon the value of the landings which are sold, but rather the participants' willingness to pay for recreational fishing. These non-market values are difficult to estimate, and are collected via either direct questioning (contingent valuation) or indirect survey techniques such as the travel cost method, as a basis for estimating demand (and thus consumer surplus) for recreational fishing.

Indirect income is also an important factor in understanding the economic impact of recreational fisheries to regional economies. This type of income could include shoreside facilities, marinas, gas, and fishing tackle expenditures. The economic value of the recreational Atlantic tuna fisheries, including non-market benefits, should thus be kept in mind when examining the gross revenue figures from other categories, despite the difficulty in attaching a dollar value to recreational fisheries.

The 1999 FMP estimated that in 1997 there were approximately 6,612 charterboat trips targeting BFT from Maine to North Carolina. Of these trips, 2,527 targeted commercial-sized BFT. A survey of daily charter rates advertised by Atlantic HMS Charter/Headboat permit holders which was included in the Consolidated HMS FMP estimated that the average rate for an all day trip in 2004 was \$1,053. Assuming that the total number of trips in 2004 were the same as 1997, and applying the 2004 average to the total number of trips from 1997 results in a rough estimate of gross revenues for BFT charters in 2004 of about \$7.0 million. These estimated direct revenues exceeded the total gross revenues of all other commercial BFT categories combined for 2005 through 2008 (Table 12), and could be an underestimate of revenues accruing to charterboats because some of the BFT landed are probably sold (only large mediums and giants after the 1992 rule). Additionally, tips which are typically given to the mate (about \$100 per trip) are not included. The producer surplus component of the value of the recreational fishery would thus be these gross revenues minus costs incurred in providing the charterboat services. Charter/headboat cost information has not been updated since preparation of the 1999 FMP, in which variable costs were estimated at \$392 per trip. Producer surplus for operations targeting BFT was estimated at \$408 per trip (\$800 - \$392).

According to the 1999 FMP, preliminary estimates of angler consumer surplus in the private BFT fishery were \$1,132 per fishing trip. It should be emphasized that these net revenues would be only a part of the value of the recreational fishery, since angler consumer surplus is another important component as well. Angler consumer surplus is generated from charter/headboat vessel services as well as from private vessel participation in the recreational fisheries.

#### **6.4 Bluefin Tuna Fishery Participation**

A complete description of participation rates in the BFT fishery is provided in the Consolidated HMS FMP and the 2008 SAFE Report and is not repeated here. However, Table 7 provides a summary of patterns of fishing activities and Table 5 indicates the number of vessels permitted during the 2008 fishing season, by category, to participate in the BFT fishery.

#### **6.5 Bluefin Tuna Processing and Export**

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

## **6.6 Expected Economic Impacts of the Alternatives**

Below is a brief summary of the expected economic impact of each alternative grouped by issue as set forth in Sections 2 and 4 above.

### **6.6.1 Allocation of BFT among Domestic Fishing Categories**

Under the no action alternative, fishery participants would experience positive economic impacts on a scale similar to 2007 or 2008 if all other factors remain constant (e.g., number of participants, ex-vessel values, catch rates, etc.). Potentially, overall gross revenues to the fishery could approximate those realized in 2007 and 2008 (Table 12). However, because there is variability in quota each fishing year due to the amount carried forward from the previous fishing year, the amount of available quota would likely not remain consistent with the level of a previous specific fishing year. Availability of BFT to the fisheries also would influence realized revenues. The alternative would not significantly alter ex-vessel prices or costs or change economic benefits accrued at a level from 2007 or 2008.

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

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

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

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

### **6.6.2 Effort Controls**

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

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

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

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

## General Category Daily Retention Limits

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

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

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

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

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

### **Angling Category Daily Retention Limits**

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

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

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

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

Alternative C1 would establish a one fish retention limit per vessel. It would be the most likely to overly restrict Angling category landings and result in a negative economic impact, since the quota might be underharvested. However, this alternative best balances the considerations of maximizing the opportunity to harvest the Angling category quota without overharvesting it, and providing the greatest economic benefits to the widest temporal and spatial range of participants. Thus, this alternative, which was preferred alternative in the draft EA/RIR/IRFA, is expected to be most reliable in distributing maximum economic benefits throughout the range of the fishery. Alternative C3 also has the potential to overly restrict vessels by limiting them to one fish for a portion of the season and two fish for certain date ranges. Conversely, Alternative C2 (the preferred alternative in the final action) would be most likely to result in negative economic impacts of allowing an overharvest of the Angling category quota since this alternative provides the most liberal retention limits for Angling category vessels. Because of the overharvest of 2007 and 2008 Angling category quota, the reduction in quota, and particularly because of the apparent increasing average weight of fish taken in the large school/small medium size range, NMFS felt it necessary to propose a conservative recreational daily retention limit that would effect a substantial reduction in the number of large school/small medium BFT landed in 2009. Additional information has helped NMFS develop more specific analyses showing that the Angling category did not have to be as restricted as originally assumed. As described in Section 4.2, it is important that NMFS constrain landings to BFT subquotas both to adhere to the current FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (e.g., fish caught at each age) that was assumed in the projections of stock rebuilding. However, after further consideration, NMFS now prefers Alternative C2. NMFS' consideration of the issue included: internal and public discussions about the expected relatively low availability of school BFT to the fishery in 2009 (similar to 2008 levels), potential impacts to the rebuilding program, the fact that the 2009 U.S. adjusted quota overall is nearly double the total 2008 landings, and the availability of approximately 180 mt in the Reserve for allocation to the Angling category quota at the end of the year, if needed to cover potential overharvest of the Angling category quota, and the range of public comment received regarding the potential impact of a one-fish daily retention limit. NMFS believes that the implementation of Alternative C2 would not adversely impact the BFT fishery or the stock rebuilding timeframe.

NMFS will consider the results of the 2009 fishing year, i.e., available landings information and the retention limits implemented for the 2009 recreational fishery, when selecting the proposed 2010 Angling category daily retention limits or preparing future inseason actions. The school BFT daily retention limit for 2010 will need to be set such that the United States is consistent with the ICCAT-recommended 2-year tolerance limit for BFT less than 115 cm over the 2009-2010 period.

## **7.0 REGULATORY IMPACT REVIEW**

This section assesses the economic impacts of the alternatives presented in this document. The RIR is conducted to comply with E.O. 12866 and provides analyses of the economic benefits and costs of each alternative to the nation and the fishery as a whole. Certain elements required in an RIR are also required as part of an EA. Thus, this section should be considered only part of the RIR, the rest of the RIR can be found throughout this document.

### **7.1 Description of the Management Objectives**

Please see Section 1 for a description of the objectives of this rulemaking.

### **7.2 Description of the Fishery**

Please see Section 3 for a description of fishery and environment that could be affected by this rulemaking.

### **7.3 Statement of the Problem**

Please see Section 1 for a description of the problem and need for this rulemaking.

### **7.4 Description of Each Alternative**

Please see Section 2 for a summary of each alternative and Section 4 for a complete description of each alternative and its expected ecological, social, and economic impacts.

### **7.5 Economic Analysis of Expected Effects of Each Alternative Relative to the Baseline**

NMFS does not foresee that the national net benefits and costs would change significantly in the long term as a result of implementation of the proposed action. The total amount of BFT landed and available for sale under the proposed action is expected to provide slight net positive economic impacts, particularly over the long-term, from fishing at a level that is expected to allow for rebuilding of the stock by 2018. Table 13 indicates the possible net economic benefits and costs of each alternative. The Western Atlantic BFT fishery TAC will be renegotiated in 2010.

### **7.6 Conclusion**

Under E.O. 12866, a regulation is a "significant regulatory action" if it is likely to: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights, and obligation of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in the Executive Order. The action described in this EA/RIR/FRFA does not meet the above criteria. For example, the economic impacts as reflected in this proposed rule are under the \$100 million threshold. This action raises no novel or legal policy issues as it sets fishing year BFT quotas for all domestic fishing categories consistent with international and domestic law and policy and establishes General and Angling category effort controls in accordance with the processes established in the Consolidated HMS FMP, and is not expected to result in any inconsistency with other agency actions. Therefore, under E.O. 12866, the final action described in this document has been determined to be not significant for the purposes of E.O. 12866. A summary of the expected net economic benefits and costs of each alternative can be found in Table 13.

## **8.0 FINAL REGULATORY FLEXIBILITY ANALYSIS**

The Final Regulatory Flexibility Analysis (FRFA) is conducted to comply with the Regulatory Flexibility Act (5 USC 601 et. seq.) and provides a description of the economic impacts of the various alternatives on small entities. Certain elements required in a FRFA are also required as part of an EA. Therefore, the FRFA incorporates the economic impacts identified in the EA.

### **8.1 Statement of the Need for, Objectives of, and Legal Basis for this Final Rule**

See Section 1 for a description of the need for, objectives of, and legal basis for this action.

### **8.2 A Summary of the Significant Issues Raised by the Public Comments 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 as a Result of Such Comments**

NMFS received numerous comments on the proposed quota specifications and effort controls (74 FR 7577, February 18, 2009) during the comment period. A summary of these comments and the Agency's responses are included in Section 14 and are included in the final rule. NMFS received one comment specifically on the IRFA. The commenter wrote that NMFS should establish a separate quota allocation for the charter sector and suggested that NMFS should better quantify the positive economic impact of the charter sector in the BFT fishery. Establishment of a new quota category would involve an FMP amendment and is therefore outside the scope of this rulemaking.

### **8.3 Description and Estimate of the Number of Small Entities to Which the Final Rule Will Apply**

This final action would apply to all participants in the Atlantic BFT fishery, all of which are considered small entities. As shown in Table 5, there are nearly 43,000 vessels that held an Atlantic HMS Charter/Headboat, Atlantic HMS Angling, or an Atlantic tunas permit as of December 31, 2008. These permitted vessels consist of commercial, recreational, and charter vessels as well as headboats.

### **8.4 Description of the Projected Reporting, Record-Keeping, and other Compliance Requirements of the Final Rule, Including an Estimate of the Classes of Small Entities which will be Subject to the Requirements of the Report or Record**

The final action does not contain any new collection of information, reporting, record keeping, or other compliance requirements.

## **8.5 Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and the Reason That Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect Small Entities Was Rejected**

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

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

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

The FRFA assesses the impacts of the various alternatives on the vessels that participate in the BFT fisheries, many of which are considered small entities. In order to do this, NMFS has estimated the average impact that the alternative to establish the 2009 BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories. As mentioned above, the 2008 ICCAT recommendation reduced the U.S. BFT quota to 1,034.9 mt. This quota allocation includes 25 mt to account for incidental catch of BFT related to directed longline fisheries in the NED. This action would distribute the adjusted (baseline) quota of 1,009.9 mt to the domestic fishing categories based on the allocation percentages established in the Consolidated HMS FMP.

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

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

As noted above, Alternative A2 would implement the 2008 ICCAT recommendation in accordance with the Consolidated HMS FMP and consistent with ATCA, under which the United States is obligated to implement ICCAT-approved quota recommendations, as necessary and appropriate. The preferred alternative would implement this quota and have slightly positive impacts for fishermen. The no action alternative would keep the quota at pre-2008 ICCAT recommendation levels (approximately 155 mt more) and would not be consistent with the purpose and need for this action and the Consolidated HMS FMP. It would maintain economic impacts to the United States and to local economies at a distribution and scale similar to 2008 or recent prior years, and would provide fishermen additional fishing opportunities, subject to the availability of BFT to the fishery, in the short term. In the long term, however, as stock rebuilding is delayed, negative impacts would result.

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

The proposed three fish daily retention limit (measuring 73 inches or greater) per vessel is the preferred alternative for the opening retention limit for the General category, which would be in effect June 1-August 31, 2009. It is expected to result in the most positive socio-economic impacts by providing the best opportunity to harvest the quota while avoiding oversupplying the market, thus maximizing gross revenues. Other considered alternatives were the no action alternative (one BFT 73 inches or greater per vessel) and a retention limit of two BFT (73 inches or greater) per vessel. Both of these alternatives are expected to be too restrictive given the large amount of quota available for the General category during the 2009 fishing year and could result in the negative economic

impact of lower gross revenues. Although early season landings seldom occur at a rate that could oversupply the market, NMFS will monitor landings closely to ensure that the increased retention limit does not contribute to an oversupply.

Three alternatives were considered for Angling category retention limits for the 2009 fishing year. Alternative C1, which was preferred in the draft EA/RIR/IRFA and is the no action alternative (C1) is a daily retention limit of one fish measuring 27 inches to less than 73 inches per vessel for all sectors of the Angling category for the entire 2009 fishing year. The other alternative that would provide a constant daily retention limit is Alternative C2 (one fish measuring 27 inches to less than 47 inches and one fish measuring 47 inches to less than 73 inches per vessel ). This alternative was not preferred in the draft EA/RIR/IRFA as it was then anticipated to result in overharvest of the quota (specifically the large school/small medium BFT subquota), based on the results of the 2008 season and the apparent trend in increasing fish weight in the large school/small medium BFT size range. Additional information has helped NMFS develop more specific analyses showing that the Angling category did not have to be as restricted as originally assumed. Alternative C3 (one fish measuring 27 inches to less than 47 inches and, for certain periods, one fish measuring 47 inches to less than 73 inches per vessel) would be designed to constrain large school/small medium BFT landings to the available subquota and would be more restrictive with regard to retention of this size class than Alternative C2. However, this was not the preferred alternative in the draft EA/RIR/IRFA as it was not then considered to be sufficiently restrictive to constrain the recreational landings to the adjusted large school/small medium BFT subquota and as it may not provide consistent and equitable fishing opportunities to all users. Although NMFS requested specific public comments on Alternative C3, none were received.

After considering additional fishery information, public comment, and other management objectives, NMFS has selected Alternative C2 as the preferred alternative. NMFS has the flexibility to allocate some or all of the Reserve quota to the Angling category quota at the end of the year, if needed and as available, to cover potential overharvest of the Angling category quota. Such use of the Reserve would minimize the likelihood that future Angling category quotas (specifically the large school/small medium BFT subquota) would need to be reduced due to 2009 recreational fishery overharvest. Based on current projections and analyses, NMFS does not anticipate an overharvest of the school BFT subquota.

## 9.0 COMMUNITY PROFILES

Section 102(2)(a) of the National Environmental Policy Act (NEPA) requires Federal agencies to consider the interactions of natural and human environments by using “a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences . . . in planning and decision-making.” Federal agencies should address the aesthetic, historic, cultural, economic, social, or health effects which may be direct, indirect, or cumulative. The Magnuson-Stevens Act also requires, among other matters, consideration of social impacts. Consideration of the social impacts associated with fishery management measures is a growing concern as fisheries experience variable participation and/or declines in stocks.

Profiles for the following communities were included in Chapter 9 of the Consolidated HMS FMP and updated in the 2008 SAFE Report. These communities are analyzed for social impacts in this action due to the importance of BFT fishing to the community: Gloucester, MA; New Bedford, MA; Barnegat Light and Brielle/Point Pleasant, NJ; Hatteras, NC; Wanchese, NC; and Venice and Dulac, LA.

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

## **10.0 OTHER CONSIDERATIONS**

### **10.1 Magnuson-Stevens Act**

The analyses in this document are consistent with the National Standards (NS) under the Magnuson Stevens Act, as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act, and as set forth in the 50 CFR part 600 NS Guidelines.

This action is consistent with NS 1 in that it would prevent the overfishing of BFT and maintain the western Atlantic BFT rebuilding schedule recommended by ICCAT. Because the action is based on the results of the 2008 ICCAT recommendation, it is based on the best scientific information available (NS 2), including stock assessment data which provide for the management of these species throughout their ranges (NS 3).

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

### **10.2 Paperwork Reduction Act**

This action contains no new collection-of-information requirements subject to the Paperwork Reduction Act.

### **10.3 E. O. 13132**

This action does not contain regulatory provisions with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 13132.

## **11.0 LIST OF PREPARERS**

This EA/RIR/FRFA was prepared by Sarah McLaughlin, Brad McHale, Mark Murray-Brown, and Margo Schulze-Haugen from the HMS Management Division, Office of Sustainable Fisheries. Please contact the HMS Management Division, Northeast Regional Office, for a complete copy of current regulations for the Atlantic tunas fisheries.

Highly Migratory Species Management Division  
NMFS -Northeast Regional Office  
55 Great Republic Drive  
Gloucester, MA 01930  
phone: (978) 281-9260 fax: (978) 281-9340

## **12.0 LIST OF AGENCIES AND PERSONS CONSULTED**

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

### **13.0 REFERENCES**

- NMFS. 1999. Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks. Highly Migratory Species Management Division, Silver Spring, MD.
- NMFS. 2004. Final Supplemental Environmental Impact Statement for a Final Rule to Implement Management Measures to Reduce Bycatch and Bycatch Mortality of Atlantic Sea Turtles in the Atlantic Pelagic Longline Fishery. June 1, 2004.
- NMFS. 2006 a. Final Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis for a Final Rule on 2006 Final Initial Atlantic Bluefin Tuna Quota Specifications, General Category Effort Controls, and Catch and Release Provision. U.S. Department of Commerce, National Marine Fisheries Service, Silver Spring, MD.
- NMFS. 2006 b. Final Consolidated Atlantic HMS FMP. HMS Management Division, NMFS, Silver Spring, MD.
- NMFS. 2008. Stock Assessment and Fishery Evaluation (SAFE) Report for Atlantic HMS Species. HMS Management Division, NMFS, Silver Spring, MD.
- SCRS. 2008. Report on the Standing Committee on Research and Statistics, ICCAT Standing Committee on Research and Statistics, September 29-October 3, 2008.

## 14.0 PUBLIC COMMENT AND AGENCY RESPONSES

Over 150 written comments were received, and oral comments were received from many of the approximately 140 participants who attended public hearings in Gloucester, MA, and Silver Spring, MD. In addition to the comments received specifically on the proposed quota specifications and effort controls for the General and Angling categories, as summarized below, NMFS received comments on additional issues that are beyond the scope of the rulemaking for this action. At the February 2009 HMS Advisory Panel meeting and throughout the comment period for this action, numerous commenters requested that NMFS change or eliminate what they perceive as unnecessarily restrictive BFT fishing restrictions (given the low rate of landings in the past few years) so that 2009 BFT landings can be maximized. Many of these comments reflect concerns about potential future reductions in U.S. BFT quota due to low landings. These comments state that maximizing landings in 2009 will help show that the United States is capable of landing its quota, and that this is the *only* way to prevent loss of U.S. quota when BFT allocations are renegotiated at the 2010 ICCAT meeting. However, some of these comments also reflect a misunderstanding of the ICCAT quota allocation process, i.e., western Atlantic BFT quota cannot be transferred to eastern Atlantic BFT ICCAT Contracting Parties. These comments are summarized under “Other Issues” below.

### A. BFT Quotas

Comment 1: NMFS received few comments *specifically* on the quota specifications. Some commenters support the action as proposed because it is consistent with the BFT rebuilding program, and some continue to express concern that halfway through the rebuilding period, spawning biomass is below what it was at the beginning of the rebuilding period. Two environmental groups state that the proposed rule is inconsistent with the regulations regarding application of overharvest and underharvest (e.g., the amounts applied to the quota categories for 2009 are not equal to the amounts underharvested by those categories in 2008) and deductions are not made for the quota categories that exceeded their subquotas. One specifies that the Longline category quota should be zero after accounting for dead discards.

Response: The specifications included in this rule reflect appropriate distribution of the underharvest allowed to be carried forward for the 2009 fishing year. Deductions are not made and are not required to be made for subquota categories that are exceeded where quota is available to cover such overharvest. Flexibility in quota distribution provides for several existing and potential management needs, namely: (1) ensuring that the Longline category has sufficient quota to operate during the 2009 fishing year while also accounting for BFT discards as required by ICCAT; (2) setting 15 percent of the 2009 U.S. quota in reserve for potential transfer to other ICCAT Contracting Parties, if warranted; and (3) providing the non-Longline quota categories a share of the remainder of the underharvest consistent with the Consolidated HMS FMP allocation scheme. Further, the regulations regarding determination criteria and annual adjustment of the BFT quota at §§ 635.27(a)(8) and 635.27(a)(10) allow NMFS to transfer quotas among categories based on several criteria (such as a review of landing trends, the projected ability of the vessels fishing under a particular category quota to harvest the additional amount of BFT before the end of the fishing year, the estimated amounts by which quotas for other categories might be exceeded, the effects of the

adjustment on accomplishing the objectives of the fishery management plan, etc.). This provides NMFS the flexibility to apply the underharvest to the overall quota for the following fishing year, and distribute the underharvest as needed, provided that the total of the adjusted category quotas and the Reserve is consistent with the ICCAT recommendation.

Comment 2: Many commenters, including fishermen, academics, and environmental organizations, oppose the concept of a U.S. quota transfer to another ICCAT-contracting party for two main reasons. The first reason given by these commenters is that such action could set the stage for future permanent quota allocation reductions at ICCAT. The second reason suggested is that loss of U.S. quota could have negative stock impacts because other Contracting Parties implement less restrictive fishing measures, tend to catch the larger sized BFT, and/or take a high proportion of western origin BFT in their fisheries. Thus, it would be better for the stock if the quota were caught by U.S. vessels than vessels from less restrictive Contracting Parties. Some commenters misunderstood and assumed that the proposed rule actually *proposed* such a transfer as part of the proposed action. An industry representative suggests that NMFS fully allocate the underharvest carried forward from 2008 to the quota categories rather than holding a portion in the Reserve for potential transfer. Some commenters suggest that NMFS maintain the 155.2 mt that NMFS proposed to be held in Reserve for ICCAT transfer purposes and other domestic management purposes and instead use it specifically for covering potential Angling category overharvest (i.e., potential overharvest of the large school/small medium BFT subquota).

Response: NMFS did *not* propose any specific quota transfer in the proposed rule, but proposed setting aside 155.2 mt of underharvest carried forward from 2008 in the Reserve category for *potential* transfer to other ICCAT contracting parties, if warranted, and for other domestic management objectives.

NMFS does not currently intend or plan to make use of the ICCAT transfer provision to transfer BFT quota to another ICCAT Contracting Party in 2009. As indicated in the proposed rule, the 2008 ICCAT recommendation allows the United States to transfer up to 15 percent of the total U.S. quota, consistent with domestic obligations and conservation considerations. Before considering a possible quota transfer, the United States, through NMFS, would evaluate several factors, including the amount of quota proposed to be transferred, the projected ability of U.S. vessels to harvest the total U.S. BFT quota before the end of the fishing year, the potential benefits of the transfer to U.S. fishing participants, potential ecological impacts, and the contracting party's ICCAT compliance status. The United States would need to explore and analyze these factors prior to transferring quota through a separate action. In the proposed rule, NMFS proposed placing 155.2 mt (15 percent of the total U.S. quota) in the Reserve so that, *if* the United States were to approve a transfer, the quota could be from the Reserve and not from category-specific quotas.

Because of the ICCAT-recommended limit on quota carryover and given the recent trend of substantial U.S. quota underharvest, distribution of 155.2 mt of carryover to individual quota categories in the final action would not result in substantially greater future fishing opportunities or effects on the fishery than holding that amount in Reserve. Further, as indicated above, the regulations allow NMFS to transfer quotas among categories based on the determination criteria.

Under the preferred alternative, there would be over 180 mt available in the Reserve. Therefore, should a situation arise in which a BFT domestic quota transfer from the Reserve to a quota category is needed to avoid exceeding that category's quota, NMFS could take action as appropriate, e.g., allocate some or all of the 180 mt of Reserve quota to the Angling category quota at the end of the year, if needed and as available, to cover potential overharvest of the Angling category quota.

NMFS understands the concerns regarding the potential impact of other ICCAT Contracting Parties' fishing activities on the BFT stock, specifically the concern that a greater proportion of those fish targeted and caught by other western Atlantic BFT Contracting Parties would be western origin (spawned) BFT than would result from U.S. fishing activities, given research showing a greater degree of mixed-origin (western Atlantic and eastern Atlantic/Mediterranean) BFT off the U.S. mid-Atlantic coast. Thus, as it is neither to the U.S. fishery's nor the BFT stock's benefit to transfer quota to another ICCAT Contracting Party, the United States currently has no plans to do so.

## B. General Category Effort Controls

Comment 1: The specific comments NMFS received on the proposed General category daily retention limit included support for the proposed three-fish limit and request for a reduction to a two-fish limit to speed stock recovery. As summarized below, NMFS received numerous comments seeking that NMFS help maximize commercial landings within the commercial quota, particularly the General category quota. Many commenters stated that it is not necessary for NMFS to maintain a maximum daily retention limit (3 fish under current regulations), but to instead use inseason authority to set the daily retention limit as appropriate given available quota. Several commenters felt that NMFS should not loosen any restrictions because that could slow stock recovery.

Response: The existing regulations allow NMFS to adjust the General category retention limit of large medium and giant BFT over a range of zero (on restricted-fishing days, which are not applicable for 2009) to three. Given the low early season harvest rate in recent years, NMFS is setting the June through August retention limit at three BFT to allow General category fishermen the maximum harvest of BFT possible under current regulations while keeping within the quota of the first General category subperiod. Stock recovery would be unaffected by this action.

## C. Angling Category Effort Controls

Comment 1: Some commenters, including several environmental organizations, support a proposed Angling category daily retention limit of one school, large school, or small medium BFT (i.e., one fish measuring 27- < 73 inches) per vessel (the current default limit) so that the ICCAT-recommended limit on school BFT is not exceeded and the Angling category quota overall is not exceeded, as it was in 2007 and 2008. However, the majority of commenters oppose this limit in the proposed action and request that NMFS maintain the 2008 daily retention limit of one school BFT (measuring 27- < 47 inches) plus one large school/small medium BFT (measuring 47- < 73 inches). Many commenters participate in the HMS Charter/Headboat fishery and maintain that it is extremely difficult to attract customers with a daily limit of only one BFT and that loss of charter bookings would have a negative economic impact on their business and other shoreside businesses in coastal

communities. As above, some suggest using the Reserve to cover any recreational overharvests.

Response: Since publication of the draft EA, NMFS has reconsidered the recreational daily retention limit, taking several issues into consideration, including the extensive public comment received at the February 2009 HMS Advisory Panel meeting, public hearings, and in writing. NMFS understands the concern of captains that that it is extremely difficult for captains to book charter trips when clients feel that only one person per vessel per day/trip would be able to retain a BFT, and that a reduction in charter trips would economically impact not only the charter business but also potentially the support businesses in the surrounding coastal communities.

Following recent NMFS consideration of the following issues, NMFS has identified Alternative C2 (one BFT measuring 27-<47 inches and one BFT measuring 47-<73 inches) as the preferred alternative:

- (1) Public comment requests for NMFS to maintain the 2008 daily retention limit;
- (2) Expected school BFT landings in 2009 (relatively low, similar to the 2008 level, which was about half of the available quota);
- (3) Landings over the last several years have been far below the total U.S. quota, and NMFS has not needed to make use of the Reserve, which is available for a variety of quota management purposes, including transfer to any quota category inseason or at the end of a fishing year. There would be over 180 mt in the Reserve, which NMFS may allocate to the Angling category quota at the end of the year, if needed and as available, to cover potential overharvest of the Angling category quota; and
- (4) Internal discussion of the impact of a one school BFT and one large school/small medium BFT daily retention limit on potential stock rebuilding . NMFS maintains that the retention limit under Alternative C2 is likely to result in a pattern of fishing mortality (e.g., fish caught at each age), consistent with the one used in the last stock assessment due to low availability of school BFT. Thus it would be consistent with the assumptions used in the latest BFT stock status projections, and would not be expected to affect the rebuilding timeframe.

NMFS will need to consider closely the results of the 2009 fishing year (i.e., available landings information and the retention limits implemented for the 2009 recreational fishery) when selecting the 2010 daily retention limit. The school BFT daily retention limit for 2010 will need to be set such that the United States is consistent with the ICCAT-recommended 2-year tolerance limit for BFT less than 115 cm over the 2009-2010 period.

Comment 2: One commenter suggested that NMFS eliminate the large medium and giant (“trophy”) BFT fishery, i.e., the annual Angling category limit per vessel of one BFT measuring greater than 73 inches per year.

Response: NMFS does not believe that elimination of the trophy BFT fishery as part of the final action to set 2009 BFT quota specifications and effort controls is warranted. The subquota for recreational large medium and giant BFT has not been met in recent years. NMFS believes this comment was made in the spirit of sacrificing the ability to retain an annual trophy fish to gain a second fish on a daily basis. As above, the preferred alternative is a two-fish daily recreational

retention limit.

#### D. Other issues

The majority of comments NMFS received during the comment period requested that NMFS modify the existing regulations to improve the chances that the U.S. BFT quota can be achieved. Many comments stated it is critical to increase 2009 BFT landings because 2009 landings information will be considered at the ICCAT meeting in 2010, when BFT quotas are scheduled to be renegotiated. Similar to the concerns regarding any direct transfer from the United States to other ICCAT Contracting Parties, some comments asserted that loss of U.S. quota would have negative stock impacts, due to how and where these other Parties may fish. Specific suggestions for regulatory changes made at the HMS Advisory Panel meeting, at the public hearings, and in written comments include:

##### *General category*

- Increase the General category maximum daily retention limit (currently three BFT greater than 73 inches) or eliminate it and instead manage the General category fishery through daily retention limits set by inseason action.  
A related comment was to allow the daily retention limit to apply for *each* day of a multi-day trip.
- Extend the General category season.  
Some commenters specify that the General category season should be closed when the January subquota (adjusted with underharvest from the prior year) is filled, and some indicate it should remain open year-round.

##### *Harpoon category*

- Eliminate the two large medium BFT restriction on Harpoon category vessels.

##### *General and Harpoon category*

- Decrease the commercial minimum size for BFT.  
Most comments requested a reduction from the current 73-inch minimum size to a 65-inch minimum size, although others suggest a size between 65 and 73 inches (e.g., 66 inches or 68 inches). Some also specify that only one of these smaller than 73-inch BFT be allowed per day in addition to some amount of BFT greater than 73 inches. For instance, one fish 65 to less than 73 inches plus unlimited (or maximum allowed under inseason daily retention limit) BFT greater than 73 inches per day.
- In combination with the decrease in commercial minimum size, reallocate quota within the applicable category in a “conservation neutral” way so as not to impact stock rebuilding.

##### *Longline category*

- Increase the Longline incidental BFT retention trip limits.  
Those requesting this change indicated the action would reduce regulatory discard of commercial-sized BFT and would provide greater economic incentive for Longline vessel operators to make pelagic longline trips for swordfish or other tunas, specifically contributing to the revitalization of

the swordfish fishery. The specific limits suggested are: two BFT landed provided that at least 3,000 lb of non-BFT species are caught, retained, and offloaded on the same trip; 3 BFT for at least 6,000 lb; 4 BFT for at least 9,000 lb; and 5 BFT for at least 12,000 lb.

*Charter/Headboat category*

- Allow HMS Charter/Headboats to fish both commercially and recreationally on the same day.
- Allow harpoon use on HMS Charter/Headboat vessels.

*Angling category*

- Implement a census program in which every recreational fish is tagged so that NMFS does not have to depend on a statistical survey landings estimate.

*BFT Quotas*

- If the Purse Seine category quota is not obtained by September 15 and effort is not current, reallocate that quota to the Angling, General, and Harpoon categories.
- Reallocate the quotas to allow a separate Charter/Headboat category quota.

In response, some commenters urge NMFS not to relax the regulations in these manners, particularly reduction of the minimum size, as these actions could have detrimental impacts on stock rebuilding. Some commenters urge NMFS to adopt more stringent regulations in order to provide more conservative protections for the fishery. Several environmental groups caution against loosening restrictions on the pelagic longline fishery. One comment in particular requested that NMFS reinstate target catch requirements in the Northeast Distant water gear restricted area. There was also a suggestion to increase the Atlantic Tunas and HMS permit fees to increase funds available for enforcement of the regulations.

Response: The suggestions listed above are beyond the scope of the rulemaking and NEPA analysis for this action. However, NMFS plans to publish an Advanced Notice of Proposed Rulemaking (ANPR) simultaneous with publication of this final rule or shortly thereafter in the Federal Register. The ANPR would be intended to analyze potential approaches to addressing concerns voiced by constituents during this comment period, consistent with the rulemaking process, Magnuson-Stevens Act requirements to end overfishing by the end of 2010 and rebuild the stock by 2019, ATCA, and other applicable law.

## 15.0 TABLES AND FIGURES

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

Category	Adjusted Quota	Landings
General	740	230
Harpoon	61.2	22
Longline	72.3	82
Trap	1.6	2
Purse Seine	292.2	0
Angling	309.5	437
<b>Total</b>	<b>1476.8</b>	<b>773</b>

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

Commercial landings information is from the NERO dealer report database.

For the Angling category, landings were estimated using LPS information and reported trophy BFT landings.

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

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

(1) The distribution of 517.5 mt of underharvest (per ICCAT recommendation) to the quota categories is consistent with FMP allocations, after considerations as calculated below for the Longline category and the Reserve.

(2) Adjustment to Longline category quota is intended to provide sufficient quota for the 2009 fishing year.

Longline category quota=81.8-90.0+82.5=74.3. Dead discard deduction consistent with § 635.27(a)(10).

(3) 25 mt to account for bycatch of BFT in directed longline fisheries in the NED. Not included in total baseline allocation, which is allocated according to the category percentages contained in the Consolidated HMS FMP.

(4) Allocation of 15% of the U.S. quota (155.2 mt) to the Reserve for potential ICCAT transfer and other domestic management objectives.

(5) Totals are subject to rounding error.

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

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

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

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

The 2008 Fishing year landings figures (calculated as of January 13, 2009) were estimated using LPS information and reported trophy BFT landings.

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

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

\* Preferred alternative for final action

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

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

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

Data Source: Atlantic HMS/Tunas Permit Database

**Table 6: BFT landings (metric tons) by year and category, 1996 to 2008.**

<b>Category</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
<b>General</b>	575	679	706	714	725	933	898	595	344	234	160	122	230
<b>Harpoon</b>	58	53	60	59	53	68	41	53	30	23	22	12	22
<b>Purse Seine</b>	245	250	248	247	275	196	208	265	32	178	4	28	0
<b>No. Longline</b>	21	20	23	17	12	8	8	25	34	29	28	26	48
<b>So. Longline</b>	43	27	24	51	51	28	48	69	58	28	38	9	34
<b>Trap</b>	1	2	1	0	0	0	0	0	0	0	0	0	2
<b>Angling</b>	362	299	184	100	50	241	619	392	355	199	187	507	437
<b>Total</b>	<b>1,305</b>	<b>1,330</b>	<b>1,246</b>	<b>1,188</b>	<b>1,166</b>	<b>1,484</b>	<b>1,822</b>	<b>1,399</b>	<b>853</b>	<b>691</b>	<b>439</b>	<b>704</b>	<b>773</b>

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

Data for the 2008 fishing year are as of January 13, 2009. Commercial landings information is from the NERO dealer report database. For the Angling category, landings were estimated using LPS information and reported trophy BFT landings.

**Table 7. Summary of patterns of fishing activities directed at BFT in the United States**

<b>Gear</b>	<b>Area</b>	<b>Size of fish</b>	<b>Season</b>
Handline, Harpoon, and Rod and Reel	Cape Cod Bay and Gulf of Maine	Giant	<i>June-November</i>
		Medium	<i>August-October</i>
		School	<i>Summer (unpredictable)</i>
	Cape Lookout to Cape Cod	School	<i>June-October</i>
		Medium	<i>June-October</i>
		Large Medium and Giant	<i>December-March</i>
	Gulf of Mexico	Giant	<i>January-June</i>
Purse Seine	Cape Hatteras to Cape Cod	Large Medium and Giant	<i>July-October</i>
	Cape Cod Bay	Large Medium and Giant	<i>July-October</i>

**Table 8: General category landings of BFT before and after November 15, 1996-2008.**

Year	Before November 15		November 15 and After	
	Metric Tons	Percentage of Total	Metric Tons	Percentage of Total
<b>2008</b>	207.4	90	23.3	10
<b>2007</b>	100.6	77	30.6	33
<b>2006</b>	105.7	66	55	34
<b>2005</b>	166.1	71	67.7	29
<b>2004</b>	251.0	73	93.2	27
<b>2003</b>	486.9	82	108.1	18
<b>2002</b>	824.7	92	73.2	8
<b>2001</b>	894.8	96	38.1	4
<b>2000</b>	677.5	93	47.4	7
<b>1999</b>	714.4	100	0	0
<b>1998</b>	706.2	100	0	0
<b>1997</b>	679.9	100	0	0
<b>1996</b>	574.7	99	4.7	1
<b>Total Average</b>	<b>491.5</b>	<b>92.2</b>	<b>41.6</b>	<b>7.8</b>

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

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

Data Source: 1996-2008 BFT Dealer Report Database

**Table 9: Comparison of Impacts of Alternatives**

<b>Alternative</b>	<b>Ecological Impacts on BFT</b>	<b>Ecological Impacts on other fish species</b>	<b>Protected Species</b>	<b>Economic Impacts</b>	<b>Social Impacts</b>	<b>Administrative/ Legal/EJ/CZMA Considerations</b>
<b>Issue 1: BFT QUOTA ALLOCATION</b>						
A1. No Action (2009 Adjusted Quota: 1,695.1 mt)	Negative. Distributes quota according to 2006 ICCAT Rebuilding plan. Higher mortality inconsistent with current rebuilding plan.	No change in fishing patterns and no increase in effort	No change in fishing patterns and no increase in effort	Positive in the short term, due to greater potential gross revenues. Negative in the long term as stock rebuilding is delayed.	Overall positive in the short term. Provides fishing opportunities similar to 2008 level. Negative in the long term as stock rebuilding is delayed.	Inconsistent with the 2008 ICCAT Recommendation and ATCA
A2. Allocate U.S. quota in accordance with 2008 ICCAT recommendation and Consolidated HMS FMP (2009 Adjusted Quota: 1,462.4 mt) <b>(PREFERRED)</b>	Positive. Consistent with BFT rebuilding plan. Reduction of U.S. allocation by 155 mt expected to result in lower direct BFT fishing mortality.	No change in fishing patterns and no increase in effort	No change in fishing patterns and no increase in effort	Slightly negative in the short-term compared to A1 due to decreased opportunities. Depends on ability of vessels to harvest quota.	Overall positive. Provide additional long-term fishing opportunities by rebuilding the fishery.	Consistent with ATCA, ICCAT 2008 Rec. and Consolidated HMS FMP. Estimated to end overfishing by end of 2010.
A3. Allocate U.S. quota in accordance with 2008 ICCAT recommendation but not Consolidated HMS FMP (2009 Adjusted Quota: 1,462.4 mt)	Not Analyzed	Not Analyzed	Not Analyzed	Not Analyzed	Not Analyzed	Not Analyzed
<b>Issue 2: EFFORT CONTROLS</b>						
<b>GENERAL CATEGORY DAILY RETENTION LIMIT</b>						
B1. No Action: Initial General category retention limit of one BFT (73"+) per vessel	Neutral	Neutral	Neutral	Negative; lowest gross revenues	Overall negative because of economic impacts	Retention limits can be increased using inseason action(s), if necessary
B2. A two BFT (73"+) initial General category retention limit per vessel	Neutral	Neutral	Neutral	More positive than B1 (would increase gross revenues) but more negative than B3	More positive than B1 because of economic impacts	Retention limits can be liberalized or reduced using inseason action(s), if necessary

B3. A three BFT (73"+) initial General category retention limit per vessel <b>(PREFERRED)</b>	Neutral	Neutral	Neutral	Most positive; best alternative to maximize gross revenues	Most positive because of economic benefits	Retention limits can be reduced using inseason action(s), if necessary (e.g., to avoid oversupplying the market)
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ANGLING CATEGORY DAILY RETENTION LIMIT						
C1. No Action: Initial Angling category retention limit of one 27-<73" BFT/ vessel	Neutral	Neutral	Neutral	Short-term negative; lowest BFT retention opportunities; potential for underharvest of quota. Long-term positive if quota not exceeded.	Short-term negative because of economic impacts; facilitates planning; no perceived inequity between vessel types	Retention limits can be changed, if necessary, via inseason action(s)
C2. An Angling category retention limit of one 27-<47" BFT and one 47-<73" BFT/vessel <b>(PREFERRED)</b>	Neutral	Neutral	Neutral	Neutral relative to 2008 fishing year; provides more opportunity to harvest quota than C1 and C3 and may be sufficient to offset costs	Neutral relative to 2008 fishing year; facilitates planning; no perceived inequity between vessel types	Retention limits can be changed, if necessary, via inseason action(s)
C3. An Angling category retention limit of one 27-<47" BFT and, for certain periods, one 47-<73" BFT/vessel	Neutral	Neutral	Neutral	Mixed; positive because of greater retention opportunities than default limit (C1); may be sufficient in some areas to offset costs; negative because of risk of quota overharvest and NMFS' administrative costs associated with issuing reminder notices	Short-term negative because of economic impacts and confusion regarding daily retention limits could lead to non-compliance; however, facilitates planning and would not result in perceived inequity between vessel types	Retention limits can be changed, if necessary, via inseason action(s)

**Table 10: Ex-vessel average price (per lb, round weight) for BFT by commercial fishing category, 1996-2008.**

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

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

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

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

There were no Purse Seine landings in 2008.

Data Source: 1996-2008 BFT Dealer Report Database

**Table 11: Average monthly prices (per lb, round weight) for Atlantic bluefin tuna in the General Category, 1996-2008.**

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

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

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

Data Source: 1996-2008 BFT Dealer Report Database

**Table 12: Ex-vessel gross revenues in the U.S. Atlantic bluefin tuna fishery by commercial fishing category, 1996-2008.**

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

Revenues contained in the table reflect calendar year summaries. Data for the 2008 fishing year are as of January 13, 2009.

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

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

There were no Purse Seine landings in 2008.

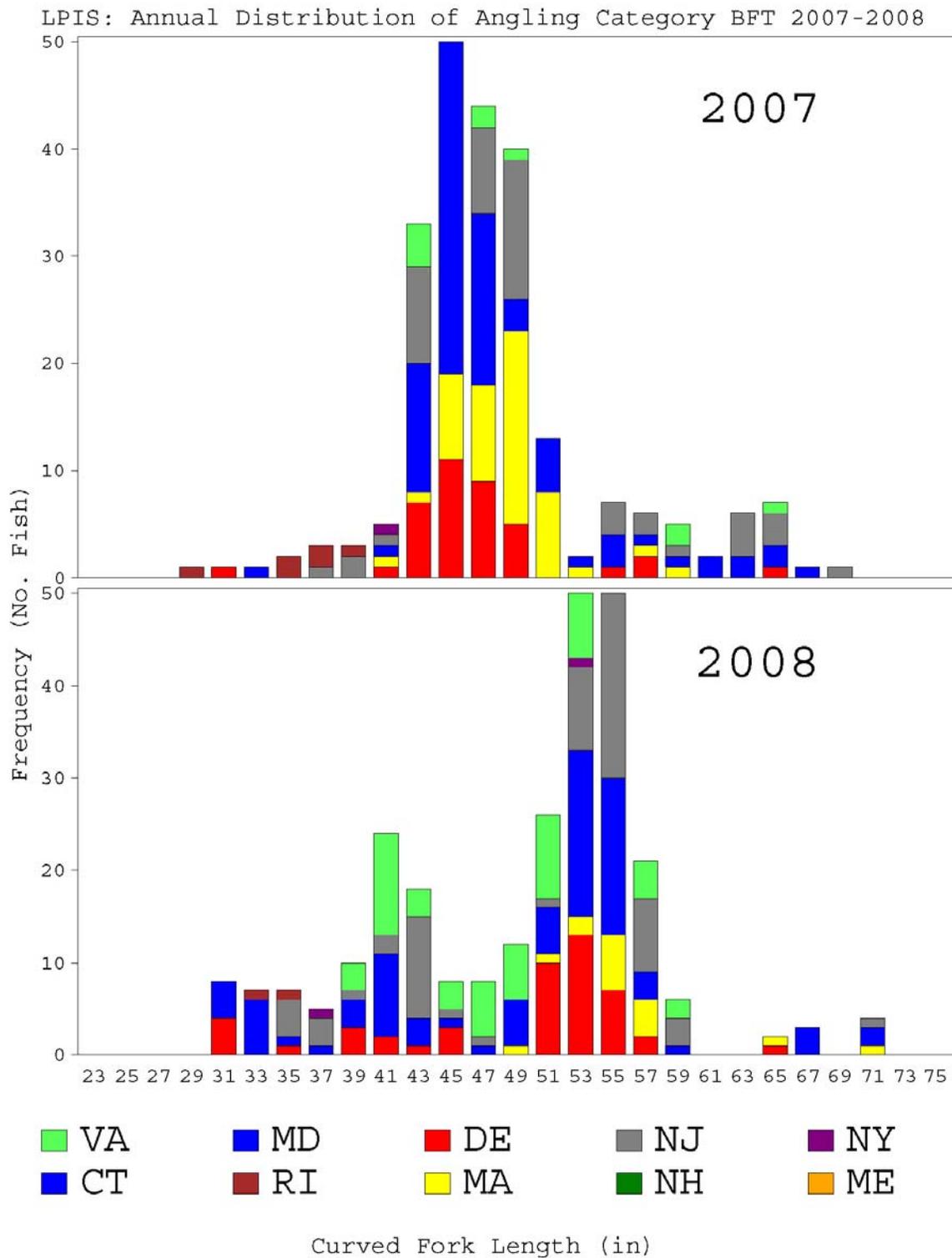
Data Source: 1996-2008 BFT Dealer Report Database

**Table 13: Summary of expected net economic benefits and costs of alternatives.**

Alternative	Net Economic Benefits	Net Economic Costs
<b>Issue 1: BFT QUOTA ALLOCATION</b>		
A1. No Action	Positive economic impacts on a scale similar to 2008	Potential long-term cost of future reduced quota
A2. Allocate U.S. quota in accordance with 2008 ICCAT recommendation and Consolidated HMS FMP <b>(PREFERRED)</b>	Less positive impacts than A1, but slightly positive net economic benefit from fishing per rebuilding plan	Opportunity cost of revenue foregone due to quota lower than that previously recommended by ICCAT recommendation
<b>Issue 2: EFFORT CONTROLS</b>		
GENERAL CATEGORY DAILY RETENTION LIMITS		
B1. No Action: Initial General category retention limit of one BFT (73"+ ) per vessel	Marginally positive if early season catch rates are very high; would avoid oversupplying market	Opportunity cost of revenue foregone if catch rates are similar to those of recent early seasons; would restrain ex-vessel revenues
B2. A two BFT (73"+) initial General category retention limit per vessel	Positive, by increasing ex-vessel gross revenues	Opportunity cost of revenue foregone if catch rates are similar to those of recent early seasons; would restrain ex-vessel revenues  Potential costs resulting from oversupply of market if catch rates high, absent NMFS action to reduce retention limit
B3. A three BFT (73"+) initial General category retention limit per vessel <b>(PREFERRED)</b>	Most positive, by increasing ex-vessel gross revenues	Potential costs resulting from oversupply of market if catch rates high, absent NMFS action to reduce retention limit
ANGLING CATEGORY DAILY RETENTION LIMITS		
C1. No Action: Initial Angling category retention limit of one 27-<73" BFT/ vessel	Short-term negative because of reduced BFT retention opportunities but long-term positive impacts expected as the fishery rebuilds. Lowest risk of quota overharvest. Long-term positive impacts expected as the fishery rebuilds, including from increased recreational enjoyment of the resource.	Highest costs for charter/headboat because of lowest BFT retention opportunities. Greatest potential for underharvest of quota, but unlikely given recent fishery performance.
C2. An Angling category retention limit of one 27-<47" BFT and one 47-<73" BFT/vessel <b>(PREFERRED)</b>	Neutral relative to 2008. Provides highest retention limit among alternatives. Long-term positive impacts expected if the fishery rebuilds, including from increased recreational enjoyment of the resource.	Potential costs, including those associated with reduced ability to enjoy the resource, if quota is overharvested and subsequent year's quotas need to be reduced.

<p>C3. An Angling category retention limit of one 27-&lt;47" BFT and, for certain periods, one 47-&lt;73" BFT/vessel</p>	<p>Short-term negative because of reduced BFT retention opportunities relative to 2008. Provides greater retention opportunities than C1 via a season that is adapted to fishery needs and based on public input. Long-term positive impacts expected as the fishery rebuilds, including from increased recreational enjoyment of the resource.</p>	<p>Potential costs for charter/headboats because of lower BFT retention opportunities relative to 2008. Potential costs, including those associated with reduced ability to enjoy the resource, if quota is overharvested and subsequent year's quotas need to be reduced. NMFS would incur administrative costs associated with issuing reminder notices</p>
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**Figure 1: Distribution of Angling category BFT landings by size, 2007-2008**



Source: NMFS Office of Science and Technology