

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 300, 600, and 635**

[Docket No. 030908222-6241-02; I.D. 051603C]

RIN 0648-AQ65

**Atlantic Highly Migratory Species; Recreational Atlantic Blue and White Marlin Landings Limit; Amendments to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Fishery Management Plan for Atlantic Billfish**

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

**ACTION:** Final rule; decision on petition for rulemaking.

**SUMMARY:** NMFS finalizes the Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP). This Final Consolidated HMS FMP changes certain management measures, adjusts regulatory framework measures, and continues the process for updating HMS essential fish habitat. This final rule could impact fishermen and dealers for all Atlantic HMS fisheries. The final rule will: establish mandatory workshops for commercial fishermen and shark dealers; implement complementary time/area closures in the Gulf of Mexico (GOM); implement criteria for adding new or modifying existing time/area closures; address rebuilding and overfishing of northern albacore tuna and finetooth sharks; implement recreational management measures for Atlantic billfish; modify bluefin tuna (BFT) General Category subperiod quotas and simplify the management process of BFT; change the fishing year for tunas, swordfish, and billfish to a calendar year; authorize speargun fishing gear in the recreational fishery for bigeye, albacore, yellowfin, and skipjack (BAYS) tunas; authorize buoy gear in the commercial swordfish handgear fishery; clarify the allowance of secondary gears (also known as cockpit gears); and clarify existing regulations. This final rule also announces the decision regarding a petition for rulemaking regarding closure areas for spawning BFT in the Gulf of Mexico.

**DATES:** This final rule is effective November 1, 2006, except for the addition of § 635.8 which will be effective January 1, 2007.

**ADDRESSES:** Copies of the Final Consolidated HMS FMP and other relevant documents are available from the Highly Migratory Species Management Division website at [www.nmfs.noaa.gov/sfa/hms](http://www.nmfs.noaa.gov/sfa/hms) or by contacting Karyl Brewster-Geisz at 301-713-2347.

**FOR FURTHER INFORMATION CONTACT:** Karyl Brewster-Geisz, Margo Schulze-Haugen, or Chris Rilling at 301-713-2347 or fax 301-713-1917; Russell Dunn at 727-824-5399 or fax 727-824-5398; or Mark Murray-Brown at 978-281-9260 or fax 978-281-9340.

**SUPPLEMENTARY INFORMATION:****Background**

The Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The Final Consolidated HMS FMP is implemented by regulations at 50 CFR part 635.

NMFS announced its intent to prepare an Environmental Impact Statement (EIS) amending the the Atlantic Billfish FMP and FMP for Atlantic Tunas, Swordfish, and Sharks on July 9, 2003 (68 FR 40907). On April 30, 2004 (69 FR 23730), NMFS announced the availability of an Issues and Options Paper and nine scoping meetings. On May 26, 2004 (69 FR 29927), NMFS extended the comment period on the Issues and Options Paper, and announced an additional scoping meeting. A summary of the major comments received during scoping was released in December 2004 and is available on the HMS Management Division website or by requesting a hard copy (see **ADDRESSES**). During scoping, NMFS referred to this project as Amendment 2 to the existing FMPs. Starting with the Predraft stage, NMFS has referred to this project as the Draft Consolidated HMS FMP.

In February 2005, NMFS released the combined Predraft to the Consolidated HMS FMP and annual Stock Assessment and Fishery Evaluation (SAFE) Report. Comments received on both the Issues and Options Paper and the Predraft were considered when drafting and analyzing the ecological, economic, and social impacts of the alternatives in the proposed rule. A summary of the comments received on the Predraft was released in June 2005 and is available on the HMS Management Division website or by requesting a hard copy (see **ADDRESSES**).

On August 19, 2005, NMFS published the proposed rule (70 FR 48804), and

the Environmental Protection Agency (EPA) published the Notice of Availability (NOA) for the Draft Environmental Impact Statement (DEIS) and the accompanying Draft Consolidated HMS FMP (70 FR 48705). The 60-day comment period on the proposed rule was initially open until October 18, 2005. However, because many of NMFS' constituents were adversely affected by Hurricanes Katrina and Rita in 2005, and the resultant cancellation of three public hearings in the Gulf of Mexico region, NMFS extended the comment period on the proposed rule until March 1, 2006 (70 FR 58177, October 5, 2005) for a total of 194 days. During that time, NMFS held 24 public hearings, gave presentations at the five Atlantic Regional Fishery Management Councils and at the Gulf and Atlantic States Marine Fisheries Commissions, and received several thousand written comments. These comments are summarized below under Response to Comments.

In the proposed rule, NMFS also took additional actions including: (1) a withdrawal of the 2003 proposed rule to implement the International Commission for the Conservation of Atlantic Tunas (ICCAT) 250 recreationally caught marlin landings limit (September 17, 2003; 68 FR 54410); (2) a decision not to include in the Draft Consolidated HMS FMP the exemption to the "no sale" provision for the artisanal handline fishery in Puerto Rico, as outlined in the 1988 Billfish FMP; and (3) an analysis of a petition for rulemaking from Blue Ocean Institute et al. that requested NMFS close a particular BFT spawning area in the Gulf of Mexico (copies of the petition are available upon request, see **ADDRESSES**). Item 1 above was completed at the proposed rule stage. Item 2 is finalized in this final rule with the consolidation of the two FMPs, and is not discussed further. The decision regarding the petition for rulemaking (item 3) is described in this final rule after the changes to proposed rule section.

This final rule does not contain information regarding the management history of Atlantic HMS, EFH, or the alternatives considered. Those issues are discussed in the proposed rule and are not repeated here. This final rule does contain responses to comments received during the public comment period, a description of changes to the proposed rule, and a decision regarding a petition to rulemaking. The response to comments section is organized similarly to the organization of the Final HMS FMP and the proposed rule. The description of the changes to the

proposed rule can be found after the response to comment section. The decision regarding the petition for rulemaking can be found after the changes to the proposed rule section.

Information regarding the management history of Atlantic HMS, EFH, and the alternatives considered was provided in the preamble of the proposed rule and is not repeated here. Additional information can be found in the Final Consolidated HMS FMP available from NMFS (see **ADDRESSES**).

Most of the measures in this rule, such as the measures relating to time/area closures, BFT, authorized fishing gears, and regulatory housekeeping, will be effective on November 1, 2006. However, the workshop alternatives (§ 635.8) will be effective on January 1, 2007, in order to coordinate the workshop requirements with the fishing vessel and dealer renewal timeframes. The management measures related to the directed billfish fishery (e.g., use of circle hooks in billfish tournaments) will also be effective on January 1, 2007, in order to allow anglers and small entities time to adjust to the new requirements. Furthermore, as a result of this final rule, all of the HMS management programs will be implemented on a calendar year cycle (January 1 to December 31). The Atlantic shark management timeframe will maintain the status quo, whereas billfish, tunas, and swordfish will shift from a fishing year (June 1 - May 31) to a calendar year at different times in 2007. Atlantic billfish will shift to a calendar year on January 1, 2007. Tunas and swordfish will shift to a calendar year on January 1, 2008. To transition from a fishing year to a calendar year for tunas and swordfish, NMFS will establish an abbreviated 2007 fishing year via a separate action for BFT and swordfish to cover the months between the end of the 2006 fishing year (May 31, 2007) and the start of the new 2008 calendar year (January 1, 2008).

#### Response to Comments

A large number of individuals and groups provided both written and verbal comments during the public comment period. The comments are summarized below together with NMFS's responses. All of the comments are grouped together in a format similar to that utilized in the preamble of the proposed rule. There are nine major groupings: Bycatch Reduction; Rebuilding and Preventing Overfishing; Management Program Structure; Essential Fish Habitat (EFH) Update; Economic and Social Impacts; Consolidation of the FMPs; Objectives of the FMP; Comment Period/Outreach; and General.

Within many of these major groupings are several separate subheadings. The comments are numbered consecutively, starting with 1, at the beginning of each of these separate subheadings. The subheadings under "Bycatch Reduction" are: (A) Workshops; and, (B) Time/Area Closures. The subheadings under "Rebuilding and Preventing Overfishing" are: (A) Northern Albacore Tuna; (B) Finetooth Sharks; and, (C) Atlantic Billfish. The subheadings under "Management Program Structure" include: (A) Bluefin Tuna Quota Management; (B) Timeframe for Annual Management of HMS Fisheries; (C) Authorized Fishing Gears; and, (D) Regulatory Housekeeping Measures. There are no separate subheadings under the major groupings entitled "EFH Update"; "Economic and Social Impacts"; "Consolidation of the FMPs"; "Objectives of the FMP"; and, "Comment Period/Outreach."

All of the comments in the major grouping entitled "General" are numbered consecutively, beginning with 1, however the grouping is further divided into subsections that address general comments related to recreational HMS fishing; commercial HMS fishing; longlines; swordfish; tunas; sharks; fishing mortality and bycatch reduction; permitting, reporting and monitoring; enforcement; and ICCAT.

#### Bycatch Reduction

##### A. Workshops

*Comment 1:* NMFS should have workshops for the recreational fishing industry explaining the use of circle hooks.

*Response:* NMFS has conducted educational outreach efforts to promote the use of circle hooks in recreational fisheries in the past and will continue to do so in the future. NMFS has distributed information on circle hooks using informational pamphlets, and in person by attendance at billfish tournaments. This final rule will implement shark identification and careful release and disentanglement workshops as required by Endangered Species Act (ESA) Biological Opinions (BiOps). The Agency may consider hosting voluntary workshops to address the use of circle hooks in the recreational fishery and may provide additional information on circle hooks at billfish tournaments.

i. Protected Species Safe Handling, Release, and Identification Workshops for Pelagic Longline, Bottom Longline, and Gillnet Fishermen

*Comment 2:* Post-release survival is important to any successful

conservation management regime and sustainable fisheries. NMFS needs additional education and outreach workshops, as well as cooperative research initiatives, before significant reductions in post-release mortality can be achieved.

*Response:* The protected species safe handling, release, and identification workshops are intended to reduce the mortality of sea turtles, smalltooth sawfish, and other protected resources and non-target species captured incidentally in the HMS pelagic and bottom longline and gillnet fisheries. These workshops are required to comply with the 2003 and 2004 ESA BiOps. Owners and operators of PLL, BLL, and gillnet vessels will receive instruction on techniques for disentanglement, resuscitation, release, and identification of protected resources and other non-target species. The goal of the workshops is to increase fishermen's proficiency with required release equipment and protocols to reduce the number of protected and non-target species mortalities. Through the Northeast Distant (NED) statistical area experiment, NMFS has shown that significant bycatch reductions can be achieved through proper research, education, and outreach. These workshops are intended to disseminate information learned from the NED experiment, as well as other information for the BLL and gillnet fisheries.

*Comment 3:* Several comments supported mandatory protected species workshops for captains and owners. Some of those comments include: owners and captains should attend the workshops, but attendance should not be mandatory for the crew because it would not be feasible for crew members, who may not be U.S. citizens, to attend a workshop; owners' attendance would discourage hiring untrained captains who do not have the expertise to properly release sea turtles; support for mandatory training to reduce post-release mortality of longline-caught marine mammals and turtles; the GMFMC supports mandatory workshops for captains on pelagic longline vessels; getting their gear off the turtles should be all the incentive fishermen need; industry will benefit from attending these workshops because it will enable them to avoid further regulations; NMFS needs to comply with the BiOp to keep the fishery open; workshops are a good investment for the fishermen; and, EPA supports alternatives A2 and A3 requiring mandatory workshops on handling protected species captured or entangled in fishing gear for all HMS pelagic and bottom longline vessel owners (A2) and operators (A3). EPA

also supported preferred alternatives A5 (mandatory workshops/certification for shark gillnet vessel owners/operators).

*Response:* Under the selected alternatives, NMFS will require owners and operators, but not crew members, of HMS longline and shark gillnet vessels to attend the protected species safe handling, release, and identification workshops. HMS longline and gillnet vessel owners will be required to attend and successfully complete the workshop before renewing their HMS fishing permit in 2007. Without workshop certification, the vessel's permit will not be renewed. Operators will be required to attend the workshop to ensure that at least one person on board the vessel, who is directly involved with the vessel's fishing activities, has been successfully trained in the proper safe handling, release, and identification of protected species. Without an operator trained in these techniques, the vessel will be prohibited from engaging in HMS PLL, BLL, and gillnet fishing activities. A safe handling, release, and identification workshop certificate will be required on board HMS permitted longline and gillnet vessels during fishing operations. Due to the large universe of HMS longline and shark gillnet crew members, NMFS will not require their attendance at these workshops. NMFS encourages operators to transfer the knowledge and skills obtained from successfully completing the workshops to the crew members, potentially increasing the proper release, disentanglement, and identification of protected resources. While crew members are not required to attend the workshops, to the extent practicable, the workshops will be open to anyone who wishes to attend and receive certification.

*Comment 4:* NMFS received several comments supporting mandatory workshop certification for all HMS commercial and recreational hook and line fisheries. Those comments include: Handling and release workshops should be implemented immediately for all HMS commercial and recreational hook and line fisheries in order to gain the maximum benefit from mitigation technologies and fishing practice; training the greatest number of crew members is the key to protecting these imperiled species. To offset the economic impact, we support a longer interval between required training for the rest of the crew, but not a complete exemption; and, all HMS fishermen should the complete workshops.

*Response:* This final rule requires owners and operators of PLL, BLL, and gillnet vessels to obtain the safe handling, release, and identification

workshop certification. Certified operators will be encouraged to transfer the knowledge, skills, and protocols obtained from these workshops to the vessel's crew members. While these workshops are mandatory for owners and operators, the workshops will also be open to other interested parties, including crew members and other HMS fishermen. Crew members that may have an opportunity to serve as an operator on board a vessel are encouraged to obtain the workshop training and certification. Crew members will not be required to obtain certification in the safe handling and release protocols because the average crew member's individual cost to attend the workshop is greater than the owner and operator. Additional information suggests that turnover is higher with the vessel's crew, making it difficult to continue operating a vessel with a fully certified crew. With at least one individual on board the vessel trained and proficient in the safe handling and release protocols, the likelihood of the safe release and disentanglement of protected species increases significantly. While implementing mandatory workshops for all commercial and recreational HMS fishermen is a laudable goal, NMFS does not have the resources to train such a large group of individuals at this time. Nearly 30,000 HMS recreational permit holders would need to be trained and certified. The cost and logistics of doing this would be prohibitive. However, NMFS may consider these workshops and other means for educating these permit holders in the future.

*Comment 5:* NMFS received comments opposed to the protected species workshops. These comments include: handling bycatch correctly wastes too much time on a valuable money-making longline trip; I am opposed to alternative A2 and part of A5, mandatory workshops and certification for all HMS pelagic and bottom longline and shark gillnet vessel owners because it is unnecessary, unless they are an owner and an operator; owners may not be the vessel operator on fishing trips. The first priority should be the vessel operator onboard while at sea on fishing trips.

*Response:* NMFS agrees that handling bycatch correctly may take extra time and effort. However, proper handling of bycatch ensures the continued survival of protected, threatened, and endangered species, prevents an exceedance of the incidental take statement (ITS), and prevents a shutdown of the fishery. NMFS realizes that many vessel owners may not

operate, or be aboard, their vessels during fishing trips. Under this rule, protected species safe handling, release, and identification workshops are mandatory for all longline and gillnet vessel operators. NMFS will encourage these operators to disseminate the workshop information to their fishing crews. By certifying vessel owners, NMFS ensures that the owners are aware of the certification requirement and skills and will hold them accountable for engaging in fishing activities without a certified operator onboard. Additionally, the certification requirement will be linked to a vessel's limited access permits and owners will not be able to renew their permits without successful completion of the required workshop. NMFS requires that vessel operators follow safe release and handling protocols when they have interacted with certain protected species. All other non-marketable species should be released in a way that maximizes their chances of survival. NMFS requires vessel owners and operators to meet or exceed the performance standards described in the 2004 BiOp.

*Comment 6:* NMFS received comments suggesting that the operator be required to train the vessel's crew with the safe handling and release protocols. Those comments include: alternatives A3 and A5 should include a requirement that the certified vessel operator train new crew members prior to each trip as is customary for safety drills; and, it should be clarified that a trained and certified owner or operator must be aboard at all times and that this individual is responsible for ensuring that proper release and disentanglement gear is aboard, the crew is informed, and correct procedures are followed.

*Response:* Owners and operators of HMS permitted longline and gillnet vessels will be required to obtain the protected species safe handling, release, and identification workshop certification before the vessel's permit expires in 2007. Operators will be required to be proficient in the safe handling and release protocols to ensure that there is an individual on board the vessel with the necessary skills to disentangle, safely release, and accurately identify any protected species caught in the vessel's gear. Owners and operators will be encouraged to explain and demonstrate the safe handling and release protocols to the vessel's crew members. Owners and operators will not be required to train crew members, as this requirement would be difficult to monitor and enforce. While crew members are not required to attend the protected species

safe handling, release, and identification workshops, to the extent practicable, these workshops will be open to individuals interested in receiving the certification.

*Comment 7:* NMFS received comments in support of training fishermen in the proper release of prohibited species and billfish, as well as protected species. These comments include: NMFS should include safe release training for sharks and billfishes in these workshops; these workshops should be referred to as "Careful Handling and Release Workshops," rather than protected species workshops because the workshops are appropriate for many species; and, the scope of the protected species workshops should be expanded to include prohibited species.

*Response:* NMFS agrees that safe handling, release, and identification training may be beneficial to all participants in HMS fisheries, including those that interact with sharks and billfishes. The need for protected species safe handling, release, and identification workshops stems from two BiOps issued for the commercial shark fishery and the pelagic longline fishery. These two BiOps also require outreach to the commercial fisheries employing PLL, BLL, and shark gillnet gear on the proper safe handling, release, and identification of protected species. To comply with these BiOps, the intent of these workshops is to reduce the post-release mortality of sea turtles that are most frequently caught by participants using BLL or gillnet gear to target sharks or PLL gear to target swordfish and tunas. However, the techniques, equipment, and protocols taught at the workshops, although specific to sea turtles, could be used to safely disengage hooks in other fish, such as billfish and sharks, and/or mammals that may be encountered. As NMFS collects additional data regarding the best methods to use to release billfish and other species, NMFS may consider modifying the existing workshops to include information on releasing these other species. Until that time, use of the dehooking equipment and protocols could be employed to safely dehook and release billfish and other non-target species. This use could increase post-release survival rates of non-target species. While workshop attendance and certification would not be mandatory for recreational fishermen, these individuals are welcome to attend voluntarily any of the workshops on safe handling, release, and identification to become more familiar with these techniques and protocols.

*Comment 8:* NMFS received comments on grandfathering individuals who attended the industry certified workshops held in Orlando, Florida and New Orleans, Louisiana. Those comments include: the industry should be recognized for holding workshops before NMFS finalized mandatory workshops; the three-year clock should start ticking on January 1, 2007, for those who are grandfathered in, not from when they took the workshop; certification should be given to fishermen and owners who attended previously held workshops; 85 percent of pelagic longline fishermen were trained and industry certified in 2005. The industry was supportive and actively engaged. These workshops should serve as a template for the future workshops; if the industry-certified sea turtle handlers who have already attended and passed the industry mandatory certification classes are required to do something, it should be an online review and should not have to lose additional time at sea and incur additional travel expenses; and, the process should be streamlined for these individuals to receive their initial certification.

*Response:* NMFS agrees that industry should be recognized for holding voluntary workshops before NMFS finalized the Consolidated HMS FMP. As such, all owners and operators that, as documented by workshop facilitators, attended and successfully completed industry certification workshops held on April 8, 2005, in Orlando, FL, and on June 27, 2005, in New Orleans, LA, will automatically receive valid protected species workshop certificates prior to January 1, 2007. The certification must be renewed prior to the expiration date printed on the workshop certificate and will need to be renewed prior to renewing their HMS permit. Generally, the certificate will expire every three years consistent with the expiration date of the permit. However, if the certificate is received during a month that is not the owner's or operator's birth month, the certificate may expire in slightly less or slightly more than three years. For example, if the person's birth month is June and they receive the certificate in March, the certificate would be valid for slightly more than three years from the date of completion of the workshop. Those who participated in the industry-sponsored workshops will have three years from their permit renewal in 2007 to renew their workshop certification. Should new information or protocols become available prior to re-certification of any owner or operator, NMFS will disseminate the new information or

protocols to the certified individuals prior to their next workshop.

*Comment 9:* NMFS received several comments requesting careful consideration when scheduling the workshops. Comments include: the lunar cycles should be considered when scheduling the workshops; workshops during closed season can still inconvenience people because shark fishermen also fish for wahoo, dolphin, etc.; NMFS needs to be cognizant of the time burden involved for fishermen; the mandatory workshops should be held only for critical issues because fishermen must be out fishing to be profitable; and, there needs to be flexibility in the process because not everyone will be able to attend the workshops.

*Response:* To the extent practicable, NMFS will consider lunar cycles and their resultant impacts on the availability of HMS participants when scheduling protected species safe handling, release, and identification workshops. However, since the Agency does not know the other fisheries in which fishermen may be participating at all times, the Agency cannot guarantee that each workshop will be held at a time that would minimize lost fishing opportunities. These workshops will be held in areas with high concentrations of permit holders, according to the addresses provided when applying for an HMS permit. The workshop schedule will be available in advance to allow fishermen to attend a workshop that is most convenient to them. The Agency may provide an opportunity for the industry to schedule one-on-one training at the expense of the individual (i.e., trainer fees), if they are unable to attend any of the previously scheduled workshops.

*Comment 10:* Some identification training should be provided to the owners and operators during the release and disentanglement workshops.

*Response:* Species identification is vital for determining how best to handle a de-hooking event, and also enhances the amount and quality of data available regarding protected species interactions. Accurate species identification is also important for compliance with HMS fishery regulations, including the avoidance of prohibited species, maintaining quota limits, and accurate data collection. NMFS intends to make education a key component of the workshops, and will provide workshop participants with training to safely disentangle, resuscitate, and release sea turtles, as well as identify and release other protected species such as marine mammals and smalltooth sawfish. Sea turtle identification guides are also

available on the internet at <http://www.nmfs.noaa.gov/sfa/hms/>. Some marine mammal identification information can be obtained from the Office of Protected Resources website: <http://www.nmfs.noaa.gov/pr/species/mammals/>. The HMS website also contains a link (HMS ID Guide) to the Rhode Island Sea Grant bookstore where you may purchase identification guides for marine mammals, sharks, tunas, and billfish.

*Comment 11:* NMFS received several comments on alternatives A6 and A16, certification renewal timetable. Those comments include: renewal of the workshop certification should occur every three years; NMFS should recertify every three years, but recertification every five years would be better; recertification more frequently than every three years would be too much; the workshop certification requirement could be an impediment to someone selling a vessel if one cannot transfer the certification; certification should be tied to the operator, not the vessel; and, the EPA supports alternative A6.

*Response:* Under the selected alternative, owners and operators of HMS longline and shark gillnet vessels will be required to renew the mandatory protected species safe handling, release, and identification workshop certification every three years. A three-year period for recertification will maintain proficiency in the release, disentanglement and identification protocols, and allow NMFS to update owners and operators on new research and developments related to the subject matter while not placing an excessive burden on the participants (e.g., lost fishing time and travel to attend workshops). NMFS considered recertifying owners and captains every five years, but determined that it allows a more extensive period of time to lapse between certification workshops, possibly affecting proficiency and the ability to obtain the latest updates on research and development of safe handling and dehooking protocols. NMFS also considered recertifying owners and operators every two years, but did not select the option because it would likely have the greatest economic burden for the participants due to increased frequency. Federally permitted shark dealers will also be required to renew the mandatory Atlantic shark identification workshop certification on a three-year timetable. A renewal frequency of three years ensures proficiency in shark identification and will provide an update on new developments in shark identification and HMS regulations.

The workshop certification will not be transferable to any other person and will state the name of the permit holder on the certificate. If acquiring an HMS limited access permit (LAP) from a previous permit holder, the new owner will need to obtain a workshop certification prior to transferring the permit into the new owner's name. This requirement ensures that every HMS limited access permit (LAP) owner is fully aware of and accountable for the mandatory protocols that must be followed on board a vessel with longline gear.

The initial operator certification will be linked to the renewal of the vessel's HMS LAP(s) in 2007. If the vessel owner holds multiple HMS LAPs, the operator would need to be certified prior to the earliest expiration date on any of the permits in 2007. After the initial certification, the operator's workshop certificate would need to be renewed prior to the expiration date on the operator's workshop certificate.

*Comment 12:* PLL, BLL, and gillnet vessel owners may need to be allowed proxies as well as dealers. NMFS should consider a proxy for elderly owners.

*Response:* The 2004 BiOp specifically requires captains to be certified in the safe handling, release, and identification protocols. This rule requires that operators, not captains, attend these workshops as operators are already defined in the regulations as the "master or other individual aboard and in charge of that vessel." This rule also requires vessel owners for vessels employing longline or gillnet gear to attend the workshops to educate the vessel owner in the protocols, requirements, and responsibilities of participating in the commercial shark or swordfish commercial fisheries. Vessel owners will be held accountable for preventing their vessel from engaging in fishing activities without a certified operator on board. NMFS is concerned that vessel owners would select proxies that are not involved with the day-to-day operation of their vessel, thus compromising the goals of these workshops and weakening the vessel owner's accountability for the activities conducted on board the vessel. Non-compliance with the requirements of the 2003 and 2004 BiOps could result in additional, more restrictive management measures in the future.

*Comment 13:* EPA commented that the Draft Consolidated HMS FMP would be improved by providing a more balanced discussion of workshop costs, and noted that in today's society, most trades and professions require practitioners to obtain licenses demonstrating competence. Additionally, without authorized

takings procedures, owners/operators might have to defend themselves in courts of law for violating ESA. EPA stated that if one considers the time invested in attending a one-day workshop, this measure seems like a bargain. EPA questioned the assumption inherent in the cost/earnings analysis that accepts the premise that time spent becoming qualified to practice longline fishing is time lost, and of no value.

*Response:* NMFS acknowledges that many trades and professions require practitioners to obtain licenses demonstrating competence. However, there is still an economic opportunity cost associated with any required activity that would not otherwise be taken voluntarily. In the case of analyzing the economic costs associated with workshop alternatives, NMFS assumed the activity that workshop participants would be engaged in, if they were not attending the workshop, would be fishing. NMFS's use of wage rates from primary job activities as the opportunity cost of engaging in other activities is commonly accepted practice by economists.

NMFS recognizes that the training provided by workshops is valuable to fishermen and may offset some unquantifiable portion of the opportunity costs that were estimated. The opportunity cost estimates provided in the Draft Consolidated HMS FMP were considered to be upper bounds on the potential economic costs associated with attending workshops. Information quantifying the economic value of time spent at the workshops is not currently available to further refine the upper bound cost estimates used in the economic analysis of workshop alternatives.

#### ii. Atlantic Shark Identification Workshops

*Comment 14:* NMFS received several comments in support of alternative A9, mandatory Atlantic shark identification workshops for all shark dealers. Those comments include: dealers should be required to attend the shark identification workshops; if shark dealers cannot properly identify a fish, their license and ability to be a dealer should be permanently revoked; workshops for species identification are generally unnecessary for commercial fishermen although shark identification workshops may be necessary for dealers or recreational fishermen; NMFS needs to rename the Identification Workshops as being Shark and not HMS, since only shark dealers are expected to be in attendance and certified at identifying sharks, not tunas; NMFS should have two days of training, one mandatory

(dealers) and one voluntary (fishermen, public, etc); workshops give the dealer a good housekeeping seal of approval; NMFS should consider prioritizing the certification of shark dealers because the universe is so large; prioritization of shark dealers could be based upon a minimum annual purchase of shark products; and, EPA supported alternative A9, stating that accurate species identification is necessary for compliance with HMS fishery regulations, including avoidance of prohibited species, maintaining quota limits, and also for accurate data collection.

*Response:* Under the selected alternative, A9, NMFS renamed the HMS identification workshops as Atlantic shark identification workshops because only federally permitted shark dealers will be required to attend the workshops and receive certification. Identification training will be focused on various species of sharks likely to be encountered by the dealer in both whole and dressed form. These mandatory identification workshops will improve the ability of shark dealers to identify sharks to the species level and will improve the data collected for quota monitoring, stock assessments, and decision making processes for formulating appropriate fishery management strategies. While mandatory for shark dealers, these workshops will be open to other interested individuals, to the extent possible. Workshop locations will be based on dealer permit addresses. A schedule of workshops will be available in advance to allow dealers to select the workshop most convenient to their schedule. The Agency may provide an opportunity for the industry to schedule one-on-one training at the expense of the individual (i.e., trainer costs), if they are unable to attend any of the previously scheduled workshops.

*Comment 15:* NMFS received several comments concerned about the effectiveness of the Atlantic shark identification workshops for only shark dealers. The comments include: limiting HMS identification workshops to dealers only will mean proper species identification will come too late for prohibited species such as dusky sharks and such a strategy will not address problems with recreational compliance. NMFS should expand the required audience at the HMS identification workshops and/or expand the scope of the protected species workshops to include identification and safe release of prohibited shark species; the identification workshop for dealers only is not enough. It will help with data collection and stock assessments, but it

will not help with conservation; and, the Agency should focus its efforts on the directed shark fishermen that are actually landing sharks and dealers with 90 percent of the catch.

*Response:* Under the selected alternatives, Atlantic shark identification workshops will be mandatory for federally permitted shark dealers, but, to the extent possible, these workshops would be open to other interested individuals (e.g., individuals participating in the shark fishery, port agents, law enforcement officers, state shark dealers, and recreational fishermen) on a voluntary basis. Under this rule, federally permitted shark dealers will be required to take this training in an effort to reduce unclassified shark landings and improve species-specific landings data. Improvements in shark dealer data will improve existing quota monitoring programs as well as improve the accuracy of future stock assessments. With improved shark identification, dealers will be more accountable for the sharks purchased, potentially discouraging the purchase of prohibited species. If there is no market for prohibited species, fishermen may modify their behavior and safely release any incidental catch of prohibited species. To train and certify the greater than 25,000 anglers that participate in the HMS recreational fishery exceeds the Agency's resources at this time. While commercial and recreational shark fishermen will not be required to attend the Atlantic shark identification workshops, to the extent possible the workshops will be open to anyone who wishes to attend and receive certification. In the future, additional actions may be taken to improve the data collected from the HMS recreational industry.

*Comment 16:* NMFS received comments on Alternative A15, mandatory attendance at HMS identification workshops for all HMS Angling category permit holders. Those comments include: mandatory attendance for all HMS Angling category permit holders would be a substantial undertaking; HMS identification workshops should be mandatory for all fishermen that land sharks; HMS Angling category permit holders should also have to attend because they are the primary misidentification and non-reporting problem; most commercial fishermen know how to identify species; and, some of the species identification problem is an angler problem.

*Response:* At this time, Atlantic shark identification workshops will not be required for HMS Angling category permit holders. Under this rule, all

federally permitted shark dealers will be required to attend the Atlantic shark identification workshops. The dealer's ability to renew a Federal dealer permit will be conditioned upon the successful completion of the workshop. The purpose of the Atlantic shark identification workshops is to improve the data collected from the fishery, thereby improving quota monitoring and stock assessments. Dealer reports are an important data source for quota monitoring and management decisions; and therefore, these workshops will have greater impact on improving the accuracy of the shark species identification. While the recreational fishery also contributes to shark misidentification, mandatory attendance for the angling community would not resolve the data quality issues associated with commercial vessel logbooks and dealer reports. Thus, quota monitoring and commercial regulatory compliance would not benefit from mandatory angler attendance as they would under mandatory shark dealer certification. Commercial and recreational shark fishermen are not required to attend the Atlantic shark identification workshops, but to the extent possible, the workshops will be open to anyone who wishes to attend and receive certification. The money and time required to track and link permits to the workshop certification, to hold an appropriate number of workshops to certify all HMS anglers permit holders (over 25,000 individuals), and to enforce the workshop requirement for all HMS angler permit holders currently exceed the Agency's resources. In the future, additional actions may be taken to improve the data collected from the HMS recreational industry.

*Comment 17:* NMFS received two comments about mandatory workshops for state shark dealers. Those comments are: HMS identification workshops should be held for state dealers to encompass the entire universe of dealers reporting unclassified sharks; and, NMFS needs more information on state shark landings. The Agency is wasting the industry's time requiring the wrong people to attend these workshops.

*Response:* NMFS does not have jurisdiction over state permitted shark dealers and cannot require their attendance at Federal workshops. However, to the extent possible, the Atlantic shark identification workshops would be open to other interested individuals, including state shark dealers, on a voluntary basis. To purchase sharks from a federally permitted vessel, a state shark dealer must also possess a Federal shark dealer

permit and, therefore, will be required to attend the workshops.

*Comment 18:* NMFS should require port agents to attend these workshops to improve their shark identification skills. Law enforcement needs to learn how to identify sharks.

*Response:* This action does not require port agents or law enforcement to attend the Atlantic shark identification workshops. The intent of this action is to reduce the number of unknown sharks in the shark dealer reports; therefore shark dealers or their proxy are required to attend the workshop. To the extent practicable, the Agency will notify law enforcement officials and port agents of workshops in their respective regions and encourage them to attend these workshops to improve their identification skills, especially since port agents are often responsible for the collection of biological information on many species that the Agency manages. Furthermore, law enforcement officials also need to identify sharks to the species level to enforce regulations related to seasons, minimum sizes, bag limits, and trip limits. Port agents and law enforcement officials are required to attend rigorous training on the identification of HMS regulated species; however, the material that will be covered in these workshops might provide additional information on morphological characteristics to facilitate shark identification in various conditions at landing (i.e., no fins, no head, several days since landing, and gutted). Because port agents and law enforcement do receive some identification training and are not directly involved with reporting shark landings, the Atlantic shark identification workshops are only mandatory for shark dealers at this time.

*Comment 19:* It is very difficult to sell "unknown" sharks in the market and sharks are being listed as unclassified because it is the path of least resistance when they are reporting.

*Response:* Landings data from 2004 indicate that the number of unclassified large coastal, small coastal, and pelagic shark landings was 19 percent, 0.3 percent, and 53 percent of total shark landings. These percentages indicate that a significant number of sharks enter the market as unclassified, despite regulations that require species-specific reporting by vessel owners and dealers. NMFS does not know if sharks are being listed as unclassified because fishermen and dealers are unable to identify them, to circumvent restrictions, or because it is the most expeditious manner to process the catch as the commenter suggests. However, NMFS believes that mandatory Atlantic shark identification

workshops will improve the ability of shark dealers to identify sharks to the species level. NMFS anticipates that these workshops will improve the data collected to assess stock status and decision making processes for formulating appropriate fishery management strategies.

*Comment 20:* NMFS received comments on the workshop materials and the need to hold shark identification workshops. These comments include: NMFS will need pictures of all the shark species to teach proper identification. Those pictures will need to include pictures of dressed fish, whole fish, and fins of each species, especially prohibited species; and, NMFS should consider enlisting members of the industry to help with these workshops.

*Response:* NMFS would coordinate with local shark dealers to have some dressed sharks available for each workshop. If the workshops are held after a closure or in an area where no carcasses are available, NMFS would use other tools, such as photo presentations and dichotomous keys, to present methods for identifying dressed sharks to the species level. The Agency intends to use a combination of dressed sharks, fins, photo presentations, and dichotomous keys to improve species-specific shark carcass identification. The success of the Atlantic shark identification workshops will depend upon cooperation between the Agency and the industry.

*Comment 21:* Please consider Houma as a location to conduct the shark dealer workshops, if selected.

*Response:* NMFS would not be able to hold workshops at every shark dealer facility; however, the Agency examined the number and location of shark dealers in each region, and would work to provide workshops in areas that are convenient to the greatest number of people. A preliminary evaluation of dealers in the southern Louisiana region shows that Houma proportionally does not land the most sharks in the region, but is central to other locations. As suggested, the Agency will consider Houma as a potential site for an Atlantic shark identification workshop.

*Comment 22:* NMFS received several comments on allowing a proxy to attend the Atlantic shark identification workshops for the shark dealers. Those comments are: NMFS should allow a purchase agent proxy to attend instead of the shark dealer permit owner; NMFS needs to consider all of the truck drivers operating under the single NMFS shark dealer permit who purchase sharks products from satellite locations; if a shark dealer loses his proxy due to

unforeseen circumstances, NMFS should have some flexibility on allowing the fishhouse to continue operating until a replacement is found and certified; a trained and certified dealer representative must be present at all times whenever HMS catches are offloaded to be responsible for ensuring that all HMS landings are monitored and properly documented; dealers should be allowed more than one proxy if requested; "Dockside Technicians" should be allowed as a proxy for the fish dealer who may not be present during vessel pack-outs; the DEIS/proposed rule has some good ideas for proxies, but NMFS will need to be careful about a lapse between proxies, should the individual leave the business; and, there must be a fast track way to get certified if a proxy leaves, such as online certification.

*Response:* Under this final rule, all federally permitted shark dealers will be required to obtain an Atlantic shark identification workshop certification. NMFS encourages shark dealers to send as many proxies as necessary to train staff members responsible for shark species identification within the dealer's business. Federally permitted shark dealers will be responsible for ensuring that the appropriate individuals receive the proper training in shark identification. Federally permitted shark dealers will be encouraged to share the workshop information and training with individuals that were unable to attend the workshop. Multiple proxies for each federally permitted shark dealer will better ensure that every dealer has at least one person on staff who possesses workshop certification and the skills necessary to properly identify sharks if another proxy's employment is terminated. The schedule for Atlantic shark identification workshops will be available in advance to allow dealers and proxies to select the workshop closest to them and most convenient to their schedule. If a dealer or proxy is not able to attend a scheduled workshop, NMFS will consider one-on-one training at the expense of the individual. These one-on-one training sessions could also accommodate the replacement of a proxy whose employment was terminated on short notice.

### iii. Other Workshop Related Comments

*Comment 23:* NMFS received several comments on outreach beyond the two workshops. These comments included: regardless of who is required to attend the workshops, the Agency should do at-sea identification; a field guide should be sent out to all HMS permit holders; NMFS should provide

waterproof field identification materials; manuals should be developed on the proper billfish and tuna release handling procedures; and, HMS Identification Guide should be required on board permitted vessels and in the office of HMS permitted fish dealers. The Guide could also be made available online.

*Response:* The HMS website (<http://www.nmfs.noaa.gov/sfa/hms/>) currently provides a variety of information on several HMS and protected species, including a tutorial on sea turtle identification and handling, and a link to purchase the waterproof HMS identification guide from Rhode Island Sea Grant, as well as the safe handling and release protocols and placards in three different languages (English, Spanish, and Vietnamese). Curriculum for the Atlantic shark identification workshops is in development. However, current plans include distributing waterproof identification materials at the protected species workshops, as well as distributing and training participants to use a key for distinguishing species-specific features at Atlantic shark identification workshops. NMFS recommends that these materials be readily accessible in dealer offices and onboard fishing vessels, and encourages workshop participants to share knowledge gained with their crew and other employees. While NMFS would like to distribute the HMS guide to all HMS permit holders, the resources to do so are not currently available.

*Comment 24:* NMFS received several comments about providing an expedited means for receiving the training, certification, and renewal. Those comments include: there should be internet training and certification; can HMS identification workshops and renewals occur online?; certification over the internet might not suffice, however, recertification might be possible; to facilitate normal turnover, review and busy schedules, NMFS could conduct training via the internet and/or by mail; NMFS needs to provide a convenient way for new captains to be certified prior to their first trip; initial certification for new vessel operators must be conveniently available, such as a self-course over the internet or overnight mail; vessel operations should not be held up unnecessarily; NMFS needs to make sure to develop a streamlined approach to keeping this certification effort simple and convenient so as to not be a burden to all folks participating; hands-on training is important; and, the first time going through the training must occur in the workshop.

*Response:* The Agency's priority is to make the workshops as successful and effective as possible. Due to the nature of workshop subject matter, hands-on training and interaction with the workshop leader is vital for initial skill development and certification for the protected species safe handling, release, and identification workshops, as well as the Atlantic shark identification workshops. Once the first round of certifications are complete, NMFS will explore alternative means for renewing permits, including online or mail-in options. The Agency also hopes to develop an online program that will provide up-to-date information regarding HMS identification and protected species handling techniques.

To facilitate coordination between workshops and regular business activities, NMFS plans to do a focused mailing to permit holders to ensure that the workshop times and locations are known in advance. This will allow workshop participants to plan workshop attendance accordingly and prevent lapses in fishing activities.

*Comment 25:* How did NMFS analyze the economic impacts of attending these workshops?

*Response:* NMFS conducted an opportunity cost analysis to determine the economic costs associated with attending the various workshop alternatives. This analysis used economic information obtained from the HMS logbook, specifically the economic costs section that is required to be completed by selected vessels. For vessels that completed the economic costs section of the HMS logbook in 2004, revenues per trip were estimated by taking the number of fish caught per trip, multiplying the number of fish by average weights for each species harvested, and multiplying the total weights for each species by average prices for each species as reported in the dealer landings system. The costs reported for each trip were then subtracted from the estimated revenue for each trip. Then the number of days at sea as reported in logbooks was used to determine the average net revenue per day at sea for each trip taken. Finally, the information provided on crew shares was used to allocate the net revenue per day at sea to owner, captain, and crew. Information from the HMS permits database was then used to estimate the potential number of participants in each of the workshop alternatives. Since information on the number of captains per permitted vessel was not available, NMFS conservatively estimated that there could be two captains per permit for PLL vessels and one captain for all others. Net revenues

per day for owners, captains, and crew were then multiplied by the number of participants expected for each workshop alternative to estimate the opportunity cost for a one day workshop. The economic impacts (i.e., out of pocket cash costs) associated with attending workshops is likely to be less than the economic opportunity costs estimated since NMFS plans on scheduling workshops on less productive fishing days to avoid lost time at sea.

*Comment 26:* If training and certification is mandated, it is essential that NMFS ensure that adequate funding and personnel resources are dedicated to develop and fully support all program facets.

*Response:* The Agency agrees and is fully aware of the ramifications of these workshops and the need to implement them successfully. Numerous individuals, with a variety of expertise and backgrounds have been involved in the implementation of the voluntary workshops to date, and will be involved in any future mandatory workshops, including: shark identification and biology, fishing gear technology and deployment, safe release and handling of protected resources, vessel permitting, fisheries law enforcement, and shark carcass identification.

*Comment 27:* NMFS should consider how to ensure compliance with this requirement and should have a plan to measure the effectiveness of the workshops.

*Response:* Successful completion of both workshops will be linked to the renewal of the owner's or dealer's HMS permits. Longline and gillnet vessel owners must be certified in the safe release and disentanglement protocols before they can renew their limited access permits. Additionally, longline and gillnet vessels may not engage in fishing operations without a certified operator onboard, as well as proof of owner and operator certification. Similarly, Federal shark dealers must be certified in shark identification, or have a certified employee, to renew their dealer permit. NMFS will gauge the success of these requirements by monitoring compliance with the sea turtle release and disentanglement performance standards established in the 2004 BiOp, as well as by monitoring the number of unclassified sharks reported by Federal dealers.

*Comment 28:* NMFS received comments suggesting that the Agency provide the workshop materials in other languages, such as Spanish and Vietnamese, as well as English.

*Response:* NMFS acknowledges the diversity of HMS fishery participants, and will make workshop materials

accessible to as many of its constituents as possible. While the workshops will be conducted in English, NMFS hopes to provide workshop materials in other languages for distribution at and outside of the workshops. Placards of sea turtle handling and release guidelines are currently available in English, Spanish, and Vietnamese. To the extent practicable, the Agency will work to develop shark identification materials in these languages as well.

*Comment 29:* NMFS received several comments related to alternative A17, Compliance with and Understanding of HMS Regulations. Those comments include: compliance and increased understanding of HMS regulations could be addressed by mailing an updated HMS Compliance Guide to each HMS recreational and commercial permit holder each year; workshops on the regulations are unnecessary as long as brochures are available; the proposed workshops should cover new regulatory requirements, such as the new PLL TRT regulations; there are no alternatives in the Draft Consolidated HMS FMP for workshops on HMS regulations. The GMFMC recommends that an interactive web-based tutorial be available to improve the understanding and compliance with HMS regulations. This training should be mandatory for commercial captains; and, NMFS should consider mandatory recreational compliance workshops because commercial vessels adhere to many U.S. regulations but less emphasis is placed upon recreational compliance.

*Response:* During scoping, NMFS explored an alternative that focused on enhancing compliance with, and understanding of, HMS regulations using Agency sponsored workshops. NMFS received comments noting that mandatory workshops need to be prioritized due to the time and cost to those who must attend. Furthermore, comments were received in support of continuing the current methods of disseminating information pertaining to HMS regulations (e.g., Annual HMS Compliance Guide) rather than spending Federal dollars to conduct workshops on the regulations at this time. Advisory Panel members supported focusing on mandatory requirements (e.g., workshops required under BiOps and other mandates) first, and then following up with additional outreach materials to meet regulatory informational needs. NMFS already disseminates this type of information and, because this information can be distributed to participants attending NMFS sponsored workshops, this alternative was not further analyzed in the Consolidated HMS FMP.

Compliance guides and brochures can be obtained from the HMS website (<http://www.nmfs.noaa.gov/sfa/hms/>).

Under this final rule, NMFS requires owners and operators to attend mandatory protected species safe handling, release, and identification workshops. Furthermore, shark dealers (or their designated proxy(ies)) must attend Atlantic shark identification workshops. In doing so, NMFS may consider the use of web-based training as a suitable media for disseminating training information following an initial workshop.

#### B. Time/Area Closures

##### i. New Closures

*Comment 1:* Alternative B2(a) indicates that there would be ecological benefits to leatherback sea turtles and blue and white marlin, yet this alternative was given cursory treatment.

*Response:* NMFS comprehensively analyzed the ecological and economic impacts of all alternatives, including alternative B2(a), in the Draft and Final Consolidated HMS FMPs, consistent with the analytical requirements of NEPA, the Magnuson-Stevens Act, ATCA, and other laws. In the Draft Consolidated HMS FMP, NMFS investigated potential changes in bycatch and discards with and without the redistribution of fishing effort for all the time/area closure alternatives considered. For alternative B2(a), NMFS evaluated a total of three scenarios of redistributed effort (as well as a fourth scenario without redistribution of effort), each of which had different assumptions regarding how fishing effort would be redistributed into open areas. The first scenario assumed that fishing effort (i.e., hooks) from alternative B2(a) would be displaced into all open areas. The second scenario assumed all fishing effort would only be redistributed within the Gulf of Mexico. The third scenario assumed that fishing effort would be displaced within the Gulf of Mexico and into an area (i.e., Area 6) where the majority of vessels with Gulf of Mexico homeports have been reported fishing during 2001 - 2004.

All three of these scenarios predicted that bycatch and discards would increase for at least one of the species considered. For instance, under the first scenario, NMFS predicted an increase in loggerhead sea turtle interactions (7.9 percent or 14 turtles/over three years; annual numbers may be obtained by dividing by three), bluefin tuna (BFT) discards (10.3 percent or 166 discards/over three years), swordfish discards (4.4 percent or 1,635 discards/over three

years), yellowfin discards (3.0 percent or 166 discards/over three years), and bigeye tuna discards (11.6 percent or 117 discards/over three years). Under the second scenario of redistributed effort (effort only redistributed in the Gulf of Mexico), NMFS predicted increases in sailfish discards (1.8 percent or 18 discards/over three years), spearfish discards (3.3 percent or 14 discards/over three years), pelagic shark discards (0.3 percent or 112 discards/over three years), large coastal shark discards (3.6 percent or 598 discards/over three years), swordfish discards (4.4 percent or 1,635 discards/over three years), yellowfin discards (22.3 percent or 1,224 discards/over three years), bigeye tuna discards (0.4 percent or 4 discards/over three years), and BAYS tuna discards (1.0 percent or 91 discards/over three years). Finally, under the third scenario (redistribution in the Gulf of Mexico and Area 6), NMFS predicted increases in sailfish (4.7 percent or 61 discards/over three years), pelagic sharks (4.4 percent or 834 discards/over three years), BFT discards (1.6 percent or 35 discards/over three years), and BAYS tuna discards (0.7 percent or 70 discards/over three years). Given the potential negative ecological impact of B2(a) under all three redistribution of effort scenarios, NMFS is not implementing alternative B2(a) at this time.

*Comment 2:* NMFS decided against any new closures to protect sea turtles, billfish, and other overexploited species at this time because there is no closure that will benefit all species. Closures should not be rejected because they do not "solve" the bycatch problem on their own. Rather, they should be coupled with other sensible measures to ensure that all species are receiving the protection they need to recover and maintain healthy populations.

*Response:* NMFS agrees that closures can be combined with other measures to achieve management objectives. However, NMFS did not reject closures because there was not a closure that benefited all species. To the contrary, NMFS is not preferring the closures because, in part, there were indications that the closures could actually result in an increase in bycatch to the detriment of some species with the consideration of redistributed effort. Additionally, NMFS does not prefer implementing new closures at this time, other than the Madison-Swanson and Steamboat Lumps Marine Reserves, for a number of other reasons, including those discussed below in this response. All of the data used in the time/area analyses were based on J-hook data. The Northeast Distant experiment suggested that circle

hooks likely have a significantly different catch rate than J-hooks; further investigations are required to determine the potential impact of any new time/area closures. The final logbook data recently became available. NMFS is beginning to analyze that data. NMFS also continues to monitor and analyze the effect of circle hooks on catch rates and bycatch reduction as well as assess the cumulative affect of current time/area closures and circle hooks. NMFS does not prefer to implement new closures until the effect of current management measures, and potential unanticipated consequences of those management measures, can be better understood. Second, NMFS is awaiting additional information regarding the status of the pelagic longline (PLL) fleet after the devastating hurricanes in the Gulf of Mexico during the fall of 2005. A majority of the PLL fleet was thought to be severely damaged or destroyed during the 2005 hurricane season. The amount of PLL fishing effort, especially within the Gulf of Mexico, will be assessed in the summer of 2006 when data quality control procedures on the 2005 HMS logbook data are complete. Until NMFS can better estimate the current fishing effort and potential recovery of the PLL fleet, it is premature to implement any new time/area closures. Third, a number of stock assessments will be conducted during 2006 (LCS, blue marlin, white marlin, north and south swordfish, eastern and western BFT, and large coastal sharks). NMFS is waiting on the results of these stock assessments to help determine domestic measures with regard to management of these species. Once NMFS has this updated information, NMFS will consider additional management measures, potentially for all gear types, to help reduce bycatch and discard rates. NMFS is also trying to assess how protecting one age class at the potential detriment of other age classes will affect the fish stock as a whole. For instance, how will protecting spawning BFT help rebuild the stock if it results in increased discards of non-spawning adults, juvenile, and sub-adult BFT along the eastern seaboard? More information is needed to further understand how to manage this species given its complex migratory patterns, life history, and age structure. NMFS is also considering developing incentives that would dissuade fishermen from keeping incidentally caught BFT, particularly spawning BFT, in the Gulf of Mexico. This may involve research on how changes in fishing practices may help reduce bycatch of non-target species as well as the tracking of

discards (dead and alive) by all gear types. In addition, sea surface temperatures in the Gulf of Mexico have recently been thought to be associated with congregations of BFT and putative BFT spawning grounds in the Gulf of Mexico (Block, pers. comm.). NMFS intends to investigate the variability associated with sea surface temperatures as well as the temporal and spatial consistency of the association of BFT with these temperature regimes. By better understanding what influences the distribution and timing of BFT in the Gulf of Mexico, NMFS can work on developing tailored management measures over space and time to maximize ecological benefits while minimizing economic impacts to the extent practicable.

*Comment 3:* NMFS received several comments regarding additional closures to consider including: NMFS should consider a time/area closure for longlining from the 35<sup>th</sup> parallel to the 41<sup>st</sup> parallel, from the 30 fathom line to the 500 fathom line, from June 15 to September 30; NMFS should consider longline closures around San Juan, Puerto Rico and other areas around Puerto Rico; NMFS should pressure the states north of the North Carolina closed area to close their state waters during April through July 31 to protect juvenile sandbar sharks; since the sandbar shark HAPC includes a major U.S. nursery area for this species, NMFS should close the Federal waters out to 10 fathoms from April to July 31 each year; NMFS should reevaluate its decision not to close the Northeast Central statistical area proposed as Alternative A14 in the June 2004 SEIS; and, Georgia CRD requests either the closure of the EEZ off Georgia to gillnet gear to facilitate state enforcement and management efforts or the requirement for shark gillnet vessels to carry VMS year-round to facilitate Georgia's cooperative state/Federal enforcement efforts.

*Response:* While additional areas could be considered for time/area closures, NMFS considered a range of different closures that encompassed the major areas of bycatch for the greatest number of species of concern. Due to the number of bycatch concerns regarding the pelagic longline fishery and the availability of data, most of the analyses for potential closures focused on the pelagic longline fishery. Although some alternatives, such as preferred alternative B4, affect additional HMS fisheries such as the recreational fishery. The majority of the areas were initially selected by plotting and examining the HMS logbook and Pelagic Observer Program (POP) data from 2001 - 2003 to identify areas and

times where bycatch was concentrated. When identifying areas to consider, NMFS also took into account information received in a petition for rulemaking to consider an additional closure (alternative B2(c)) to reduce BFT discards in a reported spawning area in the Gulf of Mexico (Blue Ocean Institute et al., 2005; Block et al., 2005), and a settlement agreement relating to white marlin, which was approved by the court in *Center for Biological Diversity v. NMFS*, Civ. Action No. 04-0063 (D.D.C.). Using the preferred alternative B5, NMFS may consider additional closures, including closures for juvenile sandbar sharks and closures for other gear types, including gillnets and/or recreational gear, in future rulemakings, as needed.

*Comment 4:* NMFS received several comments in favor of maintaining existing time/area closures. These comments included: time/area closures should be used to promote conservation of all HMS species; marine sanctuaries need to be established for all species of fish; these areas need to remain closed until the fishery is rebuilt to the 1960s levels that existed prior to the overcapitalization of this fishery; as a result of the existing closures, overall discards have declined by as much as 50 percent so NMFS should continue to expand the existing closures; the reductions in bycatch as a result of the existing closures benefit a wide range of species; current closed areas are effective, based upon recent increases in swordfish size and weight in the deep-water recreational swordfish fishery; and suggestions by the industry that the closed area goals have been met because swordfish are rebuilt ignore the broader purpose and benefit of the closures.

*Response:* NMFS agrees that the existing closures have effectively reduced the bycatch of protected species and non-target HMS, and have provided positive ecological benefits. NMFS prefers to keep the existing closures in place at this time. For example, the overall number of reported discards of swordfish, BFT, and bigeye tunas, pelagic sharks, blue and white marlin, sailfish, and spearfish have all declined by more than 30 percent. The reported discards of blue and white marlin declined by about 50 percent, and sailfish discards declined by almost 75 percent. The reported number of sea turtles caught and released declined by almost 28 percent. However, these analyses are based on J-hook data, and the fishery is required to use circle hooks. It is possible that the impact of such closures since implementation of circle hooks may be greater in ecological benefits than expected. If this happens,

NMFS may not need to implement new closures and may be able to reduce existing closures. NMFS currently only has final, quality controlled HMS logbook data on the catch associated with circle hooks from July through December of 2004. NMFS anticipates having final, quality controlled 2005 HMS logbook data in the summer of 2006. At that time, NMFS will examine and analyze the effect of circle hooks on catch rates and bycatch reduction. Any changes to the existing closures would occur through a proposed and final rulemaking using the criteria in the preferred alternative B5.

*Comment 5:* NMFS received a number of comments in opposition to closures including: the effectiveness of time/area closures as a management tool to address bycatch issues has been exhausted; bycatch measures other than time/area closures should be considered; closures are not conservation, but reallocation to prohibit one hook and line gear (especially, circle hook gear) while allowing another hook and line gear (especially, more harmful J-style hook gear and live baiting); these areas were closed to rebuild the now fully rebuilt swordfish stock; an alternative to a full area closure could be to conduct an experimental fishery to test gear modifications - if the modifications do not work then put in a full closure; and the pelagic longline industry cannot withstand additional time/area closures.

*Response:* NMFS does not believe that the effectiveness of time/area closures as a management tool has been exhausted. The existing closures have effectively reduced the bycatch of protected species and many non-target HMS, and have provided positive ecological benefits. For example, the overall number of reported discards of swordfish, BFT and bigeye tunas, pelagic sharks, blue and white marlin, sailfish, and spearfish have all declined by more than 30 percent. The reported discards of blue and white marlin declined by about 50 percent, and sailfish discards declined by almost 75 percent. The reported number of sea turtles caught and released declined by almost 28 percent. Thus, the current time/area closures have had positive ecological impact by reducing the overall bycatch of non-target and protected species. However, NMFS recognizes that the current closures have had an impact on retained species' landings as well. For example, from 1997 to 2003, the number of swordfish kept declined by nearly 28 percent, the number of yellowfin tuna kept declined by 23.5 percent, and the total number of BAYS kept (including yellowfin tuna) declined by 25.1

percent. Such declines in landings have resulted in negative economic impacts for the fleet and may explain the overall decline in effort by the Atlantic PLL fishery from the pre- to post-closure period. Thus, while time/area closures play an important part in resource management, NMFS does not prefer to implement new closures, except for the Madison-Swanson and Steamboat Lumps Marine Reserves, until NMFS can assess the cumulative effect of the current time/area closures and circle hooks. In addition, NMFS is waiting for additional information regarding the status of the PLL fleet after the devastating hurricanes in the Gulf of Mexico during the fall of 2005. A portion of the PLL fleet was thought to be severely damaged or destroyed during the 2005 hurricane season. Until NMFS can better estimate the current fishing effort and potential recovery of the PLL fleet, NMFS believes that it is premature to implement any new time/area closures, particularly on the PLL fleet.

#### ii. BFT/Gulf of Mexico

*Comment 6:* NMFS received comments regarding time/area closures to protect BFT spawning areas in the Gulf of Mexico (Alternatives B2(c) and B2(d)). Some of these comments suggested NMFS should consider different months or permutations of months between January and August. Other comments included: NMFS should implement additional measures to protect the Atlantic BFT biomass, especially spawning fish in the Gulf of Mexico; NMFS should consider closing the Gulf of Mexico to protect spawning BFT and analyze different time periods in combination with the northeast closures during months of high discards or high CPUE that might address effects on loggerhead sea turtles; an area south of Louisiana surrounding known BFT spawning areas should be closed to all longline fishing for a reasonable period of time — at a minimum this should include the area identified in Alternative B2(c); the study in the journal "Nature" firmly establishes the time and location of the spawning season and affords NMFS the opportunity to close a hot spot based on the best available science; Japan has recommended a longline closure of the entire Gulf of Mexico at ICCAT; NMFS should immediately initiate interim or emergency action to close the longline fishery in the Gulf of Mexico, starting in January of 2006 that would be effective for six months each year from January through June; NMFS should explain why the ecological benefits of closing the longline fishery in the Gulf of

Mexico during BFT spawning season, as described in Alternative B2(c), would be minimal; why does NMFS assume that a longline closure in the Gulf of Mexico would cause a redistribution of effort to areas where BFT discards could increase; and, what are the positive and negative economic consequences of allowing longline fishing to continue in the Gulf of Mexico during BFT spawning season?

*Response:* NMFS considered a wide range of alternatives ranging from maintaining existing closures (No Action) to a complete prohibition of PLL gear in all areas in order to reduce the bycatch and bycatch mortality of non-target HMS and protected species, such as sea turtles, in Atlantic HMS fisheries. After comparing the potential bycatch reduction for all of the closures that NMFS initially considered (see Chapter 2 of the FEIS for a description of alternatives), NMFS chose five closures with the highest overall bycatch for further analysis. Alternative B2(c), closing 101,670 nm<sup>2</sup> in the Gulf of Mexico from April through June, was chosen for analysis in response to a petition received by NMFS from several conservation organizations requesting consideration of a closure of the "Gulf of Mexico BFT spawning area" (Blue Ocean Institute et al., 2005). The times and areas analyzed for alternative B2(c) were directly from the petition. Alternative B2(d) was chosen for analysis in order to determine if any other closure, or combination of closures, would be more effective at reducing bycatch than some of the other alternatives considered. The analyses indicated that almost all of the closures and combinations of closures considered for white marlin, BFT, or sea turtles would result in a net increase in bycatch for at least some of the primary species considered when redistribution of fishing effort was taken into account. In addition, the predicted reduction in bycatch when redistribution of fishing effort was taken into account was typically less than 30 percent for any given species with overall reduction in the number of individual species being very low.

According to Pelagic Observer Program (POP) data, without redistribution of effort, alternative B2(c) would reduce discards of all non-target HMS and protected resources from a minimum of 2.3 percent for spearfish to a maximum of 25.0 percent for other sea turtles (comprised of green, hawksbill, and Kemp's ridley sea turtles). Without redistribution of effort, the logbook data indicate that alternative B2(c) would potentially reduce discards of all of the species being considered from a

minimum of 0.8 percent for pelagic sharks to a maximum 21.5 percent for BFT. With redistribution of effort, however, bycatch was predicted to increase for all species except leatherback and other sea turtles. Even BFT discards, which showed a fairly dramatic decline without redistribution of effort, were predicted to increase by 9.8 percent with redistribution of effort. Alternative B2(d) would prohibit the use of PLL gear by all U.S. flagged-vessels permitted to fish for HMS in a 162,181 nm<sup>2</sup> area in the Gulf of Mexico west of 86 degrees W. long. year-round, thus eliminating an area where approximately 50 percent of all effort (Atlantic, Gulf of Mexico, and Caribbean) and 90 percent of all effort in the Gulf of Mexico has been reported in recent years (2001 - 2003). Without the redistribution of effort, the closure could have resulted in large reductions in all non-target HMS, ranging from a 10.1 percent reduction in loggerheads to 83.5 percent reduction in spearfish discards. With the redistribution of effort, NMFS predicted a decrease in discards of blue marlin (20.3 percent or 497 discards/over three years; annual estimates can be obtained by dividing by three), sailfish (26.8 percent or 276 discards/over three years), and spearfish (73.3 percent or 276 discards/over three years). However, given the size and timing of this closure (i.e., year-round), NMFS also predicted an increase in white marlin discards (0.3 percent or 10 discards/over three years), loggerhead sea turtle interactions (65.5 percent or 117 turtles/over three years), BFT discards (38 percent or 614 discards/over three years), swordfish discards (31.9 percent or 11,718 discards/over three years), and bigeye tuna discards (84.8 percent or 853 discards/over three years).

Other alternatives, such as alternative B2(b), which would close a much smaller area in the Northeastern United States, could have greater benefits in terms of the number of BFT discards reduced. Although alternative B2(b) is not considered a BFT spawning area, data from the POP program indicate that large fish (>171 cm TL) are present in the area. Additionally, there is evidence to indicate that the area is utilized as a feeding and staging area by BFT prior to migrating to the Gulf of Mexico to spawn (Block et al., 2005). Hence, while NMFS recognizes that the same proportion of western spawning BFT would not be protected from a closure in the Northeast as one in the Gulf of Mexico, potentially a small proportion of western spawning-size BFT could be protected by a closure like B2(b),

especially given the prevalence of larger individuals in Northeast area from the POP data. Therefore, a closure like B2(b) may be able to protect a few spawning-size individuals as well as pre-spawners, or sub-adults, which are also valuable age classes with regard to the stock (although, presumably, there is a mixture of eastern and western origin fish in this area, and a closure in this area may protect sub-adults of western as well as eastern origin). Furthermore, the total proportion of dead discards in the Northeast was similar to the Gulf of Mexico. In the Northeast, 48 percent (219 out of 461) of all BFT discards from 2001 - 2003 were discarded dead, whereas 53 percent (249 out of 470) of all BFT discards from the Gulf of Mexico were discarded dead. Given the high number of BFT discards in the Northeast, a smaller closure there may provide similar ecological benefit compared with a closure in the Gulf of Mexico (depending on post-release survival rates in the two areas), and would minimize the economic impacts on the fleet.

NMFS will continue to pursue alternatives to reduce bycatch of spawning BFT. NMFS has adopted all of the ICCAT recommendations regarding BFT, a rebuilding plan is in place domestically for this species, and NMFS has implemented measures to rebuild this overfished stock. NMFS is currently trying to assess how protecting one age class at the potential detriment of other age classes will affect the fish stock as a whole. For instance, how will protecting spawning BFT help rebuild the stock if it results in increased discards of non-spawning adults, juveniles, and sub-adult BFT along the eastern seaboard? Therefore, more information is needed to further understand how to manage this species given its complex migratory patterns, life history, and age structure. As described above in Comment 2, NMFS is also considering developing incentives that would dissuade fishermen from keeping incidentally caught BFT, particularly spawning BFT in the Gulf of Mexico.

*Comment 7:* NMFS received several comments regarding the biology of spawning BFT in the Gulf of Mexico. These comments included: the management measures currently in place do not protect spawning BFT or create the conditions necessary for BFT to survive, reproduce, and increase their population; under current U.S. regulations, almost half the BFT landed by longline fishermen come from the Gulf of Mexico when spawning fish are present which results in a significant de facto directed fishery; warm water in the

Gulf of Mexico poses particular risks to BFT captured on longline gear due to the physiological stress caused in warm, low oxygen waters; and the spawning fish in this time and place are more valuable to the population than at other times of year.

*Response:* Although NMFS does not prefer alternative B2(c), or any other closure specific to spawning BFT in the Gulf of Mexico at this time, NMFS plans to pursue alternatives to reduce bycatch in the Gulf of Mexico, especially for spawning BFT. Such actions could improve international rebuilding efforts of this species. NMFS is also considering developing incentives that would dissuade fishermen from keeping incidentally caught BFT, particularly spawning BFT, in the Gulf of Mexico. This may involve research on how changes in fishing practices may help reduce bycatch of non-target species as well as the tracking of discards (dead and alive) by all gear types. In addition, sea surface temperatures in the Gulf of Mexico have recently been thought to be associated with congregations of BFT and putative BFT spawning grounds in the Gulf of Mexico (Block, pers. comm.). NMFS intends to compare sea surface temperature data and logbook and/or observer data in order to investigate the variability associated with sea surface temperatures as well as the temporal and spatial consistency of the association of BFT with these temperatures regimes. For this investigation, NMFS will use existing data and will likely work with scientists to collect additional data and/or conduct experiments, as needed. By better understanding what influences the distribution of BFT in the Gulf of Mexico, NMFS can tailor management measures over space and time to maximize ecological benefits while minimizing economic impacts, to the extent practicable.

*Comment 8:* NMFS should outline the methods and mortality rates used to estimate dead discards as reported to ICCAT, and comment on the likely associated uncertainty. The current regulations are failing to implement key provisions of the ICCAT rebuilding plan, in violation of ATCA. The model used by NMFS in its Draft Consolidated HMS FMP assumes that the reproductive value of western Atlantic BFT in the Atlantic Ocean off the northeastern United States later in the year is equivalent to that of BFT from March-June in the Gulf of Mexico. This is a faulty and risky assumption. Does the analysis in the Draft Consolidated HMS FMP take into account the current low stock status of western Atlantic BFT? The Draft Consolidated HMS FMP

is flawed when it does not prefer closing BFT spawning grounds because it erroneously analyzes the closure primarily with regard to minimizing bycatch to the extent practicable. In fact, the primary legal duty falls under the need to rebuild the western Atlantic BFT population in as short a period of time as possible. Overfishing continues at high rates and the model used for the rebuilding program is unrealistically optimistic.

*Response:* The estimates of discards used in the analyses include both live and dead discards, as reported by fishermen in logbooks. While NMFS ultimately used logbook data for the time/area analyses, NMFS also compared estimates of discards from the POP data. As described in the responses to comments 31 and 32 of this section, NMFS did not develop mortality estimates from the data. Rather, NMFS evaluated percent change in total discards as the measure of the effectiveness of potential time/area closures. NMFS disagrees that the current regulations are failing to implement provisions of the rebuilding plan. NMFS has adopted all of the ICCAT recommendations regarding BFT, a rebuilding plan is in place domestically for this species, and NMFS has implemented measures to rebuild this overfished stock. For the PLL fishery, fishermen are not allowed to target any BFT regardless of the size of the BFT. Thus, the model used by NMFS to calculate discards in the PLL fishery did not make any assumptions about the reproductive value of BFT caught in the PLL fishery. Rather, the intent of examining different closures was to maximize the potential reduction in bycatch of the PLL fishery for the greatest number of species, while minimizing losses in target catch in the PLL fishery.

*Comment 9:* NMFS received a comment that the area in the "Nature" journal study extends beyond the U.S. EEZ and so should the time/area closure considered in the Draft Consolidated HMS FMP. There is no legal reason to limit the closure to the U.S. EEZ.

*Response:* While NMFS has analyzed closures beyond the U.S. EEZ (e.g., the Northeast Distant closed area) in the past, except for two relatively small areas, the U.S. EEZ in the Gulf of Mexico abuts the Mexican EEZ. U.S. fishermen are not allowed to fish in the Mexican EEZ, and NMFS does not have the legal authority to regulate foreign fisheries that operate outside of the U.S. EEZ. As such, the analyses in the Final HMS FMP were limited to the U.S. EEZ in the Gulf of Mexico utilizing logbook and POP data from the U.S. PLL fishery.

Data that includes fishing effort in other countries EEZs would be included in any analyses conducted by ICCAT, as needed.

*Comment 10:* Demographics in the Gulf of Mexico have changed due to last summer's hurricanes. No one knows what the impacts of that will be. NMFS should not rush into changes in the Gulf of Mexico that are not necessary.

*Response:* NMFS is aware that there have been significant impacts in the Gulf of Mexico as a result of the 2005 hurricanes, which may take time to be fully realized. After carefully reviewing the results of all the different time/area closures analyses, and in consideration of the many significant factors that have recently affected the domestic PLL fleet, NMFS does not prefer to implement any new closures, except the complementary measures in the Madison-Swanson and Steamboat Lumps closed areas at this time. As described above in the response to Comment 2 in this section, this decision is based on a number of reasons including the potential impacts of the hurricanes on the PLL fleet.

### iii. White Marlin

*Comment 11:* NMFS received several comments in support of additional time/area closures to protect white marlin. Comments included: NMFS should consider a closure for white marlin in the mid-Atlantic; NMFS has never implemented a time/area closure for PLL fishing specifically to reduce blue and white marlin, or sailfish bycatch even though exceedingly high levels of bycatch occur; and NMFS must reduce marlin bycatch by closing areas to longline fishing when and where the most bycatch continues to occur to avoid a white marlin ESA listing.

*Response:* While NMFS has never implemented a closure to specifically reduce bycatch of blue and white marlin, current closures (the Northeastern U.S. closure, the DeSoto Canyon closure, the Charleston Bump, the East Florida Coast closures, and the Northeast Distant closed area) have resulted in large decreases in blue and white marlin discards from PLL gear, and billfish were considered in the analyses of these closures. Percent change in discards from the HMS logbook data before (1997 - 1999) versus after (2001 - 2003) the closures that were implemented showed an overall 47.5 percent decrease in white marlin discards and an overall 50.3 percent decrease in blue marlin discards. In addition, NMFS banned live bait in the Gulf of Mexico for PLL vessels to help reduce billfish bycatch on August 1, 2000 (65 FR 47214). In the Draft

Consolidated HMS FMP, NMFS considered areas specifically for white marlin, per a settlement agreement relating to white marlin (*Center for Biological Diversity v. NMFS*, Civ. Action No. 04-0063 (D.D.C.)). Based on the HMS logbook and POP data from 2001 - 2003, potential time/area closures, other than the areas outlined in the settlement agreement, were predicted to result in larger ecological benefits for all of the species considered, including white marlin. Ultimately, NMFS chose to further analyze time/area closure boundaries that included the areas of highest interactions for a number of species. However, based on the results of these analyses and for the reasons discussed under the response to Comment 2, NMFS chose not to implement any new closures at this time beside the complementary measures in the Madison-Swanson and Steamboat Lumps Marine Reserves.

*Comment 12:* NMFS received a number of comments on alternative B2(c) including: Alternative B2(c) corresponds to the location of significant incidental catches of white marlin and leatherback sea turtles, so NMFS should consider that area for closures, effort restrictions, or stricter gear requirements rather than be paralyzed in the search for a single time/area closure that will address all bycatch reduction needs for more than a dozen species; NMFS should consider closed areas in the western Gulf of Mexico because that is where marlin are being killed; Alternative B2(c) should be closed from June through August to protect the greatest abundance of billfish in the Gulf of Mexico; the Draft Consolidated HMS FMP does not propose a closure big enough or long enough to meaningfully reduce billfish bycatch; U.S. and Japanese data show that the bycatch of billfish is higher in the Gulf of Mexico than in any other part of the commercial fishery, and the closures to protect blue and white marlin in the Gulf of Mexico could save more of these species than any other closure in the entire United States, yet NMFS did not consider that there would be enough positive impact to consider implementing a closure.

*Response:* As described above in Comment 6 of this section, NMFS examined alternative B2(c) specifically in response to a petition for rulemaking regarding protection of spawning BFT. Under the full redistribution of fishing effort model for B2(c) (fishing effort distributed to all open areas), NMFS predicted an increase in white marlin discards (7.0 percent or 221 discards/over three years; annual estimates can

be found by dividing by three), blue marlin discards (2.0 percent or 50 discards/over three years), sailfish discards (4.4 percent or 45 discards/over three years), loggerhead sea turtle interactions (23.5 percent or 42 turtles/over three years), BFT discards (9.8 percent or 158 discards/over three years), swordfish discards (6.0 percent or 2,218 discards/over three years), and bigeye tuna discards (1.7 percent or 18 discards/over three years). Under the second scenario of redistributed effort (redistribution in the Gulf of Mexico and Area 6), NMFS predicted increases in blue marlin discards (0.7 percent or 20 discards/over three years), sailfish discards (21.7 percent or 283 discards/over three years), spearfish discards (2.0 percent or 10 discards/over three years), large coastal sharks (12.8 percent or 2,454 discards/over three years), swordfish tuna discards (5.0 percent or 2,109 discards/over three years), and bigeye tuna discards (0.6 percent or 7 discards/over three years). Although white marlin discards were predicted to decrease under the second scenario evaluated (by 2.6 percent or 98 discards/over three years), there were potential negative ecological impacts of B2(c) for other species considered under the different scenarios of redistributed effort. Therefore, NMFS does not prefer alternative B2(c) at this time.

Based on a submission by the Japanese at ICCAT on BFT management (Suzuki and Takeuchi, 2005), the proposed closures and subsequent ecological benefits were based on closing the entire Gulf of Mexico and did not consider redistribution of fishing effort. As described above in Comment 9 of this section, NMFS has no jurisdiction to close the Mexican EEZ, and U.S. PLL vessels are prohibited from fishing in the Mexican EEZ. NMFS also believes it is critical to consider the redistribution of fishing effort before implementing management measures, such as time/area closures, because potential increases in discards and bycatch can result from time/area closures as effort is moved to remaining open areas. Additionally, as described above in the response to Comment 3 and elsewhere in this document, NMFS is considering future management measures to minimize bycatch of non-target HMS in the Gulf of Mexico.

*Comment 13:* Longlining should be banned off the East Coast from June to September when white marlin are present in this area.

*Response:* NMFS currently has several closures along the eastern seaboard specifically for pelagic and bottom longline. These consist of the Northeastern United States closed area,

which is closed to pelagic longlining during the month of June; the mid-Atlantic Shark Closure, which is closed from January through July to bottom longline gear; the Charleston Bump closed area that is closed to PLL gear from February through April; and the East Florida Coast closure that is closed year-round to PLL gear. The Florida East Coast (FEC), the Mid-Atlantic Bight (MAB), and the Northeastern Coastal (NEC) statistical reporting areas cover the extent of the U.S. Atlantic PLL logbook reporting areas along the East Coast. Comparing the number of discards for the months of July through December between the pre-closure period 1997 - 1999 and the period 2001 - 2003, when closures were in effect, reported landings of white marlin decreased by 95.4 percent in the FEC, 53.4 percent in the MAB, and 77.8 percent in the NEC. Therefore, while NMFS has not implemented a closure for white marlin specifically along the East Coast, data show a substantial decrease in white marlin discards likely resulting from the current time/area closures along the eastern seaboard.

#### iv. Current Closed Areas

*Comment 14:* NMFS received several comments regarding the East Florida Coast closed area. These comments are: NMFS should prohibit all commercial fishing for swordfish in the East Florida Coast closed area; NMFS should eliminate all commercial shark fishing in the East Florida Coast closed area; NMFS should impose a 20-mile limit for the entire East Florida Coast that would prohibit commercial fishing in the area; NMFS should set a policy for the East Florida Coast closed area that allows for recreational swordfish hook and line fishing for a three to four month period or adopt management measures that allow for recreational swordfish hook and line fishing only on an every other year basis; NMFS needs to protect the Florida east coast because it is a nursery area for juvenile swordfish; NMFS should re-adjust the offshore border of the East Florida Coast Closed Area to allow PLL vessels a reasonable opportunity to harvest its ICCAT quotas; and, NMFS should reopen the offshore border because the inshore and Straits of Florida portions that will remain closed afford adequate ongoing protection for undersized swordfish and other bycatch.

*Response:* NMFS closed the East Florida Coast closed area to PLL gear effective in 2001 (August 1, 2000, 65 FR 47214) in order to reduce bycatch of HMS and other species by PLL gear. One reason NMFS closed that area was because it is a swordfish nursery area

and many of the swordfish being caught by PLL fishermen were undersized and therefore discarded dead. However, the goal of the closures was to reduce bycatch in general in the PLL fishery, and analyses conducted for that rulemaking also indicated that closing the area to PLL gear would reduce bycatch and discards of other species as well. The closure was not intended to be for all commercial fishing or to be permanent. Nor was the closure meant to allow only recreational fishing in that area. Because the area is a swordfish nursery area, it is likely that any fishing gear in that area, particularly those fishing for swordfish, will catch undersized swordfish that must be discarded, as well as juvenile swordfish that meet the legal minimum size. The criteria in this final rule will allow NMFS to consider closing the East Florida Coast to other gears to reduce bycatch or for other reasons, or to modify the closed area to PLL gear to either expand or reduce it, as needed. NMFS considered modifications to the closed area to allow PLL fishermen into an area that they claimed had swordfish larger than the minimum size. The analyses for this rulemaking concluded that swordfish in the potential re-opened area are significantly larger than those in the remaining closed area; however, the analyses also indicated potential increases in marlin bycatch. For this reason and others, NMFS is not modifying the East Florida Coast closed area at this time. NMFS may consider changes to that area or to the gears allowed to fish in that area in future rulemakings.

#### v. Modifications to Current Closed Areas

*Comment 15:* NMFS received comments supporting and opposing modifications of the existing HMS time/area closures to allow additional fishing effort into these areas. Comments in support of modifying the existing closures include: the existing time/area closures to protect small swordfish are no longer needed and should be reduced in size and/or duration or eliminated all together; NMFS inaction to adjust the offshore closure borders prevents U.S. fishermen from having a reasonable opportunity to harvest its ICCAT quota share, contrary to ATCA and the Magnuson-Stevens Act; NMFS needs to re-examine the area closures and provide immediate modifications to at least some areas. Other areas may require a period of heightened monitoring to determine the effects of new circle hook gear and careful handling/release procedures; NMFS should continuously monitor whether

the existing closed areas are having the desired effect to determine whether modifications can occur; NMFS should reevaluate the PLL gear time/area closures for their necessity and effectiveness and redevelop these closures to include prohibiting all HMS hook and line fishing if the biological justification warrants retaining any such closures; NMFS should consider modifying the offshore borders of existing closures in several areas where the deeper depth contours provide relatively clean directed fishing; NMFS should have considered modifying the Desoto Canyon; opening the area offshore of the 250 fathom curve in the Desoto Canyon could benefit YFT fishermen; and if NMFS allows vessels into closed zones by using Vessel Monitoring Systems (VMS), then VMS should also be used to implement and enforce additional new closures that follow oceanic bottom contour lines. Comments opposed to modifying the existing HMS closures include: NMFS should not rely on old logbook data to modify existing closures; the existing closures should not be modified; NMFS should not consider areas that may serve as nursery areas for North Atlantic swordfish; NMFS should not consider opening the DeSoto Canyon areas to longlining because this would adversely affect the health of the fisheries ecologically and would prove detrimental to the economic interests of the commercial fleet; and, the figures in this section show longline sets after the 2000 closure of the Desoto Canyon and the harvest of BFT dead discards, which is illegal, so how do individuals make these sets and record them in the logbook?

*Response:* NMFS considered modifications to the current time/area closures, including modifications to the DeSoto Canyon, and is continuously monitoring the effectiveness of the current closures. As described above in the response to Comments 4 and 5 and elsewhere in this document, an analysis of pre-closure and post-closure data indicate that the existing closures have effectively reduced the bycatch of protected species and non-target HMS, and provided other positive ecological benefits. The analysis also indicated that none of the modifications would have increased the retained catch enough to alleviate concerns about portions of the swordfish quota remaining uncaught. Specifically for the DeSoto Canyon, NMFS considered modifying the existing DeSoto Canyon time/area closure boundary to allow PLL gear in areas seaward of the 2000 meter contour from 26° N lat., 85°00' W

long., to 29° N lat., 88°00' W long. (alternative B3(d)). However, the average swordfish size was significantly smaller in the area to be reopened (average size = 108 cm LJFL) compared to the area to remain closed (average size = 116 cm LJFL;  $P = 0.03$ ). Both average swordfish sizes are smaller than the minimum size limit of 119 cm LJFL. Therefore, NMFS believes that modifying the Desoto Canyon closure could increase swordfish discards. In addition, new circle hook management measures were put into place in 2004, and NMFS is still assessing the effects of circle hooks on bycatch rates for HMS. Until NMFS can better evaluate the effect of circle hooks on bycatch reduction, especially with regards to protected species interaction rates, the Agency is not modifying the current time/area closures. Furthermore, as described in the response to Comment 14 above, the current time/area closures were established to reduce bycatch of more than just swordfish. Nonetheless, if the upcoming ICCAT swordfish stock assessment indicates the species is rebuilt, NMFS may reconsider modifying the existing closures taking into consideration things such as the impact of circle hooks and protected species interaction rates. Finally, while VMS can provide NMFS with information that allows a vessel to transit a closed area, closed areas with boundaries that track oceanic contour lines would often be too irregularly shaped to be easily enforced despite the use of VMS. Geometric coordinates greatly aid in enforcement of time/area closures.

The baseline that NMFS has used to calculate bycatch reduction associated with current time/area closures is the U.S. Atlantic HMS logbook data just prior to the implementation of the closures (1997 - 1999). NMFS feels this best reflects the status of the stocks at the time of the closures and more current data is not available because PLL gear has been prohibited in these areas since 2000 or 2001, depending on the closure. The figures referred to by the commenter (Figures 4.3 and 4.8 in the Draft Consolidated HMS FMP) incorrectly showed all of the 1997 - 1999 reported sets rather than the intended 2001 - 2003 reported sets. The figures have been corrected. Very few, if any, sets have been reported in the Desoto Canyon since 2000. The figures in the Final Consolidated HMS FMP only show where BFT discards occurred for PLL vessels from 2001 through 2003. NMFS also implemented the use of a vessel monitoring system (VMS) for all PLL vessels on September 1, 2003 (68

FR 45169). With this monitoring system, NMFS has been able to determine if PLL vessels are placing sets in closed areas. VMS has helped alert enforcement of illegal activities occurring in closed areas under real time conditions, which has led to prosecution for illegal fishing in closed areas.

*Comment 16:* We support a modification of the area described in alternative B3(a) (modifications to the Charleston Bump closed area). While the analysis shows a negligible amount of bycatch, there is an opportunity for catching marketable species for boats that are struggling and need access to this area; we support a modification of the area described in alternative B3(b) (modifications to the Northeastern U.S. closed area) because this area should never have been closed in the first place; the entire June BFT closure area should be reevaluated in light of all the mandatory bycatch reduction measures and the inability to harvest the U.S. BFT quota in recent years.

*Response:* NMFS analyzed both alternatives B3(a) and B3(b). The analyses indicate that alternative B3(a) would increase swordfish catch by 1.1 percent and yellowfin tuna catch by 0.16 percent. However, it could increase the bycatch of sailfish (3.0 percent), spearfish (2.4 percent), and white marlin (2.0 percent). Alternative B3(b) would cause a minimal increase in bycatch, with only a minimal increase in retained catch based on 1997 - 1999 data (i.e., 3 swordfish, 1 BFT, and 1 BAYS tuna (numbers of fish)). Therefore, NMFS is not implementing alternatives B3(a) and B3(b) because neither alternative would increase retained catches enough to alleviate concerns over uncaught portions of the swordfish and BFT quotas. As described in the response to Comment 2, NMFS is not implementing any new closures, except for the Madison-Swanson and Steamboat Lumps, or modifying any existing closures. NMFS may consider changes to the current time/area closures in a future rulemaking depending upon the results of the circle hook analyses, the 2006 ICCAT stock assessments (BFT, swordfish, and billfish), protected species interaction rates, and the other criteria described in this final rule.

vi. Madison-Swanson/Steamboat Lumps

*Comment 17:* NMFS received contrasting comments regarding preferred alternative B4 (implement complementary HMS management measure in Madison-Swanson and Steamboat Lumps Marine Reserves) including: I support preferred alternative B4 and the maintenance of

the existing closures; the Agency appears to be acting positively on the Gulf of Mexico Fishery Management Council's request for complementary closures; I support this alternative even though this will have virtually no significant impact on HMS fisheries because the area is so small; I support alternative B4 because it will make enforcement easier; we support alternative B4 with the following edit, "Maintain existing time/area closures and implement complementary November through April (6 months) — Preferred Alternative"; and we do not support complementary closures with Madison-Swanson and Steamboat Lumps - the PLL industry has had to withstand numerous stringent measures in recent years and cannot withstand any additional closures.

*Response:* NMFS is implementing alternative B4, complementary HMS management measures for the Madison-Swanson and Steamboat Lumps Marine Reserves, at the recommendation of the Gulf of Mexico Fishery Management Council. These closures were designed primarily to protect spawning aggregations of gag grouper and other Gulf reef species. Similar management measures are already in effect for holders of southeast regional permits. The complementary HMS management measures would close any potential loopholes by extending the closure regulations to all other vessels that could potentially fish in the areas and/or catch gag grouper and other reef fish as bycatch (e.g., HMS bottom longline vessels). As a result, this action is expected to improve the enforcement of the Madison-Swanson and Steamboat Lumps Marine Reserves. Only minor impacts on HMS fisheries, including the PLL fishery, are anticipated because the marine reserves are relatively small, and little HMS fishing effort has been reported in these areas. The suggested edit to the title of this alternative is appreciated, but is not necessary because the existing closures will remain in effect by default, absent additional action to remove or modify them.

#### vii. Criteria/Threshold/Baseline

*Comment 18:* NMFS received several comments on using the criteria on current closures including: NMFS should have created these criteria when establishing the closed area off NC - NMFS then could have modified the economic impacts to the NC directed shark fishermen by having flexibility to reduce the time and area of the current closed area; and all existing closed areas should be immediately re-evaluated in terms of the new criteria.

*Response:* NMFS used many of the criteria when establishing the current time/area closures. NMFS is implementing the criteria to clarify the decision-making process and to inform constituents about what NMFS would consider before implementing new time/area closures or modifying current time/areas closures. In addition, in this rulemaking, NMFS evaluated the impacts of most of the current time/area closures in the No Action alternative, B1, and the impacts of modifying four current time/area closures. Thus, NMFS has already re-evaluated some of the current time/area closures using the criteria. Once the criteria are implemented, NMFS would continue using them in future rulemakings. The only time/area closure that was not re-evaluated during this rulemaking was the mid-Atlantic shark closure off North Carolina. NMFS did not re-evaluate this closure because, as described in the response to a petition for rulemaking from the State of North Carolina (October 21, 2005; 70 FR 61286), the closure became effective in January 2005, and NMFS did not have any additional information on which to reevaluate the conclusions of the rulemaking that established the closure (December 24, 2003; 68 FR 74746). However, when NMFS established the mid-Atlantic shark time/area closure, the Agency considered the social and economic impacts on directed shark fishermen, while also balancing reductions in the catch of juvenile sandbar sharks, the bycatch of prohibited dusky sharks, and the quota throughout the entire large coastal shark fishery. As described in this rulemaking and in previous rulemakings, the primary goals of time/area closures are to maximize the reduction of bycatch of non-target and protected species while minimizing the reduction in the catch of retained species. NMFS believes that the mid-Atlantic shark closure should accomplish these goals even though there may be negative economic impacts as a result of that closure. Once the results of the ongoing LCS and dusky shark stock assessment are finalized, NMFS may consider whether changes to any management measures are appropriate regarding LCS, including dusky sharks, and may reconsider the mid-Atlantic closed area in a future rulemaking using the criteria being implemented in this final rule.

*Comment 19:* NMFS received several comments regarding research and closed areas including: NMFS should support additional research to determine where other closed areas should be placed; NMFS should collect data for use in

establishing such criteria in open areas to the maximum extent possible; and there must be overwhelming reason to pay fishermen to use illegal gear in a closed area in the name of research (while still being able to sell their catch) when such studies could just as easily be performed in vast areas of the oceans where it is legal to fish in that manner.

*Response:* NMFS supports research to determine how changes in fishing gear and/or fishing practices can reduce bycatch. Research in closed areas to test how changes in fishing gear and/or fishing practices may reduce bycatch is particularly important. Due to the spatial and temporal variability of HMS and the species that HMS interact with, the results of experiments in open areas may not always be applicable to closed areas. Oftentimes, these areas are "hot spots" and were closed because they are areas with high congregations of HMS or other species. These congregations usually occur along bathymetric contour lines or areas where currents interact. In order to scientifically test if a certain change in the gear would result in a significant reduction in bycatch, scientists may need to work in areas where there is a high degree of certainty that the gear will interact with the bycatch species. Testing for bycatch reduction in areas where there is little to no bycatch would likely require more monetary resources, fishermen, and time, compared with areas that are considered "hot spots." Scientists often conduct preliminary tests in open areas to ensure that the changes in gear or fishing methods being considered could work, but they may need access to closed areas at some point to make certain that the expected results are actually realized. Otherwise, NMFS might reopen a previously closed area in light of technological advances in bycatch reduction but not see the expected reduction in bycatch rates, or potentially see an increase in bycatch rates.

*Comment 20:* NMFS received comments regarding the specific criteria that NMFS should consider when examining potential area closures including: the criteria should include the status of the stock in each area under consideration; the criteria should include bycatch baselines, targets, reduction timetables, and consider impacts on all HMS, with an emphasis on overfished species; what percent reduction in discards is required to implement a time/area closure, and on what basis is this threshold determined? What is the threshold that the Agency is trying to achieve? There are no standards; was a target bycatch reduction level identified; the Agency

should quantitatively use an optimization model to combine areas to achieve the optimum benefit; these criteria should be developed in a workshop including managers, scientists, and stakeholders to ensure their success; the discussion of how specific criteria would be developed, reviewed, and authorized is vague; overall the criteria seem to restrict NMFS' use of discretion in using closed areas as part of a comprehensive strategy to reduce bycatch and ensure sustainable ecosystems; and NMFS should preserve the availability of the greatest range of options to address its fisheries management, protected resources, and marine ecosystem conservation responsibilities.

*Response:* NMFS already considers the status of the stocks when implementing time/area closures. Closed areas like the Northeastern United States closed area, the mid-Atlantic shark closed area, and the Northeast Distant closed area were all implemented to address specific overfished or protected species. The other closed areas, which were implemented to reduce bycatch in general, also considered the status of the stocks before implementation.

Establishing pre-determined thresholds or target reduction goals for specific species, as requested in this comment, is not appropriate because it does not consider the impact on the remaining portion of the catch. Consideration of the overall catch is critical when implementing a multispecies or ecosystem-based approach to management. Furthermore, while the Magnuson-Stevens Act provides NMFS with the authority to manage all species, NMFS must balance the impacts of management measures on all managed species. National Standard 1, which requires NMFS to prevent overfishing while achieving on a continuing basis, the optimum yield from each fishery for the United States fishing industry, clearly applies to all species and all fisheries. Similarly, National Standard 9, which requires NMFS to minimize bycatch and bycatch mortality to the extent practicable, applies to all species and fisheries. By choosing not to implement specific thresholds or a decision matrix, NMFS retains the flexibility to balance the needs of all the species encountered with the fishery as a whole. If NMFS must manage a fishery to achieve a specific goal (e.g., a jeopardy conclusion regarding the PLL fishery and leatherback sea turtles), this flexibility allows NMFS to close certain areas or take other actions to achieve that goal while also protecting, to the extent

practicable, the other species and the rest of the fishery. Without this flexibility, NMFS might potentially have to implement more restrictive measures to protect one species causing potential cascade effects (e.g., closing one area may increase the bycatch of another species, which could result in closing another area, etc.).

This flexible approach also provides NMFS with the ability to re-examine the need for existing closures and modify them appropriately based on the analyses rather than the attainment of a specific goal (e.g., NMFS would not have to wait for 30 percent reduction in bycatch to be met; it could open the closure at 25 percent, depending on the result of reducing bycatch of other species or other considerations, as appropriate). The present criteria do not preclude NMFS from establishing a decision matrix in the future if it could provide the flexibility necessary to consider all of the species involved. This may be more appropriate when NMFS has a longer temporal dataset on the simultaneous effect of circle hooks and the current time/closures. At this time, NMFS believes that the criteria contained in the preferred alternative B5 would provide the guidance needed, consistent with the Magnuson-Stevens Act and this FMP, to help NMFS make the appropriate decisions regarding the use of time/area closures in HMS fisheries. NMFS developed the criteria to help make the overall process of implementing and/or modifying current time/area closures more transparent, not more vague. While NMFS did not hold a workshop on these criteria, they were considered by multiple stakeholders during the scoping and public comment period for this rule and subsequently refined, as appropriate.

*Comment 21:* NMFS received many comments regarding the use of criteria to open or modify closed areas. These comments included: criteria are needed to allow for modifications of the closed areas; I cannot support the preferred alternative B5, area closure framework alternative, because it could allow NMFS to open existing closures; changes to existing closed areas must, at a minimum, be conservation neutral; we need a mechanism to open or modify closed areas; the present closures appear to be larger or different from what is necessary; to go through the entire regulatory process to change or eliminate the closures takes too long and is too costly for both the government and the fishery.

*Response:* NMFS already has the authority to modify current closed areas once NMFS determines that a closed area has met its original management

goal. The existing time/area closures were not meant to be permanent closures. Rather, each closure was implemented with a specific management goal(s) in mind. Once those goals are met, NMFS may decide to modify or remove the time/area closure. Through the implementation of the criteria, and using the appropriate analyses, NMFS would be able to modify the current time/area closures in a more timely and transparent manner. No changes were made to existing time/area closures at this time because such modifications could potentially result in bycatch of non-target HMS and protected resources, such as sea turtles. However, once NMFS better understands the effects of circle hooks, which were implemented fleet-wide in mid-2004, on all species, NMFS may consider modifying the current time/area closures. Such modifications would need to be either conservation neutral or positive.

*Comment 22:* Since the East Florida Coast, Charleston Bump, and DeSoto Canyon closures went into effect, bycatch and fishing effort has been reduced. Those three closures achieved a greater than predicted reduction in bycatch. NMFS should use the year before the closures went into effect as a baseline to determine what the existing management measures have produced, rather than taking additional actions and expecting the bycatch to continually diminish. NMFS could modify closures and allow increases in bycatch up to the reductions expected as a result of the analyses that closed those areas. This would reduce the economic impacts on fishermen.

*Response:* NMFS agrees that the current closures reduced the bycatch of most species more than predicted by the analyses in the rulemaking that originally closed the areas. NMFS used data just prior to the implementation of these closures (i.e., logbook data from 1997 - 1999) because the Agency felt this time series best represented the status of the stocks at the time the closures were implemented. NMFS considered modifications to these areas in this rulemaking. However, the current analyses indicated that bycatch of some species, such as marlin and sea turtles, could increase as a result of those modifications. Given the status of marlin and the jeopardy finding on leatherback sea turtles, NMFS believes that increases in the bycatch of those species are not appropriate. Additionally, the analyses in this rulemaking are based on mostly J-hook data, which are no longer in use in the fishery. NMFS will continue to monitor the effectiveness of the closures and

may consider modifications in the future, particularly as the amount of circle hook data increases.

viii. Fleet Mobility/Redistribution of Effort

*Comment 23:* NMFS received several comments regarding the mobility of the fleet. These comments included: I do not believe that effort will move to the Atlantic Ocean from the Gulf of Mexico; commercial fishermen would rather stay home and fish for other species rather than relocate great distances; longline vessels are tied to communities; given rising fuel prices, an increase in long distance relocation seems unlikely; NMFS states that Vietnamese fishermen are reluctant to fish outside the Gulf of Mexico and uses this statement to conduct a separate analysis specific to the Gulf of Mexico, but NMFS applied the assumption to the analysis of only one alternative in the Gulf of Mexico when it should be applied to all GOM alternatives; how does the 2001 NMFS VMS study support conducting a fleet-wide analysis when the majority of effort is in or adjacent to the homeport fishing area?

*Response:* To determine fleet mobility, NMFS relied on its analyses described in a 2001 report that NMFS submitted to the U.S. District Court in response to a lawsuit filed by the fishing industry against NMFS for implementing the vessel monitoring system (VMS) requirement. That document indicated that fishermen were as likely to fish in areas away from their homeport as in areas immediately adjacent to their homeport, even without the added pressure of a closure in an area adjacent to their homeport. In addition, NMFS conducted a separate analysis in the Draft Consolidated HMS FMP for alternative B2(a) that limited the redistribution of effort in the Gulf of Mexico. This separate analysis was conducted because the area in alternative B2(a) was the smallest of the three closures considered in the Gulf of Mexico and, therefore, represented the most likely case in which fishermen would remain in the Gulf of Mexico. Because there would still be open areas in the Gulf of Mexico during this period (May through November), fishermen might be more likely to fish in those areas rather than relocate fishing effort to the Atlantic Ocean. NMFS also recognized that Vietnamese fishermen are reluctant to fish outside of the Gulf of Mexico, especially for a small time/area closure. Such limited redistribution of effort was not appropriate for other closures in the Gulf of Mexico because of their larger geographic size and longer temporal duration.

However, NMFS further analyzed fleet mobility in the current rulemaking by examining logbook data from 2001 - 2004 (this included only the first six months of 2004 to include only J-hook data) to determine the amount of vessel movement along the Atlantic coast and into the Gulf of Mexico. The data indicated that vessels moved out of the Gulf of Mexico, and that vessels sometimes fished as far away as the central Atlantic. Similarly, in the Atlantic, some vessels fished in areas far from their homeports, although movement from the Atlantic Ocean into the Gulf of Mexico was minimal. Additionally, there were no physical differences in terms of length or horsepower between vessels that fished inside or outside the Gulf of Mexico. Thus, NMFS concluded that HMS vessels continue to be highly mobile, are capable of fishing in areas distant from their homeports, and that the closure analyses would need to take into account the potential for redistribution of fishing effort, particularly for a potentially large closure such as B2(c) in the Gulf of Mexico. Based on this additional analysis of fleet mobility, NMFS considered different scenarios of redistribution of effort for alternatives B2(a), B2(b), and B2(c). Each scenario made different assumptions regarding where effort would redistribute, based on the current fleet's movement. However, NMFS recognizes that the increased cost of fuel and other supplies may limit the amount of movement by the pelagic longline fleet.

*Comment 24:* NMFS received comments regarding the redistribution of fishing effort model used to analyze the time/area closure alternatives. Comments included: Does the model assume random distribution to other fishing grounds?; how does the redistribution of effort model result in more bycatch?; how does the redistribution of effort model work with circle hooks?; the model is based on discard rates, which implies some mortality.

*Response:* NMFS considered a broad range of time/area closure alternatives that estimated potential bycatch with and without redistribution of fishing effort. Considering the impacts of closures with and without redistribution of effort provides NMFS with the potential range of changes in catch that could occur as a result of the closure(s). One end of the range assumes that all fishing effort within a given closed area would be eliminated (i.e., fishermen who fished in the closed area would stop fishing for the duration of the closure). Thus, the number and percent reduction in catch of both non-target

and target species in these analyses represents the highest possible expected reduction. This would also represent the greatest negative social and economic impact that is anticipated for the industry. The other end of the spectrum assumes that all fishing effort in a closed area would be distributed to open areas (i.e., fishermen would continue fishing in surrounding open areas, move their businesses closer to open areas, or sell their permits to fishermen closer to open areas).

Rather than random redistribution, the full redistribution model calculates resulting catch of target and non-target species by multiplying the effort that is being redistributed due to the closure by the average CPUE across all remaining open areas for each species. This amount is then subtracted from the estimated reduction inside the closed area (for a complete description of the methodology used for redistribution of effort, please see Appendix A of the Final Consolidated HMS FMP.) This end of the continuum would be expected to provide the least amount of bycatch reduction for a given closure, depending on the CPUE of each species in all remaining open areas. Oftentimes, this model provides mixed results regarding the ecological, economic, and social impacts because HMS and protected species are not uniformly distributed throughout the ocean. Therefore, a closure in one area might reduce the bycatch of one or two species, but may increase the bycatch of others. Bycatch of a particular species increases if that species is more abundant or more frequently caught (i.e., higher CPUE) in areas outside of the closed area. For example, the analyses indicate that a closure in the central Gulf of Mexico could reduce BFT and leatherback sea turtle discards because CPUE for those species is higher in the Gulf of Mexico than along the eastern seaboard. However, such a closure could increase sailfish, spearfish, and large coastal shark discards because the CPUE for those species is higher outside of the Gulf of Mexico. In reality, the actual result is expected to be between the results obtained from these two different considerations of redistributed effort. In addition, NMFS combined dead and live discards in these analyses, so mortality is accounted for in terms of discards. Given the number of species that NMFS had to consider, there was no single closure or combination of closures that resulted in a reduction of bycatch of all species considered. The data analyzed in the Draft Consolidated HMS FMP (2001 - 2003) and additional

analyses in the Final Consolidated HMS FMP (2001 - 2004, including the first six months of 2004 only) did not include circle hook data. The implementation of the circle hook requirement in June 2004 resulted in a change to the baseline. NMFS needs to fully analyze the circle hook data to determine the extent of bycatch reduction and the effects of post-release mortality resulting from this new gear requirement.

*Comment 25:* How is NMFS going to address the peer review comments that found fault with the effort redistribution model?

*Response:* Not all of the peer reviewers found fault with the redistribution of effort analysis. For example, one peer reviewer made the following comment:

The time area closure model is based on generally accepted principles in fisheries science. In general such models rely on a set of assumptions related to static patterns of relative abundance at some temporal and spatial resolution, limited consideration of fish movements, and incomplete understanding of the effects of closure areas on redistribution of fishing effort. Nonetheless, such models can provide useful insights for comparisons of alternative management strategies. This is the approach taken within this draft EIS. Twelve combinations of seasonal and spatial closures are evaluated in Section 4.1.2. Without such a model there would be no pragmatic way of comparing the proposed closed areas. In general it is probably safe to assume that the limitations of the model will be comparable across alternatives. Thus the rankings of each alternative should be relatively insensitive to the assumptions.

However, in response to another peer reviewer's comment that NMFS test assumptions and consider other plausible alternatives to the random effort redistribution model, NMFS evaluated different scenarios that made different assumptions regarding where effort would be redistributed in the Final Consolidated HMS FMP, including redistribution of effort in the Gulf of Mexico only for closures in the Gulf of Mexico, redistribution of effort in the Atlantic only for a closure in the Atlantic, and redistribution of effort in the Gulf of Mexico and the Atlantic for closures in the Gulf of Mexico. These scenarios were based on an analysis of the movement of fishing effort out of the Gulf and into the Atlantic. In order to perform this last analysis, NMFS examined logbooks from 2001 - 2004 and tracked the movement of vessels out of the Gulf of Mexico into different areas of the Atlantic. By examining the movement of effort between the Gulf of Mexico and the Atlantic, NMFS was able to modify the existing full redistribution of effort model and apply different proportions of effort to the

average CPUEs of species in the different areas. Using these additional analyses, NMFS could ask different questions about the assumptions of the existing model (e.g., should all fishing effort from a closed area be distributed to all open areas or redistributed only within remaining open areas of the Gulf of Mexico).

*Comment 26:* The random redistribution of effort model weighs nearby and distant areas equally. This may artificially emphasize distant areas where bycatch rates are higher, and may result in unlikely assumptions about how the effort will shift. This model suggests that Gulf of Mexico vessels are mobile and might fish as far away as Florida but does not suggest that effort is distributed randomly or that significant effort would be displaced to the Northeast. To close or not close an area based on random redistribution of effort is not reasonable. We are concerned about the model given the fact that the data clearly show where concentrations of marlin are caught.

*Response:* As described above in the response to Comment 24, the method used to calculate redistribution of effort and the resulting catch of target and non-target species is to multiply the effort that is being redistributed by the average catch rate (CPUE) for each species in all remaining open areas, and subtract it from the estimated reduction inside the closed area (for a complete description of the methodology used for redistribution of effort, please see Appendix A of the Final Consolidated HMS FMP.) In some cases, depending upon the average CPUE in open areas, this approach may emphasize distant areas where bycatch rates may be higher. However, in other cases, low bycatch rates in distant areas would not be a factor. For example, a small closure such as B2(a) in the central Gulf of Mexico might result in fishing effort being displaced into areas immediately adjacent to and surrounding the closed area. NMFS tried to take this into account by analyzing redistribution of effort only in the Gulf of Mexico for alternative B2(a). For larger closures in the Gulf of Mexico such as alternative B2(c), NMFS considered redistribution of effort in the Gulf of Mexico and Atlantic based on known movement of fishing vessels and effort into areas of the Atlantic. Finally, for a closure such as B2(b) located in the Atlantic, NMFS considered redistribution of effort in open areas of the Atlantic only. In all cases, NMFS considered the results of both no redistribution of effort and the full redistribution of effort model and assumed that the actual result of the

closure would be somewhere between the results of the two scenarios.

*Comment 27:* NMFS needs a probabilistic model for effort redistribution that considers things such as the history of effort.

*Response:* NMFS is aware of other models that have investigated redistribution of effort as a result of time/area closures (i.e., random utility models (RUMs) used for the Hawaiian PLL fishery, and a closed area model used by the New England Fishery Management Council (NEFMC) to evaluate closures for the groundfish fishery). These types of models are econometric models, which predict where fishermen will reallocate effort based on maximizing revenues and/or profits. These models were not designed to be used for the current HMS PLL fishery, and in order for either framework to be applicable to a time/area analysis for the Atlantic HMS PLL fishery, NMFS would have to develop a specific model for the PLL fleet based on the current economics, fishing grounds, and fishing effort of the Atlantic HMS PLL fleet. Development of such a model would require considerable additional investment, time, and effort.

At present, NMFS has not developed a probabilistic model that considers the history of effort or other complicating factors (i.e., trip costs, revenues or profits). Prior to developing such a model, NMFS would need to consider the limitations of the Agency, both financially and logistically, to build such a model. For example, despite the fairly straightforward model used in this rulemaking and previous time/area rulemakings to calculate redistribution of fishing effort, many commenters found the procedure confusing or misunderstood the approach and results. This confusion could become even worse if a more complicated model were used. Some models require substantial capital investment for the Agency, years to develop, and years of testing before they can be used. While the model used continues to be the best available science for the PLL fishery at present, NMFS is considering different options to improve the models used to analyze the impacts of time/area closures.

*Comment 28:* NMFS has applied the redistribution model beyond its usefulness because the model does not describe where the vessels are likely to go. NMFS places an overemphasis on the dangers of redistribution of effort instead of making balanced recommendations based on both the lower and upper estimates of the model.

*Response:* NMFS disagrees that the redistribution model has been applied beyond its usefulness. It is highly unlikely that NMFS could develop a perfect model that accurately predicts fishing behavior. The redistribution of effort model is useful in providing one end of a range of potential outcomes resulting from new closures. NMFS does not overemphasize the dangers of redistribution of effort, but rather considers it likely that fishing effort may be displaced into open areas and that there may be some increase in bycatch as a result. This is not highly speculative, but rather based on quantitative assessments of fishing effort, bycatch rates, and resulting ecological impacts. For instance, fishing effort in the open areas increased in the Gulf of Mexico after the implementation of the existing closures, which suggests that fishing effort will be displaced to other areas. Furthermore, NMFS does not believe that fishing effort that occurred historically within an area would be completely eliminated with a new closure. As stated above, the model used is the best available science for the PLL fishery; however, NMFS will continue to refine the model to increase its usefulness.

*Comment 29:* NMFS received comments regarding effort shifts in the Gulf of Mexico including: effort shifts have not occurred in the Gulf of Mexico as predicted for other species; vessels may be offloading in different ports but still in the Gulf of Mexico; and the assumption that vessels would move out of the Gulf of Mexico and catch BFT, particularly spawning western BFT, is unlikely.

*Response:* While there has been an overall decrease in fishing effort since implementation of the closures in 2000 - 2001, NMFS has seen evidence of an increase in effort in the Gulf of Mexico during 2001 - 2004, possibly as a result of the East Florida Coast closure implemented in 2001, which forced fishermen who originally fished in the east coast of Florida into the Gulf of Mexico. The difference between closures implemented in 2000 and the closures being considered in this FMP is that many of the areas of high bycatch were targeted for closures in 2000 and remain closed today. NMFS is now analyzing an additional series of closures that may not produce the same tangible results that occurred after the first round of closures because bycatch has already been reduced substantially for many species. Analyses indicate that the overall number of reported discards of swordfish, BFT, bigeye tuna, pelagic sharks, blue and white marlin, sailfish, and spearfish have all declined by more

than 30 percent since the time/area closures went into effect. Additionally, as the areas open to fishermen become more restricted, fishing effort will tend to become more and more concentrated in smaller and smaller areas where even low bycatch rates may result in increases in bycatch due to the high effort levels. Some of the closures considered in this rulemaking such as alternatives B2(c) and B2(d) would close very large portions of the Gulf of Mexico where approximately 90 percent of the historic fishing effort in the Gulf has occurred. Closing such a large area in the Gulf of Mexico would be unprecedented, and predicting the outcome would likewise be difficult. It should be noted that while the NED closure was just as large as some of the closures proposed in this rulemaking, the closures proposed in this rulemaking are closer to land and more accessible to vessels. However, NMFS disagrees with the comment that vessels would be unlikely to move out of the Gulf of Mexico in response to such an unprecedented large closure. The analyses indicate that fishermen currently homeported in the Gulf of Mexico move out of the Gulf of Mexico into the Atlantic even without the added incentive of a closure. Even in the highly unlikely event that fishermen did not move out of the Gulf of Mexico in response to a closure, the economic impact could force them to sell their permits to fishermen in the Atlantic, thereby increasing fishing effort in those areas. The redistribution of effort analysis in the FMP would take this into account.

*Comment 30:* NMFS received many comments regarding where effort would be redistributed including: the model fails to consider redistribution of effort from one fishing gear to another (e.g., longline to gillnet); the model inappropriately predicts spatially heterogeneous increases in regional fishing effort and bycatch; NMFS should acknowledge the limitations of the model when selecting the final alternatives and base predictions about redistribution of effort on credible, transparent sources and peer-reviewed literature or on comparisons to the outcomes of previous time/area closures; and NMFS initially argued that there would not be a displacement of effort if closures were implemented, but now is arguing the opposite.

*Response:* While the redistribution of effort model does not explicitly take into account the potential for fishermen to shift from one gear to another, NMFS has discussed a number of unintended consequences that could result from new closures, including fishermen

selling their permits, moving to other areas, and possibly switching gears to target other species. However, given the limited access restrictions of permits for other fisheries, NMFS predicts that it would be difficult for fishermen to switch to a different gear and different fisheries unless they currently possess other permits. NMFS acknowledges the limitations of the redistribution of effort model, and has considered and analyzed other plausible alternatives to the current redistribution scenario. NMFS has considered results from both the redistribution of effort model and a no redistribution of effort model since the first closure for HMS fishermen was implemented in 1999. NMFS has consistently taken both scenarios into account when considering new or additional closures.

#### ix. Data Concerns

*Comment 31:* Does the recent article in the journal "Nature" regarding BFT spawning, which indicated that discards are being underestimated, affect NMFS assumptions about the benefits (and costs) of the proposed time/area closures? Does NMFS have any data indicating that bycatch rates are significantly lower than those recorded by the scientific observers?

*Response:* NMFS is aware that discards may be underreported in the HMS logbook data compared to the POP data. However, NMFS examined whether any differences in underreporting between the logbook and observer data for different species emerged between different regions. If underreporting was not different between regions, then the relative effect of each closure on bycatch reduction for each species should be comparable across alternatives.

Cramer (2000) compared dead discards from HMS logbook and observer data. In her paper, Cramer used observer data to estimate dead discards of undersized swordfish, sailfish, white and blue marlin, and pelagic sharks from the PLL fishery operating in the U.S. Atlantic, Caribbean, and Gulf of Mexico. She also provided the ratio of catch estimated from the observer data divided by the reported catch in the HMS logbooks. This ratio indicates the amount of underreporting for different species in a given area. NMFS analyzed these ratios to test whether underreporting varied for different species in different parts of the Atlantic, Caribbean, and Gulf of Mexico. NMFS found no statistical difference in the ratio of estimated catch versus reported catch for undersized swordfish, pelagic sharks, sailfish, or white or blue marlin in the Atlantic, Caribbean, or Gulf of

Mexico. Based on the available information, NMFS found that the underreporting in logbooks compared to observer reports was consistent between areas. Therefore, NMFS believes that, while HMS logbooks may underestimate the amount of bycatch, the use of logbook data rather than observer data should not invalidate or bias the results and that the relative effect of each closure for each species should be comparable across alternatives when using logbook data.

Furthermore, while logbook data appear to underreport bycatch, NMFS has logbook data for each set fished and has observer data for only a limited number of sets fished. In order to use observer data for the analyses, NMFS would have had to extrapolate the catch for all species in all the different areas. This extrapolation process would have added another layer of uncertainty to the model and the results. NMFS believes that while the overall numbers of bycatch and target catch taken would have been larger using the observer data, the use of observer data would have resulted in more uncertainty regarding the relative effect of each closure in terms of predicted changes in bycatch, discards, and retained catch would be the same. Use of the raw logbook data, however, would not introduce the same degree of uncertainty. NMFS will continue to investigate potential differences in reporting between HMS logbook and observer data for all discarded species as well as potential biases in reporting between geographical areas for different species.

*Comment 32:* NMFS should use the observed sea turtle CPUE by season for each region and multiply it by the amount of effort anticipated to return to that particular area in order to more accurately assess changes to sea turtle bycatch.

*Response:* NMFS used HMS logbook data for all of the analyses to maintain consistency among the alternatives and species. If NMFS had used the POP data for all species, NMFS would have had to calculate extrapolated takes for all the species considered. This extrapolation would have introduced more assumptions and uncertainty than using HMS logbook data to analyze the potential impacts of time/area closures. As mentioned in the response to Comment 31, NMFS found that HMS logbooks may underestimate the amount of bycatch, however, the relative effect of each closure for each species should be comparable across alternatives. The analyses conducted for this rulemaking (and described in the response to Comment 31) give some indication that the use of HMS logbook data over POP

data should not invalidate or bias the results of the time/area analyses because the level of underreporting did not significantly differ between geographic regions and, thus, between closure alternatives. NMFS will continue to investigate potential differences in reporting between HMS logbook and POP data for all discarded species.

*Comment 33:* How did NMFS conduct the overlap analysis comparing effects of bycatch on BFT, marlin, and sea turtles?

*Response:* NMFS analyzed the distribution of white marlin, BFT, leatherback and loggerhead sea turtles, as well as a number of other species from the 2001 - 2003 HMS logbook and POP data using GIS. Data for each of the species were mapped and compared spatially to one another in order to select the areas of highest concentration of bycatch. The areas of highest concentrations of bycatch for all species were then selected for further analysis. NMFS provided maps of bycatch for individual species in the Draft Consolidated HMS FMP, and has provided a map showing the overlap of BFT, white marlin, and sea turtles in the Final Consolidated HMS FMP. NMFS combined the bycatch data from the HMS logbook for BFT, white marlin, and sea turtles into one combined dataset, and then joined them to a 10 x 10 minute grid (which is equivalent to approximately 100 nm<sup>2</sup>) to get the number of discards for all species combined per 100 nm<sup>2</sup>. A color scale is included to show the number of observations per 100 nm<sup>2</sup>. The maps show the areas of highest bycatch for the three species combined. Monthly interactions for the different species (i.e., temporal variability) were considered in the redistribution of effort analyses.

*Comment 34:* NMFS should consider increasing observer coverage throughout the longline fleet to document unintended bycatch.

*Response:* NMFS's target for PLL observer coverage is 8 percent. This is based on the recommendation from the National Bycatch Report that found coverage of 8 percent would yield statistical analyses of protected resources that would result in coefficient of variance estimates that were below 30 percent.

*Comment 35:* Available evidence suggests that leatherbacks, loggerheads, and BFT may share similar hot spots in the Gulf of Mexico, thus closures could be beneficial to all species — despite the opposite conclusion in the Draft Consolidated HMS FMP.

*Response:* Pelagic logbook data also showed areas in the Gulf of Mexico

where leatherbacks, loggerheads and BFT have been present. NMFS considered closures in the Gulf of Mexico for white marlin, blue marlin, sailfish, spearfish, leatherback sea turtles, loggerhead sea turtles, other sea turtles, pelagic and large coastal sharks, swordfish, BFT, and BAYS tunas. However, unlike the analyses for the existing closures, NMFS found that no single closure or combination of closures would reduce the bycatch of all species considered, and in certain cases resulted in increases of bycatch for some species with the consideration of redistribution of effort. While the Magnuson-Stevens Act provides NMFS the authority to manage all species, NMFS must balance the mandates of the National Standards when examining various closures. For example, National Standard 9 requires NMFS to minimize bycatch and bycatch mortality to the extent practicable and National Standard 1 requires NMFS to prevent overfishing while achieving on a continuing basis the optimum yield from each fishery for the U.S. fishing industry. Both of these National Standards applies to all species and fisheries. If NMFS were to consider only National Standard 9, NMFS could continue to reduce bycatch of certain species until no fishery exists. However, NMFS also needs to balance the needs of National Standard 1 and ensure that each fishery has the opportunity to catch optimum yield of fish while preventing overfishing. NMFS will continue to look at additional closures and other management measures that reduce bycatch and bycatch mortality and that balance the requirements of all the National Standards and other domestic law, as applicable.

#### x. Pelagic Longline

*Comment 36:* NMFS received several comments regarding alternative B7, the prohibition of PLL gear. These comments included: we oppose any rule that would allow the further use or experimentation of such gear, and support alternative B7, which would prohibit the use of PLL gear in HMS fisheries and areas (this alternative would save the fishery if buoy gear was also prohibited); NMFS needs to look at data prior to the introduction of PLL gear in relation to the decline of billfish; and this should be about the gear, not the fishermen, because PLL gear is problematic.

*Response:* NMFS does not prefer alternative B7 at this time because, while prohibiting the use of PLL gear would eliminate bycatch associated with that gear, it would also eliminate a significant portion of the retained

catch of swordfish and tunas (e.g., in 2004, 97 percent of the swordfish landings from the U.S. Atlantic were from longline gear). Elimination of this retained catch would result in substantial negative social and economic impacts. Under ATCA, the United States cannot implement measures that have the effect of raising or lowering quotas, although NMFS may change the allocation of that quota among different user groups. The swordfish fishery is confined, by regulation, to three gear types: harpoon, longline, and handlines. Under preferred alternative H5, the commercial swordfish fishery would also be authorized to use buoy gear. Since it is unlikely that the handgear sector would be able to catch the quota given the size distribution of the stock, prohibiting longline gear may reduce the ability of U.S. fishermen to harvest the full quota. It may also reduce traditional participation in the swordfish fishery by U.S. vessels relative to the foreign competitors because the United States would harvest a vastly reduced proportion of the overall quota.

In addition, any ecological benefits may be lost if ICCAT reallocates U.S. quota to other countries that may not implement comparable bycatch reduction measures as the United States. The PLL fishery has implemented many management measures to reduce bycatch including circle hook requirements, live bait restrictions in the Gulf of Mexico, prohibition of the targeted catch of billfish and BFT, time/area closures, and safe handling and release protocols for protected resources. These restrictions have been successful. Methods that have been employed and designed by U.S. PLL fishermen, such as circle hooks and safe handling and release protocols for protected resources, are being transferred around the world to reduce bycatch world-wide. Therefore, this alternative could ultimately support the fisheries of other countries that do not implement or research conservation and bycatch reduction measures to the same extent that the United States does. As a result, alternative B7 could have the unintended effect of increasing the bycatch of undersized or non-target species and protected resources in the Atlantic Ocean.

*Comment 37:* NMFS needs to consider the adverse economic impact of existing time/area closures on the commercial longline fishery especially because the PLL fleet has been reduced to approximately 88 vessels due to existing restrictions; the current high cost of fuel is severely impacting the PLL fleet, and

recent hurricanes may have further reduced the fleet.

*Response:* NMFS evaluated the effect of current time/area closures on the PLL fleet in the No Action alternative, B1. While the closures have had a positive impact on bycatch, they have also had a negative impact on retained species landings. For example, from 1997 to 2003, the number of retained swordfish declined by nearly 28 percent, the number of retained yellowfin tuna declined by 23.5 percent, and the total number of retained BAYS tunas declined by 25.1 percent. Overall effort in the Atlantic PLL fishery, based on the reported number of hooks set, declined by 15 percent from the pre-closure period to the post-closure period. One reason for this decline may be that fishermen left the fishery as a result of the time/area closures. In addition, other factors such as hurricanes and fuel prices have negatively impacted the PLL fishery. This is one reason why NMFS does not prefer any new time/area closures, except for Madison-Swanson and Steamboat Lumps, at this time. Rather, NMFS will continue to estimate current fishing effort and the potential recovery of the PLL fleet, while also considering protected species and other takes.

*Comment 38:* Why is NMFS considering additional closures for the PLL fishery when analyses indicate that the original goals of the closures have been met or exceeded; NMFS does not react this way for the BFT fishery because it protects spawning or pre-adult swordfish, exceeding the ICCAT standards, yet promotes full utilization of the BFT angling quota; NMFS must realize that the PLL fishery is not always the highest contributor to mortality, and that other fisheries continue to hide behind their lack of data; NMFS should show recreational data and analyze closures for other gears; the issue is fishing mortality, regardless of where it comes from; NMFS must consider all forms of fishing mortality including post release mortality from catch and release fishing.

*Response:* As part of its annual review process, NMFS evaluates the effectiveness of existing time/area closures. Analysis of the change in effort and bycatch after implementation of existing closures indicates that bycatch may have been reduced more than predicted with redistribution of effort, and in some cases, without redistribution of effort. There are several possible explanations for the higher than predicted decline in bycatch and effort resulting from time/area closures that may have ecological impacts as well as economic repercussions on

fishing behavior and the PLL fishing industry: (1) stocks may be declining; (2) time/area closures may have acted synergistically with declining stocks to produce greater declines in catch than predicted; (3) fishermen may have left the fishery; and (4) fishing effort may have been displaced into areas with lower CPUEs. With regard to the last point, the redistribution of effort model is incapable of making predictions based on a declining CPUE. Instead, the model assumes a current CPUE that remains constant in the remaining open areas when estimating reductions. NMFS also considered modifications to the existing closures, in alternatives B3(a) and B3(b), to provide additional opportunities to harvest legal-sized swordfish but not increase bycatch. NMFS, however, does not prefer any modifications to the current closures for the reasons discussed in the response to Comment 15. NMFS agrees that all sources of fishing mortality should be considered in evaluating new and existing management measures. For this reason, circle hooks would be required with natural baits in all billfish tournaments (preferred alternative, E3). Estimated mortality contributions of the domestic PLL and recreational sectors toward Atlantic white marlin can be seen in Appendix C of the Consolidated HMS FMP. NMFS will consider additional information on post release mortality as it becomes available.

*Comment 39:* NMFS must consider safety. Overly restrictive closed areas force small vessels to stretch beyond their offshore capabilities.

*Response:* NMFS agrees that safety concerns should be considered when developing any new management measures, consistent with National Standard 10. After carefully reviewing the results of all the different time/areas closures analyses, and in consideration of the many significant factors that have recently affected the domestic PLL fleet, NMFS, at this time, does not prefer any new closures, except the complementary measures in the Madison-Swanson and Steamboat Lumps Marine Reserves. This decision is based primarily upon the analyses indicating that no single closure or combination of closures would reduce the bycatch of all species considered (see the response to Comment 39 of this section). Furthermore, the economic impacts of each of the alternatives may be substantial, ranging in losses of up to several million dollars annually, depending upon the alternative, and displacement of a significant number of fishing vessels.

## xi. Bottom Longline

*Comment 40:* We support the prohibition of bottom longline gear in the southwest of Key West to protect smalltooth sawfish (alternative B6). This alternative can provide a head-start in reducing sawfish bycatch during the lengthy process of review and implementation of the Smalltooth Sawfish Recovery Plan (SSRP). NMFS should coordinate closely with the Panama City Laboratory and Mote Marine Laboratory to ensure full funding of their proposed research into sawfish critical habitat and act promptly on their recommendations regarding additional time/area closures for the species.

*Response:* The alternative to close an area off of Key West relied upon a limited amount of Commercial Shark Fishery Observer Program (CSFOP) data, thus making it difficult to determine whether the area being considered would result in overall reduction in interactions, or whether sawfish exhibit a higher degree of mobility, and are as likely to be caught in other areas. Recent information indicates that additional sawfish interactions have occurred outside the proposed area, thus necessitating further review of the most appropriate location for a potential closure. In addition, the Smalltooth Sawfish Recovery team is currently in the process of identifying sawfish critical habitat, which may be helpful in determining an appropriate closure area in the future. NMFS supports this and other efforts to further delineate critical habitat for this endangered species.

*Comment 41:* NMFS received several comments regarding the bottom longline closed area off North Carolina including: NMFS should comprehensively examine and assess the effectiveness of closures and have the confidence that alterations would not reduce protection for dusky and sandbar sharks; I recommend removing the NC BLL closure and re-analyzing the impacts in the same manner as was done for this document. Displacement was not considered for that closure; and NMFS should change the NC closed area to only be closed out to 15 fathoms maximum depth, and change the time to begin on April 1 and continue until July 31 of each year. These changes protect juvenile sandbar sharks, keep protections in place for the peak "pupping season," and balance the needs of the directed shark fishermen whose economic livelihood has been hurt by the Amendment 1 measures.

*Response:* The bottom longline closed area off North Carolina was implemented in Amendment 1 to the

FMP in December 2003, and became effective on January 1, 2005. The time/area closure has now been in place for two complete management periods from January 1 to July 31, 2005, and January 1 to July 31, 2006. The final 2005 logbook data recently became available. NMFS is beginning to evaluate the impacts of the first period of this closure. NMFS is considering additional new information, such as the results of LCS stock assessment and the dusky shark stock assessments, to determine whether changes to the time/area closure, and all shark management measures in general, are appropriate. As a result of the new stock assessments, long-term changes to the time/area closure will be considered in an upcoming amendment to the FMP. However, given the large overharvest in the South Atlantic region in the first trimester of 2006, NMFS is considering short-term changes to the mid-Atlantic shark closure in 2007. NMFS also continues to monitor changes to shark regulations by coastal states and to work with the Atlantic States Marine Fisheries Commission (ASMFC) to develop an interstate shark plan, which may warrant additional review of existing Federal regulations and consideration of further changes to the time/area closure.

NMFS considered redistribution of fishing effort for the time/area closure off North Carolina in Amendment 1. The redistribution of fishing effort analysis indicated that, despite an increase in fishing effort outside the time/area closure, the closure would reduce the overall catch of juvenile sandbar and dusky sharks. The analysis showed that the number of juvenile sandbar and prohibited dusky sharks outside the time/area closure was low compared to the number being caught inside the time/area closure.

## xii. Hook Types

*Comment 42:* NMFS received several comments regarding hook types and time/area closures, including: the time/area closure analyses are based on J-hook data, which the Agency has admitted is obsolete; the time/area closure analyses do not take into account new CPUE or PRM rates based on circle hooks; the impact of the area closures will be larger than predicted because the PLL industry is already using circle hooks; all of NMFS analyses are based on J-hook data and a much larger fleet. Bycatch and bycatch mortality will be further reduced due to the exclusive use of circle hooks in the PLL fishery; NMFS should consider banning all J-hooks and live bait fishing

in all areas that are currently closed to PLL fishing.

*Response:* NMFS used the best scientific information available to analyze the various time/area closure alternatives. Circle hooks were not required in the PLL fishery until July 2004, and all of the data used in the time/area analyses were based upon J-hook data. The evaluation of the effects of circle hooks is discussed in the response to Comment 2 above. An important component of the rationale supporting the Agency's decision not to prefer new time/area closures (notwithstanding Madison-Swanson and Steamboat Lumps) is based upon absence of information regarding the effects of circle hooks on bycatch rates in the PLL fishery.

Similarly, there is an absence of information to analyze the effects of a ban on all J-hooks and live bait fishing in areas that are currently closed to PLL fishing. Some available studies document the effects of circle hooks on certain species (i.e., white marlin), and NMFS prefers specific, targeted hook requirements to reduce bycatch mortality in these fisheries. However, the effect of circle hooks on other HMS species (i.e., swordfish and sharks) and fisheries is largely unknown. As additional information becomes available, NMFS will assess the need to require circle hooks, or to prohibit live bait, in other HMS fisheries in areas that are closed to PLL fishing.

## xiii. General Time/Area Comments

*Comment 43:* NMFS chose to combine some of the closures in the analyses. How were those areas chosen?

*Response:* NMFS analyzed the combination of areas that had the highest bycatch of certain species in the Gulf of Mexico and the Atlantic to maximize potential bycatch reduction, and to take into account high bycatch for the same species in different areas as described in response to Comment 33. For example, there is high bycatch for BFT in both the Gulf of Mexico and in areas of the Northeast. By combining these two areas, NMFS took into account the fact that, if effort were redistributed, it would not be redistributed into the areas of highest bycatch in a different geographic region.

*Comment 44:* What is the new process for establishing and/or modifying closures?

*Response:* NMFS is not implementing a new process for establishing or modifying HMS time/area closures. Rather, the Agency is identifying specific criteria to consider for regulatory framework adjustments that could implement new time/area

closures or modify existing time/area closures in the future. NMFS has always considered these criteria, or combinations of them, in establishing or modifying time/area closures. The preferred alternative, however, will provide for greater transparency and predictability in the decision making process by clarifying what the Agency is looking for, or considering, during its analyses. The same criteria will be used both to establish new closures and to modify existing closures. The preferred alternative to establish these criteria will not affect the ability of the public to submit a petition to NMFS for rulemaking if they believe that an existing time/area closure should be modified or a new time/area closure should be established.

*Comment 45:* The proposed time/area closure alternatives do not achieve the conservation objectives of the FMP.

*Response:* There are many objectives in the Consolidated HMS FMP. All of these objectives must be balanced and considered in their entirety, within the context of the Magnuson-Stevens Act and other domestic laws, when implementing management measures. Some of the objectives in the FMP are especially relevant to this particular comment. The first objective is to prevent or end overfishing of Atlantic tunas, swordfish, billfish and sharks and adopt the precautionary approach to fishery management. The second objective is to rebuild overfished Atlantic HMS stocks and monitor and control all components of fishing mortality, both directed and incidental, so as to ensure the long-term sustainability of the stocks and promote Atlantic-wide stock recovery to the level where MSY can be supported on a continuing basis. The third objective is to minimize, to the extent practicable, bycatch of living marine resources and the mortality of such bycatch that cannot be avoided in the fisheries for Atlantic HMS or other species, as well as release mortality in the directed billfish fishery. Finally, another objective that is relevant to this comment indicates that NMFS should minimize, to the extent practicable, adverse social and economic impacts on fishing communities and recreational and commercial activities during the transition from overfished fisheries to healthy ones, consistent with ensuring the achievement of the other objectives of this plan and with all applicable laws. These objectives clearly indicate that the biological impacts on all HMS species must be considered, as well as the bycatch of all other living marine resources. In addition, NMFS must minimize, to the extent practicable,

adverse social and economic impacts on fishing communities and fisheries, while remaining consistent with the other FMP objectives. In selecting the preferred time/area closure alternatives, NMFS has accomplished these objectives.

In this rulemaking, NMFS does not prefer any new closures, except for complementary measures in the Madison-Swanson and Steamboat Lumps Marine Reserves. This decision is based primarily upon the analyses described in the Final Consolidated HMS FMP indicating that no single closure or combination of closures would reduce the bycatch of all species considered, when considering redistribution of effort (see response to Comment 39 of this section). Furthermore, the economic impacts associated with each of the new closure alternatives could be substantial, ranging in losses of up to several million dollars annually, depending upon the alternative, which would result in the displacement of a significant number of fishing vessels. Even when the time/area closure alternatives were combined in an attempt to maximize bycatch reduction, the ecological benefits were minimal at best, with increases in discards of some species. NMFS considered a number of closures based upon analyses with and without the redistribution of fishing effort. The Agency believes it is important to consider the redistribution of fishing effort because HMS and protected species are not uniformly distributed throughout the ocean. Fishing vessels, which are mobile, can move from one location to another, if necessary, when a closure is implemented. Therefore, a closure in one area might reduce the bycatch of one or two species, but may increase the bycatch of others. NMFS additionally considered alternative approaches to effort redistribution for closures to protect BFT in spawning areas in the Gulf of Mexico. Even when using this revised approach, which is described more fully in the Final Consolidated HMS FMP, closures in the Gulf of Mexico increase the bycatch of some of the species being considered. Based upon these results, and in consideration of other recent significant developments in the PLL fishery (mandatory circle hooks, rising fuel costs, devastating hurricanes, etc.), new time/area closures are not appropriate at this time. This decision is fully consistent with the objectives of the Consolidated HMS FMP and all other applicable law.

*Comment 46:* If species identification is questionable how can the impacts of closures be analyzed?

*Response:* NMFS agrees that species identification can be problematic, especially the identification of large coastal sharks at the dealer level. However, NMFS can evaluate the potential impacts of the various time/area closures because large coastal sharks were combined into a single group for the analyses. Identification of other species that achieve legal minimum sizes may be less problematic. Nevertheless, NMFS has used the best available scientific data to evaluate potential impacts of time/area closures.

*Comment 47:* NMFS must consider the turtle take and gear removal data from the first two years of the pelagic longline fishery's three-year ITS. Pursuant to the BiOp, annual take estimates based on POP and effort data are required to be completed by March 15th of each year. Additionally, NMFS should take this opportunity to provide a framework to take corrective actions as recommended by the BiOp.

*Response:* NMFS agrees that changes may have occurred in the PLL fishery since implementation of the circle hook requirement and safe handling and release guidelines in July 2004. NMFS currently only has finalized logbook data on the catch associated with circle hooks from July through December of 2004. 2005 was the first full year under these requirements. The final 2005 HMS logbook data became available in August 2006. NMFS will begin to analyze that data soon. Because circle hooks likely have a significantly different catch rate than J-hooks, further investigation is required to determine the potential impacts of time/area closures. The Agency will continue to monitor and analyze the effect of circle hooks on catch rates and bycatch reduction, as well as assess the cumulative effect of the current time/area closures and circle hooks. NMFS has also completed its annual take estimates of sea turtles for both 2004 and 2005. These estimates indicate that both loggerhead and leatherback interactions have decreased substantially. During 2005, the first full year under the circle hook requirement, a total of 282 loggerhead and 368 leatherback sea turtles were estimated to have been taken. This represents decreases of 64.8 and 65.8 percent compared to the annual mean for 2000 - 2003 for loggerheads and leatherbacks, respectively. With regard to the framework mechanism recommended by the BiOp, NMFS has requested comment on this mechanism and other ways to reduce unanticipated increases in sea turtle takes by the PLL fishery (August 12, 2004; 69 FR 49858). NMFS is considering the comments received

and notes that the preferred alternative to establish criteria is a step towards allowing for more proactive measures.

#### *Rebuilding and Preventing Overfishing*

##### A. Northern Albacore Tuna

*Comment 1:* NMFS received comments opposed to alternative C2, unilateral reduction in albacore fishing mortality, which indicated such restrictions would only create unnecessary waste and discards. Commenters remarked that the United States only weakens its negotiating position by taking unilateral steps prior to ICCAT action. Prohibiting retention of albacore by all U.S. vessels would have negligible conservation effects. Some commenters stated that the United States should take action ahead of ICCAT and not negotiate our position.

*Response:* NMFS recognizes the costs associated with imposing restrictions on albacore tuna landings for U.S. fisheries, and at the present time believes that the costs are greater than potential ecological benefits for the northern albacore stock as a whole. Restrictions that affect U.S. fishermen solely are not expected to be of significant ecological value to the Atlantic albacore stocks as a whole, as U.S. albacore landings account for less than 2 percent of the international landings. Furthermore, albacore stock assessment data has been updated but not re-evaluated since 2000. The next assessment is currently scheduled for 2007. It would not be consistent with ATCA to impose fishing restrictions on this stock in the absence of current data supporting such an action. The Agency therefore selects alternative C3, which allows the United States to build a foundation with ICCAT to develop a comprehensive management plan for albacore.

*Comment 2:* NMFS received comments in opposition to selected alternative C3, which would establish a foundation at ICCAT for the development of an international northern albacore tuna rebuilding program. These comments include: "The Gulf of Mexico Fishery Management Council is concerned that regulations to rebuild the northern albacore could impact other Gulf fisheries and recommends that no action be taken in the Gulf as part of the United States foundation for the ICCAT rebuilding program, since there is not a substantial albacore catch in the Gulf"; I am leery about any regulations relating to albacore since albacore is an important fishery in Aug-Sept off Long Island; NMFS should set a bag limit of three albacore per person and a minimum size of 27 inches curved fork

length now, and perhaps enact a seasonal catch limit as well.

*Response:* As noted by the SCRS in 2003, trends for CPUE of albacore are stable and possibly increasing for the PLL fleet; however, in the absence of more recent stock assessment data, the Agency believes that no action, or moving forward with a unilateral reduction in U.S. fishing mortality are not consistent with ATCA and are therefore not selected. In alternative C2, NMFS considered the ecological, social and economic impacts of unilateral action. Restrictions that affect U.S. fishermen solely, including the implementation of bag and size limits, or catch limits, are not expected to significantly benefit the Atlantic albacore stocks as a whole, as U.S. albacore landings account for less than 2 percent of the international landings. NMFS prefers to work with ICCAT to develop an international rebuilding plan for albacore. No immediate restrictions will be imposed on fisheries in the Gulf or elsewhere as NMFS develops the appropriate foundation for such a plan as described in alternative C3. Upon adoption of an ICCAT rebuilding plan, domestic management would be developed in separate rulemaking and Gulf regulations options may be considered at that time, as appropriate.

*Comment 3:* NMFS received support for establishing a foundation at ICCAT for developing an international rebuilding program for northern albacore tuna. These comments include: The management approach for Northern Albacore is favorable and NMFS should apply this approach to many other domestic fisheries; and we support alternative C3, which will actively encourage ICCAT to develop and implement an international rebuilding plan for albacore tuna. While we support an albacore-rebuilding plan, we do not believe that the United States should implement reductions on its albacore fishermen. For meaningful and effective rebuilding of albacore to take place, U.S. managers must be willing to put significant pressure on countries with high fishing mortalities; and, EU countries have felt compelled to ban gillnets in this fishery.

*Response:* To effectively ensure that international efforts are taken to regulate albacore fishing mortality and provide for a sustainable fishery, the Agency plans to work with ICCAT to develop a rebuilding program for this species. As current international catch rates exceed the levels needed to produce MSY, NMFS believes that international cooperation is essential to rebuild the stock and thereby provide long-term positive ecological impacts.

*Comment 4:* NMFS received a number of comments regarding the data that is used to determine the U.S. catch and status of Atlantic albacore, including: We are concerned about the use of survey data for the for-hire sectors of this fishery. A study by Loftus and Stone showed that the LPS data significantly underestimated recreational catches of northern albacore tuna, which supports the need for increased recreational data collection; there is a directed fishery for longfin tuna that catches albacore; this fishery is not important to the GOM but it could affect other GOM fisheries. It is important to get the data straightened out now rather than after the fact; and, we need better recreational data. The draft FMP did not pay adequate attention to data issues, including looking at a census approach rather than sampling. We need to work with ACCSP to create census data with good quality control.

*Response:* Adequate data collection is an ongoing concern for the successful management of Highly Migratory Species. NMFS funds the Large Pelagic Survey (LPS) which is a sampling based catch data collection program for HMS species. In two states, MD and NC, catch-card and tail-wrap tagging programs are part of the LPS, which is using the census approach to catch data collection. NMFS is working with managers to collect data for all HMS species, including Atlantic albacore, through the ACCSP program. In addition, the Gulf of Mexico Fishery Management Council has asked the Gulf States Marine Fisheries Commission to look into statistical and census-based data collection programs for HMS in the Gulf of Mexico.

*Comment 5:* NMFS received comments asking to explain what "establish the foundation with ICCAT" means in terms of a specific plan. One commenter suggested that the plan needs to be fully developed and explained in the proposed FMP.

*Response:* If the stock is determined to be overfished during the 2007 assessment, the United States will work with ICCAT to develop a comprehensive international rebuilding plan that would be adopted by ICCAT, and that would comply with the Magnuson-Stevens Act. Implementation of the selected alternative will include a thorough analysis of the ICCAT rebuilding program to ensure that it includes a specified recovery period, biomass targets, fishing mortality rate limits, and explicit interim milestones expressed in terms of measurable improvement of the stock. Each of these components is necessary to support the objectives of

this FMP and the intent of the Magnuson-Stevens Act. The goal of this alternative is for ICCAT to adopt an Atlantic-wide TAC for northern albacore tuna, along with other conservation and management measures, to rebuild the stock. Upon adoption by ICCAT, domestic management and conservation measures for the United States would be developed in a separate rulemaking.

*Comment 6:* One commenter asked how the 607 mt quota is to be divided between the commercial and recreational fisheries.

*Response:* Currently, the United States does not have domestic quota for recreational albacore catches, nor are there restrictions on the number of albacore that may be landed by commercial vessels issued an Atlantic tunas permit. Allocation of the quota between commercial and recreational fisheries has not been of concern during recent years as the U.S. harvest has been below the quota allocated by ICCAT. During the last eight years (1997 to 2004), an average of 161.4 mt and 311.4 mt of northern albacore were caught on longlines and rod and reel, respectively.

*Comment 7:* NMFS received a comment that a lot of albacore tuna are seen off New York. The commenter wanted to know how it is that NMFS can conclude they are overfished.

*Response:* During the last 20 years, the spawning stock biomass of albacore has declined significantly, according to the SCRS. The most recent SCRS stock assessment (reviewed in 2004, using catch at age data from 2003 to update the 2000 assessment) for albacore, indicates that the spawning stock biomass is 30 percent below maximum sustainable yield. A new assessment is anticipated in 2007. According to the Magnuson-Stevens Act, a stock is overfished if the level of fishing mortality is greater than the capacity of that fishery to produce the maximum sustainable yield on a continuing basis. The presence of fish therefore, does not necessarily mean that a stock is not overfished. However, NMFS recognizes the seasonal nature of the albacore fisheries and will take this into account in developing management measures as needed.

#### B. Finetooth Sharks

*Comment 1:* NMFS received several comments in support of seasonal commercial gillnet fishing restrictions to reduce finetooth shark fishing mortality, including one from the South Atlantic Fishery Management Council. These comments included: If seasons of high finetooth shark landings can be identified from the observer program, landings, or other data, then we suggest

closing the small coastal shark fishery during that season for gillnetters, or having shark fishermen move offshore into deeper waters away from where finetooth sharks are typically found; fishing on these schools during pupping season may have significant biological implications; and, the seasonality of finetooth shark pupping should be investigated to determine whether some finetooth shark bycatch is more biologically significant than others.

*Response:* Seasonal closures of commercial gillnet fisheries landing finetooth shark were not analyzed as part of alternative D2 (implement commercial management measures to prevent overfishing of finetooth sharks), however, these closures may be considered in the future, as necessary, to reduce fishing mortality. Closing the small coastal shark fishery will not prevent dead discards, or account for finetooth that are landed in other fisheries such as the Spanish mackerel fishery. In the Final Consolidated HMS FMP, trips that landed finetooth sharks between 1999 - 2004, according to the Coastal Fisheries Logbook data, were analyzed by gear and month. These data indicate that the number of trips landing finetooth sharks increases in October and November. This could be attributed to finetooth sharks moving in schools southward from the Carolinas to warmer waters off Florida in these months leading to an increase in finetooth landings. Furthermore, there is an expansion of fishing effort targeting Spanish mackerel as these fish are also moving south to Florida in October and November each year, which might also lead to increased landings during this period.

Commercial shark gillnet fishermen are already subject to stringent regulations during October and November including: prohibitions on fishing in state waters of FL, GA, and SC with gillnets longer than 100 ft.; the directed shark gillnet fishery in Federal waters is subject to 100 percent observer coverage and the use of VMS in the vicinity of the Southeast U.S. Restricted Area for north Atlantic right whales between Savannah, GA and Sebastian Inlet, FL; and, all gillnet fishermen are prevented from deploying shark gillnets (stretched mesh >5 in.) in the Southeast U.S. Restricted Area between November 15 and March 31 every year. Since most states in the region have already banned gillnet gear, and because most of the fishing pressure on finetooth sharks occurs after they have already given birth to their pups in the spring and summer in coastal waters (6.5 - 23 ft water depth), seasonal closure during pupping season may not be warranted.

Fishermen are not able to target finetooth sharks when fishing with gillnets because it is a non-selective gear. Therefore, any management measures solely directed at fishermen using gillnet gear and in possession of a commercial shark permit could be circumvented, as fishermen could continue to use gillnets as an authorized gear for Spanish mackerel or in other fisheries pursuing currently unregulated species. Furthermore, closures may result in increased fishing effort in other areas or seasons, which could increase dead discards of finetooth sharks.

*Comment 2:* NMFS received several comments in support of the preferred alternative for finetooth shark management, including: identifying sources of finetooth shark fishing mortality to target appropriate management actions is appropriate; the occurrence of overfishing is a function of data deficiency; I agree with the preferred alternative; we need clarification about the landings information in the SCS assessment; I support the preferred alternative and the stock assessment; I applaud NMFS for taking the approach with the level of uncertainty; NMFS scientists cautioned the reader about conclusions made for finetooth and blacknose shark; ASMFCC is trying to address these issues; we need to know which fishery is catching these fish; I know that under the law we are supposed to reduce mortality, but I think that we need more information; we support alternative D4 because it is critical to improve the assessment for finetooth sharks in 2007; NMFS should wait on the updated assessment results for finetooth sharks before attempting a quota reduction on the commercial shark fishermen; the March 2002 SCS assessment did not have bycatch estimates to include with the short catch and catch per unit of effort (CPUE) series, as well as no catch for finetooth and blacknose sharks, which may have affected the results; if the majority of mortality occurs in non-HMS fisheries, why should HMS fishermen have to solve the problem; and if there is little connection to HMS, and if we want to get to fishing mortality, we need to collect information.

*Response:* NMFS agrees that implementing a plan for preventing overfishing of finetooth sharks is necessary, and that appropriate measures are included in selected alternative D4 (identify sources of finetooth shark fishing mortality to target appropriate management actions). The majority of finetooth sharks are landed in the South Atlantic region (primarily Florida) by vessels deploying non-selective gillnet gear and in

possession of both a Spanish mackerel permit and a commercial shark permit, and/or targeting species that are currently unmanaged (i.e., kingfish). Thus, any management measures that are solely directed at fishermen using gillnet gear and in possession of a commercial shark permit could be circumvented by fishermen, as they could continue using gillnets as an authorized gear while pursuing Spanish mackerel or other currently unregulated species. Reducing finetooth shark fishing mortality through regulations directed at commercial shark permit holders is further confounded because finetooth sharks are within the SCS complex, which is not currently overfished or experiencing overfishing, and because commercial fishermen have only caught, on average, 20 percent of the SCS quota between 1999 - 2004.

Finetooth sharks have a tendency to "roll" upon contact with gillnets and are, therefore, often dead at haulback. Observer data from the five vessels targeting sharks indicate that they are only responsible for a small portion of the commercial finetooth shark landings. Most of the gillnet vessels in the South Atlantic region have permits for both HMS and non-HMS species. If gillnets were no longer an authorized gear for harvesting HMS, vessels will continue to discard dead finetooth sharks that are caught as bycatch in other non-HMS fisheries. Furthermore, a fishery closure could lead to adverse economic impacts and unknown ecological impacts as this displaced fishing effort will likely shift to other fisheries or increase fishing pressure on LCS using bottom longline gear. Recreational landings of finetooth sharks only comprise 10 percent of annual finetooth shark landings, on average. These recreational landings of finetooth sharks translate to approximately 1.5 percent of the landings within the SCS complex.

In 2002, NMFS conducted a stock assessment for all SCS, including finetooth sharks. The catch rate series data were combined with life history information for finetooth sharks and evaluated using several stock assessment models. The lack of bycatch data in the catch series data led to low values of MSY predicted for finetooth sharks in the SCS stock assessment (especially those obtained through the SPM models). This lack of bycatch data and shorter catch and catch per unit effort (CPUE) series, coupled with no catches reported in some years, led to some uncertainty in the stock assessment for finetooth sharks. In the case of finetooth sharks, model estimates of recent F levels are above

$F_{msy}$ , indicating that recent levels of effort directed at this species, if continued, could result in an overfished status in the relatively near future.

NMFS continues to explore which vessels may be engaged in fisheries that harvest finetooth sharks and intends to conduct a new SCS stock assessment following the Southeast Assessment, Data, and Review (SEDAR) process starting in 2007. The selected alternative, which will identify sources of finetooth mortality to target appropriate management measures, is expected to increase the amount of available catch series and bycatch data by expanding existing observer programs and contacting state and Federal fisheries management entities to collect additional landings data, which may be available for the upcoming stock assessment. The selected alternative is a critical component, and a necessary step, in NMFS's plan to end overfishing of this species to comport with National Standard 1 requirements.

ASMFC is in the initial steps of developing an interstate FMP for coastal sharks. ASMFC staff has drafted a Public Information Document (PID), equivalent to a Scoping Document drafted prior to initiating a fishery management plan. The PID is currently available online at [www.asmfc.org](http://www.asmfc.org).

*Comment 3:* NMFS received several comments either opposing the selected alternative (identify sources of finetooth shark fishing mortality to target appropriate management actions), or expressing concern over the fact that more progress has not already been made to prevent overfishing of finetooth sharks, including: NMFS determined that finetooth sharks were subject to overfishing three years ago and the current preferred alternative simply collects more data on sources of mortality for the species; it has already taken three or more years to amend this plan; NMFS should reconsider proposing more specific management measures in this Draft Consolidated HMS FMP to conserve finetooth sharks; we have a species that is in trouble, and under the law, you need to do something; we are disappointed that you are picking an alternative that will not do anything for the mortality; you need to change the preferred alternative to something more conservation-oriented; NMFS has not done anything in the past 4 years and finetooth has overfishing occurring; we support alternative D4, but note our disappointment that NMFS has not already directed the appropriate Regional Council to take action to end the overfishing of finetooth sharks; NMFS should contact states directly as

they should be more than willing to provide information; NMFS has made some steps forward in collecting more information, however, NMFS must work harder to get more data; and, NMFS needs to develop and pursue specific management measures to end finetooth shark overfishing.

*Response:* The selected alternative (identify sources of finetooth shark fishing mortality to target appropriate management actions) will implement an effective plan to prevent overfishing. Based on the best available information on the fisheries that interact with finetooth sharks, management actions that affect only HMS fisheries will not adequately address the overfishing of finetooth sharks. The majority of finetooth shark landings occur in commercial fisheries deploying a non-selective gear (gillnets) in a region (south Atlantic) where other non-HMS fisheries also deploy gillnets. Thus, measures that prohibit the use of gillnets for landing sharks (alternative D2, implement commercial management measures to reduce fishing mortality of finetooth sharks), if aimed exclusively at the commercial shark gillnet fishery, will not prevent overfishing of finetooth sharks. Most of the five vessels that comprise the commercial shark gillnet fishery also possess Spanish mackerel permits. If gillnets were not allowed for the harvest of sharks, these vessels could continue to deploy gillnets to catch other species, including Spanish mackerel, catch finetooth sharks incidentally, and then discard dead finetooth sharks. Finetooth sharks are caught in a wide range of gillnet mesh sizes and are often dead at haulback, rendering trip limits and/or gear modifications ineffective at preventing overfishing because dead sharks would continue to be discarded. Mortality of finetooth sharks in fisheries outside the jurisdiction of HMS (state waters) or in unregulated fisheries in Federal waters (i.e., kingfish) would also be unaffected. The selected alternative will provide additional information on finetooth shark landings to allow enactment of comprehensive, collaborative measures that effectively reduce finetooth shark fishing mortality.

The selected alternative will not simply collect more data. NMFS has already sent a letter to the South Atlantic Fishery Management Council and attended a recent meeting in Coconut Grove, FL (June 13-15, 2006) to request consideration of joint management initiatives. Without cooperative measures, vessels may be able to circumvent any additional regulations that would be enacted for the commercial shark fishery when

pursuing Spanish mackerel. The Agency has obtained, and will continue to evaluate, landings of finetooth sharks by non-HMS fisheries in state and Federal waters. Furthermore, the Agency has analyzed Federal logbook data to better understand what non-HMS fishermen are catching when they land finetooth sharks, has determined seasonality of landings by federally permitted fishermen, has analyzed the Federal permits of vessels that land finetooth sharks, and has analyzed the Florida trip ticket data to better understand the seasonality, extent of landings, and what permits vessels possess that are landing finetooth sharks in the State of Florida. The Agency has expanded the directed shark gillnet fishery observer program to include observer coverage on vessels using alternative types of gillnet gear (sinknet) or targeting non-HMS species to determine the extent of finetooth shark landings in these fisheries and added finetooth sharks to the select species list for bycatch subsampling in the Gulf of Mexico shrimp trawl fishery to monitor bycatch of finetooth sharks in this fishery. These activities will form the basis for implementing appropriate management measures to ensure that overfishing of finetooth sharks is prevented.

*Comment 4:* There should be a cap on the number of vessels allowed into the directed shark gillnet fishery and a limited entry program that only allows the five vessels that are currently participating in the fishery.

*Response:* NMFS does not currently employ a gear based permit endorsement for shark fisheries; rather, permit holders possess either directed or incidental permits and both permits are valid for any of the authorized gears for sharks (gillnet, bottom and pelagic longlines, handline, rod and reel, or bandit gear). NMFS did not consider specific permit endorsements or gear-based permits in this rulemaking, but may consider options to limit vessel participation in the shark gillnet fishery in the future. Logbook and permit data does not indicate that there has been a significant increase in recent years in the number of vessels targeting sharks with gillnet gear. The majority of shark fishermen deploy bottom longline gear for LCS; however, directed shark gillnet fishermen most frequently target SCS and blacktip sharks. As blacktip sharks and the SCS species complex are not overfished or experiencing overfishing, capping the number of vessels allowed into the fishery may not be justified.

*Comment 5:* NMFS received several comments in favor of banning gillnets for the directed harvest of sharks, including: banning gillnets might help

reduce finetooth shark mortality; in the absence of removing gillnets from the authorized HMS gear list, there should be a requirement for year-round use of VMS on gillnet boats; drift gillnets should be prohibited; the State of Georgia supports the prohibition of gillnet gear to target finetooth sharks to prevent overfishing; and, I suggest that this fishery be banned in the South Atlantic and GOM until we determine the status of finetooth sharks and get things straight with the Right whale calf that was caught with gillnet gear.

*Response:* NMFS considered the prohibition of gillnet gear within Alternative D2 (implement commercial management measures to reduce fishing mortality of finetooth sharks). A similar alternative was also considered in Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks. NMFS agrees that banning the use of gillnets for the five vessels that comprise the directed shark drift gillnet fishery may reduce fishing mortality of finetooth sharks. However, other gillnet fisheries in the South Atlantic that target non-HMS (Spanish mackerel and kingfish) would continue to catch finetooth sharks, and other species of sharks. Observer data indicate that the five vessels targeting sharks in the South Atlantic region are only responsible for a small portion of the commercial finetooth shark landings. Since most of the gillnet vessels in the South Atlantic have permits for both HMS and non-HMS (Council-managed) species, if gillnets were no longer an authorized gear for harvesting HMS, these vessels would continue to land, and discard dead, finetooth sharks caught as bycatch in pursuit of other non-HMS species. If gillnet gear were banned for HMS, fishermen in other fisheries would continue to catch finetooth sharks but without coordination with management entities and possibly without observer coverage. Furthermore, Federal regulations currently in place for the Southeastern U.S. Restricted Area prohibit the use of shark gillnet gear in the waters between Savannah, GA and Sebastian Inlet, FL. "Shark gillnet gear" is defined as a gillnet with stretched mesh greater than 5 inches. Gillnets that are less than 5 inches stretched mesh could still be deployed if the directed shark gillnet fishery were banned, and finetooth sharks would continue to be landed as a result. Gillnets are already banned in Georgia and Florida, and are restricted to less than 100 feet in length for recreational fisheries in South Carolina.

VMS is a critical tool in the enforcement of time/area closures.

Because no gillnet closures were fully analyzed in the Draft Consolidated HMS FMP, the requirement to use VMS on gillnet vessels year-round was not considered as an alternative in this rulemaking. The existing requirement was originally implemented in 2003 by Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks, and requires that all vessels with gillnet gear onboard and a commercial shark permit have a functioning VMS unit onboard and that the unit is operational during all fishing activities, including transiting, between November 15 and March 31 each year. This requirement applies to all areas between November 15–March 31 and not just in the vicinity of the Southeastern U.S. Restricted Area. If additional time and area closures were implemented outside of the right whale calving season, it may be prudent to reevaluate the need for a year-round VMS requirement for all shark drift gillnet vessels.

The Atlantic Large Whale Take Reduction Team (ALWTRT) met in St. Augustine, FL, on April 10–11, 2006, to determine what course of action should be taken to prevent future interactions between right whales and gillnet gear. The ALWTRT did not reach consensus on all the management measures that were being considered at the meeting and are still deliberating on how to address the co-existence of gillnet fisheries and right whales on their calving grounds in the Southeastern U.S. Restricted Area. NMFS will work with the team to minimize mortality of these endangered marine mammals.

*Comment 6:* Identification of finetooth sharks is difficult because they are often confused with blacktip sharks.

*Response:* The Agency agrees that finetooth sharks are difficult to identify, especially for dealers who are required to positively identify shark species based on a log (carcass that has been gutted and finned). The mandatory HMS identification workshops for all shark dealers being implemented through this final rule will provide shark dealers with tools and instruction that they could employ to prevent mis-identification of finetooth sharks, and minimize the likelihood of confusion between finetooth and other species of *Carcharinid* sharks, including blacktip.

*Comment 7:* Spanish mackerel fishermen catch finetooth sharks intermixed with blacktip sharks.

*Response:* An analysis of Federal logbook data from 1999–2004 indicates that 17 vessels landed finetooth sharks with gillnet gear and possessed both a Spanish mackerel and commercial shark permit. Since gillnets are a not selective gear and finetooth sharks, blacktip

sharks, and Spanish mackerel have similar temperature and habitat preferences, it is not unreasonable to assume that all three species are landed in some gillnet sets. The Federal logbook data indicated that Spanish mackerel were the most abundant non-HMS reported on trips that landed finetooth sharks and accounted for approximately 13.6 percent (by weight) of landings.

*Comment 8:* NMFS states that 80 percent of finetooth sharks are caught in gillnets, and the majority are landed in FL and GA, but gillnets are banned in these states. So finetooth sharks must not be all that coastal if they are being caught outside of state waters (> 3 miles).

*Response:* Generally speaking, finetooth sharks inhabit shallow coastal waters of the western Atlantic Ocean from North Carolina to Brazil. Finetooth sharks travel north to waters adjacent to South Carolina when the surface temperature of the water increases to approximately 20°C then return south to off the coast of Florida when temperatures fall below 20°C. Finetooth seem to prefer water temperatures in this range, and they feed primarily on menhaden, which are also generally found closer to shore. However, finetooth sharks are opportunistic and will likely inhabit more coastal state waters or locales offshore in Federal waters as oceanographic and feeding conditions allow. Finetooth sharks may not be harvested with gillnets within State waters of Florida, Georgia, or South Carolina, however; they would still be vulnerable to fishing mortality resulting from interactions with gear in other fisheries and may be landed in Florida if they are caught in gillnets deployed in Federal waters.

*Comment 9:* There are only five vessels in the fishery so where do all the catches come from?

*Response:* The five gillnet vessels that target sharks with drift gillnet or strikenet gear are responsible for less than 10 percent of the commercial finetooth shark landings. The majority of finetooth sharks may be landed either in state waters, or by fishermen pursuing other species, such as those managed by the Gulf of Mexico or South Atlantic Fishery Management Councils (i.e., Spanish mackerel) or species that are not currently managed (i.e., kingfish). Since these fishermen hold directed shark permits, they can opportunistically keep all finetooth sharks; however, because their harvest of finetooth sharks is incidental to landing of other non-HMS species, these vessels have not been selected for HMS observer coverage.

A recent analysis of landings data submitted via the Fishing Vessel Logbook/Gulf of Mexico Reef Fish/South Atlantic Snapper-Grouper/King and Spanish Mackerel/Shark (Coastal Fisheries Logbook) from 1999 - 2004, indicates that a total of 46 vessels reported landings of finetooth sharks. Of these, 17 vessels had only a shark limited access permit, 17 vessels had both a shark and a Spanish mackerel permit (managed under the Coastal Pelagics FMP and its amendments by the South Atlantic Fishery Management Council), and 12 vessels had neither permit. In 2003, 15 vessels reported landings of finetooth sharks and all of these vessels had both a shark directed permit and a Spanish mackerel permit. Furthermore, since approximately 29 vessels are either targeting other non-HMS species and keeping finetooth sharks opportunistically, or are not covered under existing management regimes, these vessels would likely continue to contribute to finetooth shark fishing mortality by participating in coastal gillnet fisheries within the finetooth shark's range.

*Comment 10:* NMFS received several comments questioning the 2002 SCS stock assessment, including: In 1995, 95 percent of finetooth landings came from PLL and not gillnets, but in 1996–2000, there was a shift to gillnet, and I do not understand why; the document says that less than 1 percent came from the commercial fishery in the GOM, how can shrimp trawls not catch finetooth?; and, 100 percent of recreational landings came from the GOM, it just does not make any sense.

*Response:* NMFS analyzed landings data from 1999–2004 for the analysis of alternatives to prevent overfishing of finetooth sharks in this rulemaking. It is possible that there are inconsistencies between more recent data analyzed for this rulemaking and data employed for the 2002 stock assessment. This could be the result of misidentification or misreporting of finetooth sharks, general lack of data for the 2002 SCS stock assessment, or changes in fishing effort that may have occurred. The commenter does not specify which data set in the 2002 SCS assessment they are referring to; therefore, it is difficult to explain any potential inconsistencies. Alternative D4 (identify sources of finetooth shark fishing mortality to identify appropriate management actions) will include finetooth sharks as a select species for bycatch sub-sampling in the Gulf of Mexico shrimp trawl observer program which will provide additional bycatch and landings information from this fishery. In the past, finetooth sharks were not identified in the bycatch

associated with shrimp trawls, however, they may have been present. The Marine Recreational Fisheries Statistics Survey (MRFSS) and the Texas Parks and Wildlife Service estimate that 14,811 finetooth sharks were landed between 1999 and 2005. The data used for the 2002 SCS stock assessment indicate that there were several years when all of the recreational landings of finetooth shark occurred in the Gulf of Mexico. However, in other years, the majority of recreationally caught finetooth sharks were caught in both the South Atlantic and Mid-Atlantic regions. This could be attributed to changes in oceanographic conditions and/or fishing effort.

*Comment 11:* NMFS should investigate bycatch in other areas and consider the suite of management measures by other states that may be affecting finetooth shark mortality. In the State of Texas, there are bag limits but no commercial fisheries. Sharks can only be caught on rod and reel. They may be sold, but only one fish per boat. There are also some shrimp trawl closures (seasonal) that may provide some indirect benefits for finetooth and other sharks.

*Response:* Since this comment was received, NMFS has contacted the Regional Fishery Management Councils and discussed possible fisheries where finetooth sharks may be harvested incidentally. The Agency has also compiled a list of state and Council regulations that affect gillnet and bottom longline fisheries and therefore may affect finetooth fishing mortality either directly or indirectly. Creel surveys from Texas Parks and Wildlife indicate that on average, nine finetooth sharks are landed a year, with 193 landings documented since 1984. Shark specific landing restrictions similar to those imposed by Texas and other states, while helpful, may not significantly reduce finetooth landings as the majority of finetooth landings are from commercial fisheries in the South Atlantic that use non-selective gear. Successful management of this species will likely only be attained through cooperative efforts between the fishermen, States, Regional Fishery Management Councils, the Atlantic States Marine Fisheries Commission, and NMFS.

*Comment 12:* NMFS received several comments expressing concerns that the Agency did not know where all finetooth shark landings are coming from, including: how is it that NMFS has catch data coming from dealers, but does not know which vessels are catching finetooth?; NMFS should call the dealers and find out which types of boats are offloading/selling the

finetooth; in 1999, you changed the criteria for boats that could get a directed shark permit so that the smaller croaker boats, etc. catch sharks, and they have to report to the Federal dealer, so you should be able to get the dealer information; and dealers should be required to provide vessel information with all shark landings.

*Response:* General canvass data submitted by federally permitted shark dealers does not include information on the vessels from which seafood products were purchased. These reports are submitted every two weeks and include total purchases (landings) by species acquired by individual dealers. NMFS has contacted states between Texas and North Carolina to determine whether they had any records of finetooth sharks being landed. Many states maintain trip ticket programs that can be linked to individual vessels from which seafood products were purchased. This information was analyzed for the Florida trip ticket program because the majority of finetooth shark landings are occurring there. Starting in 2000, some Florida trip tickets reporting finetooth sharks identified the vessel. Of the vessels making these landings, six vessels had only a Federal shark permit, eight had both a Federal shark and Spanish mackerel permit, and three vessels had neither permit. The fact that vessels possess multiple permits reiterates the need for collaborative management efforts between NMFS, the Regional Fishery Management Councils, and individual states.

*Comment 13:* NMFS received a comment based on the 2005 observer report for the Directed Shark Gillnet Fishery that stated that in the shark gillnet fishery, five vessels used three different fishing methods. Of the three methods, the strikenet gets the most finetooth sharks. This is a fishery that is targeting finetooth sharks. The average size is 123 cm for finetooth sharks, which is smaller than what the recreational fishery can take.

*Response:* The 2005 observer report indicated an increase in the observed landings of finetooth sharks with strikenet gear. This gear is generally used to target schools of blacktip sharks, which are located from the air using a spotter plane. Historically, most observed landings of finetooth sharks occur in the drift gillnet segment of the fishery. 2005 may have been an anomalous year with regard to prey abundance or distribution, thereby making finetooth sharks more vulnerable to strikenet gear. Strikenet fishermen are subject to the same restrictions as other shark gillnet gear. The average size of finetooth sharks

landed in 2005 was 123 cm, based on measurements obtained from 38 individuals.

*Comment 14:* NMFS received a number of comments opposed to alternative D2, implement commercial management measures to reduce fishing mortality of finetooth sharks, including: A subquota for finetooth sharks is not necessary; I oppose alternative D2 unless the fishery is harvesting its entire commercial quota; and, we are opposed to alternative D2 because it appears that the allocated quota is not being overharvested.

*Response:* The quota for small coastal sharks is not currently, and has never been, fully utilized. Observer data indicate that finetooth sharks are not the primary shark species harvested in the directed shark gillnet fishery. Since finetooth sharks have a tendency to roll upon contact with gillnet gear, prohibiting landings of finetooth sharks would not reduce fishing mortality, as most of these fish would then be discarded dead. Additional dead discards may encourage fishermen to make more trips to replace lost revenues, leading to more dead discards and an increase in fishing mortality level. Since the rest of the SCS complex is not experiencing overfishing and is not overfished, reducing the overall SCS quota was not considered in this FMP.

*Comment 15:* NMFS received several comments in support of alternative D3, implement recreational management measures to reduce fishing mortality of finetooth sharks, including: I support alternative D3 because between 2000 and 2003, 6,732 and 5,742 finetooth sharks were reported to MRFSS. What is the expansion? What are the post-release mortality estimates?; recreational landings of finetooth sharks may cause the majority of mortality for yet another HMS species; mandatory circle hooks would reduce mortality; it appears that the actions described in the preferred alternative only intend to pursue commercial mortality and ignore recreational mortality; there is a problem with shark reporting and MRFSS; no one reports finetooth sharks to the Councils; and MRFSS does not have sharks listed, but that is where I would suggest looking for information.

*Response:* NMFS is not selecting recreational measures (alternative D3) to reduce fishing mortality of finetooth sharks, at this time, because the vast majority of finetooth sharks are landed commercially, most recreational fisheries for finetooth sharks are likely in state waters, and there is no conclusive evidence that circle hooks would reduce post hooking release mortality of finetooth sharks. Between

1999 and 2004, average landings of finetooth sharks in recreational and commercial fisheries were 11.2 (10 percent) and 93.6 (90 percent) mt dw/year, respectively. MRFSS data would include landings of finetooth sharks in state waters, which is where most finetooth sharks are found, however, NMFS can not directly implement regulations in state waters. A study by Gurshin and Szedlymayer (2001) estimated that only 10 percent (1 of 10 captured) of sharpnose sharks, a similar species, died as a result of capture on hook and line. Post release mortality depends on water temperature, hook used, whether or not live bait is used, and the overall condition of the shark at hooking. Estimates of finetooth shark landings were obtained from MRFSS and included in this rulemaking. NMFS also does not prefer recreational measures at this time because there is already a conservative bag limit in place and a minimum size well above the size at first maturity. Recreational measures may be considered in the future as necessary. NMFS will continue to explore all sources of finetooth shark fishing mortality, both recreational and commercial, and will consider further exploration of the landings reported to NMFS and individual states.

*Comment 16:* Due to the lack of progress towards ending overfishing, finetooth sharks should be added to the prohibited species list while means to reduce mortality are investigated.

*Response:* NMFS considered, but did not analyze, an alternative that included adding finetooth sharks to the prohibited species list for Atlantic sharks. Presently, finetooth sharks do not meet any of the four criteria defined under 50 CFR 635.34(c) for inclusion of species to the prohibited species list. The existing criteria are: (1) there is sufficient biological information to indicate the stock warrants protection, such as indications of depletion or low reproductive potential or the species is on the ESA candidate list; (2) the species is rarely encountered or observed caught in HMS fisheries, (3) the species is not commonly encountered or observed caught as bycatch in fishing operations, or (4) the species is difficult to distinguish from other prohibited species (i.e., look alike issue). With regards to these criteria, finetooth sharks are not currently overfished, are commonly encountered and observed in HMS fisheries, are commonly caught as bycatch in non-HMS fisheries, and are distinguishable from prohibited species upon capture (prior to dressing). As new biological and fishery data becomes available, NMFS may make adjustments to the

prohibited species list, as needed in the future.

### C. Atlantic Billfish

#### i. ICCAT Landing Limits

*Comment 1:* NMFS received a number of basic questions pertaining to the history, data, U.S. actions, and the requirements of the ICCAT marlin recommendations. The comments included: Where did the 250 marlin limit come from? What was the biological data used to limit the recreational harvest of blue and white marlin to 250 fish?; has the 250 white marlin limit ever been exceeded?; what is the harvest quota for the commercial harvest of blue and white marlin?; what is the breakdown of white and blue marlin bycatch compared to the recreational catch?; and, where does NMFS get the authority to establish a quota (250-fish marlin limit)?

*Response:* The annual landing limit of 250 recreationally caught blue and white marlin, combined, stems from ICCAT Recommendation 00–13. ICCAT recommendations are binding instruments that the United States, as a contracting party to ICCAT, is obligated to implement. Recommendation 00–13 was proposed by the United States and established a number of additional stringent conservation measures intended to improve the stock status of Atlantic marlin. The 250 marlin limit was the result of a dynamic international negotiation at ICCAT that included, and was supported by, the U.S. recreational, commercial, and government commissioners. Considerations in the U.S. negotiating position included, but were not limited to, data from the Recreational Billfish Survey and the Marine Recreational Statistics Survey, and intentionally included a buffer to account for changes in the fishery and improved monitoring. The Atlantic Tunas Convention Act provides NMFS with the regulatory authority to implement ICCAT recommendations by authorizing the promulgation of regulations as may be necessary and appropriate to implement binding recommendations adopted by ICCAT. The 250 marlin limit is for both blue and white Atlantic marlin combined, and was exceeded for the calendar year 2002, when the U.S. reported 279 recreationally landed marlins. This exceedance was the result of methodological change that was applied to U.S. recreational landings retroactively. Further, while the United States exceeded its landing limit in that one year, the United States remained in compliance with Recommendation 00–13 because, as allowed by ICCAT

Recommendation 00–14, the U.S. underharvest from 2001 was applied to the “negative” 2002 balance and was of sufficient magnitude to allow the United States to comply with the recommendation. The United States does not have a commercial quota or allowable level of landings for Atlantic billfish. Commercial possession and sale of Atlantic billfish have been prohibited since 1988 in the United States. Internationally, commercial quotas vary by country. Foreign pelagic longline and purse seine vessels, the gear types that dominate commercial Atlantic billfish landings, are restricted to 50 percent and 33 percent of Atlantic blue and white marlin landings, respectively, from the years 1996 or 1999, whichever is greater. The breakdown of domestic commercial and recreational harvests varies considerably by year and are presented in detail in Chapter 4 of the Final Consolidated HMS FMP. For the period 1999 - 2004, pelagic longline dead discards and recreational harvests of Atlantic blue marlin averaged 44.2 metric tons (mt) and 22.9 mt, respectively; Atlantic white marlin averaged 31.8 mt and 2.3 mt, respectively; and Atlantic sailfish averaged 24.5 mt and 81.6 mt, respectively. These numbers do not necessarily reflect the true mortality contributions of each sector to the fishery. Recent data on post-release mortality indicates that the aggregate domestic recreational billfish mortality contribution may be equal to, or greater than, the aggregate domestic pelagic longline billfish mortality contribution, in some years, and may be the result of the substantial difference in the scale of these fisheries.

*Comment 2:* NMFS received public comment both endorsing and opposing preferred alternative E6, Implement ICCAT Recommendations on Recreational Marlin Landings Limits, for widely varying reasons, and with varying qualifiers. Comments in support of this preferred alternative included: We endorse alternative E6; I support alternative E6 because it has been five years since the ICCAT recommendation and we need stricter regulations; NMFS has to implement alternative E6 to comply with international obligations; NMFS must codify the 250-fish marlin limit because it came as a *quid pro quo* with other countries agreeing to measures. If the U.S. does not codify the 250-fish limit, it will result in loosening of restrictions in other countries, which we do not want; if something is not done now, ESA will take all the fisheries away from us. We should show we are doing all we can to stop the

killing of marlin. NMFS should implement the 250 marlin limit and the calendar year; I'm not opposed to the 250-fish limit (alternative E6), but somehow the U.S. got into a bad deal and is stuck with it; and I support alternative E6 only if the original accounting system (RBS data) is used to count U.S. landings.

*Response:* NMFS agrees that the United States is obligated to implement the 250 recreationally caught Atlantic marlin landing limit and that more needs to be done to reduce fishing mortality levels on these species if they are to recover. The U.S. landing limit was part of a comprehensive plan to begin the process of rebuilding Atlantic marlins and that obligated other nations to make substantial sacrifices on behalf of their fishing interests. NMFS shares concerns that a failure of the United States to fully implement an ICCAT recommendation may allow other nations to rationalize non-compliance on their behalf. NMFS further acknowledges that domestic implementation of the 250 Atlantic marlin landing limit has taken longer than anticipated. The United States has led international conservation efforts on Atlantic marlin and other species and will maintain its credibility and leadership role on these issues by fully implementing its international obligations through the adoption of the selected alternatives.

NMFS believes that adoption of ICCAT recommendation 00–13 was an important step toward stemming long-term declines in Atlantic marlin populations and rebuilding their populations. Under this agreement, the U.S. was limited to landing 250 recreationally caught blue and white marlin combined on an annual basis, as previously discussed. The U.S. has reported marlin landings below the 250 fish limit in three of the previous four years. Other ICCAT nations whose fishermen catch and sell Atlantic marlin were obligated to reduce their pelagic longline and purse seine landings of blue marlin by 50 percent and white marlin by 67 percent. The recommendation also required release of live marlins brought to the vessel along with other various restrictions. As conditions in the fishery change, NMFS will continue to review the appropriateness of measures contained in the ICCAT recommendations and seek changes as appropriate.

NMFS acknowledges the concerns expressed by anglers regarding the use of a different accounting methodology for compliance purposes than was originally used to contribute to the negotiation of the 250 marlin limit.

However, as discussed in the response to Comment 1, the 250 marlin limit was based in part on RBS and MRFSS data, but also intentionally included a buffer to account for changes in the fishery and improved monitoring. The number was the result of a negotiation at ICCAT and not a specific scientific methodology. Under the recommendation, the United States is obligated to report all verifiable recreational landings of Atlantic blue and white marlin for compliance purposes. New sources of data on domestic recreational landings have been developed since the 2000 negotiation, including catch-card programs in North Carolina and Maryland as well as the billfish and swordfish reporting line, which provide a small number of additional marlin each year. These sources of data have represented a very limited number of verifiable fish in any given year, with tournaments representing the majority of landings.

*Comment 3:* Comments opposing preferred alternative E6, Implement ICCAT Recommendations on Recreational Marlin Landings Limits, included: We cannot comprehend why NMFS, knowing of our small percentage of the harvest would even consider establishing severe restrictions on the recreational harvest; this alternative A6 is unnecessary and arbitrary and should be eliminated, especially since the fishery is mostly catch and release; it should be removed at the 2006 ICCAT meeting; from a conservation and negotiating standpoint, the 250 landing cap is neither needed nor of any value to the United States; mandating this cap when low marlin landings are already driven by a strong, voluntary conservation ethic will do little or nothing to reduce overall marlin mortality; why implement increased size limits to avoid reaching the 250 mark, when the existing regulations seem to work?; there should be a provision for underages and overages; the 250 marlin limit derives only from tournament landings and is not an appropriate limit for the fishery as a whole; if NMFS restricts landings of marlin species to 250 fish and prohibits white marlin catches for five years, tournament fishing will take a massive economic hit. Towns that host tournaments would have to rely on an alternative form of tourism; I oppose Alternative E6 because it will cause economic harm, unless anglers switch to blue marlin; 250 fish are insignificant compared to longline bycatch mortality; and alternative E6 is problematic considering the unknown landings in the Caribbean. The large landings of

blue marlin in Puerto Rico can be addressed through enforcement of existing management measures (minimum size, no sale, etc.); and, we must address the foreign sources of billfish mortality at ICCAT if we are to achieve the recovery of billfish stocks.

*Response:* NMFS disagrees that the selected alternative to implement the ICCAT established recreationally caught marlin landing limit, is unnecessary or arbitrary. This alternative will implement U.S. obligations negotiated as part of a key international agreement that has the potential to dramatically reduce fishing mortality of Atlantic marlins. As discussed in the response to Comment 1, the United States is obligated to implement ICCAT recommendations under the Atlantic Tunas Convention Act. Further, to maintain credibility and leadership on international billfish conservation issues, and limit opportunities for foreign nations to rationalize potential non-conformity with billfish conservation measures, the United States must abide by its international obligations. Unilateral elimination of the 250 marlin landing limit is not an option available to the United States. However, should ICCAT choose to do so during a future Commission meeting, it could remove the restriction thereby allowing the United States to follow suit. The implementation of U.S. international obligations is critical to a credible negotiating position and reduces the ability of other nations to rationalize potential non-conformity with international billfish conservation measures. Under the selected alternative, size limits will only increase if the United States is approaching its 250 marlin limit. The intent of a potential in-season minimum size limit increase is to minimize impacts to the fishery by slowing landings and allowing the fishery to continue until the 250 fish limit is reached but not exceeded. Allowing landings to continue at a slower pace over a longer period in the fishing year is anticipated to have fewer socio-economic impacts than a shift to catch and release only fishing earlier in a given year. Consistent with ICCAT Recommendation 00–14, this rule mandates carry-over of overharvest and allows for carry-over of underharvest. The 250 marlin limit did not stem from only tournament landings. The 250 fish limit is appropriate for the U.S. directed billfish fishery at this time. NMFS disagrees that implementation of the 250 marlin limit will cause substantial adverse economic impacts. As discussed in the response to Comment 2, the

United States has landed only 75 percent of its landing limit, on average, over the past four years and in half of the years reviewed, the United States has been 40 percent below the allowable landing limit for recreationally caught Atlantic marlin.

Further, this rule to implement the ICCAT recreational marlin landings limit was specifically designed to minimize economic impacts if fishing or retention patterns change and cause the United States to approach the 250 marlin limit. Should the 250 marlin limit be achieved, because few marlin are landed (see the response to Comment 2), NMFS believes that it would occur relatively late in the fishing season, thereby affecting a limited number of fishery participants and resulting in relatively minor impacts to the fishery as a whole. There could potentially be heightened localized impacts in a small number of communities, where, for instance, tournament participation may be reduced or a tournament cancelled. However, based on the significant level of catch and release fishing practiced in the Atlantic billfish fishery (75 to 99 percent), NMFS believes any reductions in participation would be minor as fishermen could still catch and release Atlantic marlin.

Based on public comment that indicated more substantial concerns over potential adverse economic impacts to the fishery if catch and release only fishing for Atlantic white marlin were required, as well as a number of other factors including, but not limited to, the impending receipt of a new assessment for Atlantic white marlin, upcoming international negotiations on Atlantic marlin, and a somewhat limited ecological benefit, NMFS did not select the alternative to allow catch and release only fishing for Atlantic white marlin. NMFS acknowledges that the 250 recreational marlin allocated to the United States represent a small portion of total billfish mortality from the full ICCAT pelagic longline fleet. However, from a domestic perspective, if the full allocation of 250 marlin was landed by the recreational sector, it would represent approximately one-third (35 percent) of the annual number of Atlantic marlin (blue and white combined) discarded dead from the domestic pelagic longline fleet, on average, over the four year period 2001–2004. Total mortality inflicted upon the stock is of more importance to the overall health of the stock than landings or dead discards. As noted in the response to Comment 1, recent estimates and data on post-release mortality indicate that the aggregate

domestic recreational white marlin mortality contribution may be equal to or greater than the aggregate domestic pelagic longline white marlin mortality contribution, in some years. This appears to be a result of the substantial difference in the scale of these fisheries. NMFS acknowledges that there is some uncertainty associated with marlin landings statistics from the U.S. Caribbean, and the Agency is working to improve these statistics by increasing enforcement of existing permitting and reporting requirements, including those for tournaments. Finally, NMFS agrees that foreign sources of billfish mortality must be addressed at ICCAT if Atlantic billfish stocks are to recover. As such, the United States will continue its efforts to champion billfish conservation at ICCAT and in other appropriate fora.

*Comment 4:* NMFS received a number of comments asking for clarification of authority and the regulations pertaining to the potential implementation of alternative E6, Implement ICCAT Recommendations on Recreational Marlin Landings Limits, including: Would the "priority" be given to tournaments in catching the 250 fish limit?; if 20 tournament boats catch and release 10 fish in the season, what are the rest of the private and recreational anglers and thousands of boats to do? Can the unharvested portion of the 250 fish limit be carried over into the next year? Once the quota is established, which we have never approached, except for the year NMFS counted differently, then what happens?; and, does the U.S. have the authority to reduce the 250-fish limit? It goes against ICCAT. In every other case, the U.S. must give fishermen a reasonable opportunity to catch fish.

*Response:* The 250 recreationally caught marlin landing limit applies to the Atlantic recreational billfish fishery as a whole. NMFS does not intend to assign Atlantic marlins that are available for landing to any particular sector or component of the recreational fishery in this rulemaking. NMFS appreciates the concern expressed by some anglers regarding the opportunity to land a fish, given the large number of participants in the fishery. However, the United States has been bound by the 250 recreationally caught Atlantic marlin landing limit since June of 2001, and only in one year has that 250 fish number been achieved, as previously discussed. Under this rule to implement ICCAT recommendations on recreational marlin landings limits, if the landings limit is approached, regardless of whether those fish are landed by a small number of vessels or by many individual vessels, the Agency

will consider the appropriateness of an inseason minimum size increase or prohibition on retention based on the criteria identified in the discussion of the selected alternative in Chapter 4 of the Final Consolidated HMS FMP, and contained in this final rule. Even if retention were prohibited for the remainder of a given fishing year, anglers could continue catch-and-release fishing for Atlantic marlin, and Atlantic sailfish would be available for landing. As previously discussed, 75 to 99 percent of all billfish are currently released on a voluntary basis, so NMFS anticipates little disruption in the fishery, should either a minimum size increase or a catch-and-release fishery become necessary. As discussed in the response to Comment 3, consistent with ICCAT Recommendation 00-14, this rule will mandate carry-over of overharvest and will allow for carry-over of underharvest into the next management period. The Agency will monitor recreational landings of Atlantic blue and white marlin and will make decisions as appropriate regarding in-season management actions based on the decision criteria identified in the HMS FMP and in this final rule. NMFS is not reducing the 250 recreationally caught marlin landings limit.

*Comment 5:* NMFS received a number of suggestions for substitute alternatives to preferred alternative E6, including: Spread the 250 fish limit over 12 months so that all areas get to land marlin (spatial and temporal); divide the 250 fish limit up by state. Let the states exchange billfish for bluefin tuna quota until each state can support the tournaments they need to; white and blue marlin should have separate limits because they are such different animals; and, not landing the 250 marlin recreational landing limit and eliminating the entire commercial billfish harvest could not solve any of the problems. To solve the problem, the United States should prohibit the importation of billfish, swordfish, and tuna from other countries.

*Response:* NMFS appreciates these comments and suggestions. ICCAT recently conducted a stock assessment of blue and white marlin. As such, ICCAT may reconsider the existing management measures for marlin. If this occurs, NMFS may consider these and other options as needed, if necessary and appropriate, in a future rulemaking.

*Comment 6:* I am opposed to counting fish that are caught by U.S. vessels fishing abroad against the United States' quota.

*Response:* Consistent with its ICCAT obligations, the United States accounts for all recreational landings of Atlantic

marlin by U.S. citizens. If an angler onboard a U.S. flagged vessel fishing in foreign waters or on the high-seas lands a fish, then the vessel owner, or their designee, is required to report that fish to NMFS.

*Comment 7:* The British Virgin Islands (BVI) have separate regulations from the U.S. International coordination on HMS management is critical. In 15 minutes time, we can be out of U.S. Virgin Island waters. For us, the importance is the coordination of international HMS management. The BVI folks can catch and sell their billfish. What is being done on the international front to resolve these types of conservation concerns? The Draft Consolidated HMS FMP does not include anything that addresses international coordination efforts.

*Response:* NMFS appreciates the frustration felt by anglers in the Caribbean regarding the current differences in regulations between the U.S. and the BVI. The Agency also agrees that Atlantic billfish management requires international cooperation to be successful. However, these types of international management issues are beyond the scope of this domestic rulemaking, and, as such, this final rule and the Final Consolidated HMS FMP do not address relations between the United States and the British Virgin Islands or any other nation on any subject. International management issues are handled jointly between Department of Commerce and the Department of State.

*Comment 8:* Will the ICCAT landing limit be placed under "Quotas" in the Code of Federal Regulations (CFR), so that it will be easy to update annually as with tuna and swordfish quotas?

*Response:* The majority of the regulatory text associated with ICCAT landing limits is contained in 50 CFR 635.27(d). This section also includes the Atlantic tunas and swordfish quotas, and is the most appropriate place for the marlin regulations.

*Comment 9:* NMFS received a number of comments on the potential impacts of the 250 marlin limit in combination with the possible shift to only catch and release fishing for Atlantic white marlin, including: the U.S. will catch the 250-fish limit if white marlin landings are prohibited, because catches of other species will be redistributed. When you ban white marlin, people will fish for blue marlin. The bigger Northeast tournaments will fish harder on blue marlin; it's not desirable to make all of the fish under the limit be blue marlin; with the proposed change in the fishing year, some tournaments could be

penalized if they take place after the 250–fish limit is exceeded.

*Response:* Based on public comment expressing concern over the ratio of potential adverse economic impacts to estimated ecological benefits, the prospect of a new international assessment, an impending international negotiation, and other factors, NMFS does not prefer to implement catch and release only fishing for Atlantic white marlin at this time. NMFS disagrees with the characterization that some tournaments may be penalized if they take place after the 250 fish limit is exceeded. The United States has been bound by the 250 fish limit since it went into effect at ICCAT in June of 2001. Since then, the only mechanism that the Agency had available to address fulfillment of the 250 marlin landing limit was to implement an emergency closure of the fishery. Thus, any tournament that would have occurred after the 250 fish limit had been reached, even prior to this action, would have been required to operate on a catch and release basis only. However, they would have had little warning. This rule was specifically designed to minimize the likelihood of a shift to catch and release only fishing for Atlantic marlin. It will allow the Agency to slow marlin landings by quickly increasing minimum size(s) for the specific purpose of avoiding a mandatory shift to catch and release only fishing for Atlantic marlin, if possible, to minimize adverse impacts. If the ICCAT recreationally caught marlin landings limit is still achieved, despite the minimum size increase, then the Agency can quickly mandate catch and release only fishing. Thus, any tournament that occurs, or would have occurred, after the 250 fish limit is/was achieved, either prior to implementation of this action or after, would have to operate under an all release scenario. This final rule actually benefits tournaments because it allows NMFS to implement in-season minimum size increases, thereby reducing the likelihood of exceeding the 250 limit and forcing a shift to an all release fishery. Further, this final rule includes a 14-day delayed effective date, which will further allow tournament operators and billfish anglers to adjust to any possible in-season management actions.

*Comment 10:* NMFS received a number of comments regarding carry over of underharvest and overharvests, including: if NMFS intends to implement the 250–fish landing limit, underages should be added to the next year's limit and fishermen should not be penalized if the limit is exceeded; the U.S. should mandate that underages be

carried-over like every other quota; codifying the 250–fish limit is not a problem, but the proposed regulations with respect to overages and underages is unacceptable. Rulemakings to deal with underages should not be necessary.

*Response:* As discussed in the response to Comment 3 above, this final rule mandates carry-forward of overharvest and allows carry-forward of underharvest, consistent with ICCAT Recommendation 00–14. A failure to account for overharvest, as suggested by one commenter, would be inconsistent with ICCAT Recommendation and result in non-compliance by the U.S. The U.S. has pledged to its ICCAT partners not to carry forward underharvest until uncertainty surrounding landings of marlin in the Commonwealth of Puerto Rico and the U.S. Caribbean is reduced. The Agency will publish a notice in the **Federal Register** to decrease or increase the annual 250 marlin landings limit resulting from the carry forward of over- or underharvests of Atlantic marlins. A rulemaking will be required to increase or decrease the 250 marlin recreational landing limit resulting from a new ICCAT recommendation.

*Comment 11:* NMFS received several questions, comments, and suggestions on billfish monitoring and reporting, including: how comprehensive or adequate is the monitoring of recreational billfish landings?; how would the public know when 250 fish are landed? Marlin recreational data collection methods are not accurate. Ninety percent of fish caught now are not reported. NMFS should implement mandatory logbooks for all permitted HMS fisheries, commercial and recreational, and require that trip reports be submitted because MRFSS interviews are not effective; enforcement is lacking. That is why people do not report their billfish landings. NMFS should develop a better system to account for marlin landings, such as tail tags; and, NMFS is not receiving all non-tournament marlin landings. There are clubs that land marlin and do not report them. NMFS should instead require each club to report their marlin landings, just like tournaments are currently required to do. Penalties should be imposed on fishing clubs that do not report.

*Response:* NMFS has a comprehensive system in place to record billfish landings that includes the Recreational Billfish Survey, the Atlantic HMS Non-tournament Billfish and Swordfish Reporting system, the Large Pelagics Survey (including dockside intercepts), and the Marine Recreational Fishing Statistics Survey

(including dockside intercepts), as well as cooperative agreements to access landings tag/card data from the states of North Carolina and Maryland. NMFS is always trying to improve its data collection systems, and this may include future tagging programs, log book reporting programs, and improvements to the MRFSS, LPS and other systems. If the 250 marlin landing limit is achieved, NMFS will likely notify the public via a number of mechanisms, including: publication of a notice in the **Federal Register**, faxing notices to interested stakeholders, notification of the HMS consulting parties, telephone contact with recreational constituent leaders, posting information on the HMS website, placing information on the HMS Information telephone line, and working with popular sportfishing magazines and websites to notify constituents, along with other means, as appropriate. NMFS encourages the public to continue to suggest potential improvements. It should be noted however, that any reporting system relies on the willingness of anglers to accurately report. When this does not occur, the veracity of the data is compromised. NMFS acknowledges that recreational Atlantic billfish landings data do not account for every billfish landed, and thus some level of uncertainty surrounds billfish landings estimates. NMFS has undertaken efforts to improve enforcement of reporting requirements, has improved the MRFSS and LPS, and has recently received a report from the National Research Council that may allow for improvements to be made to some data collection systems.

*Comment 12:* NMFS received contrasting comments on the proposed five-day minimum notification period for in-season billfish management actions intended to ensure compliance with the ICCAT 250 marlin landing limit. Comments opposing a minimum five-day notification window included; we support alternative E(6), establish the 250 recreationally caught marlin landing limit. However, 21 days would be the minimum acceptable notice period; if an additional increase in minimum size becomes necessary, a notice for an inseason adjustment should be given at least 30 days in advance. This will give tournament directors ample time to notify participants of a size change; tournament directors will need more than a few days (about a month) to make changes to their regulations, minimum sizes, and brochures if the United States approaches the 250–fish marlin limit;

and, five days is not enough time to make changes to the Atlantic billfish regulations and to inform the public of such changes, as specified in Preferred Alternative E6, which would implement ICCAT Recommendations regarding recreational marlin landings. NMFS will probably just shut down tournaments. Most HMS tournaments print their information packets long before their start date. To the extent that in-season marlin adjustments can be avoided, they should be. Comments supportive of a minimum five day notification period for in-season management action included: A five-day notice should provide sufficient time for in-season billfish management actions. Bluefin tuna has a shorter notice period. Especially with the Internet, five days is sufficient time for billfish regulatory notification for changes in size limits or closures.

*Response:* NMFS appreciates the concerns expressed by tournament operators and fishery participants that a five-day minimum delay in effective date may present difficulties with regard to potential rule changes just prior to or during a tournament. In selecting a period for notification and implementation of potential in-season regulatory changes to ensure compliance with ICCAT recreational marlin landings limits, NMFS sought to balance the need to act quickly, if necessary, while providing an appropriate period of time to adequately notify the public of any such regulatory changes. If too short of a period were selected, anglers and tournament operators may not have time to become aware of the regulatory changes. If too lengthy of a period were selected, restrictions may be enacted too late to ensure compliance with ICCAT recommendations or stave off more stringent in-season management measures. Based on public comment requesting additional advance notice, a review of the estimated time necessary to collect and analyze landings information and project the date at which regulatory action may become necessary, this rule provides a delay in the effective date of 14 calendar days for in-season billfish management actions, inclusive of the date of publication in the **Federal Register**. NMFS has determined that providing more than a 14 calendar day minimum delay in effective date would not provide the Agency sufficient control over the fishery if landings rates were high. NMFS believes that this 14 day period will still allow the agency to implement regulatory changes in a timely manner, thus ensuring compliance with ICCAT

recommendations or staving off more stringent in-season management measures and will provide anglers and tournament operators an improved ability to adapt to any potential in-season changes. NMFS also believes that there is a substantial misunderstanding of this provision. The minimum 14 day delay in effective date means that upon publication, any in-season action to increase the minimum legal size of Atlantic marlin or requirement to shift the fishery to catch and release only cannot become effective in less than fourteen days. It does not mean that no more than 14 days advanced notice can be provided to the public, tournament operators, and anglers. The Agency will seek to project potential regulatory action as far ahead as reasonably possible to aid in mitigating any potential adverse impacts to the extent practicable.

#### ii. White Marlin Landing Restrictions

*Comment 13:* NMFS received a number of comments in support of alternative E7, Allow Only Catch and Release Fishing for Atlantic White Marlin from January 1, 2007 to December 31, 2011. Comments in support of this alternative included the need for NMFS to do all it can to avoid having Atlantic white marlin placed on the Endangered Species Act (ESA) List of Threatened and Endangered Species; the need to reduce fishing mortality to the greatest extent possible to help rebuild overfished populations; statements that there is no reason to land Atlantic white marlin in tournaments because there are techniques to verify releases, including the use of video and still cameras; it makes sense to prohibit all landings, if not all directed fishing for white marlin, since they are in severe decline; we support alternative E7, the Agency has the authority to remove the requirement earlier than five years if the assessment shows that the stock is improving; and, there is strong support for prohibiting the landing of white marlin in Florida and the Gulf.

*Response:* The Agency appreciates these comments, however, based on public comment indicating more significant concerns over potential adverse economic impacts to the fishery if catch and release only fishing for Atlantic white marlin were required, as well as a number of other factors, including but not limited to, the impending receipt of a new stock assessment for Atlantic white marlin and upcoming international negotiations on Atlantic marlin, NMFS did not select the alternative to prohibit landings of Atlantic white marlin at this

time. The implementation of circle hook requirements is an important first step in reducing mortality in the directed billfish fishery. NMFS may consider catch and release only fishing options for Atlantic white marlin as well as other billfish conservation measures in future rulemakings, as necessary and appropriate. In regard to the Atlantic white marlin ESA listing review, any management measures in place at the time of the review would be considered during deliberations of the listing review team. NMFS cannot forecast the impacts of any particular management action on the outcome of the anticipated ESA listing review.

*Comment 14:* NMFS received a number of comments opposing alternative E7, Allow only catch and release fishing for Atlantic white marlin from January 1, 2007 to December 31, 2011. Those comments include: allowing only catch and release recreational fishing for Atlantic white marlin would have substantial adverse economic impacts on the recreational fishing community, including charter boat operators, shoreside facilities, and entire communities that host white marlin tournaments; NMFS underestimated the negative economic impacts of prohibiting landings of Atlantic white marlin; prohibiting landings of white marlin would do little to improve the population status of the species, the landings prohibition is unnecessary given the strong conservation ethic among U.S. anglers and as evidenced by the high release rate in the U.S. recreational fishery; the entire U.S. recreational fleet landing a few white marlin each year has little or no impact on billfish stocks; what is the rationale for prohibiting recreational landings of white marlin given the small number of recreational landings and the large economic impact generated by fishing for white marlin?; and, I do not believe in mandatory catch and release. It does not work and the public will not support it.

*Response:* In the Draft Consolidated HMS FMP, the Agency preferred a catch and release only alternative for Atlantic white marlin as well as a circle hook requirement for the tournament billfish fishery to reduce mortality and maximize the associated ecological benefits in the directed billfish fishery. NMFS received strong public comment opposed to the Atlantic white marlin catch and release alternative. As discussed under the response to Comment 13, NMFS is not prohibiting landings of Atlantic white marlin at this time. However, the Agency believes the implementation of the circle hook requirement is an important first step in

reducing mortality in the directed billfish fishery. NMFS appreciates these comments and will consider catch and release only options as well as other billfish conservation measures in future rulemakings, as necessary and appropriate.

*Comment 15:* NMFS received a number of comments specifically pertaining to the potential impacts of alternative E7 (which would allow only catch and release fishing for Atlantic white marlin from January 1, 2007 to December 31, 2011) on tournament operations. Those comments include: the proposed rule would unfairly affect white marlin tournaments along the United States mid-Atlantic coast; few white marlin are landed in tournaments; tournaments are the only cost and personnel effective means to scientifically sample Atlantic white marlin; alternative E7 would change the dynamic of fishing tournaments from contests where an anglers' luck or skill may prevail (biggest fish) to one where only skill would prevail (most fish) and would thus decrease participation; alternative E7 would create operational problems for tournament operators pertaining to verification of released fish; a fish killed and discarded as bycatch in the pelagic longline fishery has no direct economic impact. However, a fish killed as a tournament trophy or through release mortality contributes to a multi-million dollar industry and benefits the local economy and the nation as a whole; if alternative E7 is implemented, people will not go to tournaments to see the results; my concern for tournaments is that people like to see the result on the docks. If NMFS is going to full catch and release for white marlin, I do not believe that people will look at tournament videos of catches. The social aspect and behavior of tournament participants will be negatively impacted; there are decreasing numbers of tournament participants who are participating in the White Marlin Open under the catch and release category; Maryland has the most to lose by prohibiting landings of white marlin. Ocean City is the white marlin capital of the world. Ocean City should not suffer the loss of the White Marlin Open; and, alternative E7 is unnecessary, will accomplish nothing for conservation, and would have a significant impact on billfish tournaments in the mid-Atlantic areas.

*Response:* As stated above in the response to Comments 13 and 14 of this section, NMFS has not selected the catch and release alternative for Atlantic white marlin in the Final Consolidated HMS FMP. Based on overwhelming public concerns for the social and

economic impacts resulting from a shift to catch and release only fishing for white marlin, as well as the recognition of the limited ecological benefits relative to the potentially adverse social and economic impacts to billfishermen, tournaments, and other shore side businesses, as well as other reasons discussed under the response to Comment 13, the Agency has determined that it is premature to implement this measure at this time. The Agency will, however, consider catch and release only options as well as other billfish conservation measures in future rulemakings, as necessary and appropriate.

*Comment 16:* NMFS received comments requesting that the Agency modify alternative E7 to allow for some tournament landings of white marlin. Those comments include: if the Agency cannot go with zero landings, then implement a cap for tournaments that already have a history of landing white marlin. Do not throw out the whole proposal; and, if NMFS prohibits landings of white marlin, the Agency should allow retention of recreationally caught white marlin in tournaments or when prominent billfish tournaments are scheduled.

*Response:* NMFS appreciates these comments and suggestions to address mortality in the directed billfish fishery. At this time, the Agency does not believe that only allowing Atlantic white marlin to be landed in tournaments is the most appropriate solution, as nearly all Atlantic white marlin reported as retained are landed in tournaments. The Agency will, however, consider catch and release only options as well as other billfish conservation measures in future rulemakings, as necessary and appropriate.

*Comment 17:* The U.S. only lands less than 1 percent of the white marlin, so why worry about mortality?

*Response:* The U.S. is responsible for approximately 4.5 percent of white marlin catches in the Atlantic. Fishing mortality rates are a concern regardless of the size of the U.S. contribution because the current fishing mortality rate is more than eight times the level that the species can sustain. As a steward of the fishery, it is appropriate for the U.S. to work towards reducing and limiting both domestic and international fishing mortality rates. The U.S. will continue its efforts to reduce billfish mortality domestically and through ICCAT at the international level.

*Comment 18:* NMFS received comments concerned with fishermen shifting target species if white marlin

landings are prohibited. Those comments include: it's not desirable to make all of the fish under the ICCAT 250 marlin limit be blue marlin, which would happen if white marlin landings are prohibited; I would not support a prohibition on landing white marlin because we will kill more white marlin converting to targeting blue marlin; and, I oppose alternative E7 because fishing effort will be redistributed to different species.

*Response:* As stated in the responses to Comments 13 and 14 of this section, NMFS is not prohibiting landings of Atlantic white marlin at this time. NMFS understands the concern over potential increases in Atlantic blue marlin mortality, given the species' overfished status. The selected circle hook measure and measures to codify and ensure compliance with the ICCAT marlin landings limit will address mortality of both Atlantic blue and white marlin in the directed billfish fishery. The Agency may consider catch and release only options, as well as other billfish conservation measures, in future rulemakings, as necessary and appropriate.

*Comment 19:* Tournament spectators can still be involved in release tournaments if you use large viewing screens playing movie clips showing the fight and release of marlins. Dead fish on the dock do not allow for this type of participation.

*Response:* NMFS applauds the innovative efforts of some tournament organizers in working to limit marlin mortality. The Agency urges tournament organizers to be creative and to work to create formats that maximize the social and economic benefits from tournament operations while minimizing impacts to billfish resources.

*Comment 20:* NMFS received comments recommending that the Agency should implement measures to further reduce marlin mortality in other fisheries. Those comments include: NMFS should implement additional regulations on the pelagic longline fishery, which is responsible for the majority of marlin mortality, not impose landings restrictions on recreational fishermen; alternative E7 places a restriction on recreational fishermen without addressing the real issue; I am opposed to alternative E7 because recreational landings are not the problem; and, the billfish fishery was supposed to be managed for the recreational sector and NMFS has failed to make any meaningful reductions in bycatch captured on longlines issue since 1997.

*Response:* In recent years, the Agency has undertaken multiple rulemakings

intended to reduce bycatch and bycatch mortality in the pelagic longline fishery. Since implementing the 1999 FMP, NMFS has closed multiple areas to pelagic longline fishing, prohibited the use of live bait in the Gulf of Mexico, required the use of circle hooks, and required the possession and use of dehooking devices. The closed areas and live bait restriction were implemented, in part, to reduce the bycatch of billfish in commercial fishing operations. Circle hook and release gear requirements were implemented to reduce sea turtle bycatch and bycatch mortality, however, these measures likely contribute to reductions in billfish release mortality as well. Further, as discussed in more detail under the response to Comments 1 and 3, recent data and estimates on post-release mortality indicate that the aggregate domestic recreational billfish mortality contribution may be equal to or greater than the aggregate domestic pelagic longline billfish mortality contribution, in some years.

*Comment 21:* NMFS received comments relating to the ESA listing review of white marlin. Those comments include: Would a prohibition on landings of Atlantic white marlin influence the potential listing of Atlantic white marlin under the Endangered Species Act?; and, selecting alternative E7 will not necessarily prevent an ESA listing of white marlin.

*Response:* The listing review team would consider any management measures in place at the time of the Atlantic white marlin ESA listing review. NMFS cannot predict the effect of any particular management action on the outcome of the anticipated ESA listing review.

*Comment 22:* The white marlin settlement agreement between NMFS and Turtle Island Restoration network does not preclude further regulation of billfish catches under the Magnuson-Stevens Act, but does require a complete reassessment of white marlin by the U.S. no later than 2007.

*Response:* The Agency intends to complete the Atlantic white marlin ESA Listing Review on or before December 31, 2007, as provided in the settlement agreement. NMFS has the authority to impose additional restrictions on fisheries that interact with Atlantic white marlin, including the directed billfish fishery; however as discussed under the response to Comment 13, NMFS is not prohibiting landings of Atlantic white marlin at this time. The implementation of circle hook requirements is an important first step in reducing billfish mortality in the directed billfish fishery. NMFS will

consider catch and release only options, as well as other billfish conservation measures, in future rulemakings if they are necessary and appropriate.

*Comment 23:* NMFS received comments inquiring about the Agency's legal authority to prohibit landing of white marlin. Those comments include: NMFS does not have the legal authority to restrict landings of Atlantic marlin to levels below ICCAT landings limits; I am opposed to alternative E7 because it is contrary to giving fishermen a reasonable opportunity to catch fish as required by ATCA.

*Response:* The ICCAT 250 marlin landings limit could apply to both species combined, or one species alone, if landings of the other species were to be prohibited domestically. ICCAT Recommendation 00-13, and the subsequent recommendations that modified it, did not include species specific landings limits or any references to particular landings ratios of Atlantic blue and white marlin. The ICCAT recommendations simply provided an aggregate annual landing limit that is not to be exceeded. Thus, if the landings of one marlin species were prohibited domestically, anglers would have 250 of the other marlin species available for landing, thereby providing a reasonable opportunity for anglers to fulfill their ICCAT landing limit.

*Comment 24:* Why is there a time frame associated with alternative E7? The target should be MSY. The proposed time frame seems political. A biological threshold seems more appropriate.

*Response:* NMFS believed that a five-year time frame would have allowed for adequate time to gauge the potential impacts of such measures on marlin stocks and determine, at that point, if the measures achieved the objectives of the fishery management plan. Additionally, NMFS is required to consider factors beyond biology in making management decisions. However, as noted in the response to Comment 13, NMFS has not selected this alternative in the Final Consolidated HMS FMP, but may consider landings prohibitions for Atlantic marlins and other species in future rulemakings, as necessary and appropriate.

*Comment 25:* Recreational fishermen would release all billfish if they thought it would do any good. However, it will not. The U.S. has always said that its catch is an insignificant piece of the Atlantic-wide take. The Draft FMP throws this concept out the window and directs its regulatory muscle at a tiny number of recreational billfish landings.

It is as if NMFS is deciding to make them a prohibited species before the ICCAT stock assessment or the ESA status review.

*Response:* NMFS believes that the majority of recreational fishermen understand the value of catch and release fishing for Atlantic billfish as supported by the 75 to 99 percent release rate in this fishery. NMFS believes that catch and release fishing significantly reduces the domestic mortality contribution to the Atlantic-wide stock. The implementation of circle hook requirements for this sector of the fishery is expected to significantly reduce post release mortality. The Agency recognizes that other ICCAT nations kill significantly more billfish than the U.S. In comparison to other nations, the U.S. landings and dead discards represent approximately 2.4 and 4.5 percent of total Atlantic landings of Atlantic blue and white marlin, respectively. Recent information suggests that the U.S. mortality contribution for Atlantic billfish may be significantly higher than previous estimates, given new studies on recreational post-release mortality. This rulemaking seeks to minimize this mortality.

*Comment 26:* The entire U.S. recreational fleet and charter/headboats are landing very few white marlin each year, approximately 227 total fish over the last three years. These landings have little or no impact on the stock, but generate tremendous social and economic benefits for coastal communities particularly where tournaments are held.

*Response:* NMFS acknowledges the significant social and economic benefits that the recreational billfish fishery provides to coastal communities. Additionally, NMFS acknowledges the limited conservation benefit that could be realized from a prohibition on the landings of Atlantic white marlin. This measure was preferred in the Draft Consolidated HMS FMP in addition to a circle hook requirement for tournament billfish fishermen. The Agency preferred these alternatives together in an attempt to maximize reductions in total Atlantic white marlin mortality resulting from the directed billfish fishery. However, as noted in the response to Comment 13, NMFS did not select this alternative in the Final Consolidated HMS FMP, but may consider landings prohibitions for Atlantic marlins and other species in future rulemakings, as necessary and appropriate. The Agency has selected a non-offset circle hook requirement for HMS permitted vessels participating in billfish tournaments. This measure is

anticipated to substantially reduce mortality without the potential adverse economic impacts associated with a prohibition on white marlin landings.

*Comment 27:* NMFS received comments in support of alternative E8, which would allow only catch and release recreational fishing for Atlantic blue marlin. Additionally, one commenter added that alternative E8 may be needed if overfishing cannot be addressed.

*Response:* This alternative was analyzed but not preferred in the Draft Consolidated HMS FMP or Final Consolidated HMS FMP due, in part, to potentially severe negative social and economic impacts, and for other reasons. The U.S. will continue its efforts to reduce billfish mortality both domestically and at the international level. Additionally, the Agency may consider catch and release only options for Atlantic blue marlin as well as other billfish conservation measures in future rulemakings, as necessary and appropriate.

*Comment 28:* NMFS received comments opposed to alternative E8, which would allow only catch and release fishing for Atlantic blue marlin from January 1, 2007 to December 31, 2011. Those comments include: we are vehemently opposed to alternative E(8), catch and release only for blue marlin. This is not a conservation issue, this is a socio-economic issue and to implement alternative E8 would be economic suicide; and, this alternative exceeds the ICCAT Recommendations for this species. NMFS should focus on compliance with ICCAT's recommendations. The U.S. directed billfish fishery should be allowed to harvest its allocated quota.

*Response:* The Agency did not select this alternative in the Draft Consolidated HMS FMP, however, it remains a valid management tool available to NMFS if warranted by stock status or other factors. NMFS selected an alternative that will fully implement U.S. international obligations contained in ICCAT Recommendation 00-13 and subsequent amendments. Additionally, the Agency has selected other domestic measures in the Final Consolidated HMS FMP to reduce post-release mortality of billfish stocks.

*Comment 29:* By itself, alternative E8, which would allow only catch and release fishing for Atlantic blue marlin from January 1, 2007 to December 31, 2011, will not substantially reduce blue marlin fishing mortality unless 100 percent circle hook use, careful handling/release tools, procedures, and training are also required. Even then, unless such responsible actions are

taken by foreign fisheries, especially in the directed fisheries, reducing the U.S. blue marlin fishing mortality is unlikely to have substantial conservation gains.

*Response:* NMFS agrees that improved handling and release skills may reduce domestic post-release mortality of billfish, and that it is critical for foreign fishing nations to reduce total Atlantic billfish mortality to improve the stock status of these species. NMFS did not consider the other measures suggested in Comment 29, such as careful handling and release tools, and thus, they are beyond the scope of this rulemaking. NMFS may consider these measures in a future rulemaking, if necessary and appropriate. NMFS also agrees that international cooperation is essential to rebuilding Atlantic billfish populations and, as such, will continue to pursue international billfish conservation through ICCAT.

*Comment 30:* NMFS should not impose any new restrictions on HMS tournaments until after 2006.

*Response:* To provide Atlantic billfish tournament operators and participants time to acclimate to new regulations requiring the use of non-offset circle hooks when natural baits and/or natural bait/artificial lure combinations are deployed from HMS permitted vessels that are participating in billfish tournaments, NMFS has selected January 1, 2007, as the effective date for these requirements. Barring unforeseen circumstances, no new restrictions will be imposed on HMS tournaments during 2006.

*Comment 31:* NMFS should consider a limited entry system for tournaments with a specific white marlin quota. Tournaments should be issued a permit and a quota for white marlin kills. Outside of tournaments, recreational vessel owners should be required to have a permit and to abide by a catch-and-release only policy. This would allow for the continuation of HMS tournaments, which provide the largest economic benefits. It would also facilitate more accurate counting of marlin, and provide some fish for biologists to conduct scientific research.

*Response:* NMFS appreciates the suggestions submitted to the Agency regarding potential additional tournament regulations and other management suggestions for the directed billfish fishery, and asks commenters to continue to submit innovative ideas to improve billfish management. As discussed above, ICCAT has conducted a marlin stock assessment and may reconsider management measures for billfish at its annual meeting in November 2007. If

this occurs, NMFS could consider comments such as these in future rulemakings, as necessary and appropriate.

*Comment 32:* How many Atlantic white marlin are brought to the dock in tournaments each year?

*Response:* Between 1999 and 2004, inclusive, a total of 144 Atlantic white marlin were reported to the Recreational Billfish Survey as landed in tournaments. According to RBS data, landings of Atlantic white marlin in tournaments ranged from a low of eight in 2000, to a high of 36 in 1999, and averaged 24 annually for the six year period under discussion.

*Comment 33:* All fishing tournament participants should be required to use circle hooks, not just billfish tournament participants.

*Response:* NMFS believes that the current severely overfished stock status of Atlantic blue and white marlin and the proven ability of circle hooks to reduce post-release mortality support the selected alternative to require use of non-offset circle hooks in billfish tournaments. However, NMFS believes that more data on the impacts of circle hooks on non-billfish species and other fisheries should be collected and analyzed prior to proposing additional hook and bait requirements for all HMS tournaments. NMFS may consider additional hook and bait requirements for other segments of the HMS recreational fisheries in future rulemakings, as appropriate.

*Comment 34:* I spend \$3,000.00 a year on the White Marlin Tournament in Ocean City, Maryland. There are five fishermen on the boat pumping \$15,000 into the Ocean City, Maryland, economy on our boat alone. I do not want this tournament to end.

*Response:* NMFS is interested in seeing a healthy HMS tournament industry continue operations and continue to provide benefits to the nation. The final management measures regarding Atlantic billfish, implementation of non-offset circle hook requirements under certain conditions in billfish tournaments, and the ICCAT recreational marlin management measures, have been crafted in a way to minimize and mitigate potential adverse socio-economic impacts and are not expected to have significant impacts on billfish tournaments. Please refer to Chapter 4 of the Final Consolidated HMS FMP for additional detail regarding the estimated impacts of the selected alternatives.

*Comment 35:* NMFS received several comments, including one from the Gulf of Mexico Fishery Management Council, in favor of increasing the minimum size

limits for white and/or blue marlin, including: even a limited benefit is worth implementing; people interested in a smaller size limit are trying to make loopholes so they can catch and keep smaller fish; NMFS should increase the size limit of blue marlin because the Puerto Rico Game fish association has only taken 15 marlin all year in tournaments; increasing the size by approximately 40 percent, we would not have to apply the 250 fish cap; I support E4(b), increasing the minimum size of blue marlin because length and weight are correlated for blue marlin; increase the minimum size for blue marlin to 105 inches LJFL because most tournaments have a minimum weight of 400 pounds; increasing the minimum size for blue marlin would reduce the number of legal fish landed by one third; there should be at least a 106 inch minimum size limit to allow them to live for three more years and at least two years of spawning; and, I support a minimum size of 104 inches for blue marlin.

*Response:* The Agency is not increasing minimum sizes of Atlantic blue or white marlin at this time for several reasons. Only limited conservation benefits might be attained by increasing the minimum sizes for marlin because relatively few blue and white marlin are landed on an annual basis. In 2004, 118 blue marlin and 18 white marlin were reported to ICCAT, comprised mainly of tournament landings, but also including North Carolina and Maryland catch card landings, and non-tournament landings reported to HMS. Since the majority of landings occur in tournaments and many tournaments already have a minimum size greater than the current minimum size, increasing the minimum size may not have any significant ecological benefits. The Agency has also received information that white marlin might not display a consistent length-weight relationship, meaning that very few of these fish would even attain the minimum size if it were increased.

The United States is currently well below the 250 fish limit imposed by ICCAT and, therefore, does not need to reduce landings to comply with international obligations at this time. Lastly, other management measures selected in this action (mandatory use of circle hooks when using natural bait by HMS permit holders in tournaments that have a billfish prize category and implementation of ICCAT recommendations that establish an in-season adjustment framework to increase minimum sizes or catch and release, if necessary) should result in the desired conservation benefits by reducing landings if the ICCAT landings

limit is approached in the future and reducing post release mortality of billfish caught in tournaments. The Agency may consider permanent modifications to the minimum size in the future as necessary to ensure compliance with international obligations and facilitate rebuilding of blue and white marlin stocks.

*Comment 36:* NMFS received numerous comments opposing the implementation of a minimum size for white and/or blue marlin as described in Alternative E4 (a), increase the minimum legal size for Atlantic white marlin to a specific size between 68 - 71 inches LJFL and Alternative E4 (b), increase the minimum size of blue marlin to a specific size between 103 - 106 inches LJFL, including: many tournaments already have a larger minimum size than what NMFS has implemented (i.e., 110 inches or 400 lb), therefore, no benefits will be realized from increasing minimum sizes; NMFS had already established minimum size limits for white and blue marlin and these limits should not be increased; because of the differences in growth patterns between white and blue marlin, an increased size limit for white marlin would be ineffective because these fish grow to size and then put on additional weight and not necessarily length; for white marlin weight and length are not closely correlated for fish above 62 inches LJFL; there is no rationale for increasing minimum sizes, because requiring circle hooks will accomplish the same thing; and, why implement increased size limits to avoid reaching the 250 mark, when the existing regulations seem to work?

*Response:* NMFS did not select an increased minimum size for white or blue marlin at this time, however, NMFS may consider modifications to minimum sizes in the future, as necessary. NMFS is unaware of the exact number of billfish tournaments that currently require a minimum size greater than the current Federal regulations, however, they are numerous. Since this is where the majority of reported landings occur, increasing the minimum size may not result in significant positive ecological benefits. In 2004, all but 3 of the 149 billfish reported to ICCAT were landed in tournaments. The United States has been well under its ICCAT allocated quota of 250 billfish/year every year (except 2002), and the measures in this final rule would increase the minimum size for Atlantic white and blue marlin if there were a possibility of approaching the landings limit in the future, thereby mitigating the need to permanently increase minimum sizes to

comply with the ICCAT landings limit. NMFS also is mandating the use of non-offset circle hooks in billfish tournaments by HMS anglers when deploying natural baits to reduce post hooking mortality of released fish. Furthermore, because the majority of billfish are caught and released and catch rates are low (1.03 and 1.13 white and blue marlin per 100 hours angling, respectively), conservation benefits of increasing the minimum size may be minimal.

*Comment 37:* NMFS received comments both opposing and supporting alternatives E4(a) and E4(b) on the basis that a larger size limit would result in fishermen targeting larger, more fecund females and that NMFS should consider a slot limit to protect these larger, more fecund, marlin.

*Response:* Generally speaking, the likelihood of landing a more fecund female may increase if NMFS implemented a larger minimum legal size for blue marlin. For white marlin, the correlation between length and age or fecundity is less certain as current information indicate that white marlin may first put on length, and then weight. The fishery is generally opportunistic in nature, with a low CPUE, and with little ability for fishermen to "target" a large or small billfish. Further, the recreational billfish fishery is an overwhelmingly catch and release fishery. As such, while a larger legal minimum size may result in larger fish being landed, it is unlikely that anglers could successfully "target" larger billfish. NMFS appreciates the suggestion of analyzing a slot limit, and encourages anglers to continue to submit suggestions to the Agency. As discussed in the response to comment 35 above, NMFS did not select an alternative to change the minimum size but may reconsider minimum size changes, including slot limits, in the future.

*Comment 38:* NMFS received a comment asking what data were used to determine the billfish size limits.

*Response:* Size distributions from Atlantic billfish tournaments held from 1995–1997 were used to analyze minimum size alternatives contained in Amendment 1 to the Billfish FMP (1999), which resulted in the current minimum legal sizes for Atlantic billfish. Minimum size ranges analyzed for this rulemaking were based on RBS landings of white and blue marlin in tournaments between 1999–2004.

*Comment 39:* NMFS received several comments in support of Alternative E5 (bag limit of one billfish/vessel/day), including: the United States is already

under such a limited quota for white and blue marlin (250 fish/year combined for both species) that a bag limit is necessary; a bag limit might result in some high grading, but it should not be much of a problem; and, if the United States recreational sector is limited to 250 blue marlin and white marlin, it is inappropriate to let one boat come back with more than a single fish on any given day.

*Response:* NMFS recognizes the concerns of anglers regarding allocation of fish, particularly given the strict marlin landings limits placed upon the United States. As discussed in Chapter 4 of the Final Consolidated HMS FMP, the United States is limited to 250 white and blue marlin, combined, on an annual basis, per ICCAT

Recommendation 00–13. Since 2001, the United States has only exceeded its annual 250 fish limit one time (2002), and that was because of a modification to the accounting methodology for compliance with ICCAT. NMFS has selected the alternative to implement ICCAT Recommendation 00–13 in the Final Consolidated HMS FMP. At this time, there is little evidence suggesting that individual anglers are landing excessive numbers of marlin and potentially depriving other anglers of the opportunity to land a marlin. No multiple marlin trips have been reported to the Atlantic billfish and swordfish non-tournament landings system. However, NMFS may consider implementation of a bag limit in the future as necessary and appropriate.

*Comment 40:* NMFS received several comments objecting to alternative E5 (bag limit of one billfish/vessel/trip) for varied reasons, including: it would encourage the culling of fish; landing a few fish is not the issue; and, a bag limit will not reduce post-release mortality of billfish unless careful handling and release guidelines are followed.

*Response:* As discussed in the response to Comment 39, there is little evidence, at this time, that individual anglers are landing excessive numbers of marlin on individual trips and potentially depriving other anglers of the opportunity to land an Atlantic marlin. Further, as described in the response to Comment 39, overall landings of Atlantic marlin by U.S. recreational fishermen are low and well below the U.S. marlin landing limit. This is due, in large part, to the anglers who choose not to land marlin that are legally available for landing. NMFS is always concerned about the potential for increases in culling and discards which may result from regulation. NMFS acknowledges the limited conservation benefit that a bag limit

may produce and agrees that a bag limit alone would not reduce post-release mortality. NMFS selected a circle hook alternative in the Final Consolidated HMS FMP that is expected to reduce post-release mortality of Atlantic billfish.

### iii. Gears and Gear Restrictions

*Comment 41:* NMFS received comments in support of non-preferred alternative E2, which would require the use of circle hooks in all HMS recreational fisheries when using natural bait, including: only a fraction of the offshore recreational effort occurs in tournaments so the conservation benefits would be larger if circle hooks were required in all offshore fisheries. This alternative would facilitate enforcement by requiring that all HMS fishermen use circle hooks; NMFS should require circle hooks, careful handling/release tools and training for all HMS hook and line fisheries that interact with white marlin. This may be the only way for NMFS to prevent an ESA listing for white marlin. It cannot be ignored that the directed recreational fishery is likely the majority of domestic white marlin mortality, which is a minute percent. Unfortunately, even such a sacrifice may not be successful, unless adopted by other foreign fisheries, especially directed fisheries that interact with white marlin. Circle hooks are needed for all HMS fisheries, not just in tournaments. If an HMS fishery interacts with billfish, then it needs to use circle hooks.

*Response:* NMFS agrees that Atlantic billfish tournaments represent a subset of total fishing effort targeting Atlantic billfish and that there would be a greater conservation gain if circle hooks were required in all offshore recreational fisheries. NMFS is interested in all potential means of further reducing the post-release mortality of all HMS. However, NMFS prefers to collect and evaluate additional data regarding the impacts of circle hooks on non-billfish species and fisheries prior to mandating circle hooks for all HMS fisheries. Other possible methods of reducing post-release mortality of all HMS could include the required use of careful handling and release guidelines, release equipment, and training. NMFS may consider the feasibility of additional circle hook requirements and other requirements in the future, as suggested by the commenter. NMFS also agrees that uniform fishery-wide circle hook requirements will likely facilitate enforcement. However, NMFS believes that the requirement to use circle hooks by permitted HMS fishermen when natural bait and natural bait/artificial

lures are deployed in billfish tournaments can be adequately enforced by NMFS Office of Law Enforcement. NMFS further believes that, given the vested financial interests of billfish tournament participants in ensuring that all tournament participants compete under the same rules and conditions, tournament circle hook requirements will be significantly self-enforced. The Atlantic White Marlin ESA Listing Review Panel would take into consideration the impacts of all regulations in effect, including circle hook requirements, when making its recommendations. NMFS cannot predict the outcome of these deliberations or the direct impact that any particular regulation may have on the outcome of such deliberations. Data indicate that the domestic directed fishery for Atlantic white marlin is responsible for a significant proportion of total domestic white marlin mortality, and may, in some years, exceed the level of mortality inflicted by the domestic pelagic longline fleet. NMFS also agrees that the directed domestic fishery for Atlantic white marlin and the bycatch of this species in other domestic fisheries represents only a small portion of total Atlantic-wide mortality, on both an individual and a collective basis. NMFS also agrees that the recovery of this depleted fishery is dependant upon the cooperation of the international community. To this end, the U.S. continues to pursue marlin conservation at the international level through ICCAT.

*Comment 42:* NMFS received conditional support for alternative E2, Effective January 1, 2007, limit all participants in Atlantic HMS recreational fisheries to using only non-offset circle hooks when using natural baits or natural bait/artificial lure combinations, including: I support the use of circle hooks with natural baits in all HMS fisheries, only if no J-hooks are allowed on board the vessel.

*Response:* Public comment during the scoping phase of this rulemaking was nearly unanimous on the need to allow the use of J-hooks with artificial lures when fishing for Atlantic blue marlin given the feeding behaviors of this species. Additionally, in its analysis of circle hook requirements, NMFS found that the post-release mortality rate of Atlantic blue marlin caught recreationally on J-hooks appeared to be comparable to post-release mortality rates of Atlantic white marlin caught recreationally on circle hooks. As such, this rule, which requires the use of non-offset circle hooks by permitted HMS fishermen when natural bait or natural bait/artificial lures are deployed in

billfish tournaments, but allows J-hooks to be used with artificial lures, will likely reduce mortality in the directed billfish fishery and provide a significant and appropriate conservation benefit.

*Comment 43:* NMFS received comments opposing Alternative E2, including: I do not support alternative E2; I am concerned about requiring circle hooks in all HMS fisheries because dolphin, wahoo, king mackerel, and inshore fisheries could be impacted; how would NMFS determine who is in the HMS fishery?; I strongly oppose requiring the use of circle hooks in all HMS fisheries because circle hooks do not work on swordfish and the catch rate goes down; and there may be a problem in terms of enforcement with making circle hooks mandatory in all HMS fisheries (alternative E2), but it could work in Atlantic billfish tournaments (preferred alternative E3).

*Response:* NMFS acknowledges that requiring circle hooks in all HMS fisheries could affect secondary fisheries, including dolphin, wahoo, king mackerel, and other inshore fisheries. As previously acknowledged, NMFS prefers to collect additional data on the impacts of fishery-wide circle hook requirements. Such data collection would include HMS fisheries and may also include some non-HMS species and fisheries. The NED circle hook study indicated that deployment of circle hooks in the commercial pelagic longline fishery can result in a decrease in the number of swordfish caught under some oceanographic conditions. However, NMFS has only limited data on the impact of circle hooks in the recreational swordfish fishery. With regard to enforcement, NMFS believes that given the vested financial interests of billfish tournament participants in ensuring that all tournament participants compete under the same rules and conditions, tournament circle hook requirements will be significantly self-enforced.

*Comment 44:* NMFS received comments on the adequacy of data and assumptions made in support of non-preferred alternative E2, which would require all HMS fishermen to use circle hooks when using natural bait and preferred alternative E3, which would require the use of non-offset circle hooks in billfish tournaments when using natural bait, including: NMFS cannot justify alternatives E2 or alternative E3. We do not believe that there is data to support the preferred alternative to require circle hooks in tournaments; and, the assumptions made to support the use of circle hooks are not specified in the text and leads one to believe that there is another set

of assumptions that would not support the use of circle hooks. Where the “23 percent overall” figure comes from is not discoverable in the text. It is one of those derived from assumptions that are not spelled out. The “65.7 percent” figure is right from the Horodysky and Graves study which, as argued, is insufficient to support any of the proposals.

*Response:* The significant potential reductions in post-release mortality of recreationally caught Atlantic billfish that are anticipated to be achieved through the shift from J-hooks to non-offset circle hooks in the directed fishery provide ample support for implementing these measures. Reducing the post-release mortality of Atlantic white marlin by two-thirds would be a landmark achievement. The shift to circle hooks in the directed Atlantic billfish fishery is the most effective single management tool known to the Agency at this time to control post-release mortality, and has the added benefit of having minimal impacts on the fishery. NMFS has relied on publicly available peer-reviewed scientific papers and available recreational data sets in developing its analyses. The assumptions made to support the use of circle hooks are articulated in Chapter 4 of the Final Consolidated HMS FMP. The reference to 23 percent overall reduction represents another statistical perspective on the anticipated reduction. It represents the change in absolute terms of reducing the estimated post-release mortality of Atlantic white marlin from 35 percent overall on J-hooks to approximately 12 percent overall on circle hooks (35 percent – 12 percent = 23 percent). The 65.7 percent figure represents the relative decrease in post-release mortality between J-hook and circle hook caught Atlantic white marlin (23 percent/35 percent = 65.7 percent).

*Comment 45:* NMFS received a number of comments opposing preferred alternative E3, which would require the use of non-offset circle hooks by HMS permitted fishermen participating in billfish tournaments when using natural baits, including: we support the voluntary use of circle hooks and oppose mandating use of circle hooks in tournaments when using natural baits; if NMFS lets the recreational and charter/headboat fleet implement circle hooks on a voluntary basis, there will be 90 percent or better compliance at using circle hooks in a year or two; all south Florida tournaments have already voluntarily converted to circle hooks because they work, NMFS should ask tournament

directors to add 5 extra points to anglers who used circle hooks to catch their fish; the number of fish saved will be ten times greater with the voluntary use of circle hooks rather than mandatory use, because the public does not like to be forced into doing things; individual tournaments should be allowed to determine which type of hook is most appropriate for their own needs; we agree with NMFS that promoting circle hook use in tournaments will result in non-tournament anglers using them also, however it should not be required by regulation. Anglers will ignore the circle hook requirement at tournaments and will choose the best tackle to win. The blue marlin fishery is a mixed fishery and circle hooks do not work well on other tournament species such as wahoo; enforcing circle hook requirements will be difficult or impossible, especially at tournaments; circle hooks need to be phased in through angler education, because they are not enforceable at this time with no proposed specifications; NMFS should educate anglers on the use and benefits of circle hooks. NMFS needs to provide specifications on circle hooks (offset, circularity, shank length, size, gap, etc.) before requiring them; I do not want NMFS to advocate one hook manufacturer over another; NMFS needs written specifications that are clear to everyone in order to encourage compliance; circle hooks could potentially have huge negative economic impacts on tournaments. They may decrease anglers' ability to catch non-billfish species that are landed for food or tournament winnings and as such may decrease willingness to participate in tournaments. This commenter also noted that the transition to circle hooks may require anglers to invest between \$15,000 and \$20,000 in the way they fish tournaments; potential adverse economic impacts of implementing circle hooks may outweigh the conservation benefits derived from anticipated decreases in post-release mortality and as such other areas of conservation should be explored; anglers need to use J-hooks with artificial lures because of the way marlin feed; circle hooks do not work well for species that are trolled for at higher speeds; fish do not get gut hooked with J-hooks and artificial bait. Anglers need natural bait with circle hooks because the use of circle hooks for marlin fishing with lures will not work. Marlins smack the live bait with circle hooks and will get hooked in the mouth or bill so there is very little chance of gut hooking anything; the best way to catch them (blue marlin) is to

slow troll natural bait with no drop back. Circle hooks may not work without a drop back; and, I oppose Alternative E3 because it falls short of what is needed.

*Response:* NMFS disagrees that there will be significantly greater use of circle hooks by anglers in the Atlantic billfish fishery if circle hook use remains voluntary, as opposed to being required under certain circumstances. Circle hook use has always been voluntary, and yet significant portions of the fishery continue to use J-hooks. Further, NMFS has been actively encouraging the use of circle hooks in HMS Fisheries since 1999. NMFS advocated circle hook use through the placement of articles on circle hooks, held discussions with industry leaders to encourage their use and to educate anglers on their benefits, recommended their use during public hearings and elsewhere, and encouraged circle hook use in tournaments by providing monetary incentives to anglers for their use. While there has been some progress in sectors of the fishery, anecdotal evidence suggests that substantial portions of the fishery continue using J-hooks as the standard hook. For several reasons, NMFS has selected the alternative to require non-offset circle hooks to be used by anglers aboard HMS permitted vessels participating in billfish tournaments when deploying natural baits. There are substantial conservation benefits associated with the use of circle hooks, primarily reduced post-hooking mortality. This is especially important because recent information suggests that the post-release mortality rate of Atlantic white marlin caught recreationally on J-hooks is substantially higher than previous estimates. In addition, there are data indicating that the mortality contribution of the recreational community on Atlantic white marlin may equal or exceed that of the pelagic longline fishery in some years, and circle hook requirements are already in place for that fishery.

As discussed in the response to Comment 41 regarding enforcement of circle hook use in tournaments, NMFS believes that given the vested financial interests of billfish tournament participants in ensuring that all tournament participants compete fairly under the same rules and conditions, tournament circle hook requirements would be significantly self-enforced. A general definition of "circle hook" is included in the current Federal regulations governing Atlantic HMS, and NMFS understands the desire of tournament operators for additional circle hook specifications. However, as

there are no standard industry hook specifications, NMFS cannot provide detailed hook specifications for each size circle hook that could be used in the recreational billfish fishery at this time. NMFS is continuing to work on various definitions of circle hooks that could be applied in future rulemakings. Further, to ease concerns of anglers and simplify hook choice, NMFS is considering working with hook manufacturers to ensure that all hooks marketed as circle hooks are true circle hooks. NMFS disagrees that implementation of circle hook requirements will cause large adverse economic impacts. NMFS has not seen evidence that participation in the fishery will decrease as a result of circle hook use. Circle hooks have been shown to increase catch rates of some billfish and are, on average, slightly less expensive than J-hooks. Many commenters suggested that if circle hook use were left voluntary that compliance rates will be very high. NMFS agrees that circle hooks may affect the catches of some non-HMS species, but cannot predict whether these catches may increase or decrease. However, circle hooks will only be required on HMS permitted vessels participating in billfish tournaments when natural baits or natural bait/artificial lure combinations are deployed. Based on public comment during scoping and an examination of post-release mortality data of blue marlin caught on J-hooks, NMFS will allow anglers on HMS permitted vessels in billfish tournaments to continue to use J-hooks with artificial lures. NMFS remains convinced that implementing non-offset circle hook requirements in Atlantic billfish tournaments when natural baits or natural bait/artificial lures are deployed from permitted HMS vessels will be an important and productive first step that should reduce mortality in the U.S. directed billfish fishery.

*Comment 46:* I am concerned that alternative E3 specifies circle hooks for "all Atlantic billfish tournament participants" rather than "HMS-permitted vessels in all Atlantic billfish tournaments."

*Response:* NMFS agrees. NMFS has made a technical clarification to the wording of the alternative to correct any misperceptions. NMFS did not intend that the regulations contained in 50 CFR part 635 would apply to fisheries under the jurisdiction of the regional fishery management councils. NMFS analyzed this alternative from the perspective of applying circle hook requirements only to HMS-permitted vessels. To clarify, NMFS will require circle hook use only

by anglers fishing from Atlantic HMS permitted vessels participating in Atlantic billfish tournaments when deploying natural bait or natural bait/artificial lure combinations.

*Comment 47:* NMFS received a number of comments in support of preferred alternative E3, Effective January 1, 2007, limit all Atlantic billfish tournament participants to using only non-offset circle hooks when using natural or natural bait/artificial lure combinations, including: I support alternative E3, which would require circle hooks in Atlantic billfish tournaments; the results of recent circle hook studies are very compelling; NMFS should make a tough decision and implement circle hooks because they work; circle hooks can help with catch and release by reducing post-release mortality; NMFS must reduce mortality on marlin and should require circle hooks; limiting tournaments to circle hooks should reduce post-release mortality and provide additional conservation to billfish in the recreational fishery. Mandatory use is viable in the tournament setting. Outside of tournaments, NMFS needs an aggressive education program to promote the use of circle hooks; it is easy to get a circle hook back, and circle hooks have the benefit of not leaving any gear on the fish; circle hooks work, save fish, and result in less hooking trauma; I support the use of circle hooks, but they may not work with combination baits; our club adopted the use of circle hooks exclusively for all our tournaments, and we generally have a short ten to 15 minute release time on sailfish and white marlin, which minimizes stress on the animal; we support alternative E3, non-offset circle hooks with dead or live natural baits in tournaments, but a circle hook needs to be clearly defined; circle hooks should be mandatory for billfish tournaments; I support the mandatory use of circle hooks in billfish tournaments because it is enforceable. Tournament directors can give out hooks or inspect them; Tournaments are a good place to start implementing circle hooks; there is an international movement to use circle hooks; the U.S. needs to put circle hook requirements on paper to show ICCAT our commitment and credibility, rather than doing this voluntarily; the international focus needs to be on improving the post-release mortality of Atlantic billfish and requiring circle hooks in U.S. fisheries will help with this effort; and, the recreational sector claims they are not ready for circle hooks, but the commercial sector was forced to move to circle hooks.

Anything that can be done to reduce mortality is good. The commercial fishing sector has stepped up to the plate, so the recreational community should do the same.

*Response:* NMFS agrees with comments suggesting that implementing circle hook requirements in tournaments will reduce post-release mortality of billfish caught in tournaments, and should help reduce the overall fishing mortality rate of Atlantic marlins. Recent data indicate that switching to circle hooks could reduce post-release mortality rates for individual fish by approximately two-thirds. NMFS also agrees with comments indicating the mandatory circle hook use in tournaments will be viable and enforceable for the reasons discussed in the response to Comment 41. NMFS also concurs with the need to continue educational efforts to better educate anglers in the use and benefits of circle hooks, as noted by some commenters, and encourages anglers to minimize fight times, release fish quickly, and to release fish in a manner that maximizes the probability of survival to further minimize billfish mortality. NMFS agrees with commenters who suggest that there is growing international momentum to use circle hooks in various fisheries. However, NMFS sees a need for continuing pressure on the international community to implement circle hook use more rapidly. As discussed in the response to Comment 46, a general definition of circle hooks is included in the current Federal regulations governing Atlantic HMS, and NMFS understands the desire of anglers and tournament operators for additional circle hook specifications. However, an index of detailed hook specifications for each size of circle hook that could be used in the recreational billfish fishery is not available at this time. NMFS is working on definitions of circle hooks that could be applied in future rulemakings. Further, to ease concerns of anglers and simplify hook choice, NMFS is considering working with hook manufacturers to ensure that all hooks marketed as circle hooks are true circle hooks. Implementing circle hook requirements in portions of the domestic recreational billfish fishery will demonstrate to the international community the conservation benefits of these hooks, and the commitment of the U.S. to billfish conservation. Improving post-release mortality in both the commercial and recreational fisheries is a critical component of halting the current decline of Atlantic marlin populations. NMFS agrees that the

commercial fishing sector is subject to a number of restrictions to reduce bycatch and bycatch mortality. However, with regard to the hook requirements analyzed in this rulemaking, NMFS believes that the data indicate that circle hooks can reduce post-release mortality in the recreational billfish fishery.

*Comment 48:* NMFS received a number of comments conditionally supporting implementation of circle hooks in billfish fisheries, including: the use of circle hooks should be voluntary until NMFS develops a specification on the off-set and shank length; we support alternative E3, circle hooks in tournaments, provided it includes provisions to conduct cooperative scientifically valid research, determine and specify minimum design specifications for circle hooks, require the handling and release equipment be on board, and allow for voluntary participation in handling and release workshops. The current definition for a circle hook is not adequate. Rather, NMFS needs to outline minimal design specifications as was done in the NED experimental design; and, if voluntary conversion to circle hooks is low, then I would support their mandatory use.

*Response:* As discussed fully in Chapter 4 of the Final Consolidated HMS FMP and in the response to Comment 45 above, NMFS believes it is appropriate to require circle hooks for HMS permitted vessels when participating in Atlantic billfish tournaments at this time, despite a lack of detailed circle hook specifications. NMFS is continuing to develop more detailed circle hook specifications, but believes that the conservation benefits derived from circle hook requirements at this time outweigh any possible adverse impacts that may result from a lack of detailed circle hook specifications. NMFS has not considered or proposed any restrictions on scientific research in the Final Consolidated HMS FMP. Interested parties may conduct scientific research as appropriate under the selected circle hook alternative. Should the design of such scientific research call for utilizing gears or undertaking activities prohibited by regulation, interested parties may apply for either an Exempted Fishing Permit or Scientific Research Permit, as appropriate. Requiring handling and release equipment and workshops for the recreational sector is beyond the scope of this rulemaking, but may be considered in a future rulemaking, if appropriate. NMFS has selected an alternative requiring mandatory shark identification workshops for federally permitted shark dealers, as well as

mandatory protected resources identification and release and disentanglement workshops for longline and gillnet vessel owners and operators. However, to the extent possible, these workshops will be open to other interested parties, including recreational fishery participants. As previously discussed, NMFS is unable to determine what percentage of billfish trips deploy circle hooks. However, the Agency believes that the data clearly demonstrate significant conservation benefits can be derived from the use of circle hooks in portions of the recreational billfish fishery.

*Comment 49:* NMFS received comments regarding the timing of implementing possible circle hook requirements suggesting the need for a short phase-in of circle hooks into tournaments and the recreational fishery and advance notice of impending circle hook regulations to allow for changes in the rules and advertising, and to inform tournament participants of potential circle hook requirements. Commenters also suggested that educational efforts should be increased to promote and enhance the growing recreational awareness, and use, of circle hooks.

*Response:* NMFS surveyed a number of tournament operators in the Atlantic, Gulf of Mexico, and Caribbean to better understand various aspects of tournament operations. NMFS determined that a delayed date of effectiveness of between four and six months would likely provide adequate time for tournament operators and participants to adjust tournament rules, formats, and advertising, as necessary, as well as to notify anglers of changes, and allow anglers to adjust fishing practices and take other steps, as appropriate, to minimize any potential adverse impacts stemming from selected circle hook requirements. As such, given the publication of this Final Rule in September 2006, the effective date for the selected circle hook alternative is January 1, 2007. This effective date is consistent with the effective date proposed for preferred alternative E3 as contained in the Draft Consolidated HMS FMP. NMFS has also had a circle hook public education program in place for a number of years to educate anglers and encourage the use of circle hooks in recreational fisheries.

*Comment 50:* Why would the recreational fishery not be allowed to have offset hooks, while the PLL fishery can have a 10 percent offset?

*Response:* Pelagic longline circle hook and bait requirements were developed to specifically address bycatch and bycatch mortality of Atlantic sea turtles, while the selected circle hook

requirements for Atlantic HMS permitted fishermen participating in Atlantic billfish tournaments are intended to reduce post-release mortality of Atlantic billfish. In other words, they were developed to address different issues. The pelagic longline fishery may only possess circle hooks offset up to 10 degrees if they are 18/0 or larger in size. The offset was determined to be necessary to allow the use of large baits (e.g. whole Atlantic mackerel), which can shield the hook. The recreational billfish fishery typically uses significantly smaller hooks (sizes 8/0 and 9/0), which, if offset, may diminish the conservation benefit of circle hook requirements by resulting in higher rates of deep hooking and soft tissue damage to vital organs.

*Comment 51:* NMFS received comments on the potential applicability of circle hook requirements of preferred alternative E3, which would require billfish tournament participants to use non-offset circle hooks when deploying natural baits, including: would participants in tournaments that offer prizes for both billfish and non-HMS species be required to use circle hooks for the non-HMS species; and would the circle hook requirement apply to vessels fishing in U.S. waters, or to all U.S. flagged vessels everywhere?

*Response:* Anglers aboard HMS permitted vessels, or vessels that are required to be permitted, and are participating in Atlantic billfish tournaments will be required to use non-offset circle hooks when deploying natural baits and natural bait/artificial lure combinations. However, HMS permitted vessels participating in Atlantic billfish tournaments will be able to deploy J-hooks on artificial lures. Circle hooks will be required for U.S. flagged vessels possessing an HMS permit and participating in an Atlantic billfish tournament regardless of where that vessel is fishing.

*Comment 52:* NMFS received a number of comments and suggestions on potential gear and bait restrictions or policy programs beyond those analyzed in the Draft Consolidated HMS FMP, including: there should be no live bait fishing; prohibit the use of "live bait" in all HMS J-style hook fisheries and areas known to have billfish interactions; the use of kites and offset circle hooks may be more damaging than J-hooks; NMFS should allow only one hook per lure to reduce foul hooking and injuries to the fish and anglers; NMFS should implement minimum line test requirements during the season or in tournaments; NMFS should create a buyback program for J-hooks; and, it would be useful to convene a summit of

HMS tournament directors to work on a protocol to get anglers to switch to circle hooks.

*Response:* NMFS appreciates the thoughtful and creative suggestions made by commenters to address billfish issues. Although these ideas were not specifically considered in the Draft Consolidated HMS FMP, NMFS is investigating their potential and may consider them in a future rulemaking if appropriate.

*Comment 53:* NMFS received a number of questions specific to tournament landings of billfish in South Carolina, including: how many billfish are caught annually in South Carolina tournaments? What is the number harvested for weigh-in versus the number released? What is the estimated mortality for those released? What is the financial gain to the state?

*Response:* An examination of the Recreational Billfish Survey (RBS), which records tournament landings, indicates that an average of four Atlantic billfish (blue marlin, white marlin, and sailfish) were landed in South Carolina in tournaments annually for the period 1999 - 2004, inclusive. A high of seven blue marlin were landed in tournaments in South Carolina in 1999, and a low of one blue marlin was landed in 2002. In total, for the period 1999 - 2004, 25 billfish were retained and 73 were released in tournaments, as reported through the RBS. According to RBS data, between seven and eight (7.6) tournaments per year were conducted in South Carolina. Rounding-up to an estimate of eight tournaments per year, and applying an average value of \$1,375,481 per tournament, the estimated impact of tournaments to coastal South Carolina equates to \$11,003,848.

The commenter also indirectly suggested that the alternatives selected to address billfish mortality would result in the cancellation of South Carolina's tournaments resulting in an estimated loss of \$11 million dollars to the state. NMFS does not agree with this suggestion. Circle hook requirements are not expected to result in decreased tournament participation, given the high catch and release rate practiced by billfish anglers, the fact that all U.S. Atlantic billfish tournament anglers will have to abide by the same circle hook requirements, the low number of marlins that are annually landed in South Carolina, and because marlin are available for landing. South Carolina tournaments are not likely to be affected by the 250 fish marlin landing limit either, primarily because all South Carolina tournaments occur prior to the date at which any potential estimated

impacts are projected to occur (August 22), based upon the assumptions described in Chapter 4 of the Final Consolidated HMS FMP.

iv. Circle Hooks and/or Post-Release Mortality Data

*Comment 54:* NMFS received several comments on the adequacy of some of the studies cited in development of the Draft Consolidated HMS FMP, including: the Horodysky and Graves study is flawed because it is based on a sample size of only 40 fish and because they landed the fish in 30 - 40 minutes which is unreasonable. Most anglers will land their fish much more quickly in 5 - 10 minutes thus reducing stress on the fish and increasing survival rates; the Horodysky and Graves study concludes that there is a 35 percent greater likelihood that a white marlin will survive release if taken on a circle hook, rather than a J-hook. Other factors resulting in post-release mortality must come into play; e.g., no one would expect fish fought for 83 minutes ((DR02-04) or 46 minutes (VZ03-11)) to survive and it has nothing to do with the type of hook used. Yet, the study takes into consideration nothing but the type of hook used to conclude that hook type alone results in a lower mortality rate; one of the circle hook studies cited in the DEIS is problematic because it was conducted in the Pacific Ocean (Guatemala), the vessel's captains were required to use offset circle hooks rather than non-offset circle hooks, the methods do not represent how fishermen fish, and the study does not contain a comparison of circle hooks versus J-hooks.

*Response:* NMFS appreciates the concerns expressed over the methods and/or validity of the studies cited in the Draft and Final Consolidated HMS FMP. Nevertheless, the studies cited in Final Consolidated HMS FMP have been peer-reviewed and constitute the best available science regarding the topics under discussion. NMFS would appreciate additional relevant peer-reviewed studies on these subjects if the commenter is aware of any such studies because the Agency is always searching for, and required to utilize, the best available scientific information for fishery management actions.

*Comment 55:* NMFS received a number of comments that recommended research and data collections, or asked about the availability of certain data, including: we recommend research to determine the impacts of circle hooks on catch rates, not only of billfish, but other species such as dolphin, wahoo, and tuna; NMFS should conduct studies on the post-release mortality of sailfish

with circle versus J-hooks in the Atlantic Ocean. Do not rely on studies from the Pacific Ocean because the sailfish are different between the oceans; more data from pop-up satellite (PSAT) tags and angler experience is needed to provide a foundation for any major change in regulations pertaining to marlins; has there been any research on exhaustion mortality, e.g., fighting fish for different times on different gear (drop back, hook type, etc) and the resultant impacts on mortality?; we see big blue marlin occasionally and are wondering about post-release mortality and catch-and-release rates. Predation should be considered in estimating post-release mortality; NMFS should conduct additional studies to identify more effective ways for the pelagic longline fishery to reduce bycatch of marlin and sharks; NMFS should evaluate the impacts of using "live bait" and circle-style hooks as well as careful handling and release tools and procedures; and, NMFS should further investigate how the feeding and behavior of Atlantic blue marlin may affect catch rates with circle hooks.

*Response:* NMFS appreciates these research recommendations as a way to help guide future research efforts and funds. The Agency is always looking for, and appreciative of, relevant research suggestions and additional data that can benefit the management of Atlantic HMS. The answers to many of the research suggestions could potentially benefit management. Some of the research suggestions contributed by commenters are currently under investigation by either NMFS or private sector entities. NMFS will consider these suggestions in the future, as appropriate.

*Comment 56:* Off-set circle hooks show less mortality than non off-set circle hooks.

*Response:* NMFS is unaware of data showing off-set circle hooks result in a lower mortality rate than non-offset circle hooks. NMFS would appreciate receiving any such data that may support this contention, and will consider it in future rulemakings, as appropriate.

*Comment 57:* The Agency has not published specifications for circle hooks and I am requesting clarification of the definition of "non-offset circle hooks" by NMFS because, in part, each manufacturer creates its own definition for non-offset circle hooks.

*Response:* A general definition of circle hooks is included in the current Federal regulations governing Atlantic HMS, and NMFS understands the desire of tournament operators for additional circle hook specifications. The current

definition of "circle hook" in 50 CFR 635.2 reads: "A circle hook means a fishing hook originally designed and manufactured so that the point of the hook is turned perpendicularly back toward the shank to form a generally circular or oval shape." NMFS is working on definitions for circle hooks. At this time, however, detailed hook specifications for each size circle hook that could be used in the recreational billfish fishery are not available. There are no standard industry hook specifications. As detailed in the discussion of the selected circle hook alternative in Chapter 4 of the Final Consolidated HMS FMP, NMFS finds that it is appropriate at this time to require the use of non-offset circle hooks in portions of the recreational billfish fishery to reduce post-release mortalities in the recreational billfish fishery. Further, to ease concerns of anglers and simplify hook choice, NMFS is considering working with hook manufacturers to ensure that all hooks marketed as circle hooks are true circle hooks.

*Comment 58:* The Maryland Department of Natural Resources submitted a comment indicating that they would be willing to work with NMFS to teach voluntary use of circle hooks, noting that anglers must learn how to fish these hooks and that education for the offshore fishermen is necessary.

*Response:* NMFS appreciates the State of Maryland's willingness to work with the Agency to reach out to anglers and educate them on the use of circle hooks. Circle hooks have been shown to effectively reduce post-release mortality of many species while having little impact on rates of catch. The Agency hopes that the offer by the State of Maryland will remain open given the mandatory circle hook requirements for tournaments in this rule.

*Comment 59:* NMFS's statement in the Draft Consolidated HMS FMP that increases in recreational fishing effort and stable fishing mortality indicate that white marlin are decreasing in number is incorrect. Fishing mortality has not increased, the recreational fishing community is releasing more of them.

*Response:* NMFS was unable to locate this statement in the Draft Consolidated HMS FMP. However, NMFS believes that the commenter may have intended to state that increases in recreational fishing effort and stable landings of white marlin indicate that white marlin may be decreasing in number. The number of recreationally landed Atlantic white marlin reported to ICCAT between 2001 and 2004 varied considerably, ranging from a high of 191

in 2002 to a low of 23 in 2003. The number of Atlantic white marlin reported to NMFS via the Recreational Billfish Survey has remained relatively stable over the same period. However, the release rate of live Atlantic white marlin in the recreational fishery has also remained stable. In the face of increased effort, a lack of increases in landings, when coupled with stable release rates, implies decreased angler success. Decreased angler success could be attributable to a number of factors. One factor could be that the fishing mortality rate of Atlantic white marlin is more than eight times higher than the population can sustain, so the stock size is diminished. Furthermore, as discussed in Chapter 4 of the Final Consolidated HMS FMP, the current estimate of recreationally caught Atlantic white marlin post-release mortality is now significantly higher than previous estimates, so an increase in the number of releases would be anticipated to result in additional mortalities.

*Comment 60:* Six to ten thousand white marlin are caught each year by U.S. fishermen, both commercial and recreational. I have data showing that commercial mortality is higher than recreational mortality in general, but in the past 6 years, the recreational mortality has exceeded the commercial mortality.

*Response:* New post-release mortality estimates allowed NMFS to examine total mortality contributions of the commercial and recreational sectors for Atlantic white marlin over the past four years. Mortality varies greatly by year and data set. In some years, using some data sets, the recreational mortality contribution appears to exceed the commercial mortality contribution and in some years the reverse appears to be true. Please see Appendix C in the Final Consolidated HMS FMP for more detailed information by year and fishery sector. Appendix C provides a range of mortality estimates, but does not attempt to definitively identify mortality contributions, rather, the estimates provided in that table are intended to provide reference points for discussion. NMFS will continue to examine this issue as new and refined data become available.

#### v. Elimination of the "No Sale" Exemption

*Comment 61:* The "no sale" exemption for Atlantic billfish should be removed. The sale of all billfish in the U.S. should be prohibited.

*Response:* NMFS agrees that the exemption to the no sale provision for Atlantic billfish should be removed.

However, NMFS does not agree that the sale of all billfish, including those from Pacific stocks, should be prohibited. Stock status of Pacific billfish is currently unknown, and as such a nation-wide ban on the sale of billfish may not be appropriate. The Certificate of Eligibility program in place for Atlantic billfish is designed to ensure that no Atlantic billfish enter the stream of commerce, while allowing Pacific billfish to be sold legally. However, the Agency may reconsider a prohibition on the sale of Pacific billfish in the future, as necessary and appropriate.

*Comment 62:* The potential ecological impact of billfish sales from fishermen in Puerto Rico would be minimal because the individuals who may sell Atlantic billfish take only 10 - 15 fish a year, and only keep fish that come to the boat dead in an effort to minimize waste.

*Response:* NMFS has little data on the extent of illegal sales of billfish in Puerto Rico and cannot verify the veracity of the commenter's claims or assess the impact of these sales. NMFS has received a significant number of anecdotal reports of sales of Atlantic marlin in Puerto Rico. The number of these anecdotal reports suggests that a sizable number of Atlantic marlin may be illegally sold and implies that more fish than just those that come to the boat dead are illegally entered into commerce.

*Comment 63:* The sale of billfish is legal outside of the U.S. Do foreign vessels fishing in waters of the U.S. need to obtain U.S. fishing permits and abide by U.S. regulations?

*Response:* Foreign commercial vessels are not allowed to fish in waters of the U.S. unless there is an international fishery agreement or some other specific authorization under the Magnuson-Stevens Act for such activity. Such vessels would be subject to permit requirements and other statutory and regulatory provisions. Foreign fishing vessels which are not operated for profit may engage in recreational fishing in U.S. federal and state waters. However, the vessels must obtain the requisite permits (e.g., HMS Angling permit and/or any state permits) and comply with all applicable federal and/or state laws. Since the 1988 Atlantic Billfish FMP, the U.S. has prohibited commercial retention of billfish.

*Comment 64:* How many comments were received from Puerto Rico on the proposed removal of the no sale exemption for billfish?

*Response:* No comments from Puerto Rico directly addressed removal of the no sale provision. However, one commenter from Puerto Rico requested

increased law enforcement at establishments that may illegally sell Atlantic billfish, such as restaurants. NMFS interprets this comment to be supportive of prohibiting sale of Atlantic marlin. Further, the Caribbean Fishery Management Council adopted a motion supporting elimination of the exemption to the no-sale provision in August of 2005.

#### vi. General Billfish Comments

*Comment 65:* The proposed Atlantic billfish alternatives are in direct conflict with the 1988 Billfish FMP and the 1999 Billfish FMP Amendment's stated objective of "Maintaining the highest availability of billfishes to the United States recreational fishery by implementing conservation measures that will reduce fishing mortality."

*Response:* NMFS disagrees. The Atlantic billfish provisions in this rule are consistent with the stated objective of maintaining the highest availability of billfishes to the U.S. recreational fishery by implementing conservation measures that will reduce fishing mortality. Recent studies by Cramer (2005) and Kerstetter (2005—in press) and analyses in the Final Consolidated HMS FMP indicate that recreational fishing activities contribute significantly to Atlantic billfish mortality. Because biomass levels of both Atlantic blue and white marlin are currently low, it is imperative for NMFS to implement conservation measures for the domestic recreational Atlantic billfish fishery to reduce post-release mortality and better ensure the highest, long-term availability of these important species to the United States recreational fishery. The selected management measures, specifically the requirement to utilize non-offset circle hooks when deploying natural bait in billfish tournaments, is an important step towards accomplishing this objective.

*Comment 66:* NMFS must determine the sustainable biomass for spearfish and sailfish independently, as soon as possible.

*Response:* NMFS does not conduct its own assessments for spearfish and sailfish. Due to the highly migratory nature of these species, stock assessments are conducted by the Standing Committee on Research and Statistics (SCRS) of ICCAT. The last assessment for sailfish was conducted in 2001. In that assessment, the SCRS expressed concern about the incomplete reporting of catches, lack of sufficient reports by species, and evaluations of new methods used to split the sailfish and spearfish catch and to index abundance. The SCRS recommended that all countries landing sailfish/

spearfish, or having dead discards, report these data to the ICCAT Secretariat. The SCRS also indicated that it should consider the possibility of a spearfish "only" stock assessment in the future.

*Comment 67:* I support decreasing the mortality on Atlantic billfish as much as possible, the focus of billfish management has to be on post-release mortality.

*Response:* This rule, which will require the use of non-offset circle hooks with natural bait in billfish tournaments by HMS permitted vessels, is intended to reduce the post release mortality of Atlantic billfishes. A recent study by Horodovsky and Graves (2005) has shown that circle hooks can reduce post-release mortality on white marlin by as much as 65 percent, when compared to J-hooks.

*Comment 68:* Billfish conservation is an international problem, and the focus has to be international.

*Response:* NMFS agrees that billfish conservation is an issue that must be addressed at the international level. Nevertheless, given the low biomass levels of Atlantic blue and white marlin, and the importance of these species to the domestic recreational fishery, it is necessary to implement measures to reduce post-release mortality to the extent practicable in the domestic recreational Atlantic billfish fishery. The U.S. will continue to vigorously pursue international agreements at ICCAT to reduce billfish mortality levels caused by foreign fishing vessels.

*Comment 69:* NMFS should designate all marlin, spearfish, sailfish, and sharks as catch-and-release species, and allow fishing for these species only with rod and reel and circle hooks.

*Response:* In the Draft Consolidated HMS FMP, NMFS proposed a prohibition on landings of Atlantic white marlin. Although there was some support for this measure, many commenters indicated that a white marlin landings prohibition was unnecessary, and that it would produce significant adverse social and economic impacts. After much consideration, NMFS has decided not to select this alternative at this time. Many HMS recreational anglers already practice catch and release fishing for white marlin and other species. Furthermore, the commercial sale of Atlantic billfish is prohibited, landings of longbill spearfish are prohibited, and several shark species may not be landed. Strict quotas and other management measures based upon the best available scientific information govern commercial landings of most other shark species, while the recreational sector is required

to adhere to shark bag limits and minimum size restrictions. As a result, mandatory catch and release in the recreational sector may not be necessary at this time and prohibiting all commercial shark landings is not necessary. Domestically, the most important factor in conserving billfish is to improve their survival after the catch and release experience. This rule requires HMS permitted fishermen to use non-offset circle hooks when deploying natural baits in billfish tournaments. This measure will complement existing circle hook requirements in the commercial PLL fishery by reducing post-release mortality and contributing to the rebuilding of Atlantic billfish stocks.

*Comment 70:* The economic effects associated with the proposed billfish measures go far beyond the initial impacts that were analyzed in the Draft Consolidated HMS FMP.

*Response:* Economic impacts are a fundamental consideration in the Agency's decision making process. Oftentimes, however, the data are not sufficient to predict, for example, how recreational anglers might react to proposed management measures. If the measures change, would anglers switch to other species, quit fishing altogether, take fewer trips, or travel shorter distances? Each of these potential behavioral reactions would impart different economic impacts. One of the primary reasons for conducting public hearings and soliciting public comment is to obtain supplemental information on the analyzed impacts associated with proposed management measures. All written comments, as well as those received verbally at public hearings, were considered by the Agency in the selection of final management alternatives. NMFS will continue working to improve available social and economic data and analyses.

*Comment 71:* NMFS should require a Billfish Certificate of Eligibility to help improve compliance, facilitate enforcement and improve information on billfish shipments coming into the U.S.

*Response:* A Certificate of Eligibility for Billfishes is required under 50 CFR 635.31(b)(2)(ii), and must accompany all billfish, except for a billfish landed in a Pacific state and remaining in the state of landing. This documentation certifies that the accompanying billfish was not harvested from the Atlantic Ocean management unit, and identifies the vessel landing the billfish, the vessel's homeport, the port of offloading, and the date of offloading. The certificate must accompany the billfish to any dealer or processor that subsequently

receives or processes the billfish. The certificate of eligibility helps to maintain the recreational nature of Atlantic billfish fishery, with no commercial trade.

*Comment 72:* NMFS received a number of comments from recreational fishery participants regarding pelagic longline fishing, its impact on billfish, and suggestions for new management measures that should be researched or implemented. The comments included: new data show that just under 65 percent of all white marlin caught as bycatch on pelagic longline vessels are dead, or die soon after being released alive; it makes absolutely no sense to close recreation fishing which kills less than 1 percent of the fish caught and allow commercial fishing which kills almost 100 percent of the billfish caught. The major source of billfish mortality (pelagic longlining) still has not been satisfactorily regulated to adequately protect these fish; the commercial pelagic longline fishery is causing the decline in billfish abundance; billfish were making a comeback until longline fishing of their prey species, dolphin and wahoo, was allowed. Our club used to tag and release 35 to 40 marlin per year. Now we see only five to six marlin tags and most of them are from the other side of the Gulf Stream; NMFS should limit the length of pelagic longlines; and, limit the number of hooks that pelagic longline fishermen are allowed to set, and require that pelagic longline vessels retrieve their gear every three hours to reduce billfish mortality.

*Response:* Many commenters stated that the recreational HMS fishery has only a minor impact on billfish populations relative to the commercial PLL fleet, and that additional management measures should be imposed upon the commercial PLL fleet rather than upon the recreational sector. To address this comment, NMFS examined data from the pelagic longline logbook program and the RBS, MRFSS, and LPS databases. New information on recreational and commercial post-release mortality rates (Horodysky, 2005, and Kerstetter, 2006, respectively), when combined with these databases, indicates that in some years, the total mortality contribution of the domestic recreational billfish fishery may equal or exceed the total mortality contribution of the domestic pelagic longline fleet for Atlantic white marlin. As described in Appendix C of the Final Consolidated HMS FMP, estimates of total annual recreational white marlin mortality (which combines landings, dead discarded fish, and estimated post-release mortalities) vary greatly by data

set and year. MRFSS and LPS databases indicate that, for the period 2001 - 2004, inclusive, the aggregate level of recreational mortality was approximately three times and two times higher, respectively, than aggregate mortality contributions (dead discards and estimated post-release mortality) of the domestic pelagic longline fleet. Using RBS data, a known subset of recreational effort, estimated aggregate domestic recreational mortality appears to be about 71 percent of estimated total domestic pelagic longline mortality for the same period with regard to white marlin. When taken in combination, and in consideration of the limitations and uncertainties associated with each data base involved, two general conclusions can be drawn: (1) The aggregate domestic recreational fishing mortality contribution is higher than previously thought with regard to Atlantic white marlin; and (2) there is more parity between the mortality contributions of the domestic recreational and domestic pelagic longline fleets than previously thought. Cramer (2005) and Kerstetter (2006) also examined this same issue to varying degrees. Both papers support the same basic conclusion drawn in this Final Consolidated HMS FMP, that in some years, the domestic recreational billfish fishery may cause equivalent, or even greater, levels of mortality on Atlantic white marlin populations than the domestic pelagic longline fishery. This finding, which is contrary to widely held beliefs, appears to be the result of new data indicating higher post-release estimates for recreationally released white marlin and size differences between the two fisheries. Presently, the domestic commercial PLL fleet is regulated by a limited access permit program; observers; vessel upgrading restrictions; year-round and seasonal closed areas; ICCAT-recommended quotas; minimum size restrictions; circle hook requirements; bait restrictions; careful release protocols; mandatory logbooks; and a VMS requirement, among others. The recreational HMS sector is governed by an open access permit program; minimum size restrictions; reporting requirements for swordfish, BFT, and billfish; gear restrictions; a no-sale provision; and possession limits for swordfish, sharks and tunas, among others. The selected billfish management measures are intended to reduce recreational post-release mortality of white marlin, because current estimates are substantially higher than previously thought. NMFS will continue to evaluate the need for

additional management measures for both the domestic PLL fleet and the recreational HMS fishery. NMFS also recognizes that foreign commercial longline vessels contribute significantly to Atlantic billfish mortality, and will continue to pursue international agreements at ICCAT to reduce these levels.

*Comment 73:* NMFS would be negligent not to require mandatory tournament registration at this time; tournament registration should include all contests in which any prize, award and/or monetary exchange is made relating to the capture of Atlantic HMS; I support alternative E9, which would implement a mandatory HMS tournament permit, because monitoring and enforcement of HMS tournaments is necessary; HMS tournaments need to be permitted because we need reporting from them.

*Response:* NMFS currently requires that all tournament operators register any tournament awarding points or prizes for HMS with the HMS Management Division, at least four weeks prior to the commencement of the tournament. The regulations are being clarified to add that tournament registration is not considered complete unless the operator receives a confirmation number from NMFS. This clarification is expected to improve the HMS tournament registration process. In the Draft Consolidated HMS FMP an alternative to require a tournament permit was considered, but not further analyzed, because improvements to tournament registration, data collection, and enforceability can be achieved with less burden to the public and government by requiring a tournament confirmation number. Because HMS tournaments frequently change operators, names, and dates, a tournament permit would be burdensome to administer and enforce. NMFS believes that requiring a tournament confirmation number, issued by the HMS Management Division, will accomplish the same objective (i.e., increased compliance) as a tournament permit would.

#### Management Program Structure

##### A. BFT Quota Management

*Comment 1:* NMFS received a number of comments on the management of the purse seine sector of the Atlantic BFT fishery. These comments consisted of: BFT fisheries need every opportunity to harvest the quota and not addressing the large medium tolerance limits imposed on the purse seine sector in this rule is disappointing; the Purse Seine category should be allowed to fish throughout

the year provided quota is available; and the purse seine BFT fishery needs to become a "true" individual transferable quota (ITQ) fishery and thereby not addressing the ability to transfer purse seine quota outside the category is disappointing. Some comments stated that the Purse Seine category should be eliminated from the BFT fishery or purse seine vessels should be limited in the areas they fish to minimize any potential gear conflicts with commercial and recreational handgear vessels.

*Response:* During this rulemaking, NMFS received many comments regarding management issues in the BFT fishery in general and the purse seine sector in particular. Many of these comments arise from recent issues regarding the status of BFT, underharvests in recent years, and current size and trip limits. ICCAT is conducting a stock assessment this summer that should provide additional information regarding the status of BFT and the current rebuilding plan. In November 2006, ICCAT may recommend new management measures for BFT. In addition to any future ICCAT recommendations for BFT, NMFS intends to conduct a rulemaking regarding all HMS permits that could include, among other things, further rationalizing some segments of the HMS fisheries, streamlining or simplifying the permitting process, restructuring the permit process (gear-based, species-based, or both), reopening some segments of the limited access system to allow for the issuance of additional permits, modifying when permits are renewed (fishing year or birth month), and considering dedicated access privileges (e.g., individual transferable permits). This future rulemaking may be better suited to address the entire range of purse seine comments that were received during this rulemaking.

*Comment 2:* NMFS received a few comments regarding PLL in general and the incidental catch of BFT by PLL including: the effectiveness of the June PLL closure should be reevaluated in light of circle hook catch data; the PLL fishery should be afforded a greater opportunity to catch its targeted species of swordfish, allowable tunas, and sharks, especially considering the existing protections for BFT in the GOM and Florida East Coast, as well as 100 percent circle hooks, careful handling and release tools, and certified training; NMFS should take incremental steps to ensure that the Incidental Longline category fully utilizes its domestic BFT allocation in order to reduce dead regulatory discards to the maximum extent feasible within this category's allocation; due to the overall

underharvest of U.S. Atlantic BFT quota, NMFS should cautiously relax the incidental catch criteria to reduce/eliminate regulatory discards and effectively utilize this category's quota.

*Response:* NMFS thoroughly analyzed the incidental catch requirements of BFT by PLL vessels and published a final rule on May 30, 2003 (68 FR 32414), that substantially revised the management scheme for this incidental bycatch of BFT. NMFS continues to gather information regarding the effectiveness of incidental harvest restrictions, as well as the effectiveness of all bycatch reduction measures that have been implemented in the PLL fishery. In addition, as more information becomes available, NMFS will reevaluate which measures, if any, it may be appropriate to add, modify, reduce, and/or remove all together.

*Comment 3:* NMFS received two comments regarding rebuilding of the Western Atlantic BFT stock. These comments consisted of: Agency efforts should be more focused on the international BFT issues to be effective in rebuilding the stock; and, BFT stocks should be rebuilt by preventing the commercial interests from overfishing.

*Response:* NMFS agrees that international cooperation is critical to rebuilding the BFT stocks. The U.S. has been at the forefront of efforts to develop appropriate rebuilding plans that balance biological and socio-economic imperatives and will continue to press the international community to implement appropriate measures to rebuild Atlantic BFT stocks. ICCAT recommended the current U.S. BFT TAC based on the 1998 stock assessment for the Western Atlantic BFT stock and the rebuilding plan with the goal of achieving maximum sustainable yield within 20 years. Under the current rebuilding plan, the United States needs to maintain its allocation to prevent overfishing and contribute to rebuilding the stock. The U.S. quota is allocated to the commercial or recreational sector in accordance with the international rebuilding plan. In the past few years, all the commercial BFT categories have landed fewer fish than their allocations would allow for. Further, ATCA requires that no regulation promulgated under ATCA may have the effect of increasing or decreasing any allocation or quota of fish or fishing mortality level to which the U.S. agreed pursuant to a recommendation of ICCAT.

*Comment 4:* Are herring issues addressed in this document in terms of the impacts they are having on BFT?

*Response:* Atlantic herring, a food source for BFT, are currently managed under a separate fishery management

plan by the New England Fishery Management Council (NEFMC). The Atlantic herring fishery management plan is being amended. During a NEFMC meeting on January 31, 2006, the NEFMC approved a seasonal purse seine/ fixed-gear-only fishery for the Western Gulf of Maine (Area 1A) from June 1 through September 31. The NEFMC's action recognizes the importance of herring in the Gulf of Maine ecosystem. In addition, NMFS recognizes the importance of considering ecosystem interactions in fishery management planning, and addresses ecosystem management as one of the goals of the NMFS Strategic Plan. The Agency continues to work toward integrating an ecosystem approach into fishery management practices.

*Comment 5:* Yellowfin tuna should not take a "back seat" to BFT, and NMFS needs to put more resources into yellowfin tuna data collection, analyses, and regulation.

*Response:* NMFS acknowledges the importance of yellowfin tuna to the U.S. fishing industry. The latest SCRS report indicates that the current fishing mortality rate for yellowfin tuna may be higher than that which will support maximum sustainable yield on a continuing basis. NMFS has taken a number of actions during, and since, the implementation of the 1999 FMP to address the management of YFT fisheries (e.g., imposing limited access on the longline and purse seine sectors of the fleet and implementing a recreational retention limit). By taking precautionary initiatives for conservation measures, the U.S. will have a stronger negotiating position at ICCAT if additional management measures become necessary. NMFS currently has reporting programs in place to collect commercial and recreational YFT data. This information, in turn, is provided to ICCAT and the SCRS to be compiled with other information from member nations to be used in assessing the YFT stock. Therefore, NMFS maintains that no further action regarding the YFT fisheries is necessary at this time. However, NMFS will continue to monitor the status of the YFT fisheries as SCRS has indicated that the yellowfin tuna stock is fully-exploited and will pursue future actions if warranted.

*Comment 6:* Does NMFS have the authority to close an area or region to BFT fishing via an inseason action?

*Response:* NMFS has the regulatory authority to provide for maximum utilization of the BFT quota by conducting various types of inseason actions. The inseason actions may

consist of: increasing or decreasing the General category daily retention limits; adding or waiving Restricted Fishing Days (RFDs); increasing or decreasing the recreational retention limit for any size-class BFT or change a vessel trip limit to an angler limit and vice versa; transferring quota to/from any fishing category or to the Reserve; closing domestic quota categories when that quota is reached, or is projected to be reached; and, closing/reopening the Angling category BFT fishery by accounting for variations in seasonal distribution, abundance, or migration patterns of BFT, or catch rates in one area, which may have precluded anglers in another area from a reasonable opportunity to harvest a portion of the Angling category quota. The Angling category BFT fishery or part of the fishery may be reopened at a later date if it is determined that BFT migrated into the other area. NMFS must consider specific criteria prior to taking each type of inseason action. Currently, NMFS has multiple sets of criteria, each one designed for a specific type of inseason action, that are used in making a determination. However, in this rule, NMFS is consolidating those lists to make the inseason action determination process more transparent and consistent.

The end results of some inseason actions may be perceived as a closure of a certain geographic area. For instance, if NMFS were to implement a number of consecutive RFDs in the General category it will suspend fishing activities for that time period. NMFS also has the ability to implement an interim closure in the Angling category as described above in this response. An area closure for any other BFT category or a multi-year area closure for any BFT category will require a regulatory amendment, including public comment.

*Comment 7:* The SAFMC supports alternative F3(c), which would provide an opportunity for a winter BFT fishery. Further, the Council supported an equitable BFT quota allocation for the South Atlantic region (North Carolina southward), as well as any other actions that will ensure fishermen in all the South Atlantic states (North Carolina, South Carolina, Georgia, and Florida's East coast) have an opportunity to participate in this fishery. The SAMFC is concerned about the proposed January 1 starting date for BFT fishing because it will prevent underages from being carried over into the following January of the new fishing year. The ability to carry these underages forward can keep the fishery open through the month of January, which is critical to

the fisheries south of North Carolina, off South Carolina, Georgia, and Florida.

*Response:* Currently, the last General category time-period spans the winter BFT fishery which usually begins in November and runs through the end of the General category season (at the latest on January 31). Under this rule, the current time-period of October through January and the associated subquota will be adjusted so that the later portion of the fishery will consist of three separate time-periods; October through November, December, and January. With the implementation of the calendar year/fishing year changes in this rule, the December and January time-periods will fall in separate fishing years. Fisheries were not active across fishing years prior to the 1999 FMP, which originally adjusted the BFT fishery from a calendar year to a fishing year spanning two calendar years. Under this rule, the annual baseline quota for the January time-period will be 5.3 percent of the coastwide General category quota. As indicated in Section 4.3.1.1 of the Final Consolidated HMS FMP, several options may be used to dispose of carryover of any under or overharvest during the December time-period. In the first alternative, any under or overharvest could be entirely rolled over into January of the following fishing year and added to the baseline 5.3 percent allocation. Under this scenario, the entire underharvest would be added to the January time-period subquota, or the entire overharvest would be subtracted from the time-period subquota. In another potential alternative, 5.3 percent of the under or overharvest may be applied to the January time-period in addition to the baseline 5.3 percent allocation. In a third alternative, no under or overharvest would be added or subtracted from the January time-period subquota. NMFS will work with the affected constituents through the annual BFT specification process to determine the most appropriate approach based on constituent needs and Federal regulatory requirements.

*Comment 8:* The allocations between domestic quota categories should be adjusted, specifically increasing the quota for the Angling category.

*Response:* The Agency did not consider a modification to the sector allocations in this action; therefore, a separate rulemaking and FMP amendment would be needed to increase the allocation to the Angling category. The original allocations reflect the sector's historical share of the landings during the 1983 through 1991 time period, and were codified as part of the 1999 FMP process.

*Comment 9:* NMFS received numerous comments for and against the adjustment of the General category time-periods and associated subquotas. Those comments in support of an adjustment include: September through December have been the strongest months for BFT fishing and these allocations should be increased; General category time-period subquota allocations should allow for a dependable winter BFT fishery according to the percentages in the North Carolina Department of Marine Fisheries (NCDMF) Petition for Rulemaking; General category time-period and subquota allocations should reflect the migration of the fish through a particular area; there needs to be a balance between flexibility and predictability; the General category should be split across 12 months of equal portions and any arbitrary closure date should be removed to allow full harvest of the quota; is there a biological reason we do not allow the General category BFT fishery to be prosecuted in the months of February through May; all selected alternatives should allow for the full utilization of the available quota so the U.S. can prove we have a stake in these fisheries. Vessels need to be able to catch fish and then make money off those fish to reinvest into the fishery in the following years as this is a sign of a healthy fishery; catching wild BFT throughout the year is in the best interests of U.S. fishermen and the U.S. should remove any arbitrary controls (e.g., seasonal closures) to allow for the harvest of U.S. quota; and, regardless of which alternative is selected, when the fishery converts back to the calendar year, a methodology needs to be developed to allow quota to carry forward from December into January, i.e., across years, in a timely fashion. In addition, there was broad support at the March 2005 AP meeting for revising the General category time-periods and subquotas to allow for a winter fishery, due to the slight increase in quota as well as on informal agreements between user groups and the Agency.

Comments in opposition of an adjustment include: the Agency needs to manage the BFT fishery in the traditional manner; and changing the General category time-periods and subquotas will have negative impacts on the traditional New England fishermen.

*Response:* This rule to amend the coastwide General category time-periods and their associated subquota allocations will strike a balance between formalizing a winter fishery, acknowledging recent trends in the BFT fishery, as well as recognizing the traditional patterns of the fishery. This rule will also allow for business

planning throughout the entire General category season. In light of recent underharvests in the General category, NMFS is aware of the need to provide reasonable opportunities to harvest the General category quota, and how this relates to requests to extend the fishery throughout the year. However, as catch rates in the BFT fishery can increase quite dramatically in a short time period, there are concerns in allowing a fishery to emerge that may be unsustainable or cause overcapitalization on a species that is currently designated as overfished.

*Comment 10:* NMFS received comments both in favor of and opposed to the preferred alternative to establish General category time-periods, subquotas, and geographic set-asides via annual framework actions. The comment in favor stated the preferred alternative allows for a balance between flexibility and predictability in the General category BFT fishery. The comment opposed stated the overall BFT management program should not be modified.

*Response:* Annual regulatory framework actions will be used to establish and adjust the General category time-periods, subquotas, and geographic set-asides. This procedural change to the management of this category will expedite the process, providing the agency with greater flexibility to adapt to changes in the fishery and the industry with greater predictability in the management of the General category's upcoming fishing year. The General category will have consistent time-periods and subquota allocations from one year to the next unless ICCAT provides a new recommendation for the U.S. BFT TAC.

*Comment 11:* NMFS received a number of comments opposing the removal of the Angling category North/South dividing line and one comment supporting its removal. The comments include: the BFT North/South dividing line should be maintained as it was created to provide "fair and equitable" distribution of the BFT quota; it appears that the reason for removing the North/South line is not due to a lack of real time data, but because of participant noncompliance with the current call-in system; NMFS should devise a reliable real-time data collection system for recreational BFT landings; the funds used to support the current LPS program should be reallocated to implement tail tag programs at the state level, similar to North Carolina and Maryland; and the agency should develop more recreational set-asides to further ensure that recreational participants are provided an equitable

opportunity to harvest a portion of the Angling category quota.

*Response:* NMFS has modified the selected alternative, F4, from the Draft Consolidated HMS FMP by removing the proposal to eliminate the North/South Angling category dividing line and thereby maintaining the status quo regarding this recreational management tool.

NMFS acknowledges the recreational fishery supports the North/South line for a variety of socio-economic reasons. Based on the social and economic impacts associated with the status quo alternative, NMFS prefers retaining the North/South line at this time. However, for this management tool to be most effective, NMFS requires real-time BFT landings data from the recreational sector. To date, compliance with the recreational Automated Landing Reporting System (ALRS) has been low, thus hindering the real-time effectiveness of this management tool. If compliance with the ALRS requirements increases or, as recreational catch monitoring programs are improved over time, the effectiveness of this management tool may increase.

*Comment 12:* NMFS received two comments regarding the clarification of the school size-class BFT tolerance calculation. One comment supported the selected alternative that will calculate the school size-class tolerance amount prior to accounting for the NED set-aside quota because it brings the calculation more in line with the ICCAT recommendation regarding school size-class BFT tolerances. The second comment stated there was no recreational input when the tolerance limit was implemented, and the tolerance limit should be 15- or 16-percent of the total quota.

*Response:* This rule will clarify the procedure NMFS uses to calculate the ICCAT recommended 8 percent tolerance for BFT under 115 cm (young school and school BFT), thus implementing the ICCAT recommendation more accurately based on the specific language contained in the recommendation. Regarding the comment stating a lack of recreational input in developing the 8 percent tolerance limit for the smaller size classes of BFT, ATCA authorizes domestic implementation of ICCAT-adopted management measures, and provides that no U.S. regulation may have the effect of either increasing or decreasing the quota or fishing mortality level adopted by ICCAT. ATCA also provides that not more than three Commissioners shall represent the United States in ICCAT. Of the three

U.S. Commissioners, one must have knowledge and experience regarding recreational fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea. In addition, the U.S. Commissioners are required to constitute an Advisory Committee to the U.S. National Section to ICCAT. This body, to the maximum extent practicable, consists of an equitable balance representing the interests of various groups concerned with the fisheries covered by the Convention, including those of the recreational community.

*Comment 13:* NMFS received a number of comments for and against implementing a rollover limitation for each domestic quota category. Those in support of the limitation include: a rollover cap should be implemented, but the cap should be set lower because a rollover of up to 100 percent of a category's baseline allocation could be harmful to the fishery in future years as it will lead to unsustainable overcapitalization; and NMFS must develop a way to track size classes of BFT entering the Reserve category as a result of this cap, so there are no conflicts with overall mortality estimates.

Comments in opposition of the rollover limitation include: rollover of quotas should be eliminated to increase conservation; limiting the amount of quota that categories can roll over is not appropriate at this time; NMFS should not get ahead of ICCAT as it compromises the U.S. delegation's ability to negotiate multilateral implementation in the future; long term ramifications of lost quota have not been fully explored on both domestic and international fronts; and the United States should not ask any more of its citizens while quota is not harvested, and international conservation measures are not equivalent.

Other comments NMFS received regarding this issue include: when there is surplus quota in commercial categories, recreational anglers should be permitted to take part of this surplus; categories should not be punished or rewarded for not harvesting the quota until all arbitrary regulations have been removed; the Agency needs to proceed cautiously with rolling over quota in case there is a stock issue; however, the United States needs to maintain control of the underharvests due to the lack of conservation of other member nations; rollovers from the previous fishing year should be accessible in the January time period if the selected alternative to change back to a calendar year is implemented; uncaught sub-period quota should be rolled forward to allow

for year-round General category landings. If the fishing year is changed to January 1, then any prior year's uncaught quota should be allowed to be caught between February 1 and May 31; implementing a domestic rollover limitation would adversely affect our ability to negotiate at ICCAT as the bottom line remains the same regardless of which domestic category the underharvest resides in; rollover limitations are helpful, however this item should be addressed at ICCAT; and, the Agency needs to be aware of the ripple effects quota rollovers have on business planning late in the season.

*Response:* This rule authorizes NMFS to limit the amount of BFT quota that may be carried forward from one fishing year to the next. By establishing a limitation that may be imposed on each domestic quota category, except the Reserve, NMFS will be better equipped to address quota stockpiling situations if they arise. This rule will not preclude inseason quota transfers to any of the domestic quota categories if warranted. Due to the different size classes that each category may target, the number of BFT per metric ton may differ; therefore the origin of the quota entering the category must be noted, to ensure mortality levels are consistent with those accounted for in the stock assessment. This rule will have minimal conservation benefits on the Western Atlantic BFT stock as a whole. NMFS supports an international discussion on the use of rollover caps, as well as their pros and cons. Implementing the potential use of a cap domestically should not adversely affect the U.S. delegation's ability to negotiate and play a strong role on this issue as U.S. BFT quota levels will remain consistent.

*Comment 14:* NMFS received comments supporting the consolidation of the inseason action determination criteria. These comments consisted of: revising and consolidating the criteria for BFT management actions improves the agency's flexibility and consistency in making determinations; and the preferred alternative should be selected, however, it needs to be clarified if the criteria have a different ranking of importance.

*Response:* Consolidating and refining the criteria that NMFS must consider prior to conducting any inseason, and some annual, actions will assist in meeting the consolidated HMS FMP's objectives in a consistent manner, providing reasonable fishing opportunities, increasing the transparency in the decision making process, and balancing the resource's needs with users' needs. The criteria listed are in no particular order of

importance and will be fully considered, as appropriate, in making a determination; however, in some circumstances, not all criteria will be relevant to the decision making process.

*Comment 15:* NMFS received a number of comments that did not directly address the actions being proposed in the Consolidated HMS FMP, but are more general in nature or are more pertinent to the recently proposed 2006 Atlantic BFT Quota Specification and effort controls. These comments consist of: the maximum three fish per day General category bag limit should be eliminated. Flexibility to set the bag limit higher may be needed as the fishery evolves and to allow for the possibility of a distant water General category fishery; NMFS should relax the "tails on tuna" requirement. The tail is not necessary for species identification. This requirement prevents higher quality cleaning and storage at sea. Many years of data confirm that prohibited undersized tunas are either not encountered or are extremely rare in this fishery. ICCAT has eliminated the minimum size for some Atlantic tunas. The tails on requirement is an unnecessary and costly burden that should be removed; NMFS is using RFDs to deny fishermen a reasonable opportunity to catch the quota and to make U.S. fishermen do more to conserve BFT than fishermen from other countries with ICCAT BFT quotas. NMFS should not implement RFDs unless the General category quota is in immediate danger of being exceeded. NMFS should remove every domestic restriction that denies U.S. fishermen a reasonable opportunity to catch the quota.

*Response:* This action does not address these specific items, however, the 2006 Atlantic BFT quota specifications and effort controls address retention limits, as well as the use of RFDs in the coastwide General category. The final initial 2006 specifications published on May 30, 2006 (71 FR 30619). Regarding the removal of tuna tails, NMFS has received past comments from the industry, particularly the HMS CHB sector, to investigate this possibility. However, the proposal to process HMS at sea may compromise enforcement of domestic size limits. To date, NMFS has been able to enforce the domestic size limits for HMS through curved measurements, which requires the tail remain on the fish. This has been an efficient and effective way of enforcing size limits.

*Comment 16:* NMFS received comments requesting changes in the

allowable use of harpoons on CHB vessels. These comments include: NMFS should authorize the use of harpoons as primary gear to target giant BFT from the pulpit of CHBs to allow maximum flexibility. With the cost of doing business rising daily and the fishery changing dramatically over the past few years, this antiquated prohibition needs to be modified to allow CHB operators the opportunity and versatility to harpoon BFT on days that they are not carrying paying passengers. This rule was originally written to curb the sale of undersized BFT, which is no longer an issue.

*Response:* In 1993, NMFS created a recreational Atlantic tunas permit that was required for CHB or privately operated vessels targeting any of the regulated Atlantic tuna species. This rulemaking also established a list of allowable gears that can be used to harvest tunas. In 1995, NMFS removed the ability for vessels to hold more than one permit at a time. In that 1995 rulemaking, NMFS proposed, collected comments on, and finalized a list of authorized gears for the CHB sector of the fishery. Harpoons were not proposed as an authorized gear, nor were any comments received requesting this gear type be authorized for CHB vessels at that time; therefore, harpoon gear was not listed as an authorized primary gear type. As NMFS has conducted a number of rulemakings regarding permits, permissible gears, and targeted species, NMFS intends to conduct a comprehensive rulemaking regarding all HMS permits that could include, among other things, further rationalizing some segments of the HMS fisheries or restructuring the permit process (gear-based, species-based, or both). This future rulemaking may be better suited to address further revisions to authorized gears and the permitting structure for managed HMS. The issue of allowing the use of various gears to subdue HMS caught on authorized primary gears was analyzed in the Final Consolidated HMS FMP. Please refer to discussions of Authorized Fishing Gear.

#### B. Timeframe for Annual Management of HMS Fisheries

*Comment 1:* Public comments expressed both support and opposition for administratively adjusting all HMS fisheries to a calendar year. Commenters asked the following: what has changed since fisheries were originally shifted from a calendar year; Is the United States in compliance with ICCAT reporting requirements using a fishing year? Several commenters stated that use of a fishing year was not a disadvantage at ICCAT.

*Response:* This rule will adjust tuna, swordfish, and billfish fisheries so that all HMS fisheries occur on a calendar year. The previous shift from a calendar year to a fishing year (1996 for swordfish, 1999 for tuna and billfish) accommodated domestic markets for swordfish and provided additional time for rulemaking to implement ICCAT recommendations, since ICCAT traditionally meets in November of each year. Use of a fishing year is allowed by ICCAT. Since the fishing year was implemented for these species, several aspects of the fisheries and their management have changed. For the past several years, the U.S. has not fully harvested its swordfish quota, and has carried over quota underharvest from one year to the next. Because of this underharvest, summer swordfish markets have not been limited by the amount of quota available, and starting the fishing year in early summer to avoid quota shortfalls has been unnecessary. In addition, after several years of experience with ICCAT negotiations since the U.S. implemented the fishing year, NMFS and the U.S.'s ICCAT delegation have found misunderstanding regarding data alignment over time periods unnecessarily confuses decisions, negotiation, and ultimately enforcement of ICCAT recommendations. Adjusting tuna, swordfish, and billfish fisheries to a calendar year will increase transparency in U.S. data and statistics, and help focus on achieving domestic and international fishery management objectives such as reducing/eliminating IUU fishing.

*Comment 2:* Commenters expressed concern about the timely implementation of ICCAT recommendations under a calendar year, the potential disadvantage to U.S. fishermen if ICCAT recommendations were not implemented in a timely fashion, and the need for fishery specifications to be available prior to the start of calendar year fisheries.

*Response:* NMFS recognizes that switching back to a calendar year will reduce the amount of time between the adoption of ICCAT recommendations in November and the start of calendar year fisheries on January 1. This HMS FMP will adjust the process for issuing annual BFT specifications by consolidating the analysis in the FMP itself, and thus reducing the annual burden and associated amount of time necessary for promulgation of the annual specifications. NMFS anticipates that BFT specifications will usually be issued on time using these newly adopted procedures. Although ICCAT recommendations that can adjust quotas

may be adopted at any time, usually such adjustments occur after stock assessments, which are performed at several year intervals. Thus, on average, more complex rulemakings are anticipated to occur less frequently. NMFS notes that rulemakings that adjust quotas or implement other significant changes in fishery management programs usually require more than the amount of time (e.g., seven months) that would have been available between adoption of a recommendation at ICCAT and start of the fishing year, if fisheries had been maintained on a fishing year schedule rather than adjusted to a calendar year.

*Comment 3:* Commenters opposed the adjustment to a calendar year because of potential socio-economic impacts of a shift to calendar year in combination with the proposed ICCAT 250 marlin limit, particularly for billfish tournaments. Commenters stated the following: a basic analysis demonstrating the economic importance of billfish tournaments should be included, and millions of dollars of prize money is missing from the current analysis; what is the impact if a large tournament that happened later in the year was restricted to catch and release fishing only; and, it appears that adjusting all HMS fisheries to a fishing year will socio-economically benefit most HMS fisheries.

*Response:* The HMS FMP identifies that the potential for reaching the ICCAT marlin 250 limit is low and subsequent prohibition of marlin landings unlikely. Over the past several years, U.S. billfish landings have only been attained in a single year. In addition, the FMP includes a measure that will allow increases in size limits as a means of reducing landings to avoid attaining the limit and implementation of catch and release fishing only. Despite the limited potential for reaching the limit, the Consolidated HMS FMP analyzes potential impacts should the limit be attained, using the worst case scenario that tournaments would be cancelled if the limit were attained. This analysis indicates that socio-economic impacts could be higher under a calendar year scenario. These impacts could be mitigated if tournaments required catch and release. On balance, NMFS anticipates that the benefits, as described in Chapter 4 of the HMS FMP and in the response to Comment 1 of this section, provided by switching to a calendar year and other regulatory adjustments set forth in the Consolidated HMS FMP will outweigh potential negative impacts. NMFS did not identify, nor did commenters provide, any positive socio-economic

impacts for switching the shark fishery to a fishing year. Impacts of concern for ICCAT managed fisheries (e.g. tuna, swordfish, and billfish) are discussed in the response to Comment 1 of this section.

*Comment 4:* Several commenters questioned the effect of a change to calendar year on the January General category BFT fishery, particularly the disposition of quota underages that may have occurred in the previous calendar year. Commenters stated the following: I oppose a shift to calendar year because of the potential negative impacts to southeastern fishermen; and, I support a roll-over provision from December to January similar to the rollover provision that exists between sub-periods during a fishing year.

*Response:* The HMS regulations at 50 CFR 635.27(a)(1) divide the General category quota into three subperiods including June through August, September, and October through January. These regulations further state that NMFS will adjust General category subperiod quotas based on under- or overharvest during the previous subperiod. Currently, the last subperiod spans the winter south Atlantic BFT fishery which usually begins in November and continues until the General category closes (at the latest on January 31). Under the Consolidated HMS FMP, these subperiods will be adjusted so that the winter fishery will include separate subperiods in December and January, each of which occur in a separate fishing year. An active fishery did not occur across the change of quota years prior to the 1999 FMP, which originally adjusted the BFT fishery to a fishing year. In addition, prior to 2003, the BFT fishery rarely experienced underharvest and roll-over of unharvested quota. Under this Consolidated HMS FMP, the January subperiod will have a quota of 5.3 percent of the annual ICCAT allocation. In consideration of a potential underharvest and rollover of General category quota from one calendar year to the next (i.e., December to January), NMFS has explored various ways to manage this situation. A preferred approach would depend upon the magnitude of the underharvest and the needs of the fishery at the time. Several potential alternatives regarding the disposition of carryover of any under or overharvest during the December subperiod are discussed in Chapter 4 of the Consolidated HMS FMP. In the first alternative, any under or overharvest could be fully rolled over into January of the following fishing year in addition to the baseline 5.3 percent. Under this scenario, the entire underharvest would

be added to the January subperiod quota, or the entire overharvest would be subtracted from the subperiod quota. In another potential alternative, 5.3 percent of the under- or overharvest would be applied to the January subperiod in addition to the baseline 5.3 percent. In a third alternative, no under- or overharvest would be added or subtracted from the January subperiod's 5.3 percent allocation. NMFS will work with the affected constituents through the annual BFT specification process to determine the most appropriate approach based on constituent needs and Federal requirements.

#### C. Authorized Fishing Gears

*Comment 1:* NMFS received several comments in support of and opposed to the introduction of new gear. Comments supporting the introduction of new gears include: expansion of authorized gears would be acceptable in underexploited fisheries. Gears without bycatch problems could improve the availability of swordfish to the American public; and, gear innovations should not be stymied. Comments opposed to the introduction of new gears include: I am opposed to the introduction of any new commercial fisheries; do not allow new effective gears in fisheries that are undergoing rebuilding; do not allow any new gear types, especially for BFT; why should NMFS authorize new gears?; NMFS has reported that all HMS fisheries are fully harvested or overfished. NMFS's proposal to legalize new commercial gear violates National Standard 1, which is to prevent or end overfishing of tuna, swordfish, billfish, and sharks; this will not permit overfished stocks to rebuild. Additional new commercial gear can only result in fully harvested HMS becoming overfished; we do not support allowing new gears into overfished fisheries except for use as experimental fishing permits; NMFS proposes to authorize new commercial gear types that can only increase the harvest of HMS; and there is a lot of resistance to new gears in the Gulf of Mexico.

*Response:* As current or traditional gears are modified and new gears are developed, NMFS needs to be cognizant of these advances to gauge their potential impacts on target catch rates, bycatch rates, and protected species interactions, all of which can have important management implications. While NMFS needs to evaluate new and innovative gears and techniques to increase efficiency and reduce bycatch in fisheries for Atlantic HMS, the Agency did not select any new fishing gears for the HMS commercial fisheries at this time. Further, this action will not

authorize any new gears for the bluefin tuna commercial or recreational fisheries.

In this action, NMFS considered the definition and authorization of speargun gear, green-stick gear, and buoy gear, as well as the clarification of the allowable use of secondary gears (also known as cockpit gears). At this time, NMFS is authorizing only one new gear for the HMS fisheries, recreational speargun fishing for Atlantic BAYS tunas. NMFS does not believe that the addition of speargun fishing for Atlantic BAYS would disrupt existing rebuilding plans for overfished BAYS tunas given the current number of participants in the recreational Atlantic tuna fishery relative to the expected number of spearfishermen. Additionally, taking into account the estimated low encounter rates for target species using speargun fishing gear, the additional anticipated effort from spearfishermen will likely result in minimal increased landings compared with the landings by current Angling and CHB category participants. A limited number of additional individual fishermen are expected to use this gear type, and spearfishermen may actually fish for months or years without having an opportunity to spear a tuna. All sale of tuna harvested with recreational speargun fishing gear will be prohibited in order to clarify the intent of authorizing this gear type, which is to allow a small group of fishermen an opportunity to use spearguns to recreationally target BAYS tuna. BFT are excluded from the list of allowable target species for speargun gear due to the recent declining performance of the existing BFT fishery, recent quota limited situations within the BFT Angling category, and ongoing concerns over stock status.

The selected buoy gear alternative will not authorize a new gear; rather, it will rename the handline fishery for commercial swordfish and limit the number of gears deployed in this fishery. Defining "buoy gear" was necessary because the Final Consolidated HMS FMP will also modify the "handline" definition to require that the gear be attached to a vessel. Therefore, under the selected alternative, the commercial swordfish handgear fishery will be the only fishery where free-floating handlines, now referred to as buoy gear, will be authorized. Under this rule, buoy gear fishermen will be limited to possessing or deploying no more than 35 floatation devices, with no more than two hooks or gangions attached to each individual gear. Prior to this action, buoy gear had been utilized with no limit on the

number of gears deployed, as long as each gear had no more than two hooks attached and it was released and retrieved by hand. Also, both recreational and commercial fishermen were able to use this gear in areas closed to PLL gear. Under the selected alternative, buoy gear will be prohibited for use by all commercial fishermen without a swordfish handgear or directed limited access permit and by all recreational fishermen. Additionally, when targeting swordfish commercially, the number of individual gears a vessel may possess or deploy will be limited to no more than 35. Vessels with directed swordfish or swordfish handgear LAPs may use this gear type to capture swordfish in pelagic longline closed areas, provided all longline gear has been removed from the vessel. While buoy gear will be allowed in the Gulf of Mexico, the swordfish handgear fishery does not appear to be widespread and operates primarily off the East Coast of Florida, according to public comment.

Based on public comment, the Agency prefers to clarify the authorized configuration of green-stick gear, rather than proceed with authorization and definition of the gear-type that may further add to the confusion and have unintended negative consequences to the fishery and resource. Public comments were opposed to and supported authorizing green-stick gear for the commercial harvest of Atlantic BAYS tunas; expressed considerable confusion over the current regulatory regime; were concerned about the need for better reporting, monitoring, and overall data collection for this gear-type; and expressed a need to further understand the gear's technical nature.

*Comment 2:* Commercial HMS handline gear, buoy gear, and green-sticks should be prohibited in the closed areas.

*Response:* The current HMS closed areas were specifically developed for a particular gear type (e.g., PLL or BLL) to reduce bycatch and discards. At this time, there are no time/area closures for buoy and handline gear. If a green-stick is configured with more than two hooks, then it would meet the definition of "longline," and thus, would also be prohibited from certain closed areas. If future data indicate that the bycatch rates of these gears are high, NMFS would consider closing certain areas, or other management measures, to minimize bycatch and bycatch mortality, to the extent practicable.

*Comment 3:* NMFS received a comment concerned about the bycatch associated with the introduction of new gears. Those comments include: small

tuna fisheries, like NMFS is trying to promote with the handline, buoy, and green-stick fisheries, will negatively affect marlin stocks because they target marlin prey species; and, were any bycatch analyses conducted for the proposed authorized gears?

*Response:* This action will not change the currently allowed and authorized use of green-stick gear in any HMS commercial fishery. This action distinguishes between handlines and buoy gear, such that handlines must be attached to the vessel and buoy gear will be allowed to float freely; however, both handlines and buoy gear were authorized and used in HMS fisheries commercially and recreationally prior to this action. The rule limits buoy gear usage to the commercial swordfish fishery for individuals with a swordfish handgear or directed limited access permit. No HMS other than swordfish may be harvested with buoy gear. Because swordfish is not a marlin prey species, the Agency does not believe buoy gear will have a negative impact on marlin stocks. No bycatch analyses are available for handline or buoy gear, but data from the logbooks were reviewed. The HMS logbook does not distinguish between attached and unattached handlines, so specific information on unattached handline (or buoy gear) catch is limited. In general, the HMS commercial handline fishery has relatively few discards. While there are no bycatch analyses available for recreational speargun fishing, public comment suggests that the number of individuals using this gear will be small and those that do use the gear expect low encounter rates with target species. According to public comment, this fishery is highly selective and the gear has been designed to retain speared fish and reduce fish loss. With the authorization of this gear for the recreational harvest of BAYS tunas only, information about speargun catch will be captured via the MRFSS and LPS.

*Comment 4:* NMFS should clarify the HMS authorized gear regulations to allow for gear stowage provisions. Such provisions would enable vessels to diversify, and would also provide vessels with the ability to operate in other fisheries. The Northeast gear stowage provision needs to be acknowledged in the HMS regulations.

*Response:* A gear stowage provision for HMS permitted vessels was not considered in this action and, therefore, is not authorized at this time. NMFS has concerns about the enforceability of such a provision in HMS closed areas. The Agency would appreciate additional comments on situations where gear stowage provisions are

necessary, as well as for which particular gears and areas. A gear stowage provision may be considered in a future rulemaking, if appropriate.

*Comment 5:* NMFS received comments from individuals concerned about the use of gillnets in HMS fisheries. These comments include: the Georgia Coastal Resources Division supports the removal of shark gillnet from the list of authorized HMS gear; and, gillnets should not be an authorized gear, particularly sink gillnets due to interactions with protected resources and other bycatch. If NMFS is going to continue to allow gillnets, the vessels should be required to use VMS year round.

*Response:* NMFS considered prohibiting the use of shark gillnet gear as part of a range of commercial management measures to prevent overfishing of finetooth sharks, but did not pursue this option because finetooth sharks would continue to be discarded dead in other non-HMS fisheries, and thus, the prohibition would not likely prevent overfishing. In this action, NMFS will require shark gillnet vessel owners and operators to attend the protected species safe handling and release workshop and obtain certification. The goal for this workshop will be to reduce the mortality of sea turtles, smalltooth sawfish, and other protected species. At this time, vessels issued a directed shark LAP with a gillnet on board that are away from port during the right whale calving season must have VMS on board. This action did not consider expanding this condition to require VMS on shark gillnet vessels year round.

*Comment 6:* There is confusion regarding the proposed gears. The process needs to slow down, and we need to make sure we understand what our goal is. We should be encouraging innovation. Each gear needs to be reviewed to determine where each gear appropriately fits; the public is going to need more education on the proposed gears and associated requirements. The Agency needs to clarify before authorizing; and, the language in the alternatives needs to be looked at, it appears some alternatives are allowing use to continue and others are allowing its entry.

*Response:* While NMFS encourages the use of clean and efficient gears, this action will authorize the use of only one new gear type due to the stock status of several HMS. Speargun fishing gear will be authorized only for permit holders with HMS Angling category or HMS CHB category permits and users will be allowed only to target Atlantic BAYS tunas recreationally. It will not be

authorized for BFT, or any other HMS. The sale of BAYS speared by speargun gear is not allowed. The selected alternative for buoy gear will not be an introduction of new gear, rather a clarification of an existing gear and a restriction on the number of floatation devices used in the existing commercial swordfish handgear fishery. In an effort to reduce confusion and increase compliance, NMFS will modify the HMS compliance guide and other outreach materials to reflect these changes to the HMS authorized gears.

*Comment 7:* NMFS must clarify that a longline vessel is allowed to use the following fishing gears when not longline fishing: handgear including, harpoon, handline, and rod and reel (plus the green-stick method, if authorized).

*Response:* The HMS regulations at § 635.21(e)(1) state that if an Atlantic BFT is retained or in possession, the vessel may employ only the gear authorized for the particular Atlantic tunas or HMS permit category issued to the vessel. In other words, with a BFT on board and an Atlantic Tunas Longline permit issued to the vessel, only longline gear may be possessed or employed. When fishing for Atlantic BAYS tunas, the vessel may employ fishing gear authorized for any Atlantic Tunas permit category. The two exceptions are that purse seine gear may be used only on board vessels permitted in the Purse Seine category and pelagic longline gear may be used only on board vessels issued an Atlantic Tunas Longline category tuna permit as well as LAPs for both swordfish and sharks. When targeting Atlantic BAYS tunas with an Atlantic Tunas Longline permit, a vessel may use handgear (i.e., harpoon, handline, rod and reel, and bandit gear) provided BFT are not in possession or retained on board the vessel. However, the vessel must possess all applicable and valid Federal permits, possess the safe-handling and release placard and equipment, and abide by the longline gear restrictions (e.g., closed areas and circle hooks). If a vessel is fishing in a closed area and has longline gear on board, it is a rebuttable presumption that longline gear was used to catch any fish on board that vessel. Green-stick and rod and reel gear may be utilized on a pelagic longline vessel, so long as all other PLL management measures are adhered to, including the use of circle hooks.

#### i. Spearfishing

*Comment 8:* NMFS received numerous comments supporting the authorization of speargun gear in the recreational Atlantic tuna fishery,

specifically alternative H2, which would authorize speargun fishing gear in the recreational Atlantic tuna fishery. The comments include: authorizing speargun fishing gear for Atlantic tunas would provide very high economic benefits and produce very low ecological impacts; the impact of tuna spearfishing would be minimal and the number of participants would be low; spearfishermen were left out of the List of Fisheries for tunas and sharks when initially established; and, a speargun fisherman can choose his target, assess his chances, and be more discriminate in his hunting, which is not something a hook and line fisherman can do. Comments received in support also stated affirmation that recreational divers would be allowed to be transported to the site by a charter dive boat; and, the tuna regulations would allow the taking of tuna in the Atlantic with handheld, rubber band or pneumatic power spearguns by recreational fishermen while underwater.

*Response:* This rule will authorize the use of spearguns in the recreational Atlantic BAYS tuna fishery. Holders of recreational HMS Angling and HMS CHB permits will be allowed to carry spearguns and fish for, retain, and possess any of the BAYS tunas using speargun gear. Speargun gear will not be authorized under any other HMS or Atlantic tuna vessel permit or for any other HMS species. Speargun gear will not be authorized to fish for, retain, or land Atlantic BFT. BAYS tunas killed and landed with the use of speargun gear may not be sold under any circumstances, including by owners, operators, or participants on HMS CHB vessels. Fishermen using speargun fishing gear will be allowed to freedive, use SCUBA, or other underwater breathing devices, and will be required to be physically in the water when they fire their speargun. Only free-swimming fish, not those restricted by fishing lines or other means, may be taken. The use of powerheads, or any other explosive devices, will not be allowed to harvest or subdue BAYS tunas with this gear type. In addition, spearfishermen will be required to abide by all existing recreational management measures under the Angling category regulations when recreationally fishing for BAYS tunas (i.e., minimum size requirements of 27 inches curved fork length for BET and YFT, three YFT retention limit per person per day, as well as all current state and Federal reporting requirements).

*Comment 9:* NMFS received several comments that supported spearfishing gear but requested allowing its

expansion beyond recreational tuna fishing while other comments supported additional restrictions. Comments in support of expansion include: adding spearguns as an allowed gear for sharks; and, all HMS fisheries should eventually open to spearfishing. The GMFMC specifically supported spearfishing as an approved gear for all HMS fisheries, including sharks, and recommended that the gear be authorized for recreational and commercial harvest. In contrast, other comments supported restricting the use of spearguns as proposed, stating no sale should be allowed for anyone when a tuna is harvested with a speargun under any circumstances, and speargun fishermen should not be allowed to sell tuna catches from CHB vessels as proposed. A commenter stated his concern that the ability to sell fish might be viewed as an impediment to allow participation in this fishery and, thus, NMFS should not allow sale of fish to avoid jeopardizing any chance of authorizing recreational use of speargun fishing gear. NMFS also received comments to further restrict the use of speargun fishing gear to allow only freedivers to harvest tuna (i.e., not allow SCUBA gear) consistent with original public comment on use of this gear-type.

*Response:* This rule will authorize the use of spearguns in the HMS recreational fishery only for Atlantic BAYS tunas. This measure will provide speargun fishermen an opportunity to use this gear-type and will increase the social and economic benefits for this user-group. While providing this opportunity, NMFS is also balancing concerns of introducing a new gear type in fisheries with considerable numbers of existing fishermen participating in exploited fisheries. Since publication of the list of authorized gears and fisheries and the 1999 FMP, spearfishermen have consistently argued for access to HMS fisheries. Spearfishermen have argued in particular for recreational access to the Atlantic tuna fishery to target big tuna for the social and recreational opportunity rather than the desire for economic gain. This rule will prohibit the sale of Atlantic BAYS tunas captured by speargun to minimize the possibility of additional expansion of the user-group to those interested in commercial gain from the activity and inconsistent with intent of the selected alternative. Spearguns will not be allowed to target BFT, primarily due to the depleted status of the western Atlantic stock, uncertainty over the status of the stock, and continuing poor performance of the fishery. The use of

spearguns in HMS fisheries other than the Atlantic tuna fishery, (i.e., shark, billfish or swordfish fishery) was not considered in the Draft Consolidated HMS FMP, although as these stocks improve some additional fishing opportunities for new and efficient gear-types may be considered in the future. NMFS considered further restricting speargun activity to only free-divers, (i.e., no SCUBA gear or other types of underwater breathing apparatus) to further limit the universe of

participants. Free-divers were the original group of speargun fishermen who had requested the opportunity to participate in the recreational tuna fishery. However, it was determined that not allowing SCUBA gear would have raised additional safety concerns.

*Comment 10:* NMFS received several comments regarding aspects of speargun fishing that would keep participation and catch low. Those comments include: technical knowledge barriers for a novice and inexperienced individual that wishes to engage in this activity; harvesting two or three tunas in a lifetime would be lucky because a speargun fisherman needs to know what they are doing and where to go fishing; there are not a lot of opportunities to learn how to spear BAYS tuna; the cost of the equipment including the initial cost of upgrading spearfishing gear (e.g., larger gun, shafts, spearpoints, floats, lines, and safety items) will exceed \$3,000 and that is before chartering a vessel; and the need to use a boat to access BAYS fishing grounds.

*Response:* NMFS acknowledges that the number of participants using spearguns in a recreational BAYS tuna fishery is likely to be low and the number actually encountering and successfully striking a BAYS tuna lower still. NMFS understands that the primary intent of allowing the use of spearguns in the recreational BAYS tuna fishery is to allow participants the opportunity and access to the fishery for the recreational and social benefits it affords. Successful participation would still mean adequate preparation and/or possible training (e.g., dive certificate) and the correct equipment. However, willing participants will no longer be prohibited by regulation from using spearguns in the recreational BAYS fishery.

*Comment 11:* NMFS received comments related to the level of bycatch associated with speargun fishing. Those comments include: most recreational fishermen practice catch-and-release fishing, but speargun fishermen practice release-and-catch fishing; speargun fishermen are very selective about the fish being targeted and use one shot,

usually resulting in no bycatch; and spearfishermen can see the fish and do not take unwanted species or undersized fish; and they leave no lines or other gear on the bottom to snag other fish, lobster, or turtles. A few comments stated concerns that some spearguns under this gear type may not have the capability to land large HMS, resulting in a source of unreported mortality and that spearing a fish that dies without being harvested would be considered bycatch.

*Response:* There are minimal data available to support or refute concerns regarding bycatch by spearguns in the BAYS fisheries. It is evident that the nature of the gear-type can be highly selective and targeted to specific fish, unlike traditional hook-and-line fishery. Spearfishermen are unlikely to injure other species such as HMS, sea turtles, or marine mammals as they can selectively target their catch. However, it remains unknown how many strikes of targeted BAYS may result in mortality and retention versus wounding and subsequent escape with some unknown proportion mortally wounded. Public comment by spearfishermen states that it is possible to accurately identify species and size class before firing the spear and thus the bycatch and mortality of incorrect species (e.g., BFT) or undersized tuna (i.e., less than 27 inches) should be minimal.

*Comment 12:* NMFS received several comments regarding potential gear and user conflicts that may arise with the authorization of speargun gear such as: nothing prevents divers from dropping a dive flag in the middle of a group of rod and reel vessels or on a specific wreck, and driving rod and reel vessels off the fish/wreck. In contrast, other commenters noted that spearfishermen and diver interactions with boat traffic should not be an issue in offshore fisheries, as it can be in inshore waters, that the spearfishing community has taken as many precautions as possible, and that no accidents have occurred in New Hampshire or Rhode Island where speargun fishing gear is currently allowed in state waters when targeting striped bass.

*Response:* Speargun users and rod-and-reel recreational fishermen will need to respect each other's activities and safety when sharing the same fishing grounds to avoid gear and user conflicts. Speargun fishermen will likely choose fishing areas and tuna hunting grounds away from other rod-and-reel vessels to maximize the diver's recreational opportunity and minimize safety concerns. Likewise, under existing vessel safety regulations (see 33

CFR Subchapter E and the U.S. Coast Guard Navigational Rules), recreational vessels must give adequate berth to dive-flags in the water and vessels flying diving signals.

*Comment 13:* NMFS received several comments on the economic benefits associated with speargun fishing. These comments include: allowing recreational speargun fishing for tuna would create an economic boost to coastal communities. When spearfishing, one would usually fill up the car with gas, have lunch, buy souvenirs or gear, and sometimes pay for a boat ride and not spear many fish; and, at the 4<sup>th</sup> Annual Hatteras Blue Water Open this year, there were 50 entrants from all over the world and eight charter vessels generating \$60-\$75,000 in revenue to the area in four days and there would have been more participants if tunas were included.

*Response:* It is expected that allowing spearguns into the recreational tuna fishery will provide an economic benefit to the fishery even though the actual sale of landed BAYS tuna will be prohibited. Recreational speargun fishermen are likely to invest in fishing stores and dive-shops for appropriate gear and contribute to local economies by renting hotel rooms and chartering vessels or renting equipment, etc.

*Comment 14:* NMFS received comments stating that if spearfishing gear is allowed to harvest Atlantic tunas, then the Agency must devise and implement mandatory permitting, reporting, monitoring, and enforcement. One comment specifically stated that if NMFS cannot guarantee this, there should not be an additional uncontrollable fishery.

*Response:* All HMS recreational spearfishing activity must be conducted from a federally permitted HMS Angling or HMS CHB category vessel. NMFS currently requires mandatory reporting of all recreational landings of BFT, swordfish, and billfish via automated telephone systems. Although the Agency does not currently have similar requirements for recreational landings of BAYS tunas, NMFS monitors HMS recreational effort and landings through Federal recreational surveys, such as the MRFSS and LPS in addition to State monitoring programs. NMFS enforcement works in cooperation with local and State enforcement programs to ensure compliance with management measures in both recreational and commercial fisheries. NMFS will monitor compliance with reporting requirements and may consider modifications to requirements, as appropriate, in the future.

*Comment 15:* NMFS received a comment stating that there are fishermen currently using spearguns to harvest YFT that do not realize it is illegal to use the gear to target Atlantic tunas. Spearfishing has been included as a category in some of the tournaments.

*Response:* Until the final rule authorizing recreational speargun fishing for BAYS tunas takes effect, any use of spearguns to fish for any HMS is illegal. The list of authorized gears has been published since the end of 1999 (December 1, 1999; 64 FR 67511) and numerous brochures and guides that have been published since that date clearly specifying the authorized gears for HMS with valid permits. Currently, speargun gear is not an authorized gear for any HMS. After the effective date of this final rule, speargun gear will be legal for BAYS tunas, but not for other HMS.

*Comment 16:* NMFS should not allow another directed commercial fishery (e.g., speargun fishing gear) for giant BFT.

*Response:* This rule does not authorize another directed commercial fishery for giant BFT. It does not authorize the use of spearguns to fish for, retain, or land any Atlantic BFT, in either the recreational or commercial fishery.

*Comment 17:* Speargun fishermen would want to target the largest fish available due to the difficulty in taking smaller fish, the trophy nature of the fishery itself, and the largest take for time and money invested in the opportunity.

*Response:* NMFS recognizes that a prime motivation for spearfishermen to enter the Atlantic BAYS tuna fishery is the opportunity to recreationally fish for a big fish. Spearfishermen will need to abide by all existing recreational management measures, including the minimum size for YFT and BET of 27 inches curved fork length and retention limits. There is no minimum size for albacore or skipjack tuna. Blackfin tuna are not federally regulated.

## ii. Green-Stick Gear

*Comment 18:* NMFS received several comments supporting the preferred alternative to authorize green-stick gear for the commercial BAYS tuna fishery. These comments include: green-stick gear is much better than longlines and could be an alternate gear; green-stick gear is the most environmentally sound way to harvest tuna; if green-stick gear is a viable U.S. HMS fishery, then NMFS needs to be flexible in allowing its use; and, the use of green-stick gear for directed fishing by pelagic longline

vessels when targeting BAYS should be approved. In contrast, NMFS received several comments opposed to authorizing green-stick gear for tunas. The GMFMC commented that green-stick gear is classified as longline gear in the Gulf of Mexico and if it is authorized, it is likely to become very abundant and could have a negative impact on stressed and overfished stocks; green-stick gear is an excuse for more longline fishing using a slightly different method; and green-stick gear is similar to longline gear and therefore should not be allowed into closed areas.

*Response:* This rule will not provide a regulatory definition of "green-stick gear" as a separate authorized gear and as differentiated from already authorized forms of handgear (rod-and-reel or handline) and longline gear. This is a change from what was proposed. Under existing regulations, green-stick gear is already authorized depending on how it is configured and how many hooks are on each line. Due to the current confusion over what is already allowed and how the draft preferred alternative may or may not have changed current uses of green-stick gear, NMFS is not modifying the list of authorized gears for green-stick gear at this time. In addition to the existing confusion and the potential to exacerbate the situation by changing the regulations, there is conflicting opinion and little data to support or refute its efficiency and impact on target and non-target stocks. NMFS intends to publish a brochure clarifying acceptable configuration of green-stick gear under the existing HMS regulations. In the meantime, NMFS will also work with current logbook and monitoring programs to examine ways to collect additional information on the use of green-stick gear and its impact on the environment as well as its social and economic benefits and consequences.

*Comment 19:* NMFS received numerous comments in support of authorizing green-stick gear for targeting BFT, as well as BAYS. These comments include: green-sticks are permanently attached to the vessel, so why do the proposed regulations state that a vessel could never possess a BFT onboard if green-stick gear is onboard; green-stick gear is the same as the trolling fishery, meaning the same boats, same gear, and same permits are used as those used to target BFT; the Japanese use this gear to harvest BFT because minimal lactic acids build during the fight; green-stick gear should be allowed for all Atlantic tunas provided there are mandatory permitting, reporting, monitoring, and enforcement of this fishery; BFT have been harvested using green-stick gear in

the past and should be allowed to be continued; in North Carolina, green-stick gear has been used to catch BFT; past BFT landings using this gear type have been reported as rod-and-reel therefore a group of individuals are going to be adversely impacted if BFT are not allowed; this rule will make it even harder to catch the BFT quota; and, curiosity as to what conservation benefits are to be had by not allowing BFT to be retained as there are other management measures in place for BFT such as size and retention limits as well as quotas. One comment stated support for General category fishermen to target BFT with green-stick. The same commenter only supported the authorized use of green-sticks by longline permitted vessels as an allowed gear for directed YFT fishing and did not support the use of green-sticks by pelagic longline fishermen to target BFT while aboard a permitted pelagic longline vessel.

*Response:* Throughout the development of the Draft Consolidated HMS FMP, most of the analysis and comment from scoping led the Agency to determine that green-stick gear was primarily used to target BAYS tunas and that the methods of fishing with the gear were not conducive to targeting BFT. In addition, due to the current severely depleted status of the BFT stock, the introduction of a new gear-type and adding fishing pressure in this already heavily capitalized fishery is not appropriate at this time. Thus, it was determined in the Draft Consolidated HMS FMP that it was possible to consider the use of green-stick gear, in a manner that modified the status quo, for a BAYS only fishery. Furthermore, it was determined that excluding BFT from the allowed list of target species would provide marginal positive economic and social impacts to the BAYS fishery with neutral biological impacts to the BFT stock. However, at several public meetings on the Draft Consolidated HMS FMP and in written comment, particularly from the mid-Atlantic area, it was evident that there is an active interest in using the gear to target BFT. The preferred alternative in the Draft Consolidated HMS FMP could have eliminated this opportunity allowed under the status quo, provided the gear is configured to conform to the current regulations. For BFT fishing, these conditions exist generally when commercial fishing for BFT in the General category (or with an HMS CHB permit) using handgear (rod-and-reel, handline, or bandit gear) with two hooks or less. These conditions also exist when recreationally fishing for

BFT in the Angling category (or with an HMS CHB permit) using handgear (rod-and-reel or handline) with two hooks or less. The limit on the number of hooks for both recreational and commercial handgear has helped limit effort in currently overcapitalized fisheries targeting species with weak stock status (i.e., either overfished or approaching overfishing). Furthermore, the incidental retention of BFT by green-stick gear, trailing more than two hooks, is authorized under a Longline category permit so long as all other corresponding management measures are adhered to such as target catch restrictions, use of circle hooks, avoidance of closed areas, etc.

Since the publication of the Draft Consolidated HMS FMP in August 2005, NMFS received data on the performance of both the recreational and commercial BFT fishery. In the case of the commercial fishery, landings were low throughout the 2005 fishing season. The 2005 season was also marked by a noticeable lack of availability of commercial sized BFT throughout their traditional fishing range and, in particular, BFT were largely absent off southern states during the winter of 2005/2006. Although the available quota in the commercial size classes is high, scientists continue to be concerned over the status of this stock, especially the abundance of these larger fish that represent the potential spawners for future recruitment, particularly in the Gulf of Mexico. An international stock assessment on the current status, and future prognosis, of BFT is scheduled this year by the SCRS and new recommendations, if any, by ICCAT would not be available until November 2006. NMFS will continue to analyze potential impacts of authorizing green-stick gear and may consider modifications in the future, as appropriate.

*Comment 20:* NMFS received several comments regarding the technical nature of green-stick gear including comments comparing and contrasting the gear type to longline gear and commercial or recreational handgear such as handline and rod-and-reel. Comments included: green-stick gear is very different from longline gear in that when deploying green-stick gear the greatest distance the hooks are from the boat is 500 feet, whereas PLL gear has one hook a football field length away from one another; longline gear is set in the water column with many hooks while green-stick is trolled at a high speed with the artificial baits suspended above or skipping across the waters surface; this gear is trolled and is not set out to drift, which makes it very

different from the definition of a longline gear; green-stick is similar to longline gear therefore it should be prevented from entering into closed areas; this gear is still a longline because of the use of hydraulics and several hooks; there are two distinct types of green-stick fishing and each should be carefully defined separately; the commercial green-stick method uses multiple hooks with artificial baits on a single line to catch Atlantic tunas, including BFT; the recreational green-sticking is an "angling" method primarily using rods-and-reels to catch Atlantic tunas, including BFT; some recreational gear is being pulled with more than two hooks per line; teasers without hooks should be allowed; the definition should include using no more than two hooks per any single line attached to the green-stick that basically acts as a vertical out-rigger; green-stick gear should be restricted to hand powered reels; green-stick gear is also appropriate for use in the Angling and General category fisheries; and, recreational fishermen using green-stick gear could open up illegal commercial sale opportunities.

*Response:* NMFS notes that there are considerable similarities between the use of green-stick gear and recreational and commercial handgear as well as longline gear depending on how green-stick gear is configured and used under current definitions at 50 CFR parts 600 and 635 and in accordance with all gear operation and deployment restrictions at 50 CFR 635.21. "Longline" means fishing gear that is set horizontally, either anchored, floating, or attached to a vessel, and that consists of a mainline or groundline with three or more leaders (gangions) and hooks, whether retrieved by hand or mechanical means. Any hook and line gear with three or more hooks is considered to be a longline. In addition to the use of rods and reels, "handline gear" means fishing gear that consists of a mainline to which no more than two leaders (gangions) with hooks are attached, and that is released and retrieved by hand, rather than by mechanical means. Finally, the use of bandit gear and downriggers is also an authorized means of deploying and retrieving the hook and line. "Bandit gear" means vertical hook and line gear with rods that are attached to the vessel when in use. Lines are retrieved by manual, electric or hydraulic reels. A "downrigger" is a piece of equipment attached to a vessel and with a weight on a cable that is in turn attached to hook-and-line gear to maintain lures or bait at depth while trolling. In addition to the above definitions and gear

restrictions, specific additional management measures may apply to the use of gear depending on the targeted fishery and HMS or tuna vessel permits (i.e., 50 CFR part 635 subpart C, as well as general permitting, recordkeeping, and monitoring requirements at 50 CFR part 635 subpart A).

*Comment 21:* NMFS received several comments and questions noting the level of confusion regarding what constitutes the technical nature of "green-stick" gear, and how it can already be used versus modified by the proposed alternative. Comments include: the definition of "longline gear" is the problem, not "green-stick gear"; over one hundred green-sticks have been sold and you need to change the definition; it is not the stick that is the most important part of this gear, rather the suspended bait attracts the fish, not the number of baits; fishermen can use only one rod due to tangling; green-sticks are permanently attached to the vessel; green-stick gear is used to catch larger tuna, and that the gear is set-up vertically allowing the bait to fish further from the vessel; we support the use of green-stick gear by commercial vessels, but only if restricted to hand powered reels, but not if used with electric or hydraulic reels; this trolling method does not require any large device and is easy to set up on a small vessel and it is used to catch BFT and YFT around the world; the name "green-stick" comes from the original color of the pole, but today it is available in a variety of colors; and, as green-stick gear is permanently attached to the vessel there could be enforcement issues as the gear can be configured either as commercial or recreational. Questions include: what permit would be required to use this gear; would live bait be allowed with this gear; will configuration of the gear use rods and reels or hydraulic drum, how would one know the type of gear used to catch the fish if different gear types are allowed on the same vessel but not authorized to land the same species; is there a length limit on a rod and reel to distinguish it from green-stick gear; what does it matter how many hooks are on the line when operating under a General category permit; if we have longline and incidental BFT permits can we use green-stick gear; how do the incidental limits apply to longline vessels using green-stick gear; under the current regulations, what permit would be required for someone who fishes with green-stick gear for YFT; which will have more hooks - green-stick gear or recreational gear; can green-stick gear fish in the closed areas; do the reporting

requirements for General category permit holders call for reporting the gear employed; would green-stick fishermen be able to use live bait as it is proposed currently; in which fishery can the gear be authorized; is green-stick gear currently used in the Gulf; and can it be used at all in the Gulf of Mexico where BFT cannot be targeted since it is a spawning area?

*Response:* NMFS acknowledges that there is considerable confusion over the status of green-stick in the HMS fisheries under current management measures. NMFS intends to publish a brochure to clarify the current situation. This rule will maintain the current definitions for use of longline gear in the longline fishery and handgear in the commercial General category, the recreational HMS Angling, and the HMS CHB fishery. Thus, the use of green-stick gear is still allowed as in the past and in conformance with the appropriate management measures and existing reporting requirements for these HMS fisheries. No new regulatory definitions or permits are being implemented at this time. Green-stick gear can be used in any configuration so long as it conforms to current definition of the use of longline or hook-and-line handgear as currently defined in the regulations, and as described in the response to Comment 20 above.

*Comment 22:* NMFS received several comments regarding the need for additional data regarding this gear-type. One comment stated the fishery needs further analysis on the use and configuration of green-stick gear and one commenter questioned what information would NMFS need collected to conduct a more detailed analysis of the impacts of using this gear. A comment stated that there needs to be some accommodation of this gear type, even if it is through an EFP to collect further information. A comment stated that the information used from the North Carolina Sea Grant paper referenced in the Draft Consolidated HMS FMP is out of date and that the gear has been altered as individuals have gained experience using it.

*Response:* NMFS agrees that the Agency and the fishery could benefit from additional data on the use of green-stick gear and its impact on both the recreational and commercial constituencies, HMS stocks, and bycatch. In the past, green-stick gear was identified as a unique gear type on HMS Vessel Pelagic Logbook reports, but was discontinued as it was not a uniquely identified and defined gear. It also appears that fishermen had already been reporting green-stick HMS landings under either hook and line gear

or longline gear. As a first step, NMFS intends to publish a brochure to clarify current allowable uses of the gear and how existing vessel and dealer permit and reporting requirements apply. NMFS also intends to examine whether or not existing monitoring programs should be modified to understand more adequately the uses and impacts of this gear or whether some additional program is necessary, including potential use of the EFP program. The North Carolina Sea Grant paper published by Westcott, 1996, contains historical and background data on green-stick gear that NMFS used to define and graphically present different ways to configure the gear. NMFS would appreciate assistance in locating more recent updates and/or publications that could be used to assist with the development of the planned brochure describing green-stick gear. NMFS is interested in knowing how many fishermen use, or have used, this gear and in what configurations that conform with or differ from the current definitions. In addition, NMFS is interested in the locale and distribution of its use, preferred target species, efficiency over other gear-types, amounts and rates of bycatch, and social and economic costs and benefits of using the gear, among other things.

*Comment 23:* NMFS received comments on the bycatch associated with green-stick gear. Those comments include: almost all tuna are hooked in the mouth and could be released relatively unharmed, there are no turtle interactions, and other bycatch is limited because billfish and shark species have difficulty reaching bait that spends so much time in the air; and, green-stick gear is a gear that minimizes the interactions of billfish with commercial handgear and should be promoted. Other comments noted a need to be cautious about potential bycatch issues and that NMFS needs to confirm the level of bycatch associated with this gear type; NMFS needs to prohibit this gear's use in the Gulf of Mexico due to potential bluefin tuna bycatch; the description of green-stick gear sounds like longline gear, which could mean greater bycatch and there should be no additional gear used in the Gulf of Mexico; and, we are opposed to green-stick gear because it appears to be a trolled longline and the biggest bycatch of marlin is in the yellowfin tuna fishery.

*Response:* This rule will not modify the regulations to define "green-stick gear" and thus NMFS does not expect the levels of bycatch to change as a result of implementing the No Action alternative. NMFS has minimal data

available to analyze the bycatch issues associated with green-stick gear deployed as a form of handgear or as a longline. NMFS expects that trolled green-stick gear, configured as a version of rod-and-reel handgear, would have bycatch issues similar to that of conventionally configured rod-and-reel gear. Data from Pacific green-stick fisheries indicate that increases in billfish bycatch are possible although no billfish were reported caught on green-stick gear in Atlantic commercial fisheries. Under the current regulations, the use of green-stick gear is allowed (as clarified in the response to Comment 21 and elsewhere in this document) in the Gulf of Mexico although it may not be used to target BFT in this area to protect spawning BFT. NMFS continues to be concerned about levels of bycatch in HMS fisheries as well as in other fisheries that encounter HMS as bycatch. Overall, the Agency has continued to address bycatch issues in federally managed fisheries and, consistent with National Standard 9, to implement management measures that minimize bycatch. Since 1999, NMFS has implemented a number of time/area closures to reduce bycatch to the extent practicable and, in the Draft Consolidated HMS FMP, examined numerous alternatives to determine if the closures were still meeting their original goals. Many of these measures, but not all, were designed to reduce bycatch in the pelagic longline fleet. In addition, the Draft Consolidated HMS FMP examined alternatives to train and certify fishermen in the safe handling, release, and disentanglement of protected resources from pelagic and bottom longline and gillnet gear. With the addition of new measures in the Final Consolidated HMS FMP, NMFS expects to continue minimizing bycatch throughout HMS fisheries.

### iii. Buoy Gear

*Comment 24:* NMFS received several comments supporting alternative H5, which would authorize the use of buoy gear only in the commercial swordfish handgear fishery. Some of those comments include: buoy gear should be for commercial use and handlines for recreational use; more recreational fishermen are currently using buoy gear than commercial fishermen; buoy gear should be used to target swordfish because it is an effective gear; I do not support the use of recreational buoy gear, but it should be a commercial subcategory; buoy gear should be allowed, but not where it will conflict with recreational vessels and gear; and this alternative is trying to establish a commercial fishery. Pelagic longline

vessels could remove their longline gear and set buoy gear in closed areas.

*Response:* Free-floating buoyed lines are currently in use in many areas; however, they are being fished as "handline gear," as defined by current HMS regulations. Currently, there are no limits on how many handlines a vessel may deploy, as long as each gear has no more than two hooks attached. NMFS heard during scoping that the use of this gear was expanding. This rule will change the definition of handline gear to require that the gear be attached to a vessel and allow free-floating handlines, renamed as buoy gear, to be utilized in the swordfish handgear fishery only. NMFS took this action, in part, to limit the number of individual gears a vessel may possess or deploy when targeting swordfish commercially and eliminate the use of the gear in all other HMS fisheries, both recreational and commercial. Vessels with directed swordfish or swordfish handgear LAPs may utilize this gear type to capture swordfish in pelagic longline closed areas as long as the longline gear had been removed from the vessel.

*Comment 25:* NMFS received several comments opposed to alternative H5, which would authorize buoy gear for the commercial swordfish handgear fishery and limit vessels to possessing or deploying no more than 35 individual buoys, with each gear deployed consisting of one buoy supporting a single mainline with no more than two hooks or gangions attached. The comments include: buoy gear is needless and would be harmful to recreational interests; recreational fishermen are concerned about the use of this gear type; buoy gear would increase fishing effort on swordfish when it is still overfished; opening up the buoy fishery to fill the quota is a mistake; buoy gear is indiscriminate and destructive and has no place in a sustainable, viable fishery; buoy gear is nothing more than a vertical longline and we need reductions in bycatch or bycatch mortality. We are opposed to any fishing that allows unattended gear; buoy gear should not be allowed in the HMS fisheries for numerous reasons, including: a hazard to navigation; an indiscriminate killer like longlines; and deployment of the gear with live baits will increase discards and dead discards of numerous species; if buoy gear use continues, it is probable that the gear will interact with marine mammals in the U.S. EEZ; and it is morally incomprehensible that NMFS is going to shut down the recreational white marlin fishery and yet allow thousands of hooks to be deployed with live baits on buoy gears.

*Response:* As discussed in the Consolidated HMS FMP, this gear type is currently in use as handline gear and anecdotal information suggests that it is being used by both commercial and recreational fishermen to target swordfish as well as other species. The rule will re-name the gear to buoy gear, limit its use to only those vessels permitted to participate in the limited access commercial swordfish handgear fishery, and significantly limit the number of individual gears that vessels could possess or deploy (from an unrestricted number to a maximum of 35). This action will ensure that the fishery, which currently occurs mainly in a known swordfish nursery area, does not expand in effort uncontrollably and that only a manageable number of buoy gears may be deployed by each vessel. Consistent with the current definition of "handline gear," each buoy gear will be limited to having no more than two hooks or gangions attached. Vessels deploying buoy gear may use live or dead baits and may only retain swordfish captured on the gear. All tunas, undersized swordfish, sharks, marlins, or sailfish captured on buoy gear must be released in a manner that maximizes their probability of survival. This gear differs significantly from longline gear, which is defined as having three or more hooks or gangions attached. The rule will allow vessels deploying this gear type to use multiple floatation/gear marking devices, including but not limited to, buoys, floats, lights, radar reflectors, reflective tape, and high-flyers, to minimize any hazards to navigation. Logbook data from 2004 show that 68 percent of swordfish captured on commercial handline trips were retained. These same data show that over 75 percent of swordfish discarded from these trips were released alive. NMFS monitors gears for interactions with marine mammals and sea turtles and will continue to monitor buoy gear catch, bycatch, and any interactions with protected resources through the HMS logbook program.

*Comment 26:* If handgear must be attached to the vessel, how do the buoy gear requirements affect alternative H5, which authorizes buoy gear in the commercial swordfish handgear fishery, and limits vessels employing buoy gear to possessing and deploying no more than 35 individual buoys, with each buoy having no more than two hooks or gangions attached?

*Response:* Handgear (handline, harpoon, rod and reel, and bandit gear) are not all currently required to be attached to a vessel. This final rule will modify the definition of handline to

require that handlines be attached to, or in contact with, a vessel. The buoy gear alternatives will not be affected by the handline definition change as the selected buoy gear alternative defines buoy gear as a separate gear type.

*Comment 27:* NMFS received a few comments opposed to alternative H6, authorize buoy gear in the commercial swordfish handgear fishery and limit vessels to no more than 50 individual buoys, each supporting a single mainline with no more than 15 hooks or gangions attached. These comments include: we do not support alternative H6; and alternative H6 is mini-longlining and should be limited to vessels with all three permits (Directed or Incidental Swordfish, Atlantic Tunas Longline, and Directed or Incidental Shark).

*Response:* The Agency is not selecting alternative H6 due, in part, to the comments in opposition to allowing that many free floating buoy gears. In this action, the Agency is selecting a modification of alternative H5 which will authorize buoy gear for the commercial swordfish handgear fishery and limit vessels to possessing or deploying no more than 35 floatation devices, with each gear consisting of one or more floatation devices supporting a single mainline with no more than two hooks or gangions attached. This gear differs significantly from longline gear, which is defined as having three or more hooks or gangions attached. Fishermen deploying buoy gear must possess a commercial swordfish handgear or a swordfish directed limited access permit.

*Comment 28:* NMFS received a number of comments regarding buoy gear capturing undersized swordfish, including: 35 individual buoys fished at one time is in direct conflict with the HMS FMP objective to reduce bycatch and to minimize mortality of juvenile swordfish; this alternative will produce dead juvenile swordfish that are hooked and not successfully released due to lost gear or gear that cannot be checked in a timely manner; what studies show the successful release of juvenile swordfish when using 35 individual buoys with two hooks?; buoy gear fishermen currently catch approximately 25 - 30 percent juvenile swordfish (< 33 inches); circle hooks can reduce post release mortality of juvenile swordfish and non-targeted species, they should be considered for this gear; and, about 50 percent of fish caught on well tended buoy gear can be released.

*Response:* In response to public comment, the Agency has modified the draft preferred alternative to allow buoy gear fishermen the option of deploying

multiple floatation devices on individual buoy gears. The final rule will maintain the maximum limit of 35 floatation devices possessed or deployed. Under this rule, fishermen who fish three floatation devices per gear will be limited to deploying approximately 11 individual buoy gears. Similarly, fishermen using four floatation devices per gear will be limited to deploying approximately eight buoy gears. Logbook data from 2004 show that 68 percent of swordfish captured on commercial handline trips were retained. These same data show that over 75 percent of swordfish discarded from these trips were released alive. Given the fact that this fishery currently happens in a swordfish nursery area, it is likely that the swordfish that are discarded are done so because they are undersized. Commenters requested the ability to use several floatation devices per gear to allow for the use of a "bite indicator" float, which will let fishermen know when a fish is captured by the gear. This modification could allow fishermen to easily identify those gears that have captured fish and may allow fishermen to release any undersized swordfish or non-target species more quickly and with a greater probability of survival. Additionally, the modification to allow multiple floatation devices per gear may reduce the number of gears deployed and may minimize lost gear by making the gears more buoyant and visible. Although the Agency received public comment supporting the use of circle hooks with buoy gear, a circle hook option was not specifically included in the alternatives in the Draft Consolidated HMS FMP. NMFS is considering the utility of circle hooks throughout HMS fisheries and may analyze a circle hook requirement for buoy gear in a future rulemaking.

*Comment 29:* NMFS received a few comments related to the monitoring requirements for buoy gear. Such comments include: can fishermen use additional locating devices in addition to the single buoy required (e.g., high flier to locate the buoy in bigger seas) to improve monitoring?; all four methods of marking buoy gear are needed to avoid lost fish and gear; there should definitely be a requirement for marking and monitoring; a visual radius or reasonable area a fisherman could fish with buoy gear should be defined; buoy gear "tending" requirements should be defined, like in the shark gillnet fishery, to prevent fishermen from tending buoys that belong to others; it would be impossible to monitor all 35 buoys that are free floating in rough weather

conditions; while the handgear operator is retrieving a buoy that has hooked a swordfish of sustainable size, the other 34 buoys will not be attended; there are no minimum requirements for flags, radar reflectors, radio beacons, or strobe lights; and is there any information about the loss of buoys?

*Response:* In response to public comment, the Agency has modified the draft preferred alternative to allow buoy gear fishermen the option of deploying multiple floatation devices on individual buoy gears. The final rule will maintain the maximum limit of 35 floatation devices possessed or deployed. Under the modified alternative, fishermen who fish three floatation devices per gear will be limited to deploying approximately 11 individual buoy gears. Similarly, fishermen using four floatation devices per gear will be limited to deploying approximately eight buoy gears. If a gear monitoring device used by a fisherman is positively buoyant, it will be included in the 35 floatation device vessel limit. Consistent with current regulations, each floatation device attached to a buoy gear must be marked with either the vessel's name, registration number, or permit number. At this time, NMFS is not requiring any specific gear tending requirements for vessels deploying buoy gear; however, the Agency recommends that fishermen remain in the general area where they have set their gear and monitor each gear as closely as possible. NMFS realizes that different vessels and crews will have varying abilities to monitor gear and that weather and sea condition may also impact their ability to monitor gear closely. The Agency cautions fishermen to limit the number of gears they deploy to a reasonable number that they can realistically monitor and retrieve safely. At this time, the Agency does not possess any data regarding gear loss in this fishery. The Agency may conduct additional rulemaking in the future, if additional data indicates that gear tending requirements or other bycatch reduction measures are needed.

*Comment 30:* NMFS received a number of comments regarding the definition of "buoy gear," including: consider modifying the definition of buoy gear because one buoy and all the line fished vertically will make it difficult to keep visual contact with the gear; without some way of knowing when a small fish is hooked, it may be several hours before the gear is retrieved; consider allowing a maximum of 20 feet of horizontal line on the surface for the purpose of identifying and monitoring buoy gear allowing space for "bite indicator" float and an

identification buoy/hi-flier; additional equipment may be necessary to prevent large swordfish from sounding; allow additional gear at each buoy for retrieval and to determine if a fish is on the line; why is there no length or distance specified between buoys for the commercial buoy gear?; do the regulations stipulate how far apart the buoy gear can be spaced?; are buoy gears allowed to be attached to a hydraulic drum when being used commercially?; circle hooks, VMS, light sticks, live bait, and Careful Handling/Release training and certification should be mandatory; could you require the use of Global Positioning Systems (GPS) on the buoy gear?; there should be a prohibition on using live bait; an electronic monitoring system must be required for each buoy; there is no data to justify limitations on the number of buoys and/or hooks at this time; and there is no criteria for what would constitute an acceptable buoy for this type of gear.

*Response:* As discussed above in the response to Comments 27, 28, and 29, NMFS has modified the draft preferred alternative in response to public comment and included a definition of "floatation device." The final rule will allow fishermen deploying buoy gear to attach multiple floatation devices to each buoy gear, including "bite indicator floats," however the rule will maintain the limit of 35 floatation devices possessed or deployed. A floatation device is defined as any positively buoyant object rigged to be attached to a fishing gear. Buoy gear must be released and retrieved by hand. If gear monitoring devices used by fishermen are positively buoyant and rigged to be attached to a fishing gear, they will be included in the 35 floatation device vessel limit and will need to be marked as per the gear marking regulations. Additionally, if more than one floatation device is used, no hook or gangion may be attached to the mainline or a floatation device on the horizontal portion of the gear. At this time, NMFS is not specifying any maximum or minimum length of horizontal line at the surface. However, to limit any hazard to navigation and potential gear loss by ship strike, NMFS recommends that fishermen set only the amount of gear that is needed at the surface. Similarly, NMFS is not specifying a minimum or maximum distance between deployed buoy gears. NMFS urges fishermen to be responsible in their fishing activities and to only fish gear over a distance that they can realistically monitor. Because of the limitations on the number of buoy gears that can be deployed at one time, NMFS

is not requiring GPS or electronic monitoring equipment at this time. Given the low bycatch rates and high probability of survival per logbook data on handline, NMFS is not implementing requirements regarding circle hooks, light sticks, live bait, or Careful Handling/Release training and certification for buoy gear fishermen at this time. As more information and data become available regarding the use of buoy gear, NMFS may investigate some of these options for the buoy gear fishery in future rulemakings.

*Comment 31:* NMFS received a few comments regarding permit requirements for using buoy gear and comments supporting a limit on the number of vessels using buoy gear. These comments include: buoy gear should be limited to current permit holders only and no increase in its use should be allowed in future permit considerations; what kind of permit do you need for buoy gear?; buoy gear users should have the three permits that PLL needs; approximately 10 boats have used buoy gear in the past, however, it is now likely that only about three vessels use this gear type; how many participants are actively using buoy gear?; and, how many swordfish permits are there? Effort is going to increase.

*Response:* The final rule will only authorize buoy gear in the commercial swordfish handgear fishery. Vessels deploying buoy gear must have a commercial swordfish handgear limited access permit or a swordfish directed limited access permit. As of February 2006, there were 88 commercial swordfish handgear permits and 191 directed swordfish permits. In 2004, seven vessels reported using handline gear in the HMS logbook. The logbook does not differentiate between trolled handlines, free-floating handlines, or attached handlines; however, some of those seven vessels likely fished free-floating handlines (buoy gear) and targeted swordfish. Based on historic participation and new restrictions, NMFS does not anticipate large increases in participation in this sector of the swordfish fishery.

*Comment 32:* NMFS received two comments inquiring about 35 buoys as the appropriate limit for buoy gear. These comments are: what is the basis for selecting 35 buoys as the limit?; and, how did the Agency select 35 buoys?

*Response:* NMFS selected the 35 floatation limit based on support from public comment and because the Agency identified this number as the upper limit of unattended buoy gear that a commercial fisherman could monitor and prevent from being lost. The 35 floatation limit would also allow most

vessels using this gear to possess spare gear onboard. Furthermore, as described in the response to Comments 29 and 30, NMFS modified the definition to allow for multiple floatation devices per individual buoy gear. This upper limit should provide flexibility and allow for the use of "bite indicator" floats by most fishermen using this gear.

*Comment 33:* NMFS received a number of comments on the proposed limit of 35 buoys, including: tending 35 buoys will be inefficient, taking 2 - 2.5 hours to set 35 buoys and 3 - 3.5 hours to check each one; no more than 12 buoys should be allowed when operating alone; with two crew members, up to 20 buoys could be fished; can the number of permissible buoys be linked to people onboard the vessel; participants currently cannot fish 35 buoys but may be able to in the future; 35 buoys with two hooks apiece is almost like hauling a 30 mile longline with the current; define and allow this gear type for swordfish commercial harvest, but limit the number of buoys to a more manageable number for protection of juvenile swordfish, allowing no more than 10 buoys makes the gear maintainable and produces a high quality product with minimal impact on juvenile fish; 35 buoys are unmanageable and are tended exactly like a short pelagic longline with overnight soak time violating the intent of the area closure; 10 to 12 buoys with a maximum of two hooks is the most that should be allowed, a prudent skipper and crew could not manage more than 10 buoys at a time and that would be under ideal sea conditions; The regulations should allow a maximum of 10 to 12 buoys, otherwise bycatch cannot be prevented; 35 buoys with two hooks each is not considered "handgear"; and, 35 buoys are far too many and may allow bigger vessels from the NED to move in and use this gear in closed areas, this shift could create tension between user groups and, displace the smaller vessels that pioneered this type of gear. This already happened in the FEC area with a boat using 20 - 25 radio buoys; 35 buoys are unmanageable; more than 12 buoys are unmanageable. The definition of this gear should be by the drop line, not the number of buoys; pelagic longline fishermen would need more than 35 buoys to make a go of the buoy fishery; and there is no data that shows a limit on buoy gear is needed.

*Response:* In response to public comment, the Agency is selecting a modification of alternative H5 that will authorize buoy gear for the commercial swordfish handgear fishery and limit vessels to possessing or deploying no

more than 35 floatation devices, with each gear consisting of one or more floatation devices supporting a single mainline with no more than two hooks or gangions attached. As discussed above in the response to Comments 27 - 30, the modified alternative will allow fishermen deploying buoy gear to attach multiple floatation devices to each buoy gear, including "bite indicator" floats, however the alternative maintains the limit of 35 floatation devices possessed or deployed. This rule gives greater flexibility in the gear configuration by allowing fishermen to alter the gear depending on weather or sea conditions, crew size, and characteristics of different fishing vessels. If gear monitoring devices used by fishermen are positively buoyant and rigged to be attached to a fishing gear, they will be included in the 35 floatation device vessel limit and will need to be marked in accordance with the gear marking regulations. Additionally, if more than one floatation device is used, no hook or gangion may be attached to the mainline or a floatation device on the horizontal portion of the gear. Under the final rule, fishermen who fish three floatation devices per gear will be limited to deploying approximately 11 individual buoy gears. Similarly, fishermen using four floatation devices per gear will be limited to deploying approximately eight individual buoy gears. NMFS realizes that different sized vessels and crews will have varying abilities to monitor gear and that weather and sea conditions may also affect their ability to monitor gear closely. The Agency cautions fishermen to limit the number of buoy gears they deploy to a reasonable number that can be realistically monitored and retrieved safely. NMFS realizes that the limits on buoy gear will likely reduce the chances that large distant water vessels could make profitable trips with buoy gear. During the scoping process, the Agency received comments indicating that the swordfish handgear fishery does not appear to be widespread and appears to operate off the East Coast of Florida. The final rule was developed in an attempt to maintain positive economic benefits for the commercial sector currently utilizing the gear type.

*Comment 34:* NMFS received a number of comments opposed to authorizing buoy gear and the use of buoy gear in pelagic longline closed areas. Those comments include: the proposed buoy gear would operate in a manner similar to longline gear. Do not reopen the longline fishery to further commercial exploitation in our waters; buoy gear is proposed for use in areas

currently closed to longline gear; this commercial gear violates the intent and purpose of closed areas and the basic reason these areas were originally created; how do these new proposed gears mesh with the current closed areas?; longline fishermen are by far the most indiscriminate killers of the very species that recreational fishermen and conservation groups try to protect. Yet, they are being allowed back into closed areas and are allowed to continue using longline tackle that has been renamed; these areas were closed to PLL and allowing buoy gear in will eliminate any benefits that the closures had; and, all the issues for PLL seem to be there for buoy gear. Bycatch issues are still there.

*Response:* The final rule will re-name free-floating handline gear as "buoy gear," limit vessels deploying the gear to possessing or deploying no more than 35 floatation devices, and will limit its use to commercial swordfish handgear fishermen. Therefore, this rule represents a limitation on the handgear fishery over the status quo, and is not modifying any current restrictions on longline fishing. This gear has been utilized with no gear limits by both recreational and commercial fishermen in areas closed to pelagic longline fishing in the past and will be prohibited for use by recreational fishermen and all commercial fishermen not possessing a swordfish handgear or swordfish directed limited access permit. The continued use of this gear by a limited number of fishermen would not violate the intent and purpose of the East Florida Coast closed area (or other PLL closed areas), which was to minimize bycatch in the PLL fishery while maximizing the retention of target species. Current data regarding the existing handline fishery indicates that bycatch rates with this gear are low with no marlin or sea turtles being reported caught from 2000 to 2004, and only one sailfish, which was released alive.

*Comment 35:* NMFS received several comments expressing concern over the authorization of buoy gear in the East Florida Coast PLL closed area, including: pelagic longline vessels once contributed to a vast amount of dead discards of juvenile swordfish in the East Florida Coast area and buoy gear will have the same effect; the East Florida Coast closed area is a vital nursery area that needs to be protected; there should be no free-floating gear allowed in the Florida Straits; buoy gear is like longline gear, and NMFS should ban longlining for swordfish in the Florida Straits; to fish buoy gear in the Straits of Florida the handgear operator must ensure 100 percent release of juvenile swordfish; and, a limit might be

necessary off Florida, but there might be possibilities in other areas where limits are not needed.

*Response:* As discussed in the response to Comment 34 above, the final rule will restrict the number of unattached handlines or buoy gear that may be deployed and will limit the number of permit holders authorized to utilize the gear type relative to the status quo. This gear is currently authorized for use with no limitations on numbers of buoy gears deployed by both recreational and commercial fishermen in the East Florida Coast closed area. The final rule will prohibit all recreational fishermen and commercial fishermen not possessing a swordfish handgear or swordfish directed limited access permit from utilizing the gear type. According to 2004 logbook data, 64 commercial handline trips were reported with 404 swordfish reported caught. Of those 404 swordfish captured, 67.8 percent (274 fish) were retained, 24.3 percent (98 fish) were released alive, and 7.9 percent (32 fish) were discarded dead.

*Comment 36:* NMFS received several comments concerned about allowing buoy gear to operate in the Gulf of Mexico. Those comments include: buoy gear should not be allowed in the DeSoto closures area, nor should it be allowed in the Southern Canyon area. There should be no free floating gear because it could get entangled with oil rigs; buoy gear may need greater restrictions in the Gulf. I am worried about excessive gears and bycatch with the currents and weather; concerns on how buoy gear will be deployed in the Gulf of Mexico with free floating drilling barges and their multiple thrusters, may lead to pollution issues; future generations will suffer and only one group will benefit from allowing 30 - 50 hook sets with no radar reflectors into the DeSoto area south of Destin. After the buoy fishermen have moved on, there will never be another blue marlin, swordfish, tuna, or shark in the Gulf of Mexico; the De Soto Canyon pelagic longline closure has been successful over the past five years with more tuna, dolphin, swordfish, and wahoo; and buoy gear should be banned completely from the Gulf of Mexico.

*Response:* During the scoping process, the Agency received comments indicating that the swordfish handgear fishery does not appear to be widespread and appears to operate only off the East Coast of Florida, not in the Gulf of Mexico. As discussed under Comment 34, the final rule will restrict the number of unattached handlines or buoy gear that may be deployed and the number of permit holders authorized to

utilize the gear type relative to the status quo. In addition, the requirement to affix gear monitoring equipment is intended to reduce the likelihood of gear loss. Additionally, under the final rule, buoy gear will only be authorized to harvest swordfish, no other HMS species may be targeted with buoy gear. All other HMS species captured must be released in a manner that maximizes their probability of survival. NMFS will monitor bycatch and gear loss, and may make adjustments, as needed, in the future. While the owners and operators of buoy gear vessels are not required to attend the safe handling and release workshops that are mandatory for PLL, BLL, and gillnet fishermen, these owners and operators may use the same release techniques and equipment and are encouraged to attend. If bycatch rates or mortality increase in the buoy gear fishery, NMFS may consider mandatory workshops for this fishery. Similarly, if the fishery expands into the Gulf of Mexico, NMFS may consider additional restrictions to prevent problems with free floating drilling barges or to alleviate other problems not anticipated at this time.

*Comment 37:* NMFS should consider geographic limitations for buoy gear to minimize negative gear conflicts in a future action.

*Response:* During the scoping process, the Agency received comments indicating that the existing swordfish handgear fishery does not appear to be widespread and appears to operate only off the East Coast of Florida. NMFS does not expect that this final action, which places limits on that existing fishery, would change the location of the fishery. However, if circumstances warrant changes, the Agency may consider making adjustments to minimize negative impacts in the future, if necessary.

*Comment 38:* There is no penalty for clipping the buoy gear together to create a longline.

*Response:* Under the current regulations, lines with three hooks or more are longlines. Vessels clipping buoy gears together and having more than two hooks on any combination of lines would need the appropriate permits allowing the operators to harvest HMS with longline gear. Additionally, these vessels could only set linked buoy gear in areas not closed to longline fishing. The final rule prohibits linking buoy gear together.

*Comment 39:* Buoy gear exponentially increases the footprint of the vessel because it is not attached to the vessel. It will become entangled in offshore oil platforms and dynamic positioning vessels, and other oilfield related

facilities and will result in more stand-off regulations for the recreational and commercial fisheries from these structures, not to mention the additional expense to the oil companies of removing this gear and repairing damage caused by it.

*Response:* As discussed under Comment 34, the final rule will restrict the number of unattached handlines or buoy gear that may be deployed and the number of permit holders authorized to utilize the gear type relative to the status quo. In addition, the requirement to affix gear monitoring equipment is intended to reduce the likelihood of gear loss.

#### iv. Secondary Gear

*Comment 40:* NMFS received comments on the types of secondary gears (also known as cockpit gears) that would be authorized under the proposed Consolidated HMS regulations. Those comments include: what are the primary cockpit gears included for authorization?; will the regulations have a list of acceptable cockpit gears because that list is going to be extremely long to cover all the methods currently used?; people are going to need to provide NMFS with a list of gears currently used to be sure they are included; do not allow dart harpoons and other secondary gears to be used as primary authorized gears; mechanical harpoons should not be used as secondary gear; and, if there is choice between a gaff, flying gaff, and cockpit harpoon, I am going for a cockpit harpoon every time to kill fish and protect myself.

*Response:* The final rule does not list specific acceptable secondary gear; rather, secondary gears will be authorized for assisting in subduing an HMS already brought to the vessel with an authorized primary gear. Primary authorized gears are listed in the current HMS regulations at 50 CFR 635.21(e). While examples of secondary gears are listed in the regulations, the list is not all inclusive in order to provide fishermen the maximum flexibility in using the secondary gear to gain control of an animal that will be brought onboard the vessel while also maintaining safe conditions on the vessel. This action will clarify the regulations to state that secondary gears will not be allowed to capture undersized or free-swimming HMS, but only to gain control of legal-sized HMS brought to the vessel with an authorized primary gear with the intent of retaining the HMS. This measure will acknowledge and account for the current HMS regulations at 50 CFR 635.21(a), which state that an Atlantic

HMS harvested from its management unit that is not retained must be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water.

*Comment 41:* NMFS received comments supporting the use of secondary gears. Those comments include: I support alternative H7, clarify the allowance of handheld cockpit gears used at boat side for subduing HMS captured on authorized gears; hand darts need to be authorized as secondary gear so that the people in Florida's swordfish recreational fishery are not fishing illegally; and this action is necessary to avoid enforcement conflicts over what gear is legal for subduing HMS.

*Response:* The final rule authorizes the use of hand-held secondary gears to aid anglers in subduing large HMS captured by authorized primary gear types to reduce the loss of fish at the side of the boat, increase safety when subduing large HMS, minimize enforcement problems, and respond to requests from fishery participants to clarify the regulations. This action does not specify acceptable secondary gears, rather it clarifies the HMS regulations to state that secondary gear may be used to aid in the landing or subduing of HMS after they are brought to the vessel using a primary authorized gear type only. Secondary gears may also reduce the loss of fish at boat side, increasing retention rates. Primary authorized gears are listed in the current HMS regulations at 50 CFR 635.21(e).

#### D. Regulatory Housekeeping Measures

##### i. Definitions of Pelagic and Bottom Longline

*Comment 1:* NMFS received comments in support of the no-action alternative to maintain the current PLL and BLL gear definitions, and a comment in support of the two alternatives that were preferred in Draft Consolidated HMS FMP. These included: I support Alternative I1(a) — no action. The other alternatives tend to micromanage directed shark fishermen out of the closed areas, in particular the NC BLL time/area closure, by reducing profits and causing unnecessary economic impacts; if fishermen can tell the difference between BLL and PLL gears, they should be able to teach NMFS enforcement agents the difference; it is still clear that there is a problem with the BLL and PLL definitions. NMFS should reexamine this issue with some fishing industry assistance; and, NMFS is making a big deal and creating potential additional

economic impacts for enforcement's convenience. It is not an enforcement necessity; and PLL and BLL gears should be differentiated by the number of floats (alternative I1(b)), as well as the types of species landed (alternative I1(c)).

*Response:* NMFS believes that the existing regulations defining pelagic and bottom longline gear at § 635.21(c) and (d), respectively, are generally sufficient. However, there could be situations where it is difficult for law enforcement to differentiate between the two gear types while enforcing the closed areas or VMS regulations. Difficulties could arise, for example, in determining whether the weights and/or anchors are capable of maintaining contact between the mainline and the ocean bottom in the case of bottom longlines, or whether the floats are capable of supporting the mainline in the case of pelagic longlines. These difficulties could result in lengthier boardings at sea by law enforcement, temporary curtailment of fishing activities, and potential legal proceedings. For these reasons, NMFS sought to reexamine the current PLL and BLL definitions in this amendment to ascertain whether improvements were warranted. Based upon public comment and consultations with law enforcement, NMFS found that the current PLL and BLL definitions could be strengthened by establishing limits on the types of species that could be possessed when fishing in HMS closed areas with these gears. However, in order to maintain operational flexibility for the HMS longline fleet, and in recognition of the impracticality of defining and limiting the number of "fishing floats" possessed or deployed, gear-based alternative I1(b) is no longer preferred. The overall objective of this issue, preserving the integrity of the HMS time/area closures, can effectively be achieved by implementing requirements on the species composition of catch. This methodology addresses the crux of the issue, which is to discourage catches of pelagic species in PLL closed areas (and vice versa), without the adverse economic impacts associated with additional gear restrictions. This method is expected to accommodate the majority of commercial fishing operations, yet still provide a quantifiable means to differentiate between PLL and BLL vessels. As a result, the ecological benefits associated with HMS closed areas are expected to remain intact, including reductions in discards of swordfish, bluefin tuna, dusky sharks, sandbar sharks, other HMS, other

finfish, and protected species. By selecting a method that relies upon the species composition of the catch, NMFS anticipates that HMS longline vessel operators will be prudent when fishing in the HMS closed areas and catch predominantly pelagic species in BLL closed areas, or demersal species in PLL closed areas. However, the establishment of quantifiable gear-based criteria to differentiate between PLL and BLL gear could still potentially offer an effective method to further eliminate ambiguities between the two gear types. The Agency intends to continue to assess the need for, and potential effectiveness of, gear-based criteria. If needed, such criteria could be developed in consultation with the fishing industry to further improve the monitoring of, and compliance with, HMS closed areas.

*Comment 2:* NMFS received several comments indicating that HMS longline vessel operators need to maintain their operational flexibility. These comments include: Longline vessels need to maintain their ability to change between PLL and BLL gear in order to ensure versatility. For economic survival and efficiency, vessels often conduct both PLL and BLL sets on a single trip. This is especially true for PLL vessels that fish with BLL gear during rough weather days on a PLL trip. There will be an economic loss if NMFS restricts this flexibility; definitions for PLL and BLL gear should be developed to facilitate identification by law enforcement, while not precluding fishermen from choosing between gear types; and in order to allow flexibility to conduct both PLL and BLL sets, the final regulations may need to specify differences between active gear and gear onboard the boat and not in use, because there have been some enforcement errors.

*Response:* NMFS recognizes that HMS longline vessels need to maintain their ability to change between PLL and BLL gear in order to ensure versatility. The reason for addressing the gear definition issue in this amendment was not to impose additional economic costs on longline vessels, but rather to preserve the conservation benefits associated with the HMS time/area closures. The HMS longline closed areas were implemented to protect a variety of HMS and other protected species. This protection could be compromised if HMS longline vessels are catching large amounts of pelagic species in the PLL closed areas, while under the guise of BLL fishing, and vice-versa. The critical factor in maintaining the integrity of the HMS time/area closures is, therefore, to ensure that the proper species are

hooked. This could potentially be accomplished in a variety of ways. NMFS believes that establishing a limit on the species composition of the catch when fishing in the HMS closed areas is an efficient method to discourage illegal fishing activities in these areas, without imposing additional gear requirements that could restrict operational flexibility. As long as a vessel is in compliance with the current PLL or BLL definitions when fishing in the HMS closed areas, the operator will retain the flexibility to choose how to comply with the catch limits specified in this final rule. More importantly, however, these catch limits must be adhered to if any portion of a trip is in an HMS closed area. NMFS believes that it is not unreasonable, or unduly burdensome, for HMS longline vessels to comply with the intent of the HMS closed areas and to avoid pelagic or demersal species, especially when legally fishing in these areas with BLL or PLL gear, respectively. Because NMFS is implementing a species-based, rather than a gear-based, alternative to differentiate between pelagic and bottom longlines, a gear stowage provision is not necessary at this time.

*Comment 3:* Comments were received indicating that vessel monitoring systems (VMS) could be used to help differentiate between PLL and BLL vessels. These comments included: Since VMS are already required for the closed areas, NMFS should establish a declaration system allowing the VMS monitors to know what gear type is being utilized and why. Law enforcement and/or observers could verify compliance, and impose penalties for non-compliance; and, it has been suggested that vessels "call-in" and declare their intentions prior to engaging in fishing in a closed area. This would be an unnecessary burden, but it is feasible.

*Response:* This comment was also raised by both the public and the NMFS Office of Law Enforcement during scoping hearings, and was considered during the development of alternatives for the DEIS. However, NMFS decided against including an alternative with a VMS declaration because it would not alleviate the need for a quantifiable method for enforcement to use in order to differentiate between PLL and BLL gear. For example, while a vessel operator could declare to be fishing with PLL or BLL gear, enforcement officers would still need to verify compliance with the closed areas either at the dock or at sea. Without a quantifiable method, enforcement officers could decide that a BLL vessel that has a few buoys onboard and that declared itself

a BLL vessel still meets the definition of a PLL vessel. With a quantifiable method, the enforcement officers would be less likely to make that determination. Nevertheless, there may be a potential benefit to a VMS declaration system, and NMFS will continue to assess the need for such a system.

*Comment 4:* Comments opposed to alternative I1(b), defining BLL or PLL gear based on the number of floats onboard, included: We are strongly opposed to alternative I1(b); defining BLL and PLL gear by the number of floats will not work; and, alternative I1(b) would impose an unnecessary additional economic and logistic burden on already over-regulated fisheries.

*Response:* Although the analysis in the Draft Consolidated HMS FMP indicated that relatively few HMS longline vessels would be affected by the float requirement in non-selected alternative I1(b), the alternative is not being implemented in the final rule. As described in Comment 2 above, several commenters stated that a float requirement would diminish the flexibility of vessel operators to participate in different fishing activities, depending upon the circumstances. Also, consultations with NMFS Office of Law Enforcement indicated that defining "fishing floats" and limiting the number that could be possessed or deployed would not be practical. In light of these concerns, NMFS believes that the overall objective of this issue, preserving the integrity of the HMS time/area closures, can effectively be achieved by implementing a method that relies upon the species composition of catch and the existing PLL and BLL definition. By not implementing a restriction on the allowable number of floats, potential adverse economic impacts associated with additional gear restriction should be mitigated.

*Comment 5:* NMFS received many comments regarding the float requirement in alternative I1(b), and suggestions for developing other gear-based methods to better differentiate between PLL and BLL. These comments include: There is some confusion in preferred alternative I1(b) between the terminology that the industry is accustomed to using versus what NMFS is using; how do the proposed regulations define PLL and BLL gear and floats?; floats are used for recovery and monitoring sections of the gear. The types of mainline and anchor are related to where the gear is fishing in the water column. The mainline and anchors onboard a vessel would be better indicators of what type of longline gear is onboard a vessel; if NMFS proceeds

with alternative I1(b), it is important to make sure that an anchor ball is accounted for in the float enumeration; there is no critical need for BLL vessels to possess "bullet" type floats. Such floats can be replaced with polyballs on BLL vessels at minimum costs. On the contrary, PLL vessels must carry large quantities of both polyball and "bullet" floats, this difference would enable enforcement officers to differentiate between PLL and BLL vessels while underway and/or fishing. NMFS could allow PLL vessels to retain the necessary flexibility if they required all "bullet" type floats to be stowed below deck and/or completely covered before engaging in BLL fishing in a PLL closed area. It would be awkward but it is feasible; NMFS enforcement should not require an adjustment to the definition. A PLL vessel is easy to spot by the amount of "bullet" floats and balls. While deployed, the gear is easy to determine by the consecutive "bullet" floats along the line. When a PLL vessel is engaged in BLL fishing, there is no consecutive string of "bullet" floats and a BLL vessel does not require hundreds of bullet floats; and, on the Grand Banks, fishermen use polyballs, bullet floats and radio buoys, but I do not know the exact number of each; Radio buoys are probably used more with PLL than with BLL gear.

*Response:* NMFS appreciates these comments. The proposed regulations did not contain new definitions for PLL and BLL gear, and did not define "fishing floats." Rather, comments were specifically requested on potential definitions for "fishing floats." While differences between PLL and BLL gear might be readily apparent, these comments highlight the difficulties associated with developing definitions that are quantifiable, understandable, practical, enforceable, and can accommodate a variety of different fishing techniques. These limitations greatly restrict the ability to develop practical, quantifiable definitions for PLL and BLL gear that are improvements over the existing definitions. For these reasons, and for those discussed in the response to Comment 1 above, NMFS believes that the current PLL and BLL definitions do not require significant modification, but can be strengthened by establishing limits on the types of species that can be possessed when fishing in HMS closed areas. In order to maintain operational flexibility for the HMS longline fleet, and in recognition of the impracticality of defining and limiting the number of "fishing floats" possessed or deployed, the allowable number of

floats is not limited. Nevertheless, the establishment of quantifiable gear-based criteria to differentiate between PLL and BLL gear using the recommendations contained in this comment could help to eliminate ambiguity between gear types in the future, if necessary. NMFS will continue to assess the need for, and potential effectiveness of, gear-based criteria. If needed, such criteria could be developed in consultation with the fishing industry to further improve the monitoring of, and compliance with, HMS closed areas.

*Comment 6:* Comments regarding the numbers of floats specified in alternative I1(b) included: The number of floats proposed for the PLL/BLL designation in alternative I1(b) (i.e., 71 or more floats for PLL) is appropriate, but fishermen could run into trouble with enforcement during test sets. These are sets fishermen use to determine what fish, if any, are in the area. Test sets are usually shorter and have fewer floats; NMFS is proposing too many floats to differentiate between BLL and PLL gear in alternative I1(b). BLL gear would have far fewer floats. Most BLL may have two to four floats with maybe a 12 to 15 maximum; and, a fisherman may do a short PLL set that would have less than 71 floats when fishing in closed areas and might be able to catch demersal fish, like sandbar sharks, on PLL gear.

*Response:* Based upon an analysis of the HMS logbook in the Draft Consolidated HMS FMP, NMFS believes that the number of floats specified in the proposed rule to differentiate between PLL and BLL gear was appropriate. The analysis indicated that at least 90 percent of all reported BLL sets in 2002 and 2003 possessed fewer than 70 floats, and approximately 95 percent of all reported PLL sets in 2002 and 2003 possessed more than 70 floats. However, public comment indicated that, in some instances, the float requirement could adversely affect operational flexibility. For this reason, and the others discussed in the responses to Comments 4 and 5 above, the allowable number of floats is not being limited. NMFS believes that the concern expressed in this comment regarding catching demersal fish on PLL gear in BLL closed areas will be adequately addressed by the final management measures, that limit the amount of species (either pelagic or demersal, as appropriate) that may be possessed or landed from HMS closed areas.

*Comment 7:* Alternative I1(b) may assist in defining "greenstick gear" by specifying the numbers of floats for pelagic and bottom longlines.

*Response:* The issues involved in defining "greenstick gear" are addressed in the Authorized Fishing Gear section. NMFS is not implementing management measures that would specify the allowable number of floats for PLL and BLL gear. If needed in the future, NMFS may consider distinguishing between greenstick and longline gear based upon the allowable number of floats.

*Comment 8:* NMFS received comments in opposition to alternative I1(c), including: I vehemently oppose preferred alternative I1(c) which differentiates between BLL and PLL gear based upon the species composition of the catch. There is no difference between PLL and BLL gear. BLL gear takes so long to set and retrieve that it can kill pelagic species while the hooks are being retrieved. Enforcement will be ineffective on this alternative. What is a vessel considered to be, PLL or BLL, after it has just switched from one mode to the other prior to harvest in the second mode?; and, I am opposed to this alternative because it will limit the abilities of the directed shark fishery.

*Response:* There is a difference between PLL and BLL gear. PLL gear fishes for pelagic species in the water column, while BLL gear fishes for demersal species and is in contact with the seafloor. Although the gears can each catch both types of species, the catch rates of demersal and pelagic species are very different between the gears. This fact is evident in the Coastal logbook where, on average, from 2000 - 2004, over 95 percent of the reported landings were demersal "indicator" species, as measured relative to the total amount of "indicator" species. Similarly, in the PLL logbook, from 2000 - 2004, on average, over 95 percent of the reported landings were pelagic "indicator" species, as measured relative to the total amount of "indicator" species. For this reason, a 5-percent threshold of pelagic and demersal "indicator" species will be established for BLL and PLL gear, respectively, on trips fishing in HMS time/area closures. NMFS recognizes that a small percentage of species caught on BLL and PLL gear will be the unavoidable bycatch of pelagic and demersal species, respectively. Also, the logbook data indicate that the 5-percent threshold would have been exceeded on a fishery-wide basis in 2004, whereas both fisheries (PLL and BLL) would have been well below the threshold from 2000 - 2003. If necessary, both the 5-percent threshold and the list of indicator species can be modified in the future based upon a review of current and historic landings and the effectiveness of the regulation.

Presently, the Agency does not expect that the final rule implementing a 5-percent threshold will significantly limit the abilities of either fishery. NMFS further believes that it is not unreasonable, or unduly burdensome, for HMS longline vessels to comply with the intent of the HMS closed areas and avoid pelagic or demersal species, especially when legally fishing in these areas with BLL or PLL gear, respectively. If any portion of an HMS longline trip occurs within a BLL or PLL closed area, then that vessel would be required to adhere to the 5-percent threshold for pelagic or demersal species, respectively. This management measure is readily enforceable, either through dockside verification of landings or by at-sea boardings. If difficulties arise in determining whether a vessel is fishing with PLL or BLL gear in a closed area using the existing definitions, the species composition of catch methodology will provide a quantifiable method to verify fishing technique.

*Comment 9:* Comments specifically referencing the 5-percent species composition threshold for differentiating between gears include: In order to differentiate between PLL and BLL gear, NMFS should prevent fishermen with BLL gear from landing any pelagic species in preferred alternative I1(c). This prohibition would eliminate the profit incentive and motive for violating closed areas and manipulating set time, depth at which gear is set, and the number of buoys; I am opposed to the 5-percent tolerance for species because there is too much variability in the catch. This ratio could also be problematic when combined with the alternative addressing dealers and vessels buying and selling fish in excess of retention limits, because there is no room for error and no way to dispose of catch that is useful; NMFS must make sure that the species composition lists in preferred alternative I1(c) are complete enough to allow for gear definitions based on species; and, tilefish should be added to the list of demersal indicator species.

*Response:* NMFS appreciates these comments. As discussed above in the response to Comment 8, both types of gear can occasionally catch both types of "indicator" species, pelagic and demersal. The establishment of a zero-tolerance for pelagic "indicator" species when fishing in PLL closed areas with BLL gear could create a situation where regulatory discards occur, due to the unavoidable bycatch of pelagic species. The final rule strikes an appropriate balance by establishing a 5-percent tolerance, which should discourage

directed fishing on pelagic species by BLL vessels and vice-versa, but not increase regulatory discards. Data from the Coastal and HMS logbooks indicate that, on average, vessels remained below this threshold from 2000 - 2004, although it would have been exceeded in 2004. Based upon public comment, NMFS has modified the list of demersal "indicator" species by removing hammerhead and silky sharks, and by adding tilefish to the list. If necessary, both the 5-percent threshold and the list of indicator species could be modified in the future based upon a review of current and historic landings.

*Comment 10:* More enforcement time should be spent at the docks rather than spending resources on investigating boats at sea. At-sea enforcement of alternative I1(c) could initiate unnecessary de-icing of fish in the hold while at sea, which has a substantial economic impact.

*Response:* As discussed above in the response to Comment 8, this final rule is readily enforceable, either through dockside verification of landings or by at-sea boardings. If difficulties arise in determining whether a vessel is fishing with PLL or BLL gear in a closed area using the existing definitions, the species composition of catch methodology will provide a quantifiable method to verify fishing technique.

*Comment 11:* The Gulf of Mexico Fishery Management Council and others have recommended that the preferred alternative be changed from I1(b) to I1(e); Base HMS time/area closures on all longlines (PLL and BLL); alternative I1(e) would be the easiest alternative to enforce. This is the only way to achieve a meaningful reduction in bycatch; billfish feed throughout the water column. To provide the proper protection needed, both types of longline gear should be prohibited from closed areas; alternative I1(e) should also prohibit buoy gear from the closed areas; alternative I1(e) is the only way to reduce bycatch and facilitate enforcement; and, how deep must BLL gear be set before it does not adversely affect pelagic species?

*Response:* NMFS agrees that the alternative to base all closures on both PLL and BLL gear would be the easiest to enforce. However, this final rule limiting bycatch is expected to be very effective at preserving the conservation benefits associated with the closed areas, while simultaneously mitigating adverse economic impacts on longline vessels fishing in the closed areas. When deployed and fished properly, available logbook information suggests that BLL and PLL gear can be set and retrieved with only minor impacts on

pelagic and demersal species, respectively. Closing these areas to all gears, therefore, would impose economic costs while achieving only minimal ecological benefits. NMFS anticipates that HMS longline vessels will continue to catch predominantly pelagic species in BLL closed areas, and demersal species in PLL closed areas. NMFS does not agree that areas closed to PLL or BLL gear also need to be closed to buoy gear. As discussed in the Authorized Fishing Gears section, NMFS is authorizing buoy gear in the commercial swordfish handgear fishery with gear marking requirements and limits on the number that may be deployed. These measures will prevent the uncontrolled future expansion of this gear sector, while simultaneously providing a reasonable opportunity for the U.S. to harvest its ICCAT swordfish quota.

#### ii. Shark Identification

*Comment 12:* We support alternative I2(a) which would retain the current regulations regarding shark landing requirements (No Action) because the preferred alternative, I2(b), could have a negative economic impact on the fish houses due to degradation of the product. The sharks could be exposed to heat after unloading and weighing, instead of going directly into the ice vats after weighing. It costs time and money to stop and try to cut off all the secondary fins, particularly small ones after the boat has docked and the fish house has begun the unloading efforts.

*Response:* In an effort to improve data collection, quota monitoring, and stock assessments of shark species, the Agency is implementing measures requiring that the second dorsal and anal fins remain on all sharks through landing. While offloading and processing procedures may have to be adjusted initially, NMFS believes that efforts to improve shark identification and enforcement of regulations will improve the overall status of the shark fishery. These measures are an intermediate action, relative to no-action and requiring all fins on all sharks, in terms of economic impacts, in that the second dorsal and anal fins are typically the least valuable and are usually sold as the lowest quality grade. Either the dealer or the fishermen can remove these fins after landing. If removing the fins at the dock becomes problematic, it is possible that fishermen could pre-cut fins, so that they are only partially attached, to decrease processing time. Alternatively, dealers could remove the fins later when processing the rest of the carcass.

*Comment 13:* NMFS received the following comments supporting the alternative to require the second dorsal and anal fins on all sharks: I support the preferred alternative; these measures will greatly enhance species-specific shark landing data and improve identification; retention of the second dorsal fin and anal fins of landed sharks, including nurse and lemon sharks, will improve quota monitoring, prohibited species enforcement, and species-specific identification of sharks; and, lemon sharks and great hammerheads have valuable fins- they should be ok to remove after landing.

*Response:* The final rule is expected to generate ecological benefits by enhancing and improving species identification and data collection, particularly in coordination with the final management measures requiring shark dealer identification workshops, thereby leading to improved management and a sustainable fishery.

*Comment 14:* Maintaining the second dorsal and anal fins on all sharks will do little to improve shark identification.

*Response:* The second dorsal and anal fins of sharks vary in color, shape, and size (relative to the body). While retaining these fins may not allow all shark species to be distinguished from each other, NMFS believes that it will aid shark identification at landing, which, in conjunction with species identification workshops, should reduce the number of unclassified sharks being reported. While retaining these fins is expected to enhance identification, other alternatives allowing these fins to remain on nurse and lemon sharks could confuse identification by allowing some sharks to be completely finned, and could have adverse ecological impacts.

### iii. HMS Retention Limits

*Comment 15:* NMFS received the following comment in support of the no action alternative I3(a): Proceeds from fish caught in excess of a vessel's trip limit should be donated to NMFS to help fund the observer program up to a certain limit, such as 5 percent, and fishermen should get fined for anything above that percentage.

*Response:* For each of the regulated HMS, specific trip limits have been developed based upon a number of biological, social, and/or economic reasons, such as the nature of the trip (commercial or recreational), the gear types used to harvest the fish, or the status of the stock in question. Thus, tolerance limits need to be developed for each individual species on a fishery-by-fishery basis, and may not be appropriate for all regulated species.

Also, even with tolerance limits, the likelihood of exceeding these limits would still exist and NMFS would likely continue to receive comments to adjust the limit or tolerance limit. The suggestion to fund the observer program through proceeds from fish landed above the trip limit raises a number of practical and legal concerns. If these concerns can be satisfactorily resolved, NMFS may consider this suggestion in the future, as needed.

*Comment 16:* Because NMFS is considering measures to strengthen HMS retention limits, does this mean that we are currently allowed to exceed the retention limits?

*Response:* No. Currently all vessels fishing for, retaining, or possessing Atlantic HMS, with the intent to sell that catch, must abide by the commercial retention limits as stated in §§ 635.23 and 635.24. The current prohibitions located in § 635.71 reinforce the applicability of these commercial limits. The final rule implements new prohibitions making it illegal for any person to purchase or sell any HMS from an individual vessel in excess of the commercial retention limits. As such, dealers or buyers of HMS in excess of commercial retention limits will be held responsible for their actions. These prohibitions are intended to improve compliance with HMS retention limits by extending the regulations to both of the parties involved in a transaction. They will reinforce and clarify other existing regulations regarding landings of HMS in excess of commercial retention limits.

*Comment 17:* NMFS received comments both in support of and opposition to alternatives I3(b) and I3(c). Those comments in support stated that NMFS needs to make all parties involved in a violation of the fishery regulations accountable, both vessel owners and dealers regardless if they are commercial or recreational. Those comments opposed stated: Alternatives I3(b) and I3(c) eliminate flexibility when it comes to shark landings. As scales are not used on small boats, vessel owner/operators can only estimate a trip limit at sea based upon a carcass count and an estimated average weight; and, concerns exist regarding the 5-percent shark fin/body ratio. The ratio is not correct as it was based on one species. Thus, we need to have species-specific ratios for these alternatives to be fair.

*Response:* The final rule is intended to improve compliance with HMS retention limits by extending the regulations to both of the parties involved in a transaction where HMS exceeding trip limits are sold or purchased. It will also reinforce and

clarify other existing regulations regarding landings of HMS in excess of commercial retention limits. As with any limitation on catch, vessel owner/operators must use their experience and professional judgment in determining where their harvest stands in regard to catch/possession/trip limits to ensure that they do not exceed the limits. Regarding the 5-percent tolerance limit on shark fins, this limit is currently dictated by the Shark Finning Prohibition Act. NMFS cannot alter this limit.

*Comment 18:* In addition to the selected alternatives, NMFS should enforce the existing prohibition on the sale of recreationally caught HMS. NMFS should levy heavy fines and permanent permit sanctions on the fishermen, vessel owner, and buyer if any bag limit fish are sold, traded, or bartered. NMFS should implement additional restrictive provisions in the Final Consolidated HMS FMP to prevent the illegal sale of recreational catches.

*Response:* The current suite of regulations and prohibitions contained in 50 CFR part 635 address the illegal sale, trade, and bartering of recreationally landed HMS. As the range of violations regarding these types of activities can vary greatly, the current penalty schedule provides enforcement agents and prosecutors with the flexibility to determine a suitable fine, based on information pertaining to each specific infraction.

### iv. Definition of "East Florida Coast Closed Area"

*Comment 19:* NMFS received contrasting comments on preferred alternative I4(b), which would modify the outer boundary of the East Florida Coast Closed Area so that it corresponds with the EEZ. These comments include: I support alternative I4(b), which amends the coordinates of the Florida East Coast closure; and, I am opposed to expanding any of the existing closed areas, including the East Florida Coast closed area described in preferred alternative I4(b). The PLL fleet needs every inch of available fishing grounds.

*Response:* NMFS does not expect a reduction in HMS catches associated with the final rule because the geographic size increase is very small (0.5 nm) and, according to the PLL logbook data, there have not been any recent catches or PLL sets in this area. Fishing effort that would have occurred in this area will likely relocate to nearby open areas with similar catch rates. Therefore, overall fishing effort is not expected to change as a result of the final rule. NMFS is correcting the

coordinates to reflect the original intent of the East Florida Coast closed area to extend to the outer boundary of the EEZ.

v. Definition of "Handline"

*Comment 20:* I support preferred alternative I5(b), which requires that handlines be tied to the boat. If it is tied to the boat it is a handline, if it is not, it is a longline.

*Response:* NMFS is implementing the referenced alternative which will require that all handlines remain attached to, or in contact with, a vessel. However, by authorizing buoy gear in the commercial swordfish handgear fishery (see Authorized Fishing Gears), unattached lines will not, by default, automatically be considered longline gear. Buoy gear will be authorized only in the commercial swordfish handgear fishery with gear marking requirements, hook limitations, and limits on the number that may be deployed. Both handlines and buoy gear will still be limited to no more than two hooks per line.

*Comment 21:* We support alternative I5(c), which would require fishermen to attach their handlines to their vessels, because handlines should remain as recreational gear (attached to the vessel) and buoy gear should be designated as commercial gear. However, there are times when fishermen need to detach their handlines, particularly when a large captured fish has spooled several reels, in order to retrieve the gear. Is that now going to be prohibited?

*Response:* Buoy gear will be authorized only for the commercial swordfish fishery. However, handlines are, and will continue to be, authorized in both commercial and recreational fisheries. The final rule requires that handlines remain attached to a vessel. It does not change which fisheries the gear is authorized for. The situation where a large fish spools several reels and must be "tethered-off" to retrieve the gear and/or the fish is an uncommon, but not rare, occurrence. The important factor in determining if this is an allowable practice is whether or not the handline was attached to the vessel when the fish was first hooked. Primarily to facilitate safety at sea, the handline could be "tethered-off" if it was attached to the vessel when the fish was hooked. NMFS anticipates that these situations will need to be examined on a case-by-case basis, in consideration of the circumstances affecting the decision to detach the handline.

*Comment 22:* How is the definition of "handline gear" different from the "buoy gear" definition?

*Response:* In the final rule, the main difference between the two gears is

whether or not the gear is attached to a vessel. If the gear is attached, it would be considered handline and could be used, with the appropriate permits, in any of the tunas, swordfish, or shark fisheries. If the gear is not attached, it will be considered buoy gear and can only be used in the commercial swordfish handgear fishery.

Specifically, handlines are defined as fishing gear that is attached to, or in contact with a vessel; that consists of a mainline to which no more than two hooks or gangions may be attached; and that is released and retrieved by hand rather than by mechanical means. Buoy gear is authorized for the commercial handgear fishery, and consists of one or more floatation devices supporting a single mainline to which no more than two hooks or gangions are attached. Buoy gear is required to be constructed and deployed so that the hooks are attached to the vertical portion of the mainline. Flotation devices may be attached to one, but not both ends of the mainline, and no hooks or gangions may be attached to any horizontal portion of the mainline. If more than one floatation device is attached to a buoy gear, no hook or gangion is allowed to be attached to the mainline between them. Individual buoy gears may not be linked, clipped, or connected together in any way. All buoy gears are required to be released and retrieved by hand. Fishermen using buoy gear will also be required to affix monitoring equipment to each individual buoy gear. Gear monitoring equipment may include, but is not limited to, radar reflectors, beeper devices, lights, or reflective tape. If only reflective tape is used, the vessel deploying the buoy gear is required to possess an operable spotlight capable of illuminating deployed floatation devices. Additionally, a floatation device is defined as any positively buoyant object rigged to be attached to a fishing gear.

*Comment 23:* Are floating handlines being used to catch juvenile swordfish in the East Florida Coast closed area?

*Response:* Available HMS logbook data from 2000 to 2004 indicate that the "handline-only" fishery grew significantly in 2004, and that catches and discards of swordfish in the "handline-only" fishery increased as well. However, the HMS logbook does not differentiate between "attached" and "unattached" handlines, and recreational data are limited. Given these limitations, it is not possible to determine conclusively if floating handlines are being used to catch juvenile swordfish in the East Florida Coast closed area. However, given that the legal minimum size is below the size of maturity, the average size of

swordfish caught across all fisheries is below the size of maturity. Because the area off the east coast of Florida is a known nursery ground for swordfish, it is likely that any fishing gear, including rod and reel or handline, used to catch swordfish off the east coast of Florida catches juvenile swordfish.

vi. Possession of Billfish on Vessels Issued HMS Commercial Permits

*Comment 24:* What types of permits would be affected by preferred alternative I6(b), which prohibits vessels issued commercial permits and operating outside of a tournament from possessing or taking Atlantic billfish?

*Response:* Under the final rule, only persons issued an HMS Angling or HMS Charter/Headboat, or who have been issued an Atlantic Tunas General Category permit and are participating in a registered HMS tournament, are allowed to possess or take an Atlantic billfish. Persons issued only Federal swordfish, shark, or Atlantic Tunas permits (including General Category permits outside of registered HMS tournaments) are not allowed to possess or take an Atlantic billfish. Persons issued both commercial and recreational HMS permits can take billfish, but only if the HMS species possessed onboard the vessel do not exceed the HMS recreational retention limits.

*Comment 25:* NMFS needs to make sure that the language in preferred alternative I6(b) is very clear in specifying that a commercial permit refers to HMS commercial fisheries.

*Response:* The regulations clarify that only persons issued an HMS Angling or HMS Charter/Headboat, or who have been issued an Atlantic Tunas General Category permit and are participating in a registered HMS tournament, may possess or take an Atlantic billfish. Persons issued non-HMS commercial permits may possess or take Atlantic billfish only if they have also been issued the appropriate HMS permits.

*Comment 26:* NMFS received several comments in support of, or in opposition to, the preferred alternative I6(b) including: I support preferred alternative I6(b) until Atlantic billfish stocks are rebuilt; we support prohibiting commercial vessels from possessing, retaining, or taking Atlantic billfish (alternative I6(b)); I support preferred alternative I6(b), because it would help to eliminate gillnet fisheries that kill billfish and other non-target species; I am opposed to preferred alternative I6(b) because all commercial vessels should be able to retain recreational bag limits; and, the preferred alternative I6(b) would have

more negative impacts than NMFS has listed presently in the DEIS.

*Response:* The final rule clarifies that commercial HMS vessels cannot possess or take Atlantic billfish. The regulations also clarify that the current Atlantic billfish fishery is a recreational fishery and that Atlantic billfish may only be possessed or retained when taken recreationally by rod and reel. These measures do not eliminate any existing fisheries, but indicate that commercial fishermen onboard gillnet or bottom longline vessels cannot retain a billfish taken with rod and reel for personal use, unless the vessel possesses both the recreational and commercial permits (e.g., a commercial shark limited access permit and an HMS Charter/Headboat permit) and if the other HMS onboard did not exceed the HMS recreational retention limits. Furthermore, General Category fishermen fishing for Atlantic tunas with rod and reel may not possess billfish outside of registered HMS tournaments. To the extent that some fishermen with commercial HMS permits may take billfish, there could be minimal impacts on commercial fishermen taking billfish for personal use. Current regulations do not allow commercial HMS fishermen to take recreational limits of HMS. NMFS believes that few commercial HMS fishermen take billfish, this alternative clarifies the regulations, and reinforces the recreational nature of the Atlantic billfish fishery. Once Atlantic billfish are rebuilt, NMFS may consider alternatives to allow persons issued HMS commercial permits to possess a limited number of Atlantic billfish for personal use.

#### vii. Bluefin Tuna Dealer Reporting

*Comment 27:* I support preferred alternative I7(b), which would allow tuna dealers to submit their required reports using the Internet; NMFS should move towards alternative I7(c), which would require mandatory internet reporting, as soon as possible.

*Response:* Due to the importance NMFS places on reporting, the Agency wants to ensure that reporting is both convenient and fair for all user groups. Mandatory Internet reporting will not be implemented until NMFS is confident that such an action will not impede the reporting process.

#### viii. "No-Fishing", "Cost-Earnings", and "Annual Expenditures" Reporting Forms

*Comment 28:* I support preferred alternative I8(b), which requires the submission of "no-fishing" forms. Is there latitude with logbooks coming in from different countries? If you do not

have all the parts of the logbook submission, should you send in what you have or wait until you have everything? For instance, I often do not have the offload tally by the time the logbook is due (seven days after offloading).

*Response:* As specified in the Atlantic HMS regulations 50 CFR 635.5, owners of vessels issued an HMS permit must submit a fishing record that reports the vessel's fishing effort, and the number of fish landed and discarded. This information should be entered in the logbook within 48 hours of completing that day's activities on a multi-day trip, or before offloading on a single day trip. Additionally, if HMS are sold, the vessel owner must acquire copies of the weigh out slips for submittal with the logbook forms. All forms must be postmarked within seven days of offloading HMS, regardless of offloading location. The final rule does not change these requirements.

#### ix. Non-Tournament Recreational Landings Reporting

*Comment 29:* Vessel owners should not have to report their recreationally-caught fish because they are often too busy (e.g., absentee boat owners that fly into Florida from New York City for the weekend).

*Response:* Because vessel owners are issued HMS permits, the recreational non-tournament reporting requirement should logically, and for compliance purposes, be the responsibility of vessel owners. Furthermore, since vessel owners are the permit holders, they are more likely to be familiar with the regulations governing their fishery than non-permitted anglers who might be onboard, possibly for just a day on a charter trip. The final rule will achieve better consistency with other HMS recreational reporting requirements, and may also enhance the accuracy of, and compliance with, non-tournament HMS recreational data collection. However, in response to this comment and other comments, NMFS has slightly modified the proposed regulations to allow an owner's designee to report non-tournament recreational landings of Atlantic billfish and swordfish. The vessel owner will still be held responsible for reporting, but the owner's designee may fulfill the requirement.

#### x. Pelagic Longline 25 mt NED Incidental BFT Allocation

*Comment 30:* NMFS should clarify whether "carryover" provisions would apply to the underharvest of the 25 mt NED BFT quota set-aside described in alternative I10(b).

*Response:* The alternative that was formerly preferred in the Draft Consolidated HMS FMP would have clarified that carryover procedures apply to the NED set-aside, and that any under/overharvest of the 25 mt (ww) NED set-aside would be carried forward into, or deducted from, the subsequent fishing year's set-aside allocation. This alternative was originally preferred in the Draft Consolidated HMS FMP, but after subsequent analysis of the recommendation and in response to comments seeking clarification, the Agency has determined that the ICCAT recommendation provides the flexibility to avoid some of the potential negative consequences associated with the carryover provisions of alternative I10(b). Alternative I10(c) is now the preferred alternative.

*Comment 31:* NMFS received a comment in support of alternative I10(b), which would allocate 25 mt (ww) for PLL incidental catch in the NED each year.

*Response:* This alternative was originally preferred in the Draft Consolidated HMS FMP, because NMFS believed that its interpretation would provide consistency between the regulations and operational practices regarding rollovers and final set-aside quotas in excess of 25 mt (ww). However, since publication of the Draft Consolidated HMS FMP, additional analysis of the ICCAT recommendation indicated that the previously preferred alternative, I10(b), might have some potential negative consequences that could be avoided. Thus, under alternative I10(b), incidental BFT landings from the NED Statistical area would be accounted for in this specific set-aside quota and any under/overharvest of the set-aside quota would have been added to, or deducted from, the following year's baseline quota allocation of 25 mt (ww). The under/overharvest accounting procedures contained in this alternative may have some potentially adverse ecological impacts. Specifically, if the NED set-aside was not attained in multiple successive years, the set-aside quota could increase quite dramatically and, as the wording in the ICCAT recommendation specifically allocates this quota to the longline sector of the U.S. fleet, NMFS would not have the flexibility to transfer this quota to the Reserve or to another domestic user group, to avoid a "stockpiling" situation from occurring. An unrestrained build-up of the incidental NED set-aside BFT quota may eventually undermine the intent of the set-aside itself by leading to additional effort being deployed in the NED, and potentially providing an

incentive to direct additional effort on BFT. For example, this set-aside could increase to a level that makes it more attractive for PLL vessels to target BFT, which could possibly result in negative impacts to BFT stocks. Therefore, this alternative is no longer preferred and, instead, alternative I10(c) is preferred. Alternative I10(c) will not carry forward any under/overharvest, until such time as further ICCAT discussions regarding quota rollovers are conducted.

#### xi. Permit Condition for Recreational Trips

*Comment 32:* NMFS received comments in support of preferred alternative I11(b) including: We support preferred alternative I11(b) because it will enhance Atlantic shark conservation efforts while ASMFC develops an interstate FMP; and, I support the presumption that an HMS onboard a vessel was caught in Federal waters, because the current regulations cause enforcement problems.

*Response:* NMFS agrees that this final rule will enhance HMS conservation efforts and will improve the enforcement of HMS regulations. Currently, in many states, fishermen are able to bypass both Federal and state regulations by stating they were fishing in state waters, rather than Federal waters, or vice versa. Under this rule, recreational fishermen fishing in Federal waters, who have a Federal permit, must comply with the more restrictive regulation if they are obtaining a Federal permit. Recreational fishermen who do not have a Federal permit will continue to have to comply with only state regulations. Thus, as a result of this final rule, enforcement officers will no longer need a statement from a fisherman with a Federal permit regarding where the fish was caught. Rather, they will be able to take enforcement action under the more restrictive regulations. This requirement has been in place for a number of years for shark and swordfish commercial fishermen and has been useful in enforcing commercial regulations.

*Comment 33:* Will NMFS consider the full suite of regulations implemented by states with regard to HMS or will it simply look at each regulation individually? How does NMFS intend to define "strict?"

*Response:* Each situation will need to be examined on a case-by-case basis; however, it is likely that the regulations will be enforced individually rather than as a suite. For instance, if a state has a larger bag limit and larger minimum size than the Federal regulations, the fishermen will be

limited by both the Federal bag limit and the state minimum size.

*Comment 34:* NMFS could say that all HMS vessels with Federal permits (instead of just recreational-permitted vessels) should comply with Federal regulations when in Federal or state waters.

*Response:* NMFS already has a requirement in place for commercial shark and swordfish fishermen. NMFS also has the authority, under the Atlantic Tunas Convention Act (ATCA), to manage Atlantic tunas all the way to shore for most states. This final rule will improve the enforcement of the remaining fisheries (recreational shark, swordfish, and billfish) without superseding the regulations of the states. Thus, the final rule will allow states to establish their own regulations for shark, swordfish, and billfish fishermen who are fishing only within state waters (Maine and Connecticut can also establish their own regulations for Atlantic tunas). NMFS has the authority to pre-empt states regarding HMS under both the Magnuson-Stevens Act and ATCA. However, NMFS prefers to work with states and the Atlantic and Gulf States Marine Fisheries Commissions towards consistent regulations that meet both international and domestic goals, because each state is different and the fishermen in each state prefer to fish for different HMS and use different gears. If necessary to ensure rebuilding under the HMS FMP or under an ICCAT Rebuilding Program, NMFS may consider pre-empting state authority for specific HMS.

*Comment 35:* The South Atlantic Fishery Management Council (SAFMC) and the State of Georgia commented that the preferred alternative I11(b) should be revised as for state/federal regulations does not implement the correct intent as: For allowable Atlantic billfish (and other HMS that can legally be included), if a state has a catch, landing, or gear regulation that is more restrictive than a catch, landing, or gear regulation in the HMS FMP, a person landing in such state Atlantic Billfish (and other HMS to be included) taken from the U.S. EEZ must comply with more restrictive state regulation. The requirement should be a two-way street where more restrictive state regulations should apply in adjacent federal waters.

*Response:* Individual states establish regulations for billfish or other HMS caught in state waters, which may sometimes be more restrictive than the federal regulations. This final action would not change state regulations of fishing in state waters. Federal regulations are established based on ICCAT recommendations (e.g., the

billfish size limits), implemented as necessary and appropriate pursuant to ATCA and based on the Magnuson-Stevens Act. Selected alternative I11(b) is intended to ensure compliance with these laws and Federal regulations by federally-permitted vessels.

*Comment 36:* HMS needs to check with the Regional Fishery Management Councils to make sure they are not running afoul of one another. The preferred alternative I11(b) could create more confusion if there is not a consistent policy for all Federal fishery regulations.

*Response:* While NMFS agrees that consistent policies across fisheries regulations are often appropriate, NMFS disagrees that a regulatory requirement would cause confusion if it were not consistent across the different Regional Fishery Management Councils. Currently, recreational fishermen fishing for HMS are the only Federally regulated recreational fishermen that are required to obtain a recreational fishing permit. Recreational fishermen fishing for HMS in Federal waters are already familiar with and abide by Federal regulations for HMS. Similar to other regulations, a permit condition that is appropriate for HMS may not be appropriate for a species managed by a Regional Fishery Management Council. A Federal permit condition for those HMS fishermen who also fish for HMS in state waters should not cause confusion with other Federal regulations for other species managed by Regional Fishery Management Councils. Nevertheless, NMFS will continue to work with the affected Regional Fishery Management Councils to ensure consistency, as needed.

*Comment 37:* Texas Parks and Wildlife opposes the preferred alternative I11(b), which would establish a permit condition on recreational permit holders. The alternative would increase confusion because it applies only to HMS and not to the many other species in state waters. Second, Texas regulations require that recreational landings in Texas meet Texas bag and size limits regardless of where the fish was caught unless the regulations in the waters where they were caught are more restrictive. Third, the preferred alternative applies only to Federal permit holders and would therefore create a scenario where different regulations apply in the same location. Lastly, the alternative does not simplify already confusing and complex regulations.

*Response:* NMFS does not agree that a recreational permit condition will increase confusion. This regulation will

decrease confusion by clarifying that fishermen who are permitted to fish for HMS in Federal waters must comply with Federal regulations regardless of where they are fishing, and that if they are fishing in state waters they must comply with the more restrictive regulation. Without this regulation, fishermen may need to comply with one regulation while fishing in Federal waters and another regulation while fishing in state waters. The final rule clarifies the situation if fishermen are fishing in both state and Federal waters on the same trip. With regard to the second point, the State of Texas has implemented a regulation for its waters that mirrors the regulation that NMFS is selecting. The Federal requirements will not change this and may complement the regulation by ensuring that federally permitted fishermen do not exceed either the Federal or Texas bag and size limits when fishing in or near Texas waters. NMFS agrees that different regulations could apply to federally permitted fisherman fishing in state waters next to a state-only permitted fisherman. This should not be an issue since the more restrictive regulation would apply. It may appear to be unfair to the federally permitted fisherman if the Federal regulations for that species are more restrictive than the state regulations for that species. However, the federally permitted fisherman also has the opportunity to fish for HMS outside of state waters. If the federally permitted fisherman decides that the opportunity is not worth the additional restrictions, then that fisherman could decide not to obtain the permit. The final rule will not change the regulations for state-only permitted fishermen, who are restricted to fishing within state waters and must comply with state, not Federal, regulations.

*Comment 38:* While the South Carolina Department of Natural Resources understands the importance of consistent protection for HMS in state and Federal waters, we do not believe it was the intent of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to regulate fisheries in state waters except under unusual circumstances. We request that preferred alternative I11(b) be deleted from the plan, and that HMS caught within state waters be regulated through complementary state legislation and regulations, or through provisions already existing in the Act that address special cases.

*Response:* NMFS does not agree that the requirement is regulating fisheries in state waters. The Magnuson-Stevens Act authorizes the Secretary of Commerce to manage HMS fisheries to ensure their

conservation and the achievement of optimum yield throughout their range, both within and beyond the exclusive economic zone (16 U.S.C. 1812). Requiring recreational fishermen to comply with Federal regulations regardless of where they are fishing, unless a state has more restrictive regulations, allows NMFS to manage these fisheries in a more effective manner. Additionally, the requirement will only apply to those fishermen that obtain a Federal permit because they fish in Federal waters at some times. The requirement will not change state regulations. Thus, states can establish their own regulations for fishermen who fish in state waters and not in Federal waters. Fishermen still have a choice not to obtain a Federal permit and to comply only with state regulations in state waters.

#### xii. Proposed Regulatory Changes that Do Not Need Alternatives

*Comment 39:* We support the regulatory changes that do not have alternatives.

*Response:* NMFS appreciates this comment. The regulatory changes that did not need alternatives included corrections, clarifications, minor changes in definitions, and modifications to remove obsolete cross-references. It is necessary to make these types of regulatory changes as dates expire, and as minor issues are brought to the Agency's attention.

*Comment 40:* NMFS received a comment regarding the changes to clarify the definition of "shark" and the shark "management unit": I am concerned about any item that lessens conservation on deepwater sharks; and, deepwater sharks should be added to the prohibited list rather than removed from the management unit.

*Response:* The minor changes to the shark definition and management unit will not diminish the conservation of deepwater sharks. Deepwater sharks were previously placed in the management unit in order to prevent finning for these species. No other regulations (e.g., permits, quotas, or bag limits) were placed on these species. With the implementation of the Shark Finning Prohibition Act in 2002 (February 11, 2002, 67 FR 6194), NMFS decided the species were fully protected against finning through regulations outside of the FMP, and thus, removed the species from the management unit in Amendment 1 to the 1999 Atlantic Tunas, Swordfish, and Shark FMP (December 24, 2003, 68 FR 74746). The referenced changes clarify the existing regulations by linking the definition of "shark" more directly to the definition

of the shark "management unit." NMFS will continue to collect information on deepwater sharks and may add them to the management unit or implement additional management measures in the future, as needed.

*Comment 41:* The proposed changes to the HMS tournament registration process appear to complement proposed improvements to HMS tournament registration, data collection, and enforcement described in Alternative E9. Data collection should be mandatory for all tournaments, just as it has been for all non-tournament landings since 2003. There must be more accurate estimates of billfish mortality.

*Response:* These regulatory changes, which specify that HMS tournament registration is not considered complete unless the tournament operator receives a confirmation number from the HMS Management Division, will serve a very similar purpose to the non-preferred alternative, which would have implemented a mandatory HMS tournament permit. HMS tournament registration is already mandatory, so the issuance of a confirmation number will provide verification that the process is complete in a much less burdensome manner. Currently, NMFS can select all registered HMS tournaments for mandatory reporting. Data obtained from HMS tournament reporting is used for a variety of purposes.

#### *Essential Fish Habitat (EFH)*

*Comment 1:* NMFS should look at recent Sargassum research that suggests that Sargassum is essential fish habitat for juvenile billfish. The United States should pursue all appropriate opportunities to ensure that this unique EFH is protected in international waters from excessive harvest and degradation.

*Response:* NMFS is aware of recent research regarding the role of Sargassum as EFH for certain species, including HMS. However, NMFS does not have the authority to identify and describe EFH in international waters. Furthermore, NMFS is not modifying the current descriptions or boundaries of EFH in the Consolidated HMS FMP. Rather, NMFS gathered all new and relevant information and presented it in the Draft FMP to determine whether changes to EFH may be warranted. If NMFS determines that EFH for some or all HMS needs to be modified, then that would be addressed in a subsequent rulemaking, at which point Sargassum could also be considered as potential EFH. With regard to harvest, the final South Atlantic Fishery Management Council FMP for Pelagic Sargassum Habitat in the South Atlantic Region was approved in 2003 and implemented

strict restrictions on commercial harvest of Sargassum. The approved plan includes strong limitations on future commercial harvest. Restrictions include prohibition of harvest south of the boundary between North Carolina and South Carolina, a total allowable catch (TAC) of 5,000 pounds wet weight per year, limiting harvest to November through June to protect turtles, requiring observers onboard any vessel harvesting Sargassum, prohibiting harvest within 100 miles of shore, and gear specifications.

*Comment 2:* The U.S. proposal at ICCAT to identify Sargassum as EFH was met with absolute resistance. NMFS has to be careful in dealing with this subject in an international forum. It can undermine what NMFS is trying to do.

*Response:* NMFS is aware that there are many issues to consider with regard to identifying and describing Sargassum as EFH for HMS species. In addition, there are potential international concerns, as expressed at ICCAT, regarding Sargassum as sensitive and valuable habitat. NMFS will continue to examine these issues carefully, and work to improve our understanding of the role of Sargassum as valuable habitat for HMS.

*Comment 3:* Does NMFS have data to justify not designating the entire northern Gulf of Mexico as EFH, where the paper in the journal "Nature" shows the presence of adult BFT from January to June?

*Response:* As described in response to comment 1, NMFS is not currently changing any of the EFH areas identified for HMS, including EFH for BFT through this FMP. However, large portions of the Gulf of Mexico are already identified as EFH under the original EFH descriptions in the 1999 FMP for several life stages of BFT, including adult and larval BFT.

*Comment 4:* The HMS regulations should acknowledge and comply with Gulf of Mexico EEZ EFH and Habitat Areas of Particular Concern (HAPC) designation and regulations, including any future designations that the Gulf of Mexico Fishery Management Council may make when conducting the subsequent rulemaking mentioned in the Draft Consolidated HMS FMP.

*Response:* NMFS agrees that any future modifications to EFH or new HAPC areas in the Gulf of Mexico, or any region for that matter, should be coordinated with appropriate Regional Fishery Management Council designations and regulations. The EFH guidelines require NMFS to consider fishing and non-fishing impacts of other fisheries on HMS EFH, as well as the

impact of HMS fishing activities on EFH for other federally managed species.

*Comment 5:* What process did NMFS use to identify shark EFH areas north of Cape Hatteras? EFH boundaries appear to follow bathymetric contour intervals. Is this deliberate or just a coincidence?

*Response:* EFH areas north of Cape Hatteras were identified and described in the 1999 FMP through a combination of fishery dependent and independent surveys and data collection, research, and the input of fishery managers and scientists. References to peer-reviewed scientific publications that were used to help identify important spawning and nursery habitat for sandbar and dusky shark are included in the 1999 FMP as well as the Consolidated HMS FMP. As described in the 1999 FMP, in some cases bathymetric contours were used to help delineate EFH boundaries because they can mirror the observed distributions of HMS and important areas for spawning, feeding, and growth to maturity.

*Comment 6:* NMFS should not use the same process the Gulf of Mexico Fishery Management Council did in identifying EFH and impacts to EFH. The Gulf of Mexico Fishery Management Council managed areas are completely different, and people fish differently here (in the Atlantic) than in the Gulf of Mexico.

*Response:* The species managed by each of the Regional Fishery Management Councils are unique, with characteristics that require different approaches and methodologies for identification and description of EFH, including addressing both fishing and non-fishing impacts. Similarly, HMS have unique habitat requirements that require a unique approach to identification of EFH. However, EFH guidelines require NMFS to consider fishing and non-fishing impacts of other fisheries on HMS EFH, as well as the impact of HMS fishing activities on EFH for other federally managed species. Therefore, NMFS must coordinate with the relevant regional fishery management councils as part of the process of modifying EFH.

*Comment 7:* Does HMS EFH include liquefied natural gas (LNG) facilities?

*Response:* NMFS has not specifically identified the structures associated with LNG facilities as EFH, however, these structures may be located within waters that have been identified as HMS EFH. For example, there are energy production facilities off the coast of Louisiana and Texas that may fall within EFH identified and described for BFT, yellowfin tuna, swordfish, and other HMS species.

*Comment 8:* NMFS received several comments regarding BFT EFH in the

Gulf of Mexico including, NMFS must identify the Gulf of Mexico spawning area as EFH for BFT and consider appropriate measures to minimize the impact of fishing on this EFH, and if NMFS identifies the Gulf of Mexico BFT EFH, then NMFS should include the rest of the Atlantic and the Mediterranean also.

*Response:* Portions of the Gulf of Mexico, Florida east coast, and the Atlantic were identified and described as adult and larval BFT EFH in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks, and the areas remain in effect to this day. NMFS is reviewing new and existing information, including data on potential BFT spawning areas, and will take that information into account if any modifications to EFH areas are proposed in a future rulemaking. NMFS does not have the authority to identify and describe EFH outside of the U.S. EEZ.

*Comment 9:* NMFS is to be commended for substantial progress in development of the HMS EFH Plan. NMFS has come a long way in identifying EFH and should be congratulated on the work completed in the EFH review and the review of fishing impacts. However, there is still a disconnect between the available data, especially with sharks, and what is in the Draft Consolidated HMS FMP. NMFS should do a better job of including data from research institutions and grants. NMFS should include individual researcher's names that have contributed toward identifying EFH.

*Response:* NMFS appreciates the favorable comment, while acknowledging that there is considerable work left to do to accurately identify and describe EFH for HMS. As described in the Final Consolidated FMP, significant hurdles must be overcome and NMFS is attempting to address these. For example, NMFS is continually working with NMFS scientists and other experts to update relevant data regarding HMS EFH as it becomes available. NMFS will also include the names of researchers responsible for collecting the data. Where possible and appropriate, NMFS has already included the names of individual researchers in the text, maps, and tables.

*Comment 10:* NMFS needs to update EFH for sandbar sharks, all age groups, by including a nursery area in the western Gulf of Mexico off the Texas coast, which is a straddling stock with Mexico. It gets into the straddling stock issue instead of the closed stock scenario. NMFS needs to recognize the reality of the straddling stock. This area

is referred to in Stewart Springer's "The Natural History of the Sandbar Shark."

*Response:* NMFS is aware of research done by Springer (1960) who proposed the existence of two breeding populations of sandbar sharks, one off the mid-Atlantic coast, and one in the Gulf of Mexico. One of the research recommendations of the 2005 LCS Stock Assessment was to identify nursery areas of sandbar sharks in the northern Gulf of Mexico, and NMFS will consider this information in any subsequent updates or modifications to sandbar shark EFH. Although the Springer research showed a few neonates (newborns) in the Gulf of Mexico, there may not have been enough to consider this area a primary nursery habitat like the mid-Atlantic.

*Comment 11:* NMFS has identified HAPCs off of North Carolina and other areas further north. Since NMFS has implemented a closure off North Carolina, NMFS should also bring Virginia into compliance to discourage shark fishing during pupping periods.

*Response:* NMFS agrees, and has asked Virginia to implement state regulations that complement the Federal regulations. Recently Virginia implemented a 4,000 lb trip limit consistent with the Federal regulations. NMFS is continuing to work, through ASMFC and the development of a coastwide state fishery management plan, with Virginia and other states to implement similar regulations as the Federal fishery.

*Comment 12:* NMFS should consider differences between monofilament and cable bottom longline when it comes to gear and impacts to coral reefs and sponges. Bottom longline gear would not damage mud bottoms.

*Response:* NMFS agrees that the type of gear used to fish in sensitive habitat areas may affect the overall impacts. NMFS will also be looking at overall fishing effort in sensitive coral reef areas to determine whether fishing impacts are more than minimal and not temporary. If NMFS finds that the adverse fishing effects on EFH are more than minimal and not temporary in nature, then NMFS will have to consider alternatives to reduce fishing impacts.

*Comment 13:* Most HMS gears such as pelagic longline would not affect HMS EFH.

*Response:* NMFS agrees that gears used to fish for HMS, with the possible exception of bottom longline gear, would have little or no impact on HMS EFH.

*Comment 14:* NMFS should look at sink gillnets and possible impacts on EFH. Fishermen may not want to fish on

live bottom and reefs, but they do hit them as evidenced by the catch, which includes various reef species that they catch incidentally. These may include HMS forage species as well. NMFS should investigate the possible impacts of sink gillnet gear on offshore hard bottoms and reefs. This gear is being deployed on sensitive sponge-coral areas.

*Response:* The full extent of sink gillnet impacts on benthic habitat is not known at this time. NMFS agrees that the primary adverse impact of sink gillnets to sensitive habitat would be to areas containing coral reefs or soft sponges. Sink gillnets set on sandy or mud bottom would be less likely to have an adverse effect, as there would be little vertical structure that could be damaged. NMFS will continue to gather information to assess whether sink gillnets are having adverse effects on EFH and whether actions to minimize adverse impacts should be taken in a future rulemaking.

*Comment 15:* Will NMFS be documenting where the prey species are found?

*Response:* Similar to what was done in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks, NMFS will document areas that are important to HMS for spawning, feeding, breeding, and growth to maturity. This will require identification of prey species and the degree to which they overlap both temporally and spatially with HMS in a given area.

*Comment 16:* NMFS should consider EFH designation for forage species for BFT in the Gulf of Maine. By removing prey species such as herring, mid water trawling has been destroying BFT in the Northeast. Fish are moving to Canada, and Canada would be happy to take our fish. Mid-water trawling is banned in Canadian waters, and they have a booming BFT fishery right now. We have seen in the past that the BFT will modify their migrations, and we would not want to see that happen now. We are disappointed to see that this has not been addressed at all in the FMP. The New England Fishery Management Council is taking Amendment 7 under consideration, and we would like to see an emergency rule take place to ban mid-water trawling gear.

*Response:* In the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks, NMFS identified and described large portions of the Gulf of Maine as EFH for adult BFT, and smaller portions of the Gulf as EFH for juvenile BFT. As set forth in the EFH guidelines, loss of prey species may be an adverse effect on EFH and managed species because the presence of prey makes waters and

substrate function as feeding habitat. Therefore, actions that reduce the availability of a major prey species, either through direct harm or capture, or through adverse impacts to the prey species' habitat that are known to reduce the population of the prey species, may be considered adverse effects on EFH if such actions reduce the quality of EFH. However, as described in the FMP, BFT are opportunistic feeders that prey on a variety of schooling fish, cephalopods, benthic invertebrates, including silver hake, Atlantic mackerel, Atlantic herring, krill, sandlance, and squid. Thus, NMFS needs to determine the extent to which herring or other prey species contribute to BFT EFH, and whether the removal of a portion of herring in the Gulf of Maine constitutes a negative effect on BFT EFH prior to taking any action. The EFH areas identified and described as EFH for adult BFT in the Gulf of Maine may overlap with a number of different prey species in the area in addition to Atlantic herring. These types of analyses would be part of a follow up rulemaking in which any changes to EFH boundaries, as well as any measures to minimize adverse effects, would be proposed. NMFS will continue to examine the importance of forage species on BFT and other HMS EFH.

*Comment 17:* NMFS should implement similar measures for herring as those taken by the New England Fishery Management Council. Even though herring are not a HMS species, HMS are part of sustainable fisheries, and NMFS has an interest at stake. HMS should speak up when NMFS is considering what to do with the herring plan.

*Response:* The New England Fishery Management Council has proposed several measures for the Atlantic herring fishery in the Gulf of Maine, including limited access permits, a mid-water trawl restricted area, area specific total allowable catches, and vessel monitoring systems, among others. NMFS is following the development of the FMP and will provide comments on the plan as appropriate.

*Comment 18:* EFH designations are intended to address the physical habitat and not forage species. EFH is not an appropriate forum to address forage issues. For example, herring fishermen could say that they cannot catch herring because the BFT are eating them all. The timing and location of harvest is a management issue, not a habitat issue. This is a question about access.

*Response:* The EFH guidelines state that FMPs should list the major prey species for the species in the fishery

management unit and discuss the location of prey species habitat, and that loss of prey may be considered an adverse effect on EFH. Thus, NMFS considers it appropriate to examine the presence of Atlantic herring and their role as a forage species for BFT.

*Comment 19:* NMFS should not draw too many conclusions on less than complete data. HMS species are ocean-wide. NMFS needs to get the international forum involved. They have used very progressive research techniques. Predator-prey relationships are important to every species.

*Response:* NMFS has been cautious in the interpretation of data based largely on presence or absence (level 1). While there is a great deal of ongoing research to identify and describe EFH, in many instances the research is localized or regional in nature, whereas HMS exhibit trans-regional movement and migrations. This makes identifying and describing EFH for HMS particularly challenging. For example, even though researchers may identify an area in the Gulf of Mexico as EFH for a particular species, those habitat characteristics may not necessarily constitute EFH for the same species in other regions. Furthermore, NMFS can only identify and describe EFH within the U.S. EEZ, pursuant to the Magnuson-Stevens Act.

*Comment 20:* The definition of EFH for Atlantic HMS should be modified to include the geographic range of the species and to add the availability of forage for HMS in critical areas, in time and space.

*Response:* The EFH guidelines require EFH to be distinguished from the geographic range of the species. The principle of the EFH provisions in the Magnuson-Stevens Act was to identify only those areas that are essential for feeding, breeding, or growth to maturity, and not all areas where a particular species is present. For example, if only level 1 information is available, distribution data should be evaluated to identify EFH as those habitat areas most commonly used by the species. Level 2 through 4 information, if available, should be used to identify EFH as the habitats supporting the highest relative abundance, growth, reproduction, or survival rates within the geographic range of a species. The geographic range for HMS is extremely large and would likely result in identifying all areas in the EEZ as EFH. Due to the vastness of such an area, it would be difficult to propose effective conservation measures. Narrowing or refining the extent of EFH can improve NMFS's ability to focus its conservation and management efforts on those habitats most important to the health of the

managed species. NMFS agrees that forage species may be an important component of HMS EFH and has taken steps to identify those areas.

*Comment 21:* Shark pupping and nursery areas remain unprotected. Conserving shark habitat is closely linked with state cooperation. NMFS should continue to fund and encourage research into shark EFH and to publish and distribute the results of such studies.

*Response:* NMFS disagrees that shark pupping and nursery areas remain unprotected. In 2005, NMFS implemented a time/area closure off North Carolina in shark pupping and nursery areas to reduce the bycatch and mortality of neonate (newborns) and juvenile sandbar sharks as well as all life stages of prohibited dusky sharks. While there are many other areas that may not have the same level of protection, NMFS currently closes the large coastal shark (LCS) fishing season from April through June to reduce impacts on pregnant females who may be moving into coastal areas for pupping. Many states have implemented a similar closure of state waters for LCS shark fishing during these months consistent with the Federal regulations. Finally, most HMS gears have little or no impact on HMS EFH. Bottom longline gear is the only HMS gear that may affect hard bottom habitat such as corals and sponges, but many shark pupping and nursery areas are located outside of these habitat types. NMFS continues to fund shark research, such as surveys conducted through the Cooperative Atlantic States Shark Pupping and Nursery Areas (COASTSPAN) and a similar survey in the Gulf of Mexico (GULFSPAN), and will continue to distribute the results of such studies.

*Comment 22:* NMFS must continue to recognize that these HMS must be conserved through out their range internationally. Assumptions made on partial information may not necessarily be valid Atlantic-wide.

*Response:* NMFS agrees that it is important to consider habitat conservation measures throughout the range of HMS which may include international waters, particularly for tunas, swordfish, billfish, and pelagic sharks. NMFS has taken steps in the past to raise the level of awareness of the importance of certain habitats such as Sargassum at ICCAT, and will continue to try to lead the effort in promoting conservation of HMS EFH. However, as discussed in an earlier response, NMFS is only authorized to identify and describe EFH within the

U.S. EEZ pursuant to the Magnuson-Stevens Act.

#### *Economic and Social Impacts*

*Comment 1:* The high fuel costs are having a tremendous negative economic impact on all U.S. commercial fisheries. While prices for fuel and fuel products have dramatically risen, the price of fish has nearly collapsed our markets far below the levels necessary for profitable operations, due in part to a flow of imports from largely unregulated sources.

*Response:* NMFS recognizes that fuel prices have recently risen to above average levels and continue to fluctuate. The Agency is monitoring the impacts of high fuel costs and other expenses as part of ongoing cost and earnings data collection efforts in the HMS fisheries. The Agency encourages fishermen to participate in this data collection effort on a voluntary basis in order to improve the quality of information available on HMS commercial fisheries. The trend in ex-vessel prices for HMS fish has varied by species and is detailed in Chapter 3 of the Final Consolidated HMS FMP. The flow of imports of many HMS products are managed by international agreements, include ICCAT and the supply of imports will vary based on market forces. Details regarding information concerning imports are also detailed in Chapter 3 of the Final Consolidated HMS FMP.

*Comment 2:* Holding workshops for just owners and captains could have an impact on the market. A number of captains coming in at the same time to the workshop means they will end up fishing at the same time and bringing fish to the market at the same time.

*Response:* NMFS acknowledges that holding workshops that bring together owners and captains at the same time could have an impact on local markets. As discussed in Chapter 4 of the Final Consolidated HMS FMP regarding workshops, the Agency plans to minimize these impacts by timing workshops to coincide with closed seasons, moon phases, and other events that normally are down times for local HMS fishing operations where workshops will be held. Fishermen will also have the option of attending workshops in other neighboring regions on different dates.

*Comment 3:* NMFS received comments emphasizing the economic importance of recreational fishing for HMS and concern regarding the economic impacts additional regulations could have on the recreational sector of local economies. Comments include: fishing is a key part of the whole coastal economy and

NMFS should take care not to over-regulate; tourists have many options, and may choose not to fish if the regulations are too burdensome and decrease enjoyment; the Mid-Atlantic \$500,000 tournament brings over 2,000 people to Cape May County who will eat, sleep, and shop in this tourism dependent area for the length of the tournament spending an estimated \$450,000 in lodging alone and this event is very important to this tourism driven economy, providing jobs for year-round residents and students who earn college money during the summer months; and the economic value of recreational fishing is much greater than that of commercial fishing, and according to a 2001 United States FWS report, the value of the recreational fishery is \$116 billion.

*Response:* NMFS recognizes the economic importance of recreational fishing for HMS, including its impact on tourism, lodging, and local employment. Chapters 3 and 4 of the Final Consolidated HMS FMP have sections regarding billfish that provide extensive information regarding the economic importance of recreational anglers and tournaments.

*Comment 4:* We are disturbed by the lack of any economic data or references for the recreational sector. This indicates a lack of concern for the recreational sector and ignores the enormous economic impact of this sector.

*Response:* NMFS has taken measures to improve the amount of economic data and references regarding the recreational sector of the HMS fishery. This information is detailed in Chapters 3 and 4 regarding billfish, and Chapter 4 regarding authorized gear. Direct measures in this HMS FMP regarding the recreational sector include, but are not limited to, the authorization of speargun fishing for Atlantic BAYS tunas, improving BFT quota management, and improving information gathering by requiring vessel owners to report non-tournament recreational landing of swordfish and billfish. The speargun authorization was designed specifically to enhance economic opportunities associated with HMS recreational fishing sector.

*Comment 5:* The Draft Consolidated HMS FMP does not discuss the socioeconomic impact to the recreational fishing sector. The fishing and boating industry is essential. Nationally, it generates \$34 billion annually, which is more than the longliners. The Destin Charterboat fleet has a study that it generates \$134 million annually to the local economy. A 2003 article in the Destin Log quotes

a Haas Center for Business Research and Economic Development at the University of West Florida study, which says that the Charterboat fleet alone has a \$349 million economic impact on Okaloosa and Walton counties.

*Response:* The HMS FMP assesses the impacts of regulatory alternatives on the HMS recreational fishery. Chapter 3 provides a detailed discussion of the socioeconomic impacts of the recreational HMS fleet. A full assessment of the total economic impacts of all recreational fishing is beyond the scope of this FMP.

The Agency notes the Destin Charterboat fleet study on the impacts of that fleet on the local economy. However, the impact of the HMS portion of the Destin Charterboat fleet is not discernable from that study and thus only represents a portion of the \$134 million total annual impact of recreational fishing on the local economy.

*Comment 6:* In 1989, the SAFMC documented the HMS commercial fisheries above the \$100 million threshold. NMFS has a range of values in various documents but certainly below \$40–45 million ex-vessel value. Who is responsible for the economic losses over \$100 million from unnecessary and cumulative regulatory discard policies?

*Response:* A combination of long-term market forces, biological changes to species populations and necessary regulatory activities have had an impact on the ex-vessel value of the HMS fisheries. In Chapter 3 of the Final Consolidated HMS FMP, the Agency notes that the ex-vessel value of the HMS fisheries has been estimated to be between \$44 and \$92 million over the past six years.

*Comment 7:* The information in the community profiles is so dated that they do not present an accurate current portrayal, at least concerning the HMS fisheries, which has very rapidly declined since the implementation of the 1999 HMS FMP measures, especially the time/area closures implemented in 2000.

*Response:* While information in community profiles included in this document are now several years old, it represents the best available information and includes the latest U.S. Census data from 2000. However, NMFS intends to update the community profiles. Chapter 9 documents a list of communities that need to be further examined. The Agency recently published a solicitation to update these profiles.

*Comment 8:* In terms of social and economic issues, the data need to be standardized to recent dollars. I am

troubled by NMFS staying with limited knowledge. There is additional work that can be done to understand social and economic changes. There are lots of other things that can be done to understand how people are impacted. Recreational data is a whole area lacking data. The cumulative impacts section is the soft underbelly of this plan. You need to work on this section. It characterizes the impacts without providing much evidence of assessment. NMFS uses soft language. NMFS does not know much about the people that are being regulated, and that is a problem.

*Response:* Economic data was standardized to 2003 dollars in the Draft Consolidated HMS FMP and to 2004 dollars in the Final Consolidated HMS FMP using the Consumer Price Index (CPI-U). NMFS has taken measures to enhance the information available regarding social and economic changes. The Agency has added information regarding charter boat rates for HMS trips and angler expenditure data. Other research projects throughout the Agency regarding the impacts of the 2005 hurricanes and a recreational fishing survey currently being conducted will further enhance the Agency's knowledge of the characteristics of the regulated community.

#### *Consolidation of the FMPs*

*Comment 1:* NMFS received comments in support and in opposition to the consolidation of the FMPs. Those in support included: we support consolidation of the FMPs contingent on preserving the objectives of the Atlantic billfish plan and the original objectives pertaining to swordfish and traditional swordfish handgear (harpoon and rod-and-reel) fisheries; and we had concerns that several of the most important objectives from the billfish FMP had been left out, but we are pleased that NMFS has addressed those concerns by including them in this draft. As a result, we now support the consolidation. Those comments opposed to the consolidation include: The GMFMC and others recommend that the HMS and Billfish FMPs and APs be kept separate; the GMFMC and others noted that the Billfish FMP is primarily a recreational FMP whereas the Atlantic Tunas, Swordfish and Sharks FMP is both recreational and commercial; the U.S. billfish fisheries are unique and recreational only while swordfish, tunas, and sharks are managed to utilize country-specific quotas; the billfish fishery is the only HMS fishery to practice catch-and-release; those whose efforts have saved and conserved these species should govern it; Atlantic

billfish fishery is the most valuable fishery in the country and ought to retain its distinct and separate status; I have some concerns regarding the consolidation of FMPs and managing billfish for maximum sustainable yield, when it is primarily a catch-and-release fishery, as no social or economic impacts are assessed; Puerto Rico Game Fish Association opposes the consolidation due to the recreational nature of the billfish fishery and because they do not fish for shark or tunas in tournaments. They are concerned that by combining plans, billfish will be viewed as a bycatch species; tuna and other offshore "meat fish" species should not be "consolidated" with billfish in regulatory legislation; tunas have been traditionally treated as fish to be harvested, not as a "catch-and-release" species, and they should have the issues that concern them addressed separately from the unique circumstances concerning marlin and sailfish; economic expenditures involved in the bluefin tuna fishery are just as important as that in the marlin fishery; I favor more micro-management rather than one FMP because it takes so long for changes to occur if everything is consolidated. This way, any particular species will need an entire FMP to take regulatory action; combining fishery management plans is an example of how you prejudice your research and analyses. The longline fishermen come in and take the bait that the billfish seek reducing the number of billfish coming in to areas that were once critical to their life history. A billfish FMP approach would have been to look at bait removal or spawning and nursery areas.

*Response:* NMFS agrees that commercial fisheries aim to fully utilize a quota, and that many recreational fisheries practice catch-and-release fishing. NMFS also agrees that the billfish fishery is unique in many aspects, and notes that the individual tunas, swordfish, and shark fisheries also have many unique aspects. NMFS believes that these differences between the commercial and recreational fisheries, and the different aspects of the individual recreational fisheries, can be accommodated in a consolidated FMP just as those differences are already accommodated in the existing Atlantic Tunas, Swordfish, and Shark FMP.

Given the interconnected nature of the billfish fishery with other HMS fisheries, both on the water and in the regulatory and policy arenas, as well as the current permitting structure, changes in any of the non-billfish fisheries are likely to have impacts on

the billfish fishery. Combining the FMPs should allow those changes to be analyzed more holistically with clear links among the impacts and issues between fisheries. For example, the Billfish FMP has only directed billfish measures while the FMP for Atlantic Tunas, Swordfish, and Sharks has bycatch reduction measures for billfish caught in the swordfish and tuna fisheries. Combining the FMPs will present the whole suite of billfish management measures in one document.

NMFS believes that the decision in 1999 to combine the FMPs for tunas, swordfish, and sharks and to consolidate the actual regulations for all HMS, while a challenge at first, has led to a more holistic view of the fishery. This view has allowed the impacts of management measures on all sectors of tunas, swordfish, and shark fisheries to be fully analyzed whereas before, the links between these fisheries may not have been seen or analyzed so readily.

By combining both FMPs now, NMFS is moving toward an ecosystem-based approach to the management of HMS. Such an approach could ultimately benefit the resource and the people involved. As an example of potential links, at public hearings and in written comments, recreational billfish fishermen have noted that using circle hooks while trolling for blue marlin is impracticable. Similarly, at public hearings and in written comments, recreational tuna fishermen have asked for the use of circle hooks on rod and reel. In many cases, these fishermen fish for tunas and billfish, sometimes on the same trip. While NMFS could implement different regulations for recreational tuna trips and recreational billfish trips, management can be more effective and appropriate by considering the implications on all recreational HMS trips.

Combining the FMPs will not change the composition of the APs in terms of representation by states and sectors (commercial, recreational, academic, or conservation). Also, combining the FMPs will not change the priorities of managing HMS, which are dictated by the Magnuson-Stevens Act and other domestic law. Combining the regulations should not affect the length of time it takes to amend or change the regulations. NMFS has not experienced any delays in changing the regulations for a specific species or gear since combining the tunas, swordfish, and shark FMPs. To the extent that combining the FMPs will allow NMFS and the public to see links between the fisheries easier, combining the FMPs

should allow for more efficient and effective regulations.

*Comment 2:* NMFS received a number of questions regarding the consolidation including: How will the consolidation change HMS management? How is this FMP easier to comprehend? I understand NMFS needs to consolidate, but how does this improve management?

*Response:* Consolidating the FMPs will not change the existing regulations since they are already consolidated. Rather, consolidating the FMPs should change how HMS fisheries are viewed and the ecological and economic impacts analyzed. Having two separate FMPs can give the impression that the billfish fishery does not affect the tunas, swordfish, and shark fisheries and vice versa. This impression is incorrect. The same fishermen fish for and/or catch all HMS, often on the same trip. Thus, changes in the regulations need to be analyzed and considered across all HMS fisheries. For example, regulations that limit the recreational catch of one species or the gear that can be used could result in changes in recreational effort on other species or on social and economic impacts on the entire recreational community. As described in the response to Comment 1 above, consolidating the FMPs should allow NMFS to take a more holistic view of HMS fisheries and analyze these links. Those analyses should also be more apparent to the affected and other interested parties. Together the analyses and the public comment on the analyses of the impacts and the potential alternatives to a regulation should lead to more efficient and effective management.

*Comment 3:* NMFS received comments regarding the combination of the APs. These comments included: the number of people on the Billfish AP should not decline; we support combining the APs; it is redundant, confusing and inefficient to have separate APs; the customary joint meetings of the HMS and Billfish APs over the past six years ensured an imbalance of representation by the recreational fishing sector and the result has been lopsided and ineffective advice; and the combined AP should be fair in representing the various user groups.

*Response:* NMFS is not expecting to change the composition of the APs as a result of consolidating the FMPs. Once this final rule is published, NMFS intends to combine the APs in their entirety. Over time, NMFS will adjust the number of people on the AP and/or representing each group as needed to

ensure a balanced representation of all interested sectors and regions.

#### *Objectives of the FMP*

*Comment 1:* The proposed objectives of the Consolidated HMS FMP are acceptable, including all suggested deletions and revisions, but it is not possible to continuously reduce bycatch and mortality. Logically, as the status of stocks improve, these numbers will likely increase. At some point, NMFS must recognize that incidental catches and mortality will occur and set practical and reasonable levels of allowable incidental catch.

*Response:* Consistent with National Standard 9, NMFS aims to minimize bycatch to the extent practicable, and to the extent that bycatch cannot be avoided, minimize the mortality of such bycatch. As described in the time/area section above, NMFS continues to examine the impact of closures and other bycatch reduction measures to ensure the goals are met. Consistent with protected species incidental take statements, the results of the stock assessments, and the impact of circle hooks on bycatch rates, NMFS may consider modifying the existing time/area closures or changing existing trip limits of the incidental limited access permits.

*Comment 2:* Regarding Objective 2, "Atlantic-wide" is a more appropriate term than using "management unit" because even a total prohibition on any domestic fishing effort would not recover the fish stock for most ICCAT species.

*Response:* NMFS agrees with the comment and made the appropriate change to Objective 2.

*Comment 3:* We are concerned about Objective 3, to reduce landings of Atlantic billfish in directed and non-directed fisheries. It is unnecessary to reduce directed landings that only come from the recreational sector.

*Response:* Objective 3 does not address landings of Atlantic billfish. Rather, Objective 3 addresses bycatch in all HMS fisheries and post-release mortality of billfish in the directed billfish fishery.

*Comment 4:* Objective 4, establish a foundation for international negotiation of conservation and management measure, sounds as though the intent would be to propose the creation of additional international management entities, other than ICCAT, creating a tremendous amount of unnecessary bureaucracy that ultimately weakens the efficient management of these important species. This objective needs to be clarified before final approval.

*Response:* Objective 4 states that NMFS will establish foundations to work with other international organizations to manage Atlantic HMS. NMFS already works with, and intends to continue working with, several international organizations regarding Atlantic HMS including ICCAT, NAFO, FAO, and CITES.

*Comment 5:* Regarding Objective 4, the old practice of "the U.S. goes farthest first" simply does not work, and often results in the U.S. being diminished in its capabilities and influence within ICCAT.

*Response:* Objective 4 does not state that the U.S. should work unilaterally to rebuild or maintain Atlantic HMS stocks. Rather, Objective 4 builds in the concept that NMFS will work with international bodies, such as ICCAT, to rebuild or maintain sustainable fisheries.

*Comment 6:* Objective 7 calls for the management of Atlantic HMS to achieve optimum yield and to provide the greatest benefit to the Nation, including food production. Atlantic billfish should not be managed with the intent to increase food supply and the 250 marlin landing limit is not managing in terms of optimum yield. This landing limit is not based on maximum sustainable yield, nor does it take into account relevant social, economic, or ecological factors. This objective should be reworded to say that Atlantic billfish will be managed to provide the greatest benefit to the nation with respect to recreational opportunities, preserving traditional fisheries to the extent practicable, and taking into account protection of marine ecosystems.

*Response:* NMFS agrees that Atlantic billfish should not be managed with the intent to increase food supply. NMFS has reworded Objective 7 to clarify its intent.

*Comment 7:* Objective 12 calls for the promotion of live release and tagging of Atlantic HMS. We do not believe it is in the Nation's best interest to promote live release for all HMS of legal size and those caught within a legal season because any HMS poundage under the quota resulting from live release stands the likely fate of being transferred to a country that will harvest the difference, ultimately reducing the U.S. ICCAT quota. This objective should be reworded to state that NMFS would promote live release and tagging of Atlantic billfish and sub-legal HMS.

*Response:* NMFS acknowledges that this was not the intent and has reworded the objective to address this issue.

*Comment 8:* Regarding Objective 12, all hook and line fishing post-release mortality should be addressed.

*Response:* NMFS believes that this concern is already addressed in Objective 12.

*Comment 9:* NMFS should make the proposed deletions to Objectives 13 and 14; however, if NMFS does not make these deletions, it must reevaluate its proposed revisions to Objectives 2, 4, 5, and 7.

*Response:* While NMFS did suggest removing these objectives at the Predraft stage, NMFS did not propose removing them in the Draft Consolidated HMS FMP due to the concern expressed by the recreational billfish community regarding deleting two of the original objectives from the 1988 Billfish FMP. NMFS does not believe that these objectives conflict with objectives 2, 4, 5, and 7. Therefore, no changes to those objectives are needed.

*Comment 10:* Please eliminate the word "almost" from Objective 14: "Optimize the social and economic benefits to the nation by reserving the billfish resource for its traditional use, which in the continental United States is almost entirely a recreational fishery."

*Response:* The word "almost" was an error and has been removed. The objective was clarified to refer only to Atlantic billfish.

*Comment 11:* Objective 16 needs to be rewritten or eliminated because there is no method for measuring over capitalization in the recreational fleet. Recreational fisheries should not be managed by fleet capacity and over capitalization.

*Response:* NMFS has decided to delete Objective 16 for the reason stated by the commenter and other reasons, as explained in response to comment 12 below.

*Comment 12:* Objective 16, the consideration of fishing effort, should not be explicit to commercial fisheries. Latent effort is only a problem in overcapitalized fisheries and the U.S. pelagic longline fishery is undercapitalized. NMFS needs to encourage latent pelagic longline effort to become active or reopen the "directed" swordfish permit category in a measured, incremental manner to allow new entrants.

*Response:* NMFS has deleted Objective 16. While Objective 16 was an important part of the limited access program established in the 1999 FMP, it does not apply to all HMS commercial fisheries. Instead, NMFS has reworded Objective 17 to create a management system to make fleet capacity commensurate with resource status.

*Comment 13:* Regarding Objective 18, NMFS should not condone a reallocation that is contrary to the intent of the Magnuson-Stevens Act.

*Response:* Objective 18 was combined with Objective 17 and addresses fleet capacity and resource status. This objective does not address reallocation contrary to the Magnuson-Stevens Act.

#### *Comment Period/Outreach*

*Comment 1:* NMFS received several comments regarding the length of the comment period as a result of hurricanes. These comments are: due to the impacts of Hurricane Katrina on the fishing fleets in the Gulf of Mexico and the lack of communication with people in that area, NMFS should consider a substantial extension of the comment period and consideration of suspending the scheduled public hearings; a large portion of the longline fleet is damaged and without communications - they cannot respond to the proposal at this time; we are sensitive to extension of comment period to accommodate the Gulf of Mexico Area, but we do not want to see an overly lengthy delay in the process.

*Response:* NMFS agrees that Hurricanes Katrina and Rita severely affected fishermen, infrastructures, communication, and communities in the Gulf of Mexico region. As a result, NMFS extended the comment period on the Draft Consolidated HMS FMP and proposed rule from October 18, 2005, to March 1, 2006. NMFS also rescheduled three public hearings in the area from September/October to January and February. NMFS believes that this extension in the comment period and rescheduling of public hearings gave affected entities an opportunity to review and comment on the Draft Consolidated HMS FMP and its proposed rule without delaying the implementation of the management measures significantly.

*Comment 2:* NMFS received a number of comments about the advertisement of public hearings and the Draft Consolidated HMS FMP including: many of the public hearings are not well publicized, which leads the Agency to miss a lot of key people at those hearings; a lot of people at the fish pier did not know about this hearing; NMFS should hold additional hearings in the same areas; without better publication to increase participation, NMFS is not going to get enough comment from the people who are going to be affected by this rule; NMFS should improve its outreach to magazines; NMFS needs to buy mail and email lists of anglers from publicly available sources and send them meeting notices to ensure

adequate public participation; NMFS should use the mailing and email addresses provided when applying for permits to notify the industry; NMFS has adequately informed us through various sources (e.g., internet, facsimile, and public hearing notices) of all germane and relevant issues, options, and comment deadlines; your notices are all fuzzy, full of **Federal Register** type language - they should be earlier in the process, more widely distributed, and focused on the user groups in simple language.

*Response:* NMFS agrees that public participation and outreach regarding proposed or final management measures is critical to the management of HMS. NMFS attempts to notify all interested parties of all actions using a variety of methods. The official notification is through the **Federal Register**. The **Federal Register** is available on the web at <http://www.gpoaccess.gov/fr/index.html>. Alternatively, interested parties can go to <http://www.regulations.gov> to review and comment on all proposed rules and documents open for public comment throughout the Federal government. Documents can be searched by Agency, topic, and date. NMFS also releases information regarding proposed and final rules and fishing seasons for HMS through the HMS fax network. NMFS intends to develop an email system that will allow anyone to sign up to receive these information packages. These information packages are also usually published on Fishnews, an electronic newsletter produced weekly by NMFS. To sign up for this newsletter, go on the web to <http://www.nmfs.noaa.gov>. NMFS issues press releases, which the media can publish in fishing magazines and local newspapers, regarding public hearings and proposed rules. However, NMFS cannot require these sources of information to publish information regarding proposed rules or public hearings. NMFS has tried using the email addresses included in the permit application to provide HMS fishermen with information about their permits. Often times, the email addresses have proved incorrect and the information was not delivered. Nonetheless, NMFS is working to improve communication with constituents and is open to additional suggestions on how to improve outreach.

*Comment 3:* I found the public hearing presentations completely frustrating with biomass, metric tons, and other words and numbers used as if I were in a marine biology class. At the end of the presentation, the billfish and tuna changes were slipped in as if to lull us into sleep so that the changes

slip by unnoticed. It appeared as if the intent of the presentation was to confuse the average angler with statistical data.

*Response:* NMFS agrees that information regarding stock status and quotas can be confusing. However, this information is the basis for many of the management measures that were proposed and will be the basis of many of the final management measures. Without an understanding of the basic information regarding life history, stock status, maximum sustainable yield, and other concepts, the reasons and impacts of all the alternatives considered cannot be explained. NMFS presented the information to explain the basis of any proposals or decisions and why one alternative was preferred over another. NMFS welcomes any specific comments on the presentations that would improve the clarity of the presentations.

*Comment 4:* If NMFS accepts comments by email, the Agency should require Digital Certificates to authenticate that the comments were from the identified party and was not contaminated in transit.

*Response:* NMFS accepts comments by email. To date, NMFS has not had any problems regarding authenticating the sender of the comment. However, NMFS will continue to examine this and other technological issues.

*Comment 5:* Please limit your future rulemakings to fewer topics. Large documents like this one are too difficult for many of your constituents to comprehend.

*Response:* NMFS agrees that large documents with many issues are difficult to understand. To the extent that rulemakings can be limited, NMFS will attempt to simplify and reduce the issues in the future. However, to some extent, rulemakings are dictated by priorities and the need to act on certain issues. Thus, some rulemakings may have more issues than others.

#### *General*

*Comment 1:* NMFS received several comments on how the overall rulemaking process works. These comments include: NMFS needs to clarify if we have a choice or if the decision on these proposed actions is already made?; what agency is pushing for these changes?; there is an overriding opinion that NMFS does not listen during these comment periods; it is difficult for us to know how and where to get involved; during scoping, it would be nice to know that the information we provide is helping to form future regulations.

*Response:* NMFS relies on public comment and participation at all stages when conducting rulemaking. The

comments received during scoping were crucial for defining the scope of this rulemaking and the alternatives considered. The issues explored in the rulemaking were not "pushed" by any particular agency. Rather they were considered as a result of the comments received during scoping and management needs as dictated by the Magnuson-Stevens Act and other domestic laws. Public comment at the proposed rule stage is critical in helping NMFS decide whether to implement certain measures. Often, as a result of public comment, NMFS decides not to implement or to redesign one or more of the proposed management measures. For example, in this rulemaking NMFS is not implementing several proposed measures including removal of the Angling Category North/South line and clarifying the commercial definition of greenstick. When considering public comments, NMFS does not look at the quantity of public comments received but the quality and issues raised in each individual comment. Every written comment and every statement made at a public hearing is considered. In every final rule, NMFS responds to the comments received during the public comment period. At that time, interested parties can see how their comments affected the decisions of the Agency.

*Comment 2:* I am opposed to management via Petition for Rulemaking. It undermines the role of the Advisory Panels and the International Advisory Committee.

*Response:* The public may petition an agency for rulemaking. NMFS is required to respond to any petition that is filed. This process does not undermine the role of the Advisory Panel or the ICCAT Advisory Committee as these parties can comment on the adequacy of the Petition for Rulemaking, as appropriate, or any rulemaking that results from the Petition.

*Comment 3:* NMFS received several comments regarding the relationship of the FMP to the Magnuson-Stevens Act including: Will this FMP be consistent with the revisions/reauthorization of the Magnuson-Stevens Act?; NMFS is not following its own rules in regard to National Standard 4 of the Magnuson-Stevens Act (fair and equitable distribution of fishing privileges).

*Response:* The Final Consolidated HMS FMP will be consistent with the current Magnuson-Stevens Act, including the National Standards. In regard to National Standard 4, none of the selected alternatives discriminate between residents of different states. While NMFS is tracking congressional

actions to reauthorize the Magnuson-Stevens Act, it cannot predict the outcome of the reauthorization process. If the M-S Act is reauthorized, NMFS will implement appropriate changes in a future rulemaking.

*Comment 4:* What management measures are applicable to the Caribbean?

*Response:* All management measures for HMS are applicable to fishermen fishing in the Atlantic, including the Gulf of Mexico and the Caribbean.

*Comment 5:* NMFS is allowing so much overfishing of one species after another, that our children have no expectation of there being any fish in the ocean when they grow up.

*Response:* While overfishing does continue for some species, other species are being rebuilt. In the case of HMS, since the 1999 FMP, blacktip sharks have been rebuilt and other species such as bigeye tuna and Atlantic sharpnose sharks are still considered healthy. NMFS continues to monitor the status of all HMS and take appropriate action, consistent with the Magnuson-Stevens Act and ATCA, to prevent overfishing, rebuild overfished stocks, and maintain optimum yield.

*Comment 6:* For any HMS management program to be effective, fair, and reasonable to U.S. fishermen and anglers, international transference and comparable compliance of management mitigation measures must be adopted by the global HMS fishing community. Our fishermen practice and embrace the most effective and stringent conservation measures in the world and U.S. fishermen and anglers suffer economic hardships and fishing days due to these measures. However, few international partners practice any conservation at all. The U.S. needs to continue to lead the conservation initiative, but it is unfair to assume that other countries will follow our example if we only put our fishermen out of business or deny them the opportunity to fish for quota.

*Response:* NMFS agrees that effective management of HMS requires international cooperation and compliance to management measures. NMFS also agrees that the U.S. needs to indicate to other nations that U.S. fishermen can meet their conservation goals while also remaining economically viable. NMFS and the Department of State continue to work through ICCAT to enforce compliance of existing management measures and end illegal, unreported, and unregulated fishing. Additionally, in this rulemaking, NMFS either provides additional opportunities for U.S. fishermen to take the quota (e.g.,

changing the time periods and subquotas for the General category) or provides the groundwork for future opportunities (e.g., establishes criteria to modify existing time/area closures).

*Comment 7:* Remove "including landings" from the third bullet on the bottom half of page 1-40 of the Draft Plan. The emphasis is properly on reducing mortality and post-release mortality.

*Response:* This comment refers to one of the specific goals of this rulemaking, not one of the objectives of the FMP. NMFS agrees and has reworded the goal accordingly.

*Comment 8:* In the Management History (section 1.1), include ATCA provision, "shall not disadvantage U.S. fishermen relative to their foreign counterparts."

*Response:* That provision (evaluate the likely effects of conservation and management measures on participants and minimize, to the extent practicable, any disadvantage to U.S. fishermen in relation to foreign competitors) is not a requirement of ATCA. It is a requirement under the Magnuson-Stevens Act (16 U.S.C. 1854 (g)(1)(B)). A description of this provision is included in the description of the management history in Chapter 1 and the requirements of the Magnuson-Stevens Act in Chapter 11 of the HMS FMP.

*Comment 9:* In the section of Chapter 1 regarding the pre 1999 Atlantic tunas management section, NMFS needs to clarify that the longline fishery does not seek a directed fishery on the currently overfished stock of bluefin tuna.

*Response:* This section has been moved to Chapter 3 in the Final Consolidated HMS FMP. Together, this section along with the other sections in Chapter 3 regarding the landings by gear and the status of the stocks indicate that the pelagic longline fishery is prohibited from targeting bluefin tuna.

*Comment 10:* The HMS longline fishery was unaware of NMFS's "technical revisions" following completion of the HMS FMP in 1999, which changed the Atlantic Tunas longline permit to a "limited access" status. NMFS should create an opportunity for longline vessels with valid swordfish and shark permits to obtain an Atlantic Tunas longline permit. This will help to reduce or eliminate unnecessary discards and encourage the return of pelagic longline fishing effort.

*Response:* As described in the 1999 Atlantic Tunas, Swordfish, and Shark FMP, NMFS made the Atlantic tunas longline permit a limited access permit, along with the swordfish and shark permits, at the request of the fishing

industry in order to close a potential loophole in the regulations. The technical revisions to the rule implementing the 1999 FMP clarified that intent and did not make any substantial changes. Nonetheless, NMFS intends to conduct a rulemaking to reform certain aspects of the HMS permitting system and may consider changes based on this concern in that rulemaking.

i. Recreational

*Comment 11:* NMFS received general comments related to recreational fishing including: I will not stand for the over-regulation of recreational fishing; and, NMFS has done nothing for the recreational fisherman but give him table scraps and ruined fishery resources.

*Response:* NMFS recognizes the value and important contribution of recreational fishermen throughout HMS fisheries. The Agency continues to take numerous steps to recognize this critical sector of the fishery, while ensuring that recreational effort is properly accounted for and managed to assist stock recovery. Comments from the recreational sector, and others, were fully considered in deciding upon the management measures in the Final Consolidated HMS FMP. For example, NMFS did not select the alternative that would have prohibited landings of white marlin based, in part, upon comments indicating that this alternative could produce sizeable adverse social and economic impacts upon recreational fishermen. NMFS believes, however, that the selected alternative to require circle hooks when using natural baits in billfish tournaments is appropriate, and is not overly burdensome. Many HMS recreational anglers already practice catch and release fishing for white marlin and other species. However, the mortality rate associated with catch and release of these species is now estimated to be substantially higher than previously thought. The use of circle hooks when deploying natural bait in billfish tournaments is an important step towards reducing billfish fishing mortality, and will help to maintain the highest availability of billfishes to the United States recreational fishery. Billfish tournament anglers must comply with the new circle hook requirement so that these species may better survive the catch and release experience. NMFS strongly disagrees with the comment that recreational fishermen have been given table scraps and ruined fishery resources. Numerous examples could be cited to demonstrate the balanced consideration that is given

to recreational HMS fishery interests. Foremost, the recreational sector is, and will continue to be, prominently represented on the HMS Advisory Panel. Additionally, several large areas are closed year-round or seasonally to commercial HMS longline vessels, whereas recreational anglers retain full access to these areas. The recreational sector has benefited greatly from this access, and is currently enjoying the resurgence of recreational fishing for swordfish and other species in these areas. Also, the commercial sale of Atlantic billfish has been prohibited since 1988. To reinforce the recreational nature of this fishery, this rule prohibits the possession or retention of any Atlantic billfish for vessels issued a commercial permit and operating outside of a tournament. This rule also prohibits fishing for HMS in the Madison-Swanson and Steamboat Lumps Marine Reserves, with the notable exception that high-speed trolling is allowed during the prime recreational summer fishing months.

*Comment 12:* Recreational fishing should be truly recreational fishing. A CHB vessel operator knows where to go fishing, so it gives the recreational fisherman onboard an advantage. CHB vessel operators use this expertise to sell the catch from the recreational fishery. This practice gives access to the recreational fishery where only the commercial fishermen typically go. The CHB vessel is already getting paid to go out there, he does not need to also get money from selling the tunas. NMFS should decrease bag limits on charter/headboats to avoid incentive to sell recreationally caught fish.

*Response:* NMFS regulates and manages HMS CHB permit holders differently than HMS recreational or commercial permit holders due to the unique characteristics of the CHB sector. These vessels may be both recreational and commercial, so the regulations governing them are necessarily different. For instance, some CHB captains may fish commercially for tunas on one trip, and then fish under recreational retention limits when carrying paying passengers the next day. NMFS believes that the regulations governing the sale of HMS from CHB vessels are appropriate. CHB vessels that also possess commercial limited access permits are subject to recreational catch limits when engaged in for-hire fishing, but may sell tunas (except for BFT caught under the recreational angling category regulations, i.e., BFT between 27 inches and 73 inches CFL or trophy fish greater than 73 inches) on non for-hire trips. CHB vessels may sell sharks and

swordfish only if the appropriate commercial shark and/or swordfish permits have also been issued to the vessel.

ii. Commercial Fishery

*Comment 13:* The U.S. should inflict penalties and tariffs on countries that do not follow similar rules as the U.S.; push to stop longlining worldwide; stop all longlining in the United States now; and make it illegal to import any fish from other countries that longline, do not follow conservation limits, and do not require longlines to only use circle hooks.

*Response:* The U.S. has been a leader internationally in promoting fishing practices that reduce bycatch and promote conservation of HMS and other fish stocks. Pelagic longlining gear is not being prohibited at this time due to reasons discussed in the response to Comment 36 of the Time/Area Closures section. NMFS believes that international cooperation, including sharing science and technology such as circle hooks and bycatch reduction gears, is the primary and most effective means to achieve conservation goals. The U.S. will continue to promote these types of measures both domestically and internationally, and will encourage efforts by other countries to implement similar measures.

*Comment 14:* Are fish that are caught by commercial permit holders and retained for personal use counted against the quota?

*Response:* This rule prohibits vessels issued commercial permits and operating outside of a tournament from possessing, retaining, or taking Atlantic billfish from the management unit. Under this rule, only fishermen issued either an HMS Angling or Charter/headboat permit could take or possess Atlantic billfish. Additionally, General category fishermen fishing in a registered tournament could take and possess Atlantic billfish. In the case of General category fishermen participating in a tournament, the tournament operator must report any billfish landed in the tournament. Charter/headboat vessel owners are required to report billfish under the recreational reporting requirements. Atlantic marlin landings are counted against the 250-fish landing limit. All landings from commercial shark or swordfish vessels must be reported in the HMS logbook, if selected for reporting, regardless of whether the fish are retained for personal use. Sharks landed by commercial permit holders are counted against commercial quotas. A swordfish from the North Atlantic stock caught prior to a directed fishery

closure by a vessel with a directed or handgear swordfish permit is counted against the directed fishery quota. A North Atlantic swordfish landed by a vessel issued an incidental swordfish permit or a Charter/headboat permit or landed after the directed swordfish fishery is closed is counted against the incidental catch quota. Owners of Atlantic Tunas vessels must also report landings in the HMS logbook, if selected for reporting. There are no quotas for bigeye, albacore, yellowfin, or skipjack tunas. BFT landed but not sold must be reported and are applied to the quota category according to the permit category of the vessel from which it was landed.

*Comment 15:* All commercial vessels that have not landed a fish in the past three years should be "retired."

*Response:* Commercial fishermen can take time away from fishing for certain species for numerous reasons including repairs or replacement of vessels, a desire to help rebuild the stocks, or to pursue opportunities in other fisheries. Many PLL or shark fishermen have currently stopped fishing for HMS due to restrictions such as the time/area closures and short shark seasons. Additionally, for some commercial fisheries, such as the BFT General category fishery, the quota does not allow every permit holder to land a fish every year. Thus, some vessels may not land a BFT for several years. In some fisheries, such as those that are severely overfished, such a measure may be needed to ensure that latent permit holders cannot re-enter the fishery and increase effort. NMFS may conduct a rulemaking in the future to reform the current permit structure. At that time, NMFS may consider measures such as this one, as necessary.

*Comment 16:* NMFS heard two opposing comments related to commercial vessels affected by the hurricanes last fall. These comments were: NMFS needs to provide buyout programs for the commercial fishery, especially now that vessels active in this fishery have been affected by hurricane Katrina; and NMFS should not subsidize the replacement of commercial vessels affected by hurricane Katrina.

*Response:* NMFS is still analyzing the impacts of Hurricanes Rita and Katrina on fishermen and communities in the Gulf of Mexico. At this time, NMFS does not know the extent of lasting damage or the most appropriate measures needed to rebuild the affected fisheries, either commercial or recreational. NMFS will take the appropriate actions in the future, as needed.

### iii. Longline

*Comment 17:* Why are there no proposed measures for the commercial PLL fishery in the Draft Consolidated HMS FMP?

*Response:* Many measures in the HMS FMP could have ancillary impacts on PLL fishery such as the selected alternative C3, going to ICCAT regarding a rebuilding plan for northern albacore tuna, and the selected alternative G2, the transition to a calendar year fishing years. There are also alternatives that specifically consider the PLL fishery. All of the alternatives in the time/area closure section, except for alternative B6, were considered for the PLL fishery in the Draft Consolidated HMS FMP. NMFS is not selecting, at this time, to implement any new closures, except the complementary measures in the Madison-Swanson and Steamboat Lumps Marine Reserves, which will prohibit fishing for and possessing all HMS by all HMS gears in the marine reserves from November through April (except when transiting and the gear is stowed). The possession of Gulf reef fish in these areas is already prohibited year-round (except when transiting and the gear is stowed). From May through October, surface trolling will be the only allowable HMS fishing activity. No new measures were proposed at this time because there are already a number of restrictions, including time/area closures, gear requirements, VMS, observers, and a host of other measures required to reduce bycatch in the PLL fishery. However, NMFS will continue to examine the issue of targeted time/area closures to further reduce bycatch in the future. Other alternatives that could specifically affect PLL fishermen include workshops, changes to the definition of PLL gear, modifications to the definition of the East Florida Coast closed area, and the decision regarding the 25 mt BFT available in the NED.

*Comment 18:* NMFS should allow the practice of using live baits on PLL gear again.

*Response:* Currently in the Gulf of Mexico, vessels with PLL gear onboard are prohibited from deploying or fishing with live bait, possessing live bait, or setting up a well or tank to maintain live bait. This prohibition was implemented in lieu of closing the western Gulf of Mexico through a final rule published on August 1, 2000 (65 FR 47214), and became effective on September 1, 2000. It was established to reduce the bycatch of billfish on PLL gear, and this remains an important priority. However, given the recent mandatory requirement for PLL vessels to possess and deploy only large circle hooks and to carry release

and disentanglement gear, a reexamination of the live bait prohibition may be warranted. Before this issue could be considered in a future rulemaking, it would be beneficial to obtain additional gear research information, such as bycatch rates and post-release mortality rates of billfish on PLL gear deploying large circle hooks with both live and dead baits.

*Comment 19:* Without a relaxation of the restrictions, the longline fishery will continue to fail — not due to stock declines but due to over-restrictions.

*Response:* The PLL fishery has decreased in size over time possibly due to current time/area closures but also due to other factors, which are out of NMFS control (e.g., hurricanes, fuel prices, etc.). At this time, NMFS is not implementing any new closures, except the complementary measures in the Madison-Swanson and Steamboat Lumps Marine Reserves. The U.S. has not been able to catch its swordfish ICCAT quota allocation. While NMFS considered modifications to current time/area closures, none of the modifications considered would have resulted in a large enough increase in target catch to alleviate concerns over uncaught portions of the swordfish quota. NMFS is investigating ways to revitalize the swordfish fishery and is waiting on the results of the ICCAT stock assessments to help determine domestic measures with regard to management of these species.

### iv. Swordfish

*Comment 20:* NMFS received comments regarding the trade of swordfish including: Is there anything in the Draft Consolidated HMS FMP regarding the import of swordfish from countries that have exceeded their ICCAT quota? This exceedance has been a perennial problem at ICCAT Advisory Committee Meetings and it is annoying when fishermen say that this type of fishing encroaches on "our" fishery when it is the fishery as a whole, not only the U.S. swordfish fishery; U.S. swordfish fishermen should be provided reasonable opportunity to harvest quota - U.S. has a high demand that U.S. fishermen should have an opportunity to fill; NMFS should prohibit all imports on swordfish and tuna.

*Response:* ICCAT is an international organization that addresses quota overages and penalties associated with those overages through a process that requires the adoption of recommendations and then implementation of those recommendations by contracting parties. The U.S. is a contracting party

at ICCAT and participates in the evaluation of compliance with quotas. Quota compliance is an important issue right now for the U.S. during ICCAT negotiations. However, ICCAT would be the lead in imposing trade sanctions or other appropriate penalties on a particular country if found to be violating ICCAT agreements. Such actions have been taken by ICCAT in the past. Also, NMFS agrees that overharvests of ICCAT quotas affect the entire swordfish fishery and not just the U.S. allocation, and it is important to manage the fishery as a whole and not to become too focused on just the U.S. quota. NMFS is currently working on different ways to revitalize the U.S. swordfish fishery. An SCRS stock assessment is scheduled for 2006, and the results from this stock assessment will help determine domestic measures for this species.

*Comment 21:* NMFS received comments regarding the need to revitalize the PLL and/or swordfish fishery including: in the face of our consistently rolled-over quota and fully-rebuilt swordfish stock, why are there no provisions to allow for U.S. fishermen to get newer, more efficient, and safer vessels?; NMFS should eliminate the vessel upgrading restrictions to help revitalize the PLL fishery; what is there in the Draft Consolidated HMS FMP that would allow the U.S. ICCAT Delegation to convince foreign ICCAT Delegations that the U.S. is serious about revitalizing its swordfish fishery in order to utilize the full U.S. ICCAT swordfish quota?; NMFS should make reasonable adjustments to the offshore borders of existing closed areas; eliminate the limited access upgrading criteria; re-evaluate the use of "live bait" for circle hooks only; provide a more reasonable trip limit for incidental PLL to eliminate wasteful and unnecessary regulatory discarding; re-open the swordfish handgear fisheries, especially in light of the inability of the U.S. to land its current ICCAT quota; the U.S. is looking at a stockpile for swordfish and BFT; if the U.S. does not have any quota it will be difficult to have a voice in international negotiations; \$86 million of swordfish was not caught; this domestic fleet is so over restricted that it cannot harvest the quota; count recreational swordfish live and dead releases as well as commercial catches when negotiating the U.S. quota at ICCAT; eliminate the recreational bag limit to be replaced with a higher minimum size of 47 inches LjFL and authorize anyone holding a general category tuna permit to land swordfish;

increase the number of swordfish that may be kept by swordfish incidental permit holders in the Gulf of Mexico or convert all Gulf of Mexico incidental permits to directed permits; adjust the existing PLL time/area closures within the U.S. EEZ in consideration of a fully rebuilt North Atlantic swordfish stock and the U.S. swordfish fishery's ability to harvest its ICCAT quota share; longline fishermen made great sacrifices to rebuild this fish stock and have been the world's leading innovators of "bycatch friendlier" pelagic hook and line fishing — NMFS must take action to revitalize this fishery.

*Response:* For the past several years, the swordfish fishery has been unable to catch the full quota. This is a change from the fishery in the 1990s where the quota was usually taken. In 1997, the quota was overharvested and the fishery was closed. There are a number of possible explanations for the inability of the fleet to harvest the quota including time/area closures to PLL (the primary gear used to harvest swordfish), the reduction in permit holders through limited access, the restrictions on vessel upgrading, the incidental take limits, and the paucity of reporting from the recreational sector. Given the anticipated rebuilt status of swordfish (the next stock assessment is scheduled for September 2006), a number of fishermen and others have asked NMFS to revitalize this fishery. Many people are concerned that without a plan to revitalize the fishery, the quota will be taken from the U.S. and given to other countries, many of which do not view conservation as the U.S. does. NMFS is also concerned about the status of this fishery and its quota. While this rulemaking was not intended to revitalize the swordfish fishery, many of the actions will allow for actions to be taken in the future. For example, NMFS did not choose to modify any existing closures at this time but the selected criteria will allow for modifications to the closed areas and/or experiments to test gears or other fishing methods in the closed areas. Additionally, NMFS is defining buoy gear and clarifying the difference between this commercial gear and the primarily recreational gear of handline. Depending on the stock assessment and the upcoming ICCAT recommendations, NMFS expects to engage in rulemaking in the near future that could help revitalize the swordfish fishery. Any effort to revitalize the fishery must take care not to increase sea turtle takes (the PLL fishery has a jeopardy conclusion under ESA for leatherback sea turtles), marine mammal interactions (there is a PLL Take

Reduction Team that is considering methods of reducing interactions under the Marine Mammal Protection Act), and catches of marlin, BFT, and other overfished species. Over time, consistent with the objectives of this FMP, the Magnuson-Stevens Act, Marine Mammal Protection Act, and the ESA, NMFS intends to revitalize the fishery so that swordfish are harvested in a sustainable and economically viable manner and bycatch is minimized to the extent practicable.

*Comment 22:* NMFS received comments regarding the trip limit for swordfish incidental limited access permit holders. These comments included: NMFS must reevaluate the incidental swordfish trip limits in order to reduce or eliminate unnecessary discards by valid permit holders; there was an allowance of five swordfish in the squid fishery. If a swordfish comes aboard in a trawl, it is dead. Mid-water trawls are not directing or targeting swordfish. So, can there be an allowance for 15 swordfish in a mid-water trawl? It seems to be a waste to throw dead swordfish overboard.

*Response:* The current trip limits for incidental permit holders and permit holders using mid-water trawls were implemented in 1999 as part of the limited access program for swordfish. At that time, swordfish were overfished, there were a number of latent permit holders, and the quota was being landed. Thus, the limited number of swordfish that could be landed by incidental permit holders or permit holders using mid-water trawls (an unauthorized gear) was appropriate and was aimed at reducing swordfish mortality by fishermen not targeting swordfish, to the extent practicable. The situation has now changed and, depending on the results of the upcoming 2006 stock assessment, NMFS may reconsider these limits in a future rulemaking.

*Comment 23:* U.S. recreational fishermen should be allowed to sell their swordfish.

*Response:* Under current HMS regulations, recreational fishermen are not allowed to sell HMS. If fishermen wish to sell their swordfish, they must possess a commercial swordfish limited access permit or obtain one from commercial fishermen who are leaving the fishery. Anecdotal information indicates there are a number of commercial swordfish permits available. However, depending on the type of swordfish permit obtained (directed, handgear, or incidental) these permits could restrict fishermen to the commercial suite of permits and they would not be able to obtain either an

HMS Angling or HMS Charter/Headboat permit. All recreational landings are counted against the domestic quota for swordfish (300 mt dw of the quota are allocated for recreational landings). Comments in the past have indicated concern to the public health regarding the quality of recreationally-caught swordfish. These commenters have noted that while commercial fishermen are trained and have the facilities to maintain fresh swordfish, recreational fishermen generally keep the swordfish in a cooler. Nevertheless, as discussed in Comment 22 above, fishermen have requested that NMFS revitalize the swordfish fishery. The suggestion in this comment may be one potential option for such a goal.

#### v. Tunas

*Comment 24:* The Draft Consolidated HMS FMP does not consider the uncertainty associated with estimates of recent BFT recruitment in recent years, the probable outcomes for BFT under different estimates, or the impact on rebuilding of the current high mortality in the Gulf of Mexico. The Draft Consolidated HMS FMP needs to consider this while also keeping in mind the feasibility of changing ICCAT management measures and quotas at the upcoming ICCAT meeting.

*Response:* The ecological impacts of this final action on BFT are at most, minimal. The overall quotas for each domestic fishing category are not changed, nor are the size classes of BFT that each domestic category targets. The selected alternatives for BFT comply with the ICCAT BFT rebuilding plan, which considers the uncertainty associated with BFT stock assessment analyses and reviews the efficacy of additional management options to reduce BFT bycatch in the Gulf of Mexico. The selected alternatives also continues the prohibition on directed fishing for BFT in the Gulf of Mexico. ICCAT is scheduled to reassess the West Atlantic BFT stock in June 2006, and the assessment will be evaluated at the upcoming annual ICCAT meeting in November 2006. NMFS will implement any changes to the rebuilding plan as required under ATCA.

*Comment 25:* Filleting tunas at-sea should be acceptable on HMS CHB vessels. By allowing filleting at-sea, the catch can be prepared and put on ice much sooner than if cleaning occurs upon returning to the dock; it will be better for public safety because tuna deteriorate quickly in warm summer and fall months; and preparing tuna sooner also improves the quality of the meat, and ultimately, angler satisfaction. The season is relatively short, so

filleting at-sea allows for a quicker turn around time between trips. It will not compromise enforcement of size limits, retention limits, and species identification. Retaining the racks can facilitate enforcement.

*Response:* Under current regulations at 50 CFR 635.30(a), "persons who own or operate a fishing vessel that possesses an Atlantic tuna in the Atlantic Ocean or that lands an Atlantic tuna in an Atlantic coastal port must maintain such Atlantic tuna through offloading either in round form or eviscerated with the head and fins removed, provided that one pectoral fin and the tail remain attached." "Eviscerated" is defined as a fish that has only the alimentary organs removed. The regulations are intended to aid in enforcing the minimum size limit, retention limits, and species identification. Over the past several years, the HMS CHB industry, more specifically the headboat sector, has requested that it be exempt from the current regulations and allowed to fillet Atlantic tunas at sea. While authorizing filleting at-sea may have social and economic benefits for the industry as the commenter suggests, waiving the current regulations could render enforcement of size limits, retention limits, and species identification difficult, thus NMFS is not able to authorize such actions at this time.

#### vi. Sharks

*Comment 26:* NMFS has placed sharks as the lowest priority. NMFS has not adequately addressed persistent overfishing, population depletion, and the need for a precautionary approach with regard to a number of exceptionally vulnerable coastal and pelagic shark species. The Draft Consolidated HMS FMP lacks goals, timetables, and milestones toward conserving sharks and their habitats.

*Response:* The implementing regulations for Amendment 1 to the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks (December 24, 2003; 68 FR 74746) included management measures to address overfishing and population depletion of sharks. These management measures included, but were not limited to: aggregating the LCS shark complex, using MSY as a basis for setting commercial quotas, implementing a 4,000 lb trip limit in the commercial LCS fishery, establishing regional commercial quotas and trimester seasons, establishing gear restrictions to reduce bycatch, and establishment of a time area closure in the mid Atlantic region from January to July each year to reduce interactions with sandbar and prohibited dusky sharks. There are also

several shark management measures in this final rule that will address overfishing of finetooth sharks, improve shark dealer identification of commercially harvested shark species, and require fishermen to leave the second dorsal and anal fin on all commercially landed sharks to facilitate improved identification, among others. Furthermore, the HMS Management Division is currently engaged in a proposed rulemaking (March, 29, 2006; 71 FR 15680) that may facilitate improved handling, release, and disentanglement of non-target bycatch, including sharks, sea turtles, and smalltooth sawfish. NMFS recently released a dusky shark assessment (May 25, 2006; 71 FR 30123), and is considering the results of the Canadian porbeagle assessment. The final LCS stock assessment review workshop was held in June of this year, and the SCS stock assessment workshops will begin in 2007. Additional management measures for shark fisheries in the Atlantic Ocean may be implemented in the future, as necessary.

*Comment 27:* NMFS should release and begin work to address the findings of LCS assessment as soon as possible.

*Response:* The LCS stock assessment is following the SEDAR process, which emphasizes constituent and stakeholder participation in assessment development and transparency in the assessment process. As documents related to the LCS assessment are completed they have been placed on the SEDAR webpage at: <http://www.sefsc.noaa.gov/sedar/>. The final LCS review workshop was held on June 5-9, 2006. NMFS will review the final determinations from the workshop and proceed with regulatory or management actions as necessary, consistent with Magnuson-Stevens Act, the HMS FMP, and other federal laws.

*Comment 28:* NMFS has relaxed the conservation framework for exceptionally vulnerable deepwater sharks by removing this special grouping from the management unit. Contrary to NFMS assertions, the finning prohibition alone is not sufficient to conserve these species. NMFS should add deepwater sharks to the list of prohibited shark species in subsequent rulemaking.

*Response:* The deepwater sharks were added to the management unit in 1999 because the Agency wanted to ensure that finning was prohibited for all sharks, including deepwater sharks. When deepwater sharks were included in the management unit, there were no other management regulations in place (i.e., permitting, reporting, trip limits, minimum size). NMFS believes that

maintaining data collection only on the deepwater sharks is sufficient because they are not targeted in the shark fishery. Prohibiting landings of these species would not likely reduce mortality, as most of these sharks are dead at haulback and take of these species is a rare occurrence. Furthermore, NMFS does not want to further jeopardize the collection of data on these species, which is a rare event, by including them in the prohibited species management unit. Currently, on the rare occasions when fishermen catch a deepwater shark, they can give it to a scientist. If the species were prohibited, every fisherman and scientist who might catch a deepwater shark and who would want to retain any part of it for research would need to have an EFP on the off chance that such a shark would be caught. Nonetheless, if directed fisheries for deepwater sharks are developed and/or extensive landings of these species begins to occur as bycatch in other fisheries, the Agency may implement additional measures.

*Comment 29:* NMFS needs to review and release the long-awaited population assessment for dusky sharks, as a matter of priority. We are concerned about the more than 23,000 dusky sharks landed in 2003, despite their prohibited species status. NMFS should investigate and address this problem immediately.

*Response:* The Southeast Fishery Science Center recently released the dusky shark assessment (May 25, 2006; 71 FR 30123). This document is available on the internet ([http://www.sefscpanamalab.noaa.gov/shark/pdf/Dusky\\_Shark\\_Assessment.zip](http://www.sefscpanamalab.noaa.gov/shark/pdf/Dusky_Shark_Assessment.zip)). NMFS is also concerned about the status of dusky sharks; hence, this species has been on the prohibited species list since 1999. In 2003, 23,288 lb dw of dusky sharks were reported landed in commercial shark fisheries. In 2004, only 1,025 lb dw of dusky sharks were landed. Effective January 1, 2005, the mid-Atlantic time/area closure closed commercial shark fishing with bottom longline gear from January 1 through July 31 of every year. This area was closed in part to reduce commercial fishery interactions with dusky sharks. NMFS may also implement additional management measures as a result of the recently released dusky shark assessment.

*Comment 30:* NMFS received comments regarding management of porbeagle sharks including: The porbeagle population is 11 percent of its size in 1961 which is too low; Canada has already listed porbeagle sharks as endangered - the U.S. needs to prohibit all landing immediately and eliminate the directed quota for porbeagle sharks;

we are concerned about the continuation of the directed quota for Northwest Atlantic porbeagles, given that this population has been proposed as "Endangered" by the IUCN SSG and Canada; NMFS should end the directed fishery for porbeagles by eliminating the directed commercial quota and allowing only incidental landings; we support NMFS stated interest in working with Canada to address porbeagle conservation - such negotiations will be more successful if the U.S. takes action to end directed porbeagle fisheries in U.S. waters; the U.S. should aggressively pursue no directed porbeagle shark fisheries with Canada and within ICCAT.

*Response:* The U.S. has, on average, landed less than 1 mt of porbeagle sharks in the last four years, most of which was incidental, not directed catch. NMFS, however recognizes the ecological significance of the historical decline in porbeagle sharks, and is currently considering the stock assessment report recently completed by Canada in the fall of 2005. Management alternatives and regulations to prevent further declines in the porbeagle stocks will likely be considered in upcoming rulemaking actions, if necessary.

*Comment 31:* NMFS needs to make permits available to Puerto Rican shark fishermen or allow them to retain sharks since they are retaining sharks anyway.

*Response:* All fishermen fishing for HMS are already required through state regulations to have the appropriate HMS permits when fishing in state waters. Additionally, shark fishermen fishing in Federal waters are required to have the appropriate Federal HMS permit consistent with Federal regulations. Fishermen from all states and territories, including Puerto Rico and the Virgin Islands, may face enforcement action if they do not comply with Federal regulations.

*Comment 32:* NMFS received two comments regarding the need to propose options for adding sharks to the prohibited species list including: NMFS has offered no alternatives in the Draft Consolidated HMS FMP to address depletion of these species (oceanic whitetip, silky sharks, and hammerheads); these species are not targeted but measures to avoid and reduce bycatch of these species are urgently needed. To reduce regulatory discards within the directed and incidental shark fishing fleets, NMFS should consider removing certain species of sharks from the prohibited species list, such as bignose, Caribbean reef, dusky, Galapagos, night, sand tiger, and Caribbean sharpnose.

*Response:* NMFS did not consider changes to the prohibited species management unit in this rulemaking. Amendment 1 to the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks established criteria for addition or removal of species to/from the prohibited species group. These four criteria include: there is sufficient biological information to indicate that stock warrants protection, the species is rarely encountered or observed caught in HMS fisheries, the species is not commonly encountered or caught as bycatch in fishing operations, and the species is difficult to distinguish from other prohibited species. NMFS may consider changes to the prohibited species management unit in a future rulemaking, if necessary.

*Comment 33:* Because smooth dogfish is the only U.S. Atlantic shark that is subject to a directed fishery and not covered by management measures, NMFS should evaluate this fishery and assess the population. NMFS should begin this work immediately, present the findings to the Mid-Atlantic Fisheries Management Council (MAFMC), and suggest a way forward as soon as possible.

*Response:* During the summer of 2005, NMFS received a request from the MAFMC to transfer management of smooth dogfish to the council. NMFS asked for more information regarding why the MAFMC should have sole jurisdiction over the stock. NMFS continues to wait for a response and will work with the Regional Fishery Management Council(s) to determine the appropriate management body for this species.

*Comment 34:* EPA noted that bycatch of SCS in the Gulf shrimp fishery fell approximately 46 percent following the introduction of turtle excluder devices in 1999. If this trend continues, this represents an encouraging level of success for the use of turtle excluder devices. EPA also noted that data entries for Table 3.90 in the Draft Consolidated HMS FMP for the year 1999 and 2000 were the same and assumed that 2000 data were estimated.

*Response:* NMFS agrees that turtle excluder devices should reduce the amount of bycatch. Regarding 1999 and 2000 data, 1999 data were calculated as the average of the value of 1992 to 1997 divided by two in order to account for the effect of the turtle excluder devices. Data from 2000 were assumed to be the same as the 1999 data.

*Comment 35:* EPA notes that Table 3.90 indicates that the dressed weights of SCS are approximately one pound per shark. This suggests that these are small

sharks that would have little commercial value.

*Response:* SCS are generally the small sharks, and they have the lowest commercial value of all Atlantic sharks, generally less than \$0.50 per pound. Many fishermen use these species as bait. In 2004, not including shark fin values, the SCS fishery was worth approximately \$340,000 compared to \$2.7M for LCS and just over \$500,000 for pelagic sharks.

#### vii. Fishing Mortality and Bycatch Reduction

*Comment 36:* Table 3.24 contains an error that has been repeated in several documents. The Technical Memorandum — SEFSC-515 cited as Garrison 2003 contains an error in addition concerning the total number of observed sets (both Total and non-NED) for 2001. The correct Total is 584 and non-NED is 398, which would change the correct percentages to 5.4 percent and 3.7 percent, respectively. Also the 2002 Non-NED percentage should be 3.9 percent. Lance Garrison confirms these inadvertent errors in his published errata affixed to the document.

*Response:* NMFS has made the requested corrections.

*Comment 37:* Has NMFS considered the fact that the Gulf of Mexico is a special region with special needs? Could there be regulations on a regional basis (i.e., regulations different for the Gulf of Mexico from that of other regions)?

*Response:* It is possible to implement regulations on an area-specific basis to fit the special needs of a fishery whenever possible. NMFS has implemented different regulations for the pelagic longline fishery on an area-specific basis in the past. For instance, a live bait prohibition for this fishery has been implemented in the Gulf of Mexico in an attempt to reduce the bycatch of billfish. NMFS has also implemented regional allocations and seasons for LCS and SCS including ones for the Gulf of Mexico, and BFT regulations in the Gulf of Mexico are different than those along the east coast. Another example of regionally-specific regulations is the requirement to use only 18/0 or larger circle hooks in the NED for the pelagic longline fishery while requiring 16/0 or larger circle hooks elsewhere. NMFS will continue to evaluate alternative management measures in light of the specific needs of a fishery when possible.

*Comment 38:* NMFS should request that the Gulf of Mexico Fishery Management Council and the Gulf states cooperate with NMFS to minimize shark bycatch associated with fisheries under

their purview (i.e., Gulf of Mexico shrimp and menhaden fisheries).

*Response:* NMFS agrees that cooperation amongst the States, Regional Fishery Management Councils, and the Agency can help to address bycatch issues, particularly in those fisheries that cross jurisdictional boundaries. NMFS has contacted the Gulf and South Atlantic States and Regional Fishery Management Councils in an attempt to identify fisheries where finetooth shark bycatch may be occurring. NMFS also consulted with all Regional Fishery Management Councils and both the Atlantic and Gulf States Marine Fisheries Commissions regarding the Draft Consolidated HMS FMP and its proposed measures.

*Comment 39:* NMFS has failed to meaningfully reduce longline bycatch since 1997. While time/area closures give the appearance that something is being done, this is not the only answer.

*Response:* NMFS disagrees that longline bycatch has not been meaningfully reduced. NMFS analyzed the reported landings and bycatch in the pelagic longline fishery from 1997–99 versus 2001–03 to measure the effectiveness of the time/area closures implemented in 2000–01. The analyses showed that the existing closures have been effective at reducing bycatch of protected species and non-target HMS and have provided positive ecological benefits. For example, the overall number of reported discards of swordfish, bluefin and bigeye tunas, pelagic sharks, blue and white marlin, sailfish, and spearfish have all declined by more than 30 percent. The reported discards of blue and white marlin declined by about 50 percent and sailfish discards declined by almost 75 percent. The reported number of sea turtles caught and released declined by almost 28 percent.

It appears that bluefin tuna discards in the MAB and NEC have been reduced considerably since the implementation of the June closure in 1999. Reported discards of BFT prior to implementation of the closure ranged from 558 to over 2,700 per year. Since 1999, the number of bluefin tuna reported discarded has remained below 500 per year. The number of swordfish kept in the MAB and NEC has increased since the closure was implemented while the number of billfish discarded has declined.

NMFS agrees that time/area closures are not the only management tool that can be utilized to reduce bycatch. NMFS has also implemented circle hook and bait requirements for the pelagic longline fishery and a live bait prohibition for that fishery in the Gulf of Mexico as well. These measures are

intended to reduce the bycatch of non-target species and protected resources in the pelagic longline fishery.

*Comment 40:* NMFS should allow longline fishermen to sell their bycatch for charity.

*Response:* Commercial fishermen are already allowed to sell their catch for whatever purpose unless it is a prohibited species or specific regulations prohibit its retention such as the season is closed, quota has been met, the fish is undersized, or the animal is a protected resource.

*Comment 41:* NMFS received several comments regarding the need for additional research including: NMFS should research live baiting using circle hooks as a technique to increase catch of YFT and reduce bycatch; NMFS should conduct and/or continue experiments on non-offset circle hooks, circle hooks 20/0 and larger, bait options, and post-hooking effects.

*Response:* NMFS agrees that additional research can be conducted on a number of topics, including those in this comment and other comments throughout this final rule, to evaluate their effectiveness in reducing bycatch of non-target species and protected resources. NMFS intends to continue to evaluate research proposals in many of these areas. New research is dependent on funding availability.

*Comment 42:* In our scoping comments, we set forth a proposal for NMFS to consider regarding bycatch. NMFS left that proposal out of the draft FMP even though it is required under international and domestic laws to develop fully and analyze that proposal.

*Response:* While every comment is considered, NMFS disagrees that all comments offered during the scoping process need to be developed fully and analyzed. The Agency considered a broad range of alternatives to address bycatch in the Draft FMP, however, not all of these were fully developed and analyzed for a variety of reasons. There may have been more effective alternatives considered for further analysis or a proposed measure was found to not meet the needs or objectives of the FMP, and therefore was not considered further.

*Comment 43:* NMFS received comments about the need to implement a cap or quota on bycatch. These comments include: to reduce bycatch, NMFS should implement a hard cap system. Such a system would, among other things, set limits on fishing mortality of marine life, provide accountability by dividing limits between fishing sectors, set limits that would stop fishing for that sector, reward clean fishing, prevent a race to

fish, and reduce bycatch. Such caps should be set for commercially targeted species, spawning species, recreationally targeted species, endangered species, marine mammals, and other species, such as sea birds, that are needed to promote the health of the marine ecosystem; NMFS should implement a hard cap on the takes of protected species similar to the one successfully implemented in the Western Pacific. This would remedy the historic failure of the pelagic longline fleet to maintain up-to-date records of turtle bycatch, allow for timely corrective action to reinitiate under the ESA, and help the fleet stay within take levels intended to protect against the jeopardy to the species. Such a system would require real time observer reporting and a "yellow light" system to warn fishermen when takes are approaching the limit.

*Response:* Additional measures designed to reduce bycatch could be examined in the future, possibly on a sector by sector basis as suggested by the commenter. However, a hard cap system may not be appropriate or feasible in every sector due to logistical constraints such as placing observers on every recreational and commercial vessel, limited resources, and other management measures that are already in place for the fishery such as mandatory circle hook use for the PLL fishery. There are also international concerns related to rebuilding plans and the ATCA, fishing effort and mortality rates, and bycatch that would need to be considered prior to establishing hard caps. A hard cap on the number of protected species interactions (e.g., sea turtles) in all HMS fisheries already exists through the incidental take statement. Each fishery is operating under an incidental take statement that once reached can close that fishery and/or result in a re-initiation of consultation under Section 7 of the ESA.

*Comment 44:* NMFS has a study that indicates a default standardized bycatch reporting methodology (SBRM) must include observer coverage of at least 20 percent (or 50 percent when endangered species are at risk). Rather than analyzing its needs to meet the conservation and management goals of the fishery, NMFS claims the study was simplistic and failed to account for "limited resources." This arbitrary failure to analyze alternatives for establishing a reporting methodology violates NEPA and the Magnuson-Stevens Act. NEPA requires NMFS to undertake an analysis to determine the level of observer coverage necessary to provide accurate and precise data for

each conservation and management need addressed in the draft FMP. Congress and the Magnuson-Stevens Act do not give NMFS the ability to ignore the reporting methodology based on "limited resources." Nevertheless, a NEPA analysis could consider them.

*Response:* The effectiveness of any SBRM depends on its ability to estimate the type and quantity of bycatch precisely and accurately enough to meet the conservation and management needs of a fishery. The National Bycatch Report contains an in-depth examination of the issues of precision and accuracy in estimating bycatch and how precision relates to sampling and to assessments. The precision of an estimate is often expressed in terms of the coefficient of variation (CV) defined as the standard error of the estimator divided by the estimate. The lower the CV, the more precise the estimate is considered to be. A precise estimate is not necessarily an accurate estimate.

The National Working Group on Bycatch recommended that at-sea sampling designs should be formulated to achieve precision goals for the least amount of observation effort, while also striving to increase accuracy. This can be accomplished through random sample selection, developing appropriate sampling strata and sampling allocation procedures, and by implementing appropriate tests for bias. Sampling programs should be driven by the precision and accuracy required by managers to address management needs for estimating management quantities such as allowable catches through a stock assessment, for evaluating bycatch relative to a management standard such as allowable take, and for developing mitigation mechanisms. The recommended precision goals for estimates of bycatch are defined in terms of the coefficient of variation (CV) of each estimate. For marine mammals and other protected species, including seabirds and sea turtles, the recommended precision goal is a 20–30 percent CV for estimates of interactions for each species/stock taken by a fishery. For fishery resources, excluding protected species, caught as bycatch in a fishery, the recommended precision goal is a 20–30 percent CV for estimates of total discards (aggregated over all species) for the fishery; or if total catch cannot be divided into discards and retained catch, then the goal is a 20–30 percent CV for estimates of total catch (NMFS, 2004a). The report also states that attainment of these goals may not be possible or practical in all fisheries and should be evaluated on a case-by-case basis.

Rago et al., (2005) examined potential sources of bias in commercial fisheries of the Northeast Atlantic by comparing measures of performance for vessels with and without observers. Bias can arise if the vessels with observers onboard consistently catch more or less than other vessels, if trip durations change, or if vessels fish in different areas. Average catches (pounds landed) for observed and total trips compared favorably and the expected differences of the stratum specific means and standard deviations for both kept weight and trip duration was near zero (Rago et al., 2005).

The report cited by this commenter suggests that relatively high percentages of observer coverage are necessary to adequately address potential bias in bycatch estimates from observer programs. However, the examples cited in that report as successful in reducing bias through high observer coverage levels are fisheries comprised of relatively few vessels compared to many other fisheries, including the Atlantic HMS fishery. Their examples are not representative of the issues facing most observer programs and fishery managers, who must work with limited resources to cover large and diverse fisheries. The commenter appears to suggest that simply increasing observer coverage ensures accuracy of the estimates. However, bias due to unrepresentative sampling may not be reduced by increasing sample size through increased observer coverage due to logistical constraints, such as if certain fishermen refuse to take observers, or if certain classes of vessels cannot accommodate observers. Increasing sample size through increased observer coverage may only result in a larger, but still biased, sample due to non-representative sampling. Observer programs strive to achieve samples that are representative of both fishing effort and catches. Representative samples are critical not only for obtaining accurate (i.e., unbiased) estimates of bycatch, but also for collecting information about factors that may be important for mitigating bycatch. Bias may be introduced at several levels such as when vessels are selected for coverage or when only a portion of the haul can be sampled due to weather or other concerns.

NMFS has conducted analyses to determine the level of observer coverage needed for the pelagic longline, bottom longline and shark gillnet fisheries to produce estimates for protected resource interactions with a CV of 0.3 (30 percent) or less. The current target levels of observer coverage are eight percent of total sets for the PLL fishery,

3.9 percent of total effort for the BLL fishery, and 33.8 percent for the shark gillnet fishery outside of the right whale calving season (April 1 through November 14) and 100 percent during right whale calving season (November 15 through March 31). NMFS will continue to provide observer coverage at these levels, subject to available resources.

*Comment 45:* NEPA requires that the EIS analyze the cumulative effect of all takes on sea turtles, not just the effects of takes in the HMS fisheries. While the pelagic longline fishery is one of the most damaging fisheries to sea turtle populations, a true determination of environmental impacts of this fishery cannot be made without examining the effects of all U.S. fisheries cumulatively.

*Response:* NMFS agrees that impacts to sea turtles and other protected resources are not limited to takes in HMS fisheries. The environmental impacts of the pelagic longline fishery and a description of the fishery are covered in Chapters 3 and 4 of the Draft HMS FMP. All fisheries and non-fisheries impacts on the status of each protected resource were already analyzed as part of the environmental baseline in the BiOp for the PLL fishery. Because the final actions within this final rule are not outside the scope of the BiOp for the PLL fishery, or the BiOps for other HMS fisheries, NMFS does not consider the actions detrimental to sea turtle populations.

*Comment 46:* The EIS provides only a cursory analysis of the impacts of HMS fisheries on marine mammals. The current bycatch monitoring methodology is not adequate for the conservation and management needs of marine mammals. Collecting the information is necessary to allow NMFS to devise specific bycatch reduction measures based on the actual behavior of marine mammals in HMS fisheries. NMFS should require fishermen to report in real-time where they place gear and where gear is lost, and to mark gear with colors to indicate the type and location of fishing gear. NMFS must also prioritize the granting of scientific research permits.

*Response:* The MMPA requires commercial fishermen to report all marine mammal interactions within 48 hours after the end of a fishing trip. Marine mammal interactions have been documented in the pelagic longline fishery and the shark gillnet fishery. Both fisheries are subject to observer coverage at levels that produce estimates of marine mammal interactions with a CV less than 30 percent. For marine mammals and other protected species, including seabirds

and sea turtles, the recommended precision goal in the National Bycatch Report is a 20–30 percent CV for estimates of interactions for each species/stock taken by a fishery. In June 2005, NMFS convened the Pelagic Longline Take Reduction Team to assess and reduce the takes of marine mammals, specifically pilot whales and Risso's dolphins, by the pelagic longline fishery. NMFS will take action based on the results of the Pelagic Longline Take Reduction Plan, as necessary.

*Comment 47:* NMFS must implement comparable bycatch and sea turtle safe conservation certification program on all HMS product imports.

*Response:* NMFS appreciates this comment. As such a program would be most effective as part of an international program, NMFS may evaluate the efficacy and feasibility of requiring this type of certification program as part of a future action.

*Comment 48:* While NMFS received a number of comments on ways to better monitor recreational landings including logbook data that is tied to renewing permits, catch cards, and Vessel Trip Reports (VTR), the issue was relegated to one paragraph in the "Issues for Future Consideration and Outlook" section. The AP wants to move from survey methods to census methods and that idea is lost in this draft. NMFS should work with ACCSP to implement a mandatory VTR program that provides timely, accurate catch and effort data for the for-hire fleets. NMFS should state that it supports a comparison of existing for-hire VTR catch data with LPS data for the same time periods.

*Response:* NMFS recognizes the desire to improve the collection of recreational landings data. At the request of NMFS, the National Academy of Science (NAS) recently reviewed both state and federal marine recreational fishery surveys. The review committee's report has been published and the Agency is evaluating the recommendations.

*Comment 49:* The Agency has a lack of attention to recreational fisheries data collection resulting in negative impacts to the recreational fishery.

*Response:* NMFS spends considerable time and money collecting data from recreational fisheries, including recreational fisheries for HMS. NMFS staff also spend considerable time and effort monitoring data collection and reviewing recreational fishery data for HMS fisheries. The Agency is evaluating the recommendations of the recent NAS review of marine fishery surveys to identify where improvements may be made.

*Comment 50:* Maryland catch card data should be used to determine total BFT catch instead of using LPS catch data for Maryland.

*Response:* NMFS has reviewed the Maryland BFT catch card data from 2002–2005 to evaluate its utility for management purposes. Although current reporting appears to be high, there is a measured level of non-compliance with the program. This non-compliance was determined by comparing directly observed BFT in the intercept portion of the LPS with catch card records. Non-compliance with the Maryland catch card program is currently estimated to be 15 percent. NMFS will continue to work with the Maryland DNR to improve compliance with the catch card program so that NMFS can integrate the data it generates into the monitoring and management program for BFT.

#### viii. Permitting, Reporting, and Monitoring

*Comment 51:* NMFS received a number of comments regarding HMS permitting in general. These comments consisted of: NMFS should provide updated HMS regulations to permit holders when they are issued a permit; permits should be renewed on a calendar year basis so fishing groups can notify their memberships and thereby improve renewal compliance; and, NMFS should implement a salt water fishing license for all fishermen in order to develop a database for data collection and observer coverage.

*Response:* NMFS agrees that the idea of providing copies of relevant regulations when an HMS permit is applied for and sent has merit. However, due to the ever changing dynamics of HMS fisheries, the rules and regulations may change throughout the season. Providing permit holders with a snapshot of the rules and regulations that exist early in the season may lead to a false sense of security that these regulations would remain consistent for the entire season. In an attempt to strike a balance, NMFS includes information on the Atlantic tunas and HMS permits that allow the permit holder to access the most recent information. For instance, NMFS includes a web address and toll-free telephone number where permit holders can locate the most up to date regulations. For those permits that authorize the user to participate in recreational HMS fisheries, NMFS has included the appropriate telephone numbers to report their catch. NMFS is adjusting the annual management timeframe of HMS fisheries to a calendar year, versus a wrap around

fishing year, i.e., June through May of the following year. NMFS will realign the HMS permitting to coincide with the calendar year. For consistency purposes the shark and swordfish commercial permits, both vessel and dealers, will still be issued according to birth month, under the business rules of the Southeast Permitting Office.

*Comment 52:* NMFS received a comment stating that NMFS should redesign vessel permits based on fishing methods and geographic area. NMFS should combine vessel permitting for coastal pelagics and HMS for the charter boats, headboats, and commercial handgear vessels.

*Response:* Since the inception of the 1999 FMP, constituents, advisory panel members, NMFS staff, and others have identified a number of issues pertaining to the permitting program. These have included, but are not limited to, further rationalizing some segments of the HMS fisheries, streamlining or simplifying the permitting process, restructuring the permit process to a gear-based permit system from the current species-based permit system, and reopening some segments of the limited access system to allow for the issuance of additional permits. Addressing these issues in the future may be important to the successful long-term stewardship of HMS fisheries, and therefore NMFS may consider restructuring these elements in future rulemakings.

*Comment 53:* A mandatory HMS tournament permit (alternative E9) would help to provide an exact count of the number of marlin landed in tournaments.

*Response:* In the Draft Consolidated HMS FMP, a mandatory HMS tournament permit (alternative E9) was considered, but not further analyzed, because improvements to tournament registration, data collection, and enforceability may be achieved with considerably less burden to the public and the government by issuing a confirmation number, rather than a permit, to tournament operators that have registered their tournaments with NMFS. Because HMS tournaments frequently change operators, names, and dates, a tournament permit would be very burdensome to administer and enforce. Therefore, the regulations are being clarified to specify that HMS tournament registration is not considered complete unless the operator has received a confirmation number from the HMS Management Division of NMFS. Requiring a tournament confirmation number, issued by the HMS Management Division, will achieve the same objective (i.e., increased compliance) as a tournament

permit. Since all tournaments awarding points or prizes for HMS are currently required to be registered with NMFS, and because all billfish tournaments are currently selected for reporting, the Agency is already obtaining an exact count of the number of marlin landed in registered tournaments.

*Comment 54:* NMFS received general comments regarding the recreational reporting requirements including: Non-compliance with recreational swordfish and billfish reporting occurs because it takes too much time to report fish to NMFS using the telephone. NMFS needs to simplify the telephone reporting system and increase Customer Service; to increase compliance with recreational reporting requirements, NMFS should provide a bumper sticker, or token reward, to those fishermen that have reported their catch. This technique has been successful in other fisheries.

*Response:* The recreational billfish and swordfish telephone reporting system has recently been modified to provide quicker and more convenient access. HMS Angling category permit holders (or their designees) must report landings of these species within 24 hours of landing by calling 800-894-5528, and then pushing the numbers "21" to provide information regarding the catch. A representative from NMFS will later contact the permit holder (or designee) to verify the landing and provide a confirmation number. The initial telephone call should only take a few minutes. Since the system has been modified to provide quicker access, the number of first-time callers has increased. Additionally, NMFS is working on implementing an Internet reporting system for these species. The Agency appreciates suggestions to increase compliance with the mandatory recreational reporting requirement and will consider these in the future, if necessary.

*Comment 55:* Until NMFS seriously invests in comparable permitting, reporting, monitoring, and enforcement across all HMS fisheries, commercial and recreational, it will not be able to appropriately manage Atlantic HMS fisheries. Currently, NMFS has adequate data for only a couple of commercial fisheries.

*Response:* NMFS realizes the importance of permitting, reporting, monitoring, and enforcement in maintaining viable management of Atlantic HMS. There are several measures included in this rulemaking that address these issues. Quality stock assessments, accurate quota monitoring, fishing effort control, and complying with current HMS regulations are

paramount to the HMS management program and the Agency agrees that these programs are worth serious investments of personnel and financial resources. The Agency currently maintains a comprehensive permitting system for both commercial and recreational fisheries, including both limited and open access regimes. Reporting is required of all shark and swordfish commercial fisheries participants, and some commercial tuna fishery participants, including costs and earnings reports from selected commercial fisheries participants. Landings are monitored consistently to ensure that landings are within their allotted quotas. Recreational reporting is currently required for all non-tournament landings of bluefin tuna, swordfish, and billfish. Tournaments are also required to register and report any landings of HMS. NMFS is dependant on several entities for dockside and at-sea enforcement, including NMFS Office of Law Enforcement, the United States Coast Guard, and individual states that maintain a Joint Enforcement Agreement with NMFS. NMFS is involved in activities to enhance, update, and/or modify the permitting, reporting, monitoring, and enforcement systems currently in place.

*Comment 56:* NMFS received comments pertaining to the longline sector of the HMS fishery. The comments consisted of: NMFS must monitor and account for all sources of fishing mortality, not just mortality from the PLL fleet; and, is the VMS requirement meeting its intended purpose and who needs to possess one?; and, NMFS should put 100 percent observer coverage on commercial vessels around Puerto Rico for a few years due to gear conflicts between PLL vessels and other commercial vessels. These conflicts are attributed to PLL vessels operating closer to shore and thus interfering with traditional trolling practices.

*Response:* NMFS accounts for recreational landings in stock assessments and uses the best available science regarding post-release mortality of billfish in the recreational sector to consider impacts on billfish and other HMS taken in fisheries other than commercial longlining. VMS is required on all vessels fishing for HMS with pelagic longline gear onboard, on all directed shark bottom longline vessels between 33° North and 36°30' North from January through July, and on all gillnet vessels with a directed shark permit during the Right Whale Calving Season from November 15 to March 31. VMS is meeting its intended purpose by

assisting in the monitoring and enforcement of closed areas. It is one of several tools including logbooks, observer programs, gear requirements, quotas, and limited access permits that NMFS uses to manage HMS fisheries. Resources for observer programs are limited, and having 100 percent observer coverage on commercial vessels around Puerto Rico would likely not be possible due to funding constraints. Currently, vessels are randomly selected for observer coverage throughout the fishery based on having a permit and reporting in logbooks. Furthermore, observers are not trained as enforcement personnel, and would not be in a position to reduce conflicts between different gear sectors in and around Puerto Rico. These types of issues are more appropriately handled by enforcement personnel.

*Comment 57:* NMFS received a number of comments regarding the deployment of observers in HMS fisheries. These comments consisted of: Observer coverage on the pelagic longline fishery must be significantly increased from current levels, especially in areas with high levels of sea turtle take (e.g., the Northeast Distant and the Gulf of Mexico). More coverage is essential to provide data on the effectiveness of the gear and bait modifications and the rate and location of sea turtle capture. The 2004 BiOp required 8 percent coverage but this increase was established by ICCAT for the purpose of assessing the bycatch of tuna species and will not be effective at assessing the bycatch of rarely encountered species such as sea turtles; proper measurement for observer coverage levels should be based on the number of observed hooks out of the number of hooks reported to have been fished, rather than number of observed sets; a voluntary HMS CHB observer program should be tested; and, NMFS should implement electronic reporting and mandatory observer coverage for all HMS fisheries.

*Response:* NMFS increased observer coverage in the pelagic longline fishery to 8 percent in 2004 in order to effectively monitor bycatch after implementation of new gear requirements. The pelagic longline observer program coverage level was raised to 8 percent not just to meet ICCAT targets, but also to improve the precision of catch and bycatch estimates specified in NMFS' guidelines for fisheries observer coverage levels. The number of sets is the standard effort used by other NMFS-managed fisheries in calculating the level of observer coverage required. Additionally, the set location is more easily tracked to the

statistical reporting areas in the Atlantic than logbook or fishing effort based on the number of hooks would be. NMFS agrees that voluntary observer coverage would be helpful in a number of different fisheries, as would electronic reporting if it were technologically feasible and not cost prohibitive. NMFS will continue to explore these options in the future.

*Comment 58:* An operator's permit should be required for all HMS fisheries.

*Response:* The HMS Management Division is aware of several other federally managed fisheries that have imposed this requirement (e.g., the commercial and charter/headboat Atlantic dolphin and wahoo fisheries and the commercial South Atlantic rock shrimp fishery), however, NMFS has not proposed similar measures for HMS at this time. NMFS is looking at the permitting requirements for all HMS fisheries and may be consider this requirement in the future, as necessary and appropriate.

#### ix. Enforcement

*Comment 59:* NMFS received several comments related to the lack of enforcement of HMS regulations, including: the Agency needs to enforce the HMS regulations for all people fishing for HMS, there is virtually no fisheries enforcement in the U.S. Virgin Islands, lack of enforcement is a big problem in Puerto Rico, law enforcement should increase effort around places where marlin are sold illegally and there are many issues with billfish landings in Puerto Rico and there should be continued focused efforts to better understand how many billfish are being landed in the Caribbean.

*Response:* NMFS Office for Law Enforcement (NMFS OLE) has Special Agents stationed in Puerto Rico to enforce all federal fisheries laws, including those involving HMS. In addition, the United States Coast Guard (USCG) conducts fisheries enforcement in all federal waters, including the waters off the coast of Puerto Rico. With regard to the specific concerns that the commenter raised about billfish, NMFS has very little hard data on the extent of illegal sales of billfish in Puerto Rico, and as such cannot verify the veracity of the commenter's claims or assess their impact. NMFS has received a number of anecdotal reports of sales of Atlantic marlin in Puerto Rico. The number of these anecdotal reports suggests that a sizable number of Atlantic marlin may be illegally sold and implies that more than just those fish that come to the boat dead are

illegally entered into commerce. NMFS acknowledges that there is some uncertainty associated with marlin landings statistics from the U.S. Caribbean, and the Agency is working to improve these statistics by increasing enforcement of existing permitting and reporting requirements, including those for tournaments.

*Comment 60:* One commenter was confused by the 3 and 12 mile limits, other confusing rules, and whom they should call to complain and ask for patrols.

*Response:* Most states on the Atlantic Ocean, with the exception of Texas and the west coast of Florida, have a 3 mile limit which delineates their states' waters. Individual states (or commonwealths) have jurisdiction over fisheries management and enforcement in their waters. The west (Gulf of Mexico) coast of Florida and Texas have jurisdiction out to nine miles. Puerto Rico, a U.S. Territory, has jurisdiction out to nine miles. The 2005 Guide for Complying With the Regulations for Atlantic Tunas, Swordfish, Sharks, and Billfish provides detailed information and responses to frequently asked questions concerning HMS regulations. The contact numbers for NMFS Office of Law Enforcement are also provided in this document which can be downloaded from the HMS website or by contacting NMFS.

*Comment 61:* NMFS must do a better job in protecting and preserving our marine resources in general. Possible strategies that NMFS should consider include: discouraging overfishing by increasing fees, implementing stricter regulations, and improving enforcement.

*Response:* NMFS has implemented numerous regulations that are intended to prevent overfishing, rebuild overfished stocks, reduce bycatch, and limit fishing capacity in efforts to ensure that viable stocks of HMS are enjoyed by future generations of stakeholders. Enforcement of HMS regulations is one of several priorities shared by the NMFS OLE, USCG, and states that have a Joint Enforcement Agreement with the Federal government. NMFS OLE, USCG, and individual states are constantly striving to improve enforcement of not just HMS regulations, but regulations pertaining to all fisheries. This rulemaking includes regulations aimed at rebuilding overfished stocks of billfish, preventing overfishing of finetooth sharks, reducing post release mortality of sea turtles and other protected resources, simplifying management of bluefin tuna, authorizing additional fishing gears for HMS, and improving identification of

sharks by dealers, among other measures. Increasing fees was not analyzed in this rulemaking, however, NMFS has implemented a suite of other regulations, in this rulemaking and otherwise, that prevent or discourage overfishing.

*Comment 62:* Possession of HMS angling permits in South Florida is still an issue. Many anglers do not possess the appropriate permit. Could the Sun Sentinel or Miami Herald be involved in reporting cases where anglers are caught for fishing without the proper permits?

*Response:* NMFS agrees that it is important for all participants in HMS fisheries to possess the appropriate permit and is interested in exploring options to improve outreach in all areas of the Atlantic with the objective of increased compliance with HMS permitting requirements. Advertising the requirements in newspapers or other media may be a viable option to improve compliance. However, individuals have the primary responsibility for knowing the laws surrounding their participation in all activities, including the pursuit of HMS. Many freshwater, estuarine, and/or marine fisheries require compliance with regulations that include, but are not limited to: permitting, size and bag limits, and seasons. HMS fisheries are no exception.

*Comment 63:* NMFS OLE needs to prioritize which violations are the most significant and pursue these cases first.

*Response:* NMFS OLE, in conjunction with the NMFS Regional Administrator, sets regional enforcement priorities. These priorities are based on the threat that a certain violation or category of violations presents to marine resources, identified trends in noncompliance, as well as other factors. In addition, the Magnuson-Stevens Act, as well as the Agency's own civil monetary penalty schedule, provides that the egregiousness of the offense and the violator's history of prior violations is considered, along with other factors, in determining the appropriate civil monetary penalty.

#### x. ICCAT

*Comment 64:* NMFS received a number of comments pertaining to ICCAT, the 250 recreationally caught marlin landing limit, U.S. participation at ICCAT, and U.S. negotiating positions at ICCAT, including: ICCAT should look at a longer billfish time series so they can see the increase in biomass overtime; the bargaining power of the U.S. may be reduced at ICCAT if the full quota is not being utilized; the U.S. impact on Atlantic blue and white marlin is probably considerably less

than 5 percent. The White Marlin Status Review Team noted that if the United States were to stop all commercial and recreational fishing mortality for white marlin, the impact on the stock trajectory would be minimal. The U.S. cannot have a meaningful impact acting alone. ICCAT does not give credit for unilateral conservation measures. If the U.S. implements the selected alternatives measures now, we will greatly reduce our ability to negotiate with other nations to further reduce their impacts on these overfished stocks; we do not favor additional domestic regulations on catches of marlin until after further development of a rebuilding plan by ICCAT; we would be better off if NMFS waited until the other countries reduced their commercial landing by 50 percent before we agree to the 250. We would like to see verification of the 50 percent and 66 percent landing reductions that other countries have agreed to; United States ICCAT representatives should demand the unjustified 250 marlin limit be remanded. Particularly, when across the ocean, foreign longliners harvest these species for sale, with no thought of conservation; if NMFS wants angler support of recreational limits, they need to prove to recreational anglers that the U.S. will take a tougher stand at ICCAT; ICCAT may not be enough to deal with global conservation concerns relating to billfish; more pressure needs to be applied on countries that are not complying with ICCAT recommendations; the U.S. should reconsider how we participate in the ICCAT process due to its effectiveness and the inability to get other member nations to comply with recommendations; and, NMFS must strengthen its ability to establish responsible fishing practices in other countries and protect this global resource.

*Response:* Contrary to the assertion that an examination of data over a longer time series would reveal an increase in billfish biomass over time, an examination of Atlantic billfish biomass, catch, CPUE, and fishing mortality rate data back to the late 1950s shows an even more extreme decline in biomass than an examination of more recent time series. To use Atlantic blue marlin as an example, biomass of Atlantic blue marlin was an estimated 200 percent of MSY in the late 1950s and declined to just 40 percent of MSY by 2000. CPUE during the same period fell by more than 80 percent and total Atlantic catches of blue marlin fell from approximately 9,000 mt to just over 2,000 mt. These dramatic declines were

accompanied by similarly large increases in the fishing mortality rate, which rose from less than 0.3 to approximately 4.0.

Based on SCRS data, catches of U.S. flagged vessels represent 4.5 percent of catches reported to ICCAT. U.S. action alone is not sufficient to fully recover stocks of Atlantic billfish, and reductions in catches, landings, and post-release mortalities from the pelagic longline and recreational fisheries, at both the international and domestic levels, are essential to the recovery of the Atlantic billfish. Appropriate domestic management measures, including implementation of circle hook requirements and ICCAT recommendations, as contained in this final rule, among others, can and should be implemented at this time.

The 250 marlin landing limit was contained in an ICCAT recommendation (00-13) championed by the U.S., supported by the U.S. recreational, commercial, and government ICCAT commissioners, and adopted by ICCAT. Recommendation 00-13 established a number of additional stringent conservation measures on other nations to improve the stock status of Atlantic marlin, including mandatory reductions in landings of blue and white marlin by 50 percent and 67 percent, respectively, among others. For the period 2001 through 2004, the U.S. has averaged 189 recreationally landed marlins, or approximately 75 percent of the landing limit each year. In two of those four years, the U.S. was more than 100 marlin, or the equivalent of more than 40 percent, below the U.S. landing limit, and U.S. fishermen are free to practice catch and release fishing, which is the dominant practice in the fishery by choice. The U.S. has championed, and will continue to champion, billfish conservation internationally.

*Comment 65:* The biggest threat to Atlantic billfish is illegal, unregulated, and unreported (IUU) fishing activities by foreign longline vessels. ICCAT nations must agree to eliminate these activities. No further restrictions should be placed upon U.S. recreational billfish fishermen until the problems associated with IUU fishing are addressed, and a further reduction in bycatch by legitimate longline vessels is achieved.

*Response:* IUU fishing represents a threat to the health of Atlantic billfish populations, and as such, the U.S. continues to work through ICCAT to address this issue as rapidly and efficiently as possible. Reductions in bycatch and bycatch mortality from the pelagic longline and recreational fisheries, at both the international and domestic levels, are essential to the

recovery of the Atlantic billfish. Further, there are appropriate domestic management measures, including implementation of circle hook requirements and ICCAT recommendations, as per the selected alternatives in this final rule, among others, that can and should be implemented while concurrently working to end IUU fishing at the international level.

*Comment 66:* To reduce billfish mortality, commenters suggested consideration or adoption of a number of international positions and trade restrictive actions by the U.S. including: imposition of trade penalties and tariffs on other countries that do not adhere to ICCAT billfish recommendations; initiating action at ICCAT to stop longlining worldwide; prohibition of all longlining in the U.S. immediately; and, prohibiting the importation of any fish from other countries whose vessels deploy longlines, do not adhere to ICCAT quotas, and do not require circle hooks on longlines.

*Response:* NMFS has imposed import restrictions on swordfish below the ICCAT minimum size, and may consider imposing future trade restrictions on any ICCAT species, in accordance with adopted ICCAT recommendations to impose trade restrictions. Multilateral trade restrictions, such as ICCAT recommendations, are an effective tool for addressing nations whose vessels fish in a manner that undermines the effectiveness of ICCAT conservation and management measures. Pelagic longline gear is the predominant gear type for harvesting highly migratory species and, with application of appropriate management measures, can provide for the sustainable harvest of fisheries resources in many instances. As described in the response to comments related to alternative B7, NMFS is not convinced that an international or domestic prohibition on pelagic longline fishing is necessary at this time.

*Comment 67:* NMFS should not implement any additional management measures on billfish until after the ICCAT meeting following the next assessments of blue and white marlin; I support alternative E1 (no action) because I disagree that we need to put more regulations on US fishermen. Our State Department needs to be listening to the U.S., but they do not care that they are putting U.S. fishermen out of business. What the U.S. cares about is leading by example without compliance. The U.S. still does not take international compliance at ICCAT seriously. The U.S. should say that it

would not do anything to domestic fishermen unless we see better international compliance through ICCAT. Why is NMFS in such a hurry to put more regulations on U.S. fishermen?

*Response:* Reductions in bycatch and bycatch mortality from the pelagic longline and recreational fisheries, at both the international and domestic levels, are essential to the recovery of the Atlantic billfish. There are appropriate domestic management measures, including implementation of circle hook requirements and ICCAT recommendations, as contained in this final rule, among others, that can and should be implemented while concurrently working with the international community to improve management and compliance with existing ICCAT recommendations. The U.S. takes compliance issues at ICCAT very seriously and has led efforts at ICCAT to improve compliance at every available opportunity. The U.S. has been the driving force behind most measures at ICCAT that have resulted in improved compliance with management recommendations and data collection requirements.

#### **Changes from the Proposed Rule (August 19, 2005; 70 FR 48804)**

In addition to the correct of minor edits throughout, NMFS has made several changes to the proposed rule for management measures related to the workshops, the directed billfish fishery, the BFT fishery, authorized fishing gears, and regulatory housekeeping issues. These changes are outlined below.

1. In § 635.2, the definition of “Atlantic HMS identification workshop certificate” was added to the regulatory text in the proposed rule. The final rule changes the certificate name to “Atlantic shark identification workshop certificate” to better reflect the curriculum for these workshops. The name of the protected species workshop certificate was also modified to protected species safe handling, release, and identification workshop certificate in order to more accurately reflect the workshop objectives.

2. At § 635.4(l)(1), the final rule was modified to include language regarding the requirement to obtain the appropriate workshop certificate before transferring permits from one entity to another. The change was made because the applicant must submit proof of workshop certification with the application for a shark or swordfish limited access permit. This modification will ensure that the owner is familiar with the proper safe handling, release,

and identification techniques upon entering into and prior to actively participating the fishery.

3. In § 635.8(a)(1), the January 1, 2007, deadline for owners and operators of vessels that fish with pelagic and bottom longline and gillnet gear was changed to require the owners and operators of such vessels to possess a workshop certificate prior to renewing their commercial shark or swordfish Federal limited access permits in 2007. The rolling deadline distributes workshop attendance throughout the year, facilitating the implementation and administration of these workshops. With attendance likely to be more evenly distributed, owners and operators are expected to get more hands on practice with the tools and techniques for safe handling and release of protected species. The delayed deadline gives participants the opportunity to attend the workshop most convenient for them.

4. The final rule was modified to allow NMFS to issue a certificate to any person who has completed the workshop. The reference to permitted entity in § 635.8(a)(2) and permitted entity and proxy in § 635.8(b)(2) were removed. Removing the term “permitted” allows individuals, who are not permitted to participate in any of the HMS fisheries, to receive the workshop certification (i.e., law enforcement, port agents, anglers, etc.). Some permit holders are corporations or companies; therefore the term “person” refers to individuals as well as corporations or companies. Section 3 of the Magnuson-Stevens Act defines a “person” as: “any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.”

5. In § 635.8(b)(1), the deadline for shark dealers to obtain an Atlantic shark identification workshop certificate changed from January 1, 2007, to December 31, 2007, to provide NMFS with more time to develop the workshop curriculum and materials, as well as certify all of the shark dealers or their proxies. The delayed deadline gives participants the opportunity to attend the workshop most convenient for them.

6. The final rule clarifies that if a shark dealer sends a proxy rather than personally attending an Atlantic shark identification workshop, a workshop certificate for each proxy representing each place of business listed under the shark dealer permit must be submitted

with the shark dealer permit renewal application pursuant to § 635.8(b)(5) and (c)(4). Copies of each proxy's workshop certificate is proof that an individual from each place of business, authorized to receive, purchase, trade, or barter for Atlantic shark under the dealer's permit, has attended an Atlantic shark identification workshop and is certified in the techniques for identifying sharks to the species level in whole and log form.

7. In § 635.8(c)(1), NMFS requires workshop certificates to be renewed three years from the expiration date printed on the certificate, rather than prior to the date of issuance as proposed. The certificate will be used as the individual's proof of attending a workshop and obtaining certification; therefore the expiration date printed on the certificate will facilitate monitoring and compliance as the deadline for permit renewal will coincide with the workshop certification renewal. Individuals, who are grandfathered into the workshop requirements, will also be held to the same three year renewal requirement as those attending a workshop for the first time in 2007.

8. The final rule at § 635.8(c)(7) includes a new requirement for anyone required to attend the protected species safe handling, release, and identification workshop or the Atlantic shark identification workshop. The requirement calls for mandatory workshop attendees to show a copy of their HMS permit as well as proof of identification. This additional requirement ensures that the permit holder and the individual attending the workshop are the same person. In the case where the permit holder is a company, corporation, partnership, or some other type of entity, the individual attending on behalf of the permit holder must show proof that the permit holder acknowledges the individual as their agent, and they must show a copy of the HMS permit. For proxies attending on behalf of a shark dealer permit holder, the proxy must have documentation from the dealer acknowledging that the proxy is attending on behalf of the Atlantic shark dealer permit holder.

9. In the final rule, at §§ 635.5(c)(2); 635.20(d)(2) and (d)(4); 635.21(e)(i); 635.22(b); 635.30(b); and, 635.71(c)(9) text prohibiting the take, retention, and possession of Atlantic white marlin from January 1, 2007, through December 31, 2011, inclusive, was deleted. Elimination of this text reflects the Agency's decision not to adopt this alternative, at this time, based on public comment in opposition to the proposal, limited ecological gains relative to potential economic costs, the upcoming

stock assessments for Atlantic white marlin, and upcoming international negotiations on the current ICCAT rebuilding plan.

10. In the final rule at § 635.20(d)(4) and § 635.27(d)(3), the minimum delay in effective date for in-season minimum size increases and/or an in-season shift to catch and release only fishing for Atlantic blue and white marlin was modified from 5 days to 14 calendar-days based on public comment asking for additional time and reconsideration of the estimated time necessary to collect and analyze landings information and project the date at which regulatory action may become necessary.

11. In the final rule, an effective date of January 1, 2007, was added to § 635.21(e)(2)(iii) to clarify when billfish tournament anglers would be subject to circle hook requirements.

12. Text was added to § 635.21(e)(2)(iii) and § 635.71(c)(7) to clarify which tournament anglers would be subject to circle hook requirements. This change was made to better inform the public and facilitate enforcement.

13. In the final rule at § 635.27(d)(1), reasons and mechanisms for potential adjustment of the annual U.S. Atlantic marlin landings limit were identified to provide the public a clearer understanding of circumstances and processes under and by which the annual U.S. marlin landings limit may be altered.

14. In the final rule § 635.27(d)(1) and (2) were amended to clarify that NMFS will not produce or publish annual marlin landings limit specifications at the start of each season. The final rule clarifies that NMFS will only produce and publish annual marlin landing limit specifications when carryover of underharvest or overharvest, or a subsequent ICCAT recommendation, alters the U.S. Atlantic marlin landings limit from 250 fish. This change was made to streamline the management process, similar to the process used for other HMS.

15. In the final rule at § 635.27(d)(2), variables identified as those which would be considered when determining potential adjustments to the annual landing limit of 250 recreationally caught Atlantic marlin were modified. The proposed rule mistakenly contained variables appropriate for consideration of in-season adjustments to marlin minimum sizes and/or a shift to catch and release only fishing for Atlantic marlin, but not for adjustment of the annual 250 Atlantic marlin landing limit. The inappropriate variables were removed.

16. In the final rule, text at § 635.27(d)(3) was added to clarify the variables that will be considered when the Agency is making a determination of whether or not to implement an in-season shift to catch and release only fishing for Atlantic blue and white marlin.

17. In the final rule, text at § 635.71(c)(8) was amended to clearly articulate when it is illegal to take, retain, or possess Atlantic blue or white marlin.

18. The proposed alternative in the Draft Consolidated HMS FMP regarding the retention of the North/South Angling category dividing line was changed in the Final Consolidated HMS FMP. As a result, the regulatory text contained in § 635.27(a)(2) has been modified to maintain the North/South Angling category dividing line located at 39°18' N. latitude (Great Egg Inlet, NJ). This dividing line is intended to provide a more equitable geographic and temporal distribution of recreational fishing opportunities by separating each BFT size-class subquota into two geographical regions, the northern area (allocated 47.2 percent of the size-class subquotas) and the southern area (52.8 percent of the size-class subquotas). This management tool was originally intended to ensure reasonable recreational fishing opportunities in all geographic areas without risking overharvest of the Angling category quota. While this line allows NMFS to allocate different retention limits based on the migratory pattern of BFT, the effectiveness of this management tool depends on NMFS gathering recreational BFT landings information in a timely fashion to support real-time management decisions.

19. A typographical error in § 635.27(a)(7)(ii) is also corrected in this final action. The total amount of school BFT that is held in reserve for inseason or annual adjustments and fishery-independent research is equal to 18.5 percent of the total school BFT quota for the Angling category. In the proposed rule, the metric ton equivalent to this calculation was published as 36.6 mt, this was in error and is corrected to the actual amount of 22.0 mt.

20. In the List of Fisheries (LOF) at § 600.725(v), under IX, Secretary of Commerce (H), has been modified to combine the Atlantic Tunas, Swordfish, and Shark FMP with the Atlantic Billfish FMP, consistent with the consolidation of those FMPs in this final rule. The LOF was also modified to limit the use of speargun fishing gear to BAYS tunas only. The modification to exclude BFT from the allowed list of

target species for this new gear type was made because of the declining performance of the existing BFT fishery, recent quota limited situations within the recreational angling sector, and ongoing concerns over the status of the stock. The LOF was further modified to clarify, consistent with existing regulations at § 635.21(e)(4)(iv), the authorized gears for the recreational swordfish fishery. Finally, in the final rule, green-stick was removed from the tuna handgear fishery in the LOF, as further described in item 25 below.

21. In § 635.21(e)(1)(i) and (ii), the authorized gear section for Atlantic tunas Angling and Charter/Headboat categories, the use of speargun fishing gear for Atlantic tunas has been restricted to the recreational BAYS tuna fishery only. The proposed rule was modified to exclude BFT from the list of allowable tuna species due to declining performance of the existing BFT fishery, recent quota limited situations within the recreational angling sector, and ongoing concerns over the status of the stock.

22. In § 635.21(f), the gear operation and deployment restrictions section for speargun fishing gear, the proposed rule has been amended to include, consistent with the changes in item 21 above, a restriction which limits the use of speargun fishing gear to the recreational BAYS tuna fishery only. Additionally, the regulatory text has been clarified to state that persons authorized to fish for Atlantic BAYS tunas with speargun gear must be physically in the water when the speargun is fired or discharged, given that the speargun does not use an explosive device.

23. In the final rule, at § 635.31(a)(1), the ability to sell tunas harvested with speargun gear has been modified. The proposed rule would have allowed the sale of speared BAYS tunas from HMS Charter/Headboat category vessels, subject to applicable limits, and would not have allowed the sale of large medium or giant BFT taken with speargun fishing gear at § 635.31(a)(1). In the final rule, § 635.31(a)(1) has been modified to state specifically that persons may not sell or purchase Atlantic tunas, BAYS or BFT, harvested with speargun fishing gear. This modification clarifies that authorizing this gear type for recreational speargun fishermen allows them the opportunity to use speargun fishing gear to target BAYS tunas only, recreationally.

24. To reinforce speargun fishing gear operation and deployment restrictions at § 635.21(f) and restrictions on sale and purchase at § 635.31(a)(1), additional prohibitions have been added at § 635.71(b). Under this section, it is

unlawful for any person or vessel subject to the jurisdiction of the United States to: fish for any HMS, other than Atlantic BAYS tunas, with speargun fishing gear; sell, purchase, barter for, or trade for an Atlantic BAYS tuna harvested with speargun fishing gear; fire or discharge speargun gear without being physically in the water; use speargun gear to harvest a BAYS tuna restricted by fishing lines or other means; or, use speargun gear to fish for BAYS tunas from a vessel that does not possess a valid HMS Angling or Charter/Headboat permit.

25. Based on public comments, as described in the Response to Comments section of the preamble, NMFS has determined to clarify the currently allowed use of the green-stick gear rather than proceed with authorization and definition of the gear-type in a manner that may further add to confusion and have unintended negative consequences to fishery resources and participants. Accordingly, all references to green-stick gear that were contained in the proposed rule have been removed. These references were contained in the LOF at § 600.725(v), and in the HMS regulations at § 635.2, § 635.21(e)(1), § 635.21(e)(1)(ii) and (iii), and § 635.31(a)(1).

26. In § 635.2, the definition of buoy gear has been modified. In the proposed rule, this definition contained language restricting the gear operation and deployment. This regulatory text has been removed from the definition of buoy gear and has been moved to the gear operation and deployment restrictions at § 635.21(e)(4)(iii). Additionally, NMFS has altered the definition of buoy gear in the final rule in response to public comment. The proposed rule limited fishermen utilizing buoy gear to deploying only one buoy per individual buoy gear. The final rule allows the use of more than one floatation device per gear and allows fishermen to configure the gear differently depending on vessel and crew capabilities, or weather and sea conditions. In the final rule, buoy gear is defined as a fishing gear consisting of one or more floatation devices supporting a single mainline to which no more than two hooks or gangions are attached.

27. In § 635.2, a definition of "floatation device" has been added to clarify the intent of the buoy gear definition at § 635.2 and the gear operation and deployment restrictions at § 635.21(e)(4)(iii). Further, this definition is responsive to public comment and better reflects the operational reality of this fishery. The

inclusion of this definition rectifies potential problems in enforcing the float restriction in the proposed rule.

28. In § 635.6(c)(1) and (2), buoy gear has been added to the list of gears for which there are specific gear marking requirements.

29. In § 635.21(e)(4)(iii), the gear operation and deployment restrictions for buoy gear have been modified to require that vessels utilizing buoy gear may not possess or deploy more than 35 floatation devices and to clarify the original intent of the proposed rule. The proposed rule stated that vessels may not possess or deploy more than 35 individual buoys per vessel. This modification was made to allow for additional flexibility in constructing and deploying this gear type, as discussed in item 26 above. The additional restrictions added to clarify the intent of the rule include: buoy gear must be constructed and deployed so that the hooks and/or gangions are attached to the vertical portion of the mainline; floatation devices may be attached to one, but not both ends of the mainline, and no hooks or gangions may be attached to any floatation device or horizontal portion of the mainline; if more than one floatation device is attached to a buoy gear, no hook or gangion may be attached to the mainline between them; individual buoy gears may not be linked, clipped, or connected together in any way; and, if a gear monitoring device is positively buoyant and rigged to be attached to a fishing gear, it is included in the 35 floatation device vessel limit and must be marked appropriately.

30. To reinforce buoy gear operation and deployment restrictions at § 635.21(e)(4)(iii), prohibitions have been added at § 635.71(e). Under this section, it is unlawful for any person or vessel subject to the jurisdiction of the U.S. to: fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, buoy gear as defined at § 635.2, unless the vessel owner has been issued a swordfish directed LAP or a swordfish handgear LAP in accordance with § 635.4(f); as the owner of a vessel permitted, or required to be permitted, in the swordfish directed or a swordfish handgear LAP category, and utilizing buoy gear, to possess or deploy more than 35 individual floatation devices, to deploy more than 35 individual buoy gears per vessel, or to deploy buoy gear without affixed monitoring equipment, as specified at § 635.21(e)(4)(iii); fail to mark each buoy gear as required at § 635.6(c); possess any HMS, other than Atlantic swordfish, harvested with buoy gear; or, fail to

construct, deploy, or retrieve buoy gear as specified at § 635.21(e)(4)(iii).

31. In addition to the restrictions set forth in the proposed rule at § 635.21(b), the regulatory text has been modified to state that no person may use secondary gears to capture, or attempt to capture, free-swimming or undersized HMS. This language was modified to differentiate between primary and secondary gears.

32. In § 635.71(a), the general prohibitions section, a prohibition has been added to reinforce the general gear operation and deployment restrictions at § 635.21(b). The prohibition in the final rule states that, it is unlawful for any person or vessel subject to the jurisdiction of the U.S. to utilize secondary gears to capture, or attempt to capture, any undersized or free-swimming HMS, or fail to release a captured HMS as specified at § 635.21(a).

33. In the proposed rule, NMFS added regulatory text at § 635.5(a)(1) specifying that the annual "cost-earnings" reporting form from selected vessels was to be submitted by January 31 of the following year. In the final rule, the regulatory text has been clarified and changed to specify that the "Annual Expenditures" reporting form from selected vessels is required to be submitted by the date specified on the form. The date currently specified on the form is January 31 of the following year, but this modification will allow NMFS to change the date on the form through a revision to the Paperwork Reduction Act submission without conducting a separate rulemaking to change the regulatory text. NMFS is considering, based on public comment, modifying the date to April 15 of the following year to coincide with Federal tax return submission deadlines. NMFS has clarified the title of the form to more accurately reflect its actual title.

34. In the proposed rule, the regulatory text at § 635.5(c)(2) would be modified to indicate that vessel owners, rather than anglers, are required to report all non-tournament recreational landings of Atlantic billfish and North Atlantic swordfish to NMFS. Based upon public comment indicating that some vessel owners may be absent while having another captain operate the vessel, the regulation in the final rule has been modified to indicate that vessel owners, or their designee, are required to report non-tournament recreational landings of these species to NMFS. The vessel owner would still be responsible for reporting, but the owner's designee could fulfill the requirement.

35. The proposed rule at § 635.21(c)(1)(i) and (d)(4)(i) stated that the percent of pelagic species that bottom longline vessels could possess in PLL closed areas was to be measured relative to the weight of demersal species possessed or landed, and that the percent of demersal species that pelagic longline vessels could possess in BLL closed areas was to be measured relative to the weight of pelagic species possessed or landed, respectively. In the final rule, at § 635.21(c)(1) and (d)(4), this procedure is corrected and clarified to indicate that the percent of either type of species is to be measured relative to the total weight of all indicator species that are listed in Tables 2 and 3 of Appendix A to part 635.

36. The proposed rule at § 635.21(c)(1)(ii) and (d)(4)(ii) would have established an upper and lower limit on the number of commercial fishing floats that bottom and pelagic longline vessels, respectively, could possess or deploy if fishing in an HMS closed area. Based upon public comment indicating that this measure could severely reduce the operational flexibility of longline vessels, and consultations with NMFS Office of Law Enforcement indicating that the proposed regulation was impractical, NMFS has decided to remove this measure from the final regulations.

37. In the Draft Consolidated HMS FMP, NMFS preferred alternative I10(b), which would have amended the regulatory text to clarify that carry-over provisions would apply to the NED set-aside. However, after subsequent analysis of the ICCAT recommendation and in response to comments seeking clarification, the Agency determined that the ICCAT recommendation provides the flexibility to avoid any potential negative environmental impacts associated with this alternative. Therefore, alternative I10(c) is the final alternative in the Final Consolidated HMS FMP. Under this alternative, NMFS will conduct additional discussions at ICCAT regarding the long-term implications of allowing unused BFT quota from the previous year to be added to the subsequent year's allocation. Depending upon the results of these discussions, the regulations and operational procedures may need to be further amended in the future. In the interim, NMFS will maintain the proposed regulatory text at § 635.27(a)(3) and § 635.23(f)(3), as it meets the objectives being addressed regarding this issue, but will amend the practice of allowing under/overharvest of this set-aside allocation to be rolled

into, or deducted from, the subsequent fishing year's set-aside allocation.

38. NMFS has modified the proposed list of demersal "indicator" species in Table 3 of Appendix A to part 635 by removing silky sharks and three species of hammerhead sharks from the final list, because these species could potentially be caught on both pelagic and bottom longlines. Also, three species of tilefish are added to the final list of demersal "indicator" species, because these species are indicative of bottom longline fishing activity and based upon public comment.

39. In the final rule, NMFS modified the name of the FMP in § 635.34(b) to reflect the consolidation of the two previous FMPs into one.

#### **Agency Decision on the Blue Ocean Institute's Petition for Rulemaking to Close an Area of the Gulf of Mexico from April through June**

One of the Gulf of Mexico time/area closure alternatives that NMFS considered was suggested in a petition for rulemaking from Blue Ocean Institute et al. This alternative was suggested as a means of protecting western Atlantic BFT that return to the Gulf of Mexico to spawn. This alternative would prohibit the use of pelagic longline gear in HMS fisheries in a putative BFT spawning area from April through June (101,670 nm<sup>2</sup>; 3 months). Assuming no redistribution of effort (i.e., all affected vessels no longer fish with pelagic longline), the logbook data indicated that this alternative would potentially reduce bycatch of all of the species being considered from a minimum of 0.8 percent for pelagic sharks to a maximum 21.5 percent for BFT. However, assuming that effort is redistributed to open areas (i.e., all affected vessels fish with pelagic longline in open areas), bycatch was predicted to increase for all species except leatherback and other sea turtles. Even BFT discards, which showed a fairly dramatic decline without redistribution of effort, were predicted to increase by 9.8 percent with redistribution of effort. The apparent increase in predicted BFT discards with redistribution of effort was likely due to the fact that BFT are caught in months other than April through June in the Gulf of Mexico, as well as the high number of BFT discards in other areas. This was reflected in some of the other alternatives analyzed as described in the HMS FMP. When effort was redistributed to only the open areas of the Gulf of Mexico and in an area in the Atlantic where many Gulf of Mexico vessels have reported fishing, there was a predicted decrease in bycatch of white

marlin, leatherback and other sea turtles, and pelagic shark discards, BFT discards, yellowfin tuna discards, and BAYS tuna discards. However, the analysis also predicted an increase in bycatch of blue marlin, sailfish, spearfish, and large coastal sharks.

This alternative based on the petition would potentially impact a total of 75 vessels that fished in the area from 2001 - 2003. Without redistribution of effort, this alternative would potentially result in a 13.4 percent decrease in fishing effort, and reductions in landings ranging from a minimum of 9.9 percent for incidentally-caught BFT (kept) to a maximum 27.0 percent for bigeye tuna. The total loss in revenue for this alternative, assuming no redistribution of effort, would be approximately \$3,136,229 annually, or \$49,003 per vessel annually. With redistribution of fishing effort, the alternative was predicted to result in a decrease in bluefin and yellowfin tuna landings of 18.3 and 11.0 percent, respectively, for estimated losses of approximately \$166,040 and \$1,382,042 annually. However, overall there could have been a net gain in revenues for this alternative with redistribution of effort of approximately \$1,651,023 annually, or \$25,797 per vessel annually. The actual ecological and economic impacts of the alternative would likely be in between no redistribution of effort and the full redistribution of effort model. As described in the Final HMS FMP and in the response to Comment 26 of the time/area section, NMFS also evaluated additional scenarios between these base scenarios when some movement is expected into a particular area (i.e., instead of being uniformly distributed to all open areas), depending on the spatial and temporal duration of the closure. For this particular alternative for the petition, in addition to the base scenarios, NMFS also evaluated the movement of fishing effort to other open areas in the Gulf of Mexico and to a specific area in the Atlantic Ocean. Due to the potential negative ecological impacts, negative economic impacts, and the increase in bycatch and discards based on the different redistribution of effort scenarios, NMFS is not selecting this alternative at this time.

In addition to the variability of impacts across species, all of the analyses, including those for the petition for rulemaking, were conducted using J-hook data. New circle hook management measures were put into place in 2004, and NMFS is still assessing the effects of circle hooks on bycatch rates for HMS. Until NMFS can better evaluate the effects of circle hooks on bycatch reduction, especially with

regard to sea turtle interactions and bycatch of other non-target HMS, NMFS chooses, at this time, not to modify the current time/area closures. NMFS intends to reconsider modifications to existing closures once further analyses of circle hook data and the results of the stock assessments for blue marlin, white marlin, north and south swordfish, and eastern and western BFT become available. Pending the results of the marlin, swordfish, and BFT stock assessments, the criteria could allow for additional closures or modifications of existing closures to be considered for all HMS fisheries, including those to reduce the incidental takes of BFT.

Although NMFS is not selecting this alternative based on the petition at this time, NMFS will pursue alternatives to reduce bycatch in the Gulf of Mexico, especially for spawning BFT. NMFS has currently adopted all of the ICCAT recommendations regarding BFT, a rebuilding plan is in place domestically for this species, and NMFS has implemented measures to rebuild this overfished stock. NMFS is currently assessing different protections for different ages of BFT and how such protection will affect the BFT stock as a whole. For instance, how will protecting spawning BFT in the Gulf of Mexico help rebuild the stock if it results in increased discards of juvenile and sub-adult BFT along the U.S. east coast? NMFS needs more information to further understand how to manage this species given its complex migratory patterns, life history, and age structure. NMFS is also considering developing incentives that would dissuade fishermen from keeping incidentally caught BFT, particularly spawning BFT, in the Gulf of Mexico. This may involve research on how changes in fishing practices may help reduce bycatch of non-target species as well as the tracking of discards (dead and alive) by all gear types. In addition, NMFS is also considering the effects of sea surface temperatures in the Gulf of Mexico and its association with congregations of BFT and putative BFT spawning grounds in the Gulf of Mexico (Block, pers. comm.). NMFS intends to investigate the variability associated with sea surface temperatures as well as the temporal and spatial consistency of the association with these temperature regimes. By better understanding what influences the distribution and timing of BFT in the Gulf of Mexico, NMFS can work on developing tailored management measures over space and time to maximize ecological benefits while minimizing economic impacts, to the extent practicable.

## Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* NMFS has determined that the final rule and related Final Consolidated HMS FMP are consistent with the national standards of the Magnuson-Stevens Act, other provisions of the Act, and other applicable laws.

NMFS prepared an FEIS for the Final Consolidated HMS FMP. The FEIS was filed with the EPA on July 7, 2006. A notice of availability was published on July 14, 2006 (71 FR 40096). In approving this final rule and the Final Consolidated HMS FMP, NMFS issued a ROD identifying the selected alternatives. A copy of the ROD is available from NMFS (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule contains no new collection-of-information requirements subject to review and approval by OMB under the PRA.

An informal consultation under the ESA was concluded for the Final Consolidated HMS FMP on January 25, 2006. As a result of the informal consultation, the Regional Administrator determined that fishing activities conducted under this rule are not likely to affect adversely endangered or threatened species or critical habitat. As described in the Final Consolidated HMS FMP, the final management measures are not expected to cause significant changes in fishing practices, distribution of fishing, or fishing effort. As such, reinitiation of consultation with respect to the previously concluded HMS biological opinions is not required under 50 CFR 402.16.

In addition to the impacts of the final alternatives in this document, NMFS continues to monitor impacts to protected species from the ongoing operation of HMS fisheries through various logbook and observer programs. NMFS monitors observed interactions with marine mammals and sea turtles in the pelagic longline fishery on a quarterly basis and reviews the data in conjunction with extrapolated annual take estimates for appropriate action, if any, as necessary. Should additional management measures be deemed necessary to reduce bycatch or bycatch mortality of protected species in the pelagic longline or other HMS fisheries, NMFS would take appropriate action in a separate rulemaking.

The AA has determined that this rule is consistent to the maximum extent practicable with the enforceable policies of the coastal states in the Atlantic, Gulf

of Mexico, and Caribbean that have federally approved coastal zone management programs under the Coastal Zone Management Act (CZMA). In August 2005, NMFS provided all states, Puerto Rico, and the U.S. Virgin Islands copies of the proposed rule and Draft Consolidated HMS FMP. Under 15 CFR 930.41, states have 60 days to respond after receipt of the consistency determination and supporting materials. States can request an extension of 15 days. If a response is not received within those time limits, NMFS can presume concurrence (15 CFR 930.41(a)). Eleven states replied, within the 60-day response period, that the proposed regulations were consistent, to the extent practicable, with the enforceable policies of their coastal zone management programs. The State of Georgia replied on March 1, 2006, that the proposed rule was not consistent with the enforceable policies of Georgia's coastal zone management program. NMFS notified the State of Georgia that because their response was after the 60-day response period, NMFS presumed concurrence after the end of the CZMA review period and would consider their comment as part of the public comments received on the proposed rule and Draft Consolidated HMS FMP. NMFS has presumed concurrence with the states that did not respond. NMFS will continue to work with the states to ensure consistency between state and Federal regulations.

#### *A Summary of the Final Regulatory Flexibility Analysis*

As required under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for the Draft Consolidated HMS FMP and its proposed rule (70 FR 48804, August 19, 2005) and prepared an FRFA for the Final Consolidated HMS FMP and this final rule. The FRFA examines the economic impacts of the management alternatives on small entities in order to determine ways to minimize economic impacts. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed to support the action. A summary of the information presented in the FRFA follows. Where applicable, within each section of the FRFA, the issues are addressed in the same order they were in the FEIS and in the Response to Comment section of this final rule, starting with Workshops and ending with Regulatory Housekeeping Measures. The Final Consolidated HMS FMP provides

further discussion of the economic impacts of all the alternatives considered. Copies are available (see **ADDRESSES**).

#### *Statement of the Need for and Objectives of the Final Rule*

The need for and objective of the final rule are fully described in the preamble of the proposed rule (70 FR 48804, August 19, 2005) and in the Final Consolidated HMS FMP and are not repeated here (5 U.S.C. 604(a)(1)). In summary, the selected actions in this final rule will: establish mandatory workshops for commercial fishermen and shark dealers; implement complementary time/area closures in the Gulf of Mexico (GOM); implement criteria for adding new or modifying existing time/area closures; address rebuilding and overfishing of northern albacore tuna and finetooth sharks; implement recreational management measures for Atlantic billfish; modify bluefin tuna (BFT) General Category subperiod quotas and simplify the management process of BFT; change the fishing year for tunas, swordfish, and billfish to a calendar year; authorize speargun fishing gear in the recreational fishery for bigeye, albacore, yellowfin, and skipjack (BAYS) tunas; authorize buoy gear in the commercial swordfish handgear fishery; clarify the allowance of secondary gears (also known as cockpit gears); and clarify existing regulations.

#### *A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA*

A FRFA is also required to include a summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the issues raised, and a statement of any changes made in the rule as a result of the comments (5 U.S.C. 604(a)(2)). NMFS did not receive any comments specific to the IRFA but did receive many comments on the Draft Consolidated HMS FMP as a whole and the general economic impacts of the proposed regulations. All the comments received and NMFS' responses to those comments are summarized above under Response to Comments. Additionally, NMFS describes the changes to the proposed rule (some of these changes were a result of public comment) above, under Changes from the Proposed Rule. The paragraphs below summarize some of the specific economic concerns that were raised and NMFS' response.

##### A. Workshops

NMFS received many public comments both in support of and

opposed to the protected species workshops. Some commenters were concerned about potential lost revenue on longline trips if bycatch were to be handled correctly, and recommended not limiting these workshops to longline fishermen. Some comments supported extending the workshop requirements to include all HMS fishermen, as well as expanding the release techniques to include additional species. NMFS received many comments suggesting that various combinations of owners, operators, and crew members be required to participate in the workshops. Commenters noted that if the crew members are not required to attend, then the operators should be responsible for training the crew. Several commenters opposed requiring the crew to be certified because of their transient nature and the fact that some crew members are not U.S. citizens and may not be available to attend workshops. A few commenters supported grandfathering in the industry certified individuals, so that they do not need to attend the first round of mandatory workshops (they would still need to be recertified).

This rule will require that vessel owners and operators attend the workshops. This requirement for vessel owners and operators balances the ecological need to ensure that fishermen on the vessel can use the handling and release gear appropriately and the economic costs to the fishermen to attend the workshops. While the final rule will not require crew members to attend the workshops, it is likely that operators and owners would disseminate this information to the crew in a cost effective manner. NMFS encourages all workshop participants to disseminate this information to all crew members involved with haul-back or fishing activities. This rule will also grandfather in the industry-certified individuals. While NMFS realizes that many vessel owners may not operate or be present on the vessels during fishing trips, certifying vessel owners ensures that they are aware of the certification requirements and protocols. The owners are, then, accountable for preventing their vessel from engaging in fishing activities without a certified operator on board. NMFS did not change the proposed rule as a result of these comments, but did clarify portions of the regulatory text to ensure the implementation is clear.

NMFS received several comments in support of time periods for renewal of certification that were different than the proposed alternative. NMFS is maintaining the original preferred alternative of recertification generally

every three years in order to balance the ecological benefits of maintaining familiarity with the protocols and species identification, and the economic impacts of workshop attendance due to travel costs and lost fishing opportunities.

NMFS received comments regarding the need for proxies for dealers attending shark identification workshops under alternative A9, the flexibility required in certifying newly hired proxies, and the need for multiple proxies. Alternative A9 was modified to address these comments and allow for dealer proxies. Because not all shark dealer permit holders may be onsite where vessels unload their catches, this rule will permit a local proxy to attend the workshop to obtain the proper training in species-specific shark identification, while allowing the permit holder to meet the certification requirements. Furthermore, since the actual permit holders may not be involved in fish house activities, the workshops would more effectively decrease the reporting of unknown sharks if a proxy who is directly involved with fish house activities attends and obtains the training in lieu of the permit holder. If a dealer opts to send a proxy, then the dealer would be required to designate a proxy from each place of business covered by the dealer's permit. A proxy would be a person who is employed by a place of business, covered by a dealer's permit, a primary participant in identification, weighing, or first receipt of fish as they are offloaded from a vessel, and involved in filling out dealer reports.

According to public comment, NMFS should anticipate turnover in dealer proxies. To address this, the Agency is allowing one-on-one training sessions that would accommodate the replacement of a proxy whose employment was terminated on short notice. These sessions would be at the expense of the permit holder.

Public comments were supportive of mandatory HMS identification workshops for federally permitted shark dealers, but also suggested that these workshops be available to others, such as the recreational and commercial fishery, law enforcement, port agents, and state shark dealers. While these workshops would be mandatory for federally permitted shark dealers, NMFS would try to accommodate other interested individuals when it is feasible. At well-attended workshops, those persons for whom the workshops are mandatory would be given priority in terms of hands-on instruction.

#### B. Time/Area Closures

NMFS also received comments on the time/area closure alternatives. A number of commenters expressed concern over the effort redistribution model used to analyze these alternatives. These commenters felt that pelagic longline vessels were not mobile enough to redistribute effort uniformly and that vessels in a certain area would move to adjacent areas (e.g., vessels homeported in the Gulf of Mexico would stay in the Gulf of Mexico and would not move into the mid-Atlantic bight). NMFS received comments that different approaches to effort redistribution should be considered, particularly for closures of bluefin tuna in spawning areas in the Gulf of Mexico. As a result, NMFS considered redistribution of effort based on an analysis of the mobility of the PLL fleet and known effort displacement currently taking place out of the Gulf of Mexico. Based on this revised approach, NMFS determined that the closures in the Gulf of Mexico could increase bycatch for some of the species being considered. Therefore, NMFS decided not to implement any new time/area closures, other than complementary closures for Madison-Swanson and Steamboat Lumps.

During the comment period, NMFS also received comments regarding a "decision matrix" that could help to guide the choices that NMFS would have to make between different time/area closures and different species, that NMFS should set bycatch reduction goals, and that the bycatch reduction goals of the existing closures have already been met and, therefore, the Agency should reopen portions of the current closures. As discussed in the response to Comment 20 in the Time/Area Closures section, NMFS agrees that decision matrices and bycatch reduction goals could be useful, but does not believe that NMFS could use these concepts to appropriately balance the needs of the different species involved at this time. NMFS did not change the proposed rule as a result of these comments.

#### C. Northern Albacore Tuna

NMFS did not receive many comments in regard to the alternatives considered for northern albacore tuna. None of the comments received were in regard to the economic impacts. NMFS did not change the preferred alternative as a result of public comment.

#### D. Finetooth Sharks

NMFS received a range of public comments regarding finetooth shark

alternatives indicating support and opposition to Alternatives D2–D4, and additional comments, including, but not limited to: comments on gillnet fisheries in general, the use of VMS, the results of the 2002 SCS stock assessment, reporting of HMS by dealers, identification of finetooth sharks, and the accuracy of data attained from MRFSS. All of these comments were considered prior to selection of the final alternative for preventing overfishing of finetooth sharks. NMFS did not change the proposed alternative as a result of these comments. Additional measures may be necessary to prevent overfishing of finetooth sharks in the future.

#### E. Atlantic Billfish

NMFS received many comments regarding Atlantic billfish alternatives. NMFS received substantial public comment opposing and supporting circle hook requirements proposed under draft alternatives E2 and E3. A prevalent theme of the comments opposing mandatory circle hook use, in all or portions of the HMS and billfish recreational fisheries, was that the recreational sector has a minor impact on Atlantic billfish populations relative to the commercial pelagic longline fleet. Given the relatively small size of the U.S. domestic pelagic longline fleet and the considerable size of the recreational fishing fleet, NMFS determined that it was appropriate to examine billfish mortality from the domestic perspective in addition to working internationally through ICCAT. NMFS did not change the proposed action, alternative E3, as a result of public comment. The final action will require non-offset circle hooks at all billfish tournaments if natural or natural/artificial baits are used.

A second important theme in comments opposing mandatory circle hook use under alternatives E2 and E3 was the need for NMFS to promulgate more detailed specifications for circle hooks. NMFS is continuing to work on various definitions of circle hooks that may lead to a more refined hook definition in the future. However, NMFS finds that it is appropriate to require the use of circle hooks in portions of the recreational billfish fishery, at this time, to reduce post-release mortalities in the recreational billfish fishery.

NMFS also received comments that billfish tournament operators would need advance notice of impending circle hook regulations to allow for production of rules, advertising, and informing tournament participants of potential circle hook requirements. In response, NMFS spoke to a number of tournament

operators in the Atlantic, Gulf of Mexico and Caribbean to better understand various aspects of tournament operations, and determined that a delayed date of effectiveness of no less than six months would be necessary to minimize adverse impacts to tournament operators and participants. Significant outreach efforts have been undertaken by NMFS since the release of the FEIS in July 2006 to address the need for advanced notice. Therefore, the effective date of the requirement will be January 1, 2007. This effective date in combination with continued outreach effort by NMFS will provide billfish tournament anglers additional time to familiarize themselves and become proficient in the use of circle hooks, while allowing tournament operators to adjust tournament rules, formats, and informational materials, as appropriate, thereby minimizing any potential adverse socio-economic impacts. Additionally, given the concerns expressed from fishermen in the mid-Atlantic region since the release of the FEIS regarding this requirement, NMFS intends to work cooperatively with tournaments and anglers to research other bait and/or hook and bait combinations that would achieve the same ecological benefits.

NMFS also received public comments regarding the perceived limited ecological impact of the 250 marlin landings limit. These comments could be categorized into two opposing views that suggest two different courses of action. Some commenters suggested that the limited ecological impact was not worth any potential adverse economic impact, even a very limited one, while other commenters suggested that the U.S. must implement the 250 marlin landings limit to comply with U.S. international obligations and as part of a strategy to implement appropriate measures to help limit billfish mortality. Related to these comments, NMFS received suggestions recommending that the Agency automatically carry forward any underharvest to the following management period. Given that the known level of U.S. recreational marlin landings has been within the 250 fish limit for three of the four reported years, and that the 2002 overharvest was offset by the 2001 underharvest, the ecological benefits of this alternative are likely limited. As noted above, in the response to Comments 3 and 5 of the Atlantic Billfish section, this rule allows underharvests to be carried forward. However the U.S. has made a commitment to ICCAT not to carry forward underharvest, given the uncertainty surrounding landings of

Atlantic marlin in the Commonwealth of Puerto Rico and the U.S. Caribbean, until such time as this is resolved. Thus, NMFS is not changing the proposed alternative. This rule is anticipated to allow the U.S. to continue to successfully pursue international marlin conservation measures by fully implementing U.S. international obligations and potentially provide a minor ecological impact with, at most, minor adverse economic impacts.

NMFS received public comment opposed to, and in support of, the Atlantic white marlin catch and release alternative. The commenters opposed to the alternative expressed concerns over potential adverse economic impacts to the fishery if catch and release only fishing for Atlantic white marlin were required. The commenters supporting the landings prohibition stated concerns over white marlin stock status, the ESA listing review, and maintaining leadership at the international level. Based on these comments as well as a number of other factors, including but not limited to, the impending receipt of a new stock assessment for Atlantic white marlin and upcoming international negotiations on Atlantic marlin, NMFS changed its preferred alternative and chose not to prohibit landings of Atlantic white marlin in this final rule. The implementation of circle hook requirements (alternative E3) is an important first step in reducing mortality in the directed billfish fishery. NMFS will consider, as necessary and appropriate, catch and release only fishing options for Atlantic white marlin as well as other billfish conservation measures in future rulemakings.

#### F. BFT Quota Management

NMFS received public comment in the past regarding the publication and timing of annual BFT specifications. Administrative or other delays in publishing the annual BFT specifications can have adverse social and economic impacts due to constituents' inability to make informed business decisions. NMFS did not change the proposed alternative as a result of public comment on the proposed rule. Under this rule, the annual BFT quota specifications would establish baseline domestic quota category allocations, and adjust those allocations based on the previous years under- and/or overharvest. Any delay in publishing the annual BFT quota specifications would prolong the establishment of a baseline quota in any of the domestic categories.

Fishermen have commented that knowing the exact schedule of BFT RFDs prior to the season facilitates

planning and scheduling of trips. The preferred alternative F6 should help facilitate the development of timely schedules. NMFS did not change the proposed alternative as a result of public comment on the proposed rule.

#### G. Timeframe for Annual Management of HMS Fisheries

Preferred Alternative G2, which would change the timeframe for annual management of HMS fisheries, was modified because the comment period on the proposed rule was extended. The fishing year in 2007, rather than 2006 as described in the Draft Consolidated HMS FMP, would be compressed. During the public comment period, several commenters expressed concern about the effect of a calendar year management cycle on the availability of quota rollover from the previous calendar year during the January portion of the south Atlantic fishery. Under changes to the BFT management program included in this rule, the January subperiod would receive a quota of 5.3 percent of the annual ICCAT allocation.

#### H. Authorized Fishing Gears

With regard to authorized gears, there were public comments in support of preferred alternative H2 to authorize speargun fishing as a permissible gear type for recreational Atlantic BAYS tuna. NMFS received comments indicating that recreational spearfishermen place a high value on spearfishing for tunas, and are currently traveling outside of the United States for the opportunity to participate in tunas speargun fisheries. The final rule will allow recreational BAYS fishing. This is a modification from the proposed rule that would have also allowed recreational fishing for BFT. Due to concern over the status of BFT, NMFS decided not to allow spearfishing for BFT at this time.

During the public comment period, NMFS received comments expressing confusion over the current regulatory regime regarding green-stick gear, unease over the potential impacts and intent of the preferred alternative in the Draft Consolidated HMS FMP, and concern over potential negative impacts of the green-stick gear. Therefore, NMFS is not finalizing alternative H4, which would have authorized green-stick gear. Rather, NMFS will work with the industry to ensure participants are familiar with current regulations.

In regard to buoy gear, NMFS received public comments requesting that commercial vessels be limited to deploying fewer than 35 individual buoy gears. Additionally, commercial

fishermen familiar with this gear type requested that they be allowed to attach multiple floatation devices to buoy gears to aid in monitoring and retrieval, as well as allow them to use "bite indicator" floats that will alert them to gears with fish attached. In response to public comment, NMFS modified the preferred alternative to allow fishermen to use more than one floatation device per gear and configure the gear differently depending on vessel and crew capabilities, or weather and sea conditions. This increased flexibility may result in positive social impacts and increased safety at sea.

#### I. Regulatory Housekeeping Measures

The public also provided comments on the proposed regulatory housekeeping alternatives. NMFS requested public comment regarding whether or not to define "fishing floats" in the regulations, and on potential language for a "float" definition. Several commenters indicated that the number of floats is not an appropriate gauge to determine the type of fishing gear that is being deployed, and that the presence of "bullet floats," anchors, or the type of mainline would be better indicators. Other commenters stated a float requirement would be an unnecessary burden that could diminish the flexibility of vessel operators to participate in different fishing activities, depending upon the circumstances. Finally, consultations with NMFS Office of Law Enforcement indicated that the float requirement in alternative I1(b) would not be practical. Based on these comments, NMFS chose not to prefer alternative I1(b) in the FEIS. Although alternative I1(b) was preferred in conjunction with alternative I1(c) in the Draft Consolidated HMS FMP, NMFS believes that the objective of this alternative can be effectively achieved by implementing alternative I1(c) (species composition of catch) alone.

On the basis of public comment, NMFS modified the list of demersal "indicator" species associated with alternative I1(c) from the list in the Draft Consolidated HMS FMP by removing silky, great hammerhead, scalloped hammerhead, and smooth hammerhead sharks from the list, and by adding tilefish, blueline tilefish, and sand tilefish to the list. NMFS believes these changes are appropriate because these shark species can be caught on both pelagic and bottom longlines, and because the tilefish species are representative of demersal fishing activity.

NMFS received comments indicating that alternative I1(c) could adversely affect longline vessels that fish, at least

part of a trip, in HMS closed areas and that catch both demersal and pelagic species on those trips. Similar to the comments received regarding alternative I1(b), there were concerns that, by establishing a species threshold when fishing in HMS closed areas, this alternative would restrict the flexibility of longline vessel operators to participate in different fishing activities depending upon the circumstances. Also, adverse economic impacts could result if vessel operators are unable to retain a portion of their catch that otherwise would have been retained on mixed fishing trips in the closed areas, or if they must choose to fish outside of the closed areas. NMFS received other comments indicating that there could be additional costs on vessels if they are boarded at sea by enforcement, and it was necessary to retrieve or observe fish in the hold in order to calculate the percentages of demersal and pelagic species possessed onboard. The Agency, however, still finds that this preferred alternative is important in maintaining existing time/area closures.

NMFS received comments supporting and opposing preferred alternative I2(b), which will require that the second dorsal fin and anal fin remain on all sharks through landing. Some comments confirmed that retention of the second dorsal and anal fins through landing could improve shark identification and species-specific landing data. Other comments indicated that this alternative would do little to improve shark identification. NMFS received comments that, although these fins are valuable, retaining them until landing was acceptable. The Agency received a comment opposing this alternative due to the additional time and revenue losses that may result from removing the smaller/secondary fins after docking. NMFS is finalizing this proposed alternative. While offloading and processing procedures may initially have to be adjusted, in the long-term this alternative will facilitate improved quota monitoring and stock assessment data which could result in a larger quota and larger net revenues for both the fishermen and dealers.

Public comment suggests that, among active fishery participants, a requirement for handlines to remain attached to all vessels could potentially reduce the number of handlines that could be fished or deployed. Operationally, it may be less efficient to fish with several attached handlines, as they may be more prone to entanglement. Because this alternative could restrict or limit fishing effort and because NMFS does not know the number of handline users that already

attach the handline to the vessel, it is projected to produce unquantifiable positive ecological impacts, including a reduction in the bycatch of undersized swordfish, other undersized species, protected species, and target species catches. Based upon public comment the practice of detaching handlines does not appear to be widespread, but it may be growing among a small number of vessel operators, primarily targeting swordfish in the East Florida Coast closed area. According to public comment, recreational swordfish catches would most likely be affected, as that is the primary target species. If few recreational vessels are currently fishing with unattached handlines, then any social or economic impacts associated with this alternative would be minimal. NMFS did not change this alternative between proposed and final rules.

NMFS received comments indicating that the proposed alternative (I9(b)), which would require vessel owners to report non-tournament recreational landing of North Atlantic swordfish and Atlantic billfish, could potentially disadvantage absentee vessel owners. Based upon this public comment, NMFS modified this alternative slightly from the proposed rule by specifying that a vessel owner's designee may also report landings in lieu of the owner, but the owner would be responsible for the requirement.

Finally, NMFS received several general comments regarding the information presented regarding the HMS recreational sector. Section 3.5.2 of the FEIS provides detailed information regarding the data available and past research concerning HMS recreational fisheries. Economic data on recreational fishing is difficult to collect and challenging to interpret. Nevertheless, NMFS has undertaken efforts to improve, update, and expand upon the economic information regarding HMS recreational fisheries.

#### *A Description and an Estimate of the Number of Small Entities to which the Rule will Apply*

NMFS considers all permit holders to be small entities as reflected in the Small Business Administration's (SBA) size standards for fishing entities (5 U.S.C. 604(a)(3)), and the SBA size standards for defining a small versus large business entity in this industry. All permit holders are considered to be small entities because they either had gross receipts less than \$3.5 million for fish-harvesting, gross receipts less than \$6.0 million for charter/party boats, or 100 or fewer employees for wholesale dealers. A full description of the

fisheries affected, the categories and number of permit holders, and registered tournaments can be found in the Final Consolidated HMS FMP.

The management measures in this final rule will apply to all HMS permit holders. These currently include the approximately 576 permitted pelagic and bottom longline vessels, 240 directed shark and 312 incidental shark permitted vessels, 4,824 General category permit holders, 621 permitted shark and swordfish dealers, 416 permitted Atlantic tuna dealers, 4,173 CHB permit holders, 25,238 Angling permit holders, and 256 registered HMS tournaments. Other sectors of the HMS fisheries such as dealers, processors, bait houses, and gear manufacturers, some of which are considered small entities, might be indirectly affected by the final measures, particularly time/area closures, Atlantic billfish, and authorized gear alternatives. However, the rule does not apply directly to them, unless otherwise noted above. As such, economic impacts on these other sectors (dealers, processors, bait houses, and gear manufacturers) are discussed in Final Consolidated HMS FMP.

#### *A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule*

This final rule will not result in additional reporting, recordkeeping, and compliance requirements that will require new Paperwork Reduction Act filings (5 U.S.C. 604(a)(4)). However, some of the final measures will modify existing reporting and recordkeeping requirements. These include mandatory one day workshops for vessel owners, vessel operators, and shark dealers; coordination efforts directed at government efforts to gather additional information about finetooth shark mortality; and BFT dealer electronic reporting option. In addition to the reporting and recordkeeping requirements of this rule, this rule includes compliance requirements (5 U.S.C. 604(a)(4)). These compliance requirements include requiring anglers aboard HMS permitted vessels that are participating in an Atlantic billfish tournament to use only non-offset circle hooks when deploying natural baits or natural bait/artificial lure combinations, requiring the retention of shark second dorsal and anal fins, and establishing the minimum and maximum number of floats for bottom longline and pelagic longline gear definitions. Other measures will change quota allocations, timeframes, authorized gear types, definitions, and other management

measures, but will not likely change reporting or compliance in the fishery.

#### *A Description of the Steps Taken to Minimize the Significant Economic Impact on Small Entities*

One of the requirements of a FRFA is to describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes and to describe why each of the other significant alternatives to the rule considered by the agency was rejected (5 U.S.C. 604(a)(5)).

As noted earlier, NMFS considers all permit holders to be small entities. In order to meet the objectives of this proposed FMP and the statutes (i.e., Magnuson-Stevens Act, ATCA, ESA) as well as address the management concerns at hand, NMFS cannot exempt small entities or change the reporting requirements for small entities. Among other things, the final FMP will set quotas for the fishing season, retention limits for the recreational fishery, and gear restrictions, all of which would not be as effective with differing compliance and reporting requirements.

As described below, NMFS considered a number of alternatives that could minimize the economic impact on small entities, particularly those pertaining to workshops, time/area closures, northern albacore tuna, finetooth sharks, Atlantic billfish, BFT quota management, timeframe for annual management, authorized fishing gears, and regulatory housekeeping measures.

#### A. Workshops

The final measures for the protected species safe handling, release, and identification workshops require mandatory workshops and certification on a three year renewal timeline for all HMS pelagic and bottom longline vessel owners and operators and shark gillnet vessel owners and operators. They were designed to minimize the economic impacts on fishermen, while complying with the 2003 BiOp and the post-release mortality targets for protected resources established in the June 2004 BiOp. The protected species safe handling, release, and identification workshops measure is estimated to cost each bottom and pelagic longline vessel owner up to \$281 and \$448, respectively, in potentially lost revenue share as well as unquantifiable travel costs to attend a workshop. The aggregate economic impact is estimated to be between \$154,269 and \$258,048 in the first year. Longline vessel operators will also be affected by this rule, but this rule might not affect the economic well-being of

the small businesses for which they work. In addition, the estimated twenty shark gillnet owners that will be participating in required workshops will each lose up to \$424 in revenue share based on 2004 logbook data, as well as unquantified travel costs to attend a workshop.

NMFS will strive to host a number of workshops in regional fishing hubs in order to minimize travel and lost fishing time. Besides the costs of travel and lost time, NMFS does not anticipate any additional costs for workshop participants. NMFS will attempt to hold workshops during periods when the fishery is typically inactive, effectively minimizing lost fishing time. To minimize the overall economic cost of these workshops, this rule limits mandatory participation in these workshops to owners and operators. NMFS has also selected a recertification period of 3 years that will allow for sufficient retraining to maintain proficiency and update fishermen on new research and development related to the subject matter, while not placing an excessive economic burden on the participants due to lost fishing time and travel. Two, three, and five year recertification periods were considered. In addition, to lower the costs of recertification, NMFS is considering the use of alternative sources of media including CD-ROM, DVDs, or web-based media that would not result in travel costs or lost fishing time, and would allow private certified trainers to provide training at tailored times and locations to minimize any costs.

The measures requiring mandatory workshops for all federally permitted shark dealers was selected because species-specific identification of offloaded shark carcasses is much more difficult than other HMS, as evidenced by the large proportion of "unclassified" sharks listed on shark dealer logbooks. The Agency will attempt to minimize economic impacts to shark dealers by holding workshops at fishing ports to minimize travel costs and during non-peak fishing times to minimize perturbations to business activity, to the extent possible. Dealers may also specify proxies to attend workshops in order to increase flexibility, minimize costs, and increase the probability of having a trained individual at each authorized dealer location. Similar measures as those being considered for the protected species safe handling, release, and identification recertification are being considered for the Atlantic shark identification workshops for shark dealers in order to minimize the economic impacts caused by this measure.

Several alternatives were considered for the workshop measures. The economic impacts of these alternatives are detailed in Final Consolidated HMS FMP. The No Action and voluntary HMS identification workshop alternatives would have less onerous economic impacts relative to the measures in this final rule. However, these alternatives would not address the persistent problems associated with species-specific shark identification in dealer reports, nor satisfy the requirements and goals of the Final Consolidated HMS FMP, nor aid in rebuilding the shark fishery.

NMFS also considered two additional renewal timetables of two and five years. A renewal timetable of five years for protected species safe handling, release, and identification workshops would allow a more extensive period of time to lapse between certification workshops than necessary to maintain proficiency and provide updates on research and development of handling and dehooking protocols. In a similar fashion, recertification every five years for HMS identification workshops would also allow a more extensive period of time to lapse between certification workshops than necessary to maintain proficiency in shark species identification.

#### B. Time/Area Closures

The final measures to implement complementary measures in the Madison-Swanson and Steamboat Lumps marine reserves, and to establish criteria to be considered when implementing new time/area closures or modifying existing time/area closures, were designed to minimize economic impacts incurred by fishermen, while simultaneously reducing the bycatch of non-target HMS and protected species, such as sea turtles, in Atlantic HMS fisheries. The establishment of complementary HMS regulations in the Madison-Swanson and Steamboat Lumps marine reserves will result in minimal economic impacts (e.g., only three commercial sets were reported in these areas between 1996 - 2004). Creating these complementary HMS regulations will consolidate and simplify requirements for fishermen, and therefore simplify compliance. This measure will allow surface trolling from May through October to partially alleviate any negative economic impacts associated with the closures for the HMS recreational and charter/headboat sector.

Other time/area alternatives considered in addition to the No Action alternative were a closure of 11,191 nm<sup>2</sup> in the central Gulf of Mexico to pelagic

longline gear, a closure of 2,251 nm<sup>2</sup> in the Northeast to pelagic longline gear, a closure of 101,670 nm<sup>2</sup> in BFT spawning areas in the Gulf of Mexico, a closure west of 86° W longitude in the Gulf of Mexico to pelagic longline gear, a closure of 46,956 nm<sup>2</sup> in the Northeast to pelagic longline gear, a prohibition on the use of bottom longline gear in an area off the Florida Keys to protect endangered smalltooth sawfish, and a prohibition on the use of pelagic longline gear in HMS fisheries in all areas. These closures alternatives were not selected due to large economic impacts (ranging from an estimated decrease in annual revenues as high as \$10.9 million for a closure west of 86° W longitude year-round closure in the Gulf of Mexico under the no-redistribution of effort model) with variable ecological benefits between species when considering the redistribution of effort. The details of the economic impacts associated with these other alternatives are provided in Final Consolidated HMS FMP. In addition to the closure alternatives, modifications to existing closures were also considered for the Charleston Bump closure and the Northeastern U.S. closure, which would provide some economic relief but would not meet ecological needs, and may result in increased interactions with protected resources.

The final measure will establish criteria that will guide future decision-making regarding implementation or modification of time/area closures. This will provide enhanced transparency, predictability, and understanding of HMS management decisions. The time/area closure criteria will not have immediate impacts. Any ecological, social, or economic impacts of a specific closure or modified closure would be analyzed in the future when that specific action is proposed.

#### C. Northern Albacore Tuna

The selected alternative for northern albacore management, which will establish the foundation for developing an international rebuilding program, was designed to address rebuilding of the northern albacore tuna fishery while simultaneously minimizing economic impacts incurred by fishermen. This measure will have minimal economic impacts, because it will not implement any additional restrictions at this time.

Other alternatives considered were No Action and taking unilateral proportional reductions in northern albacore tuna harvest. Taking unilateral action to address northern albacore tuna on the part of the U.S. would likely not be effective in rebuilding the stock

because the U.S. is a small participant in this fishery, and would have larger economic impacts than the selected alternative. The No Action alternative was rejected, because it would not include a rebuilding strategy in the FMP.

#### D. Finetooth Sharks

The final measure selected for finetooth shark management was designed to implement a plan that prevents overfishing while minimizing economic impacts incurred by fishermen and potential negative ecological impacts. This alternative is expected to have minimal to no economic impacts, because no new restrictions are being proposed at this time. Long-term, the alternative will have positive ecological and economic impacts by implementing a plan to address finetooth mortality in HMS and other fisheries.

Other alternatives considered were No Action, commercial management measures (e.g., gear restrictions, quota reduction), and recreational management measures (e.g., gear restrictions, minimum size increase). Only the No Action alternative would have less economic impact relative to the preferred alternative. However, this alternative was not preferred because it would not implement a plan to prevent overfishing of finetooth sharks.

#### E. Atlantic Billfish

The final measures for Atlantic billfish management require the use of non-offset circle hooks by anglers fishing from HMS permitted vessels participating in Atlantic billfish tournaments when deploying natural baits or natural bait/artificial lure combinations and implementing the ICCAT marlin landings limits. This requirement is designed to minimize economic impacts incurred by the recreational fishing sector, while enhancing the management of the directed Atlantic billfish fishery. Requiring the use of non-offset circle hooks by anglers fishing from HMS permitted vessels participating in Atlantic billfish tournaments when deploying natural baits or natural bait/artificial lure combinations will likely have a minimal economic impact, since it will not affect all billfish recreational anglers, but only tournament participants. Therefore, the impacts on hook manufacturers, retailers, and anglers will likely be limited given that J-hooks would continue to be permitted outside of tournaments and within tournaments with artificial lures. Impacts on tournaments will likely be minimal, given the increase in the

number of tournaments that provide special award categories or additional points for billfish captured and released on circle hooks. This measure will also likely have high compliance rates given the self-policing that is likely to occur among tournament participants competing for prizes, as well as the increasing use of tournament observers.

Several measures were also considered to minimize the economic impacts of the ICCAT marlin landings limits. These include the use of three separate levels of management measures based upon marlin landing thresholds: (1) no in-season management action if marlin landings do not approach action thresholds; (2) in-season minimum size increases to slow the pace of marlin landings for the remainder of the fishing year, if projections show the 250 marlin landing limit is being approached; and, (3) a shift to catch and release only fishing for Atlantic marlin for the remainder of a fishing year, if the 250 marlin landing limit is achieved or projected to be achieved. Under the calendar year management cycle, this three tiered approach also will help reduce any disproportionate economic impacts to CHB operators, tournaments, and anglers who fish for marlin late in the fishing year or in late season tournaments by providing anglers the greatest opportunity to land marlin over the entire fishing year. The ICCAT landing limit measures may potentially result in \$1.3 to \$2.7 million in economic impacts annually, if in-season management actions become necessary. However, barring substantial increases in effort and/or a change in angler behavior, this is considered unlikely based on historical landings trends.

Other alternatives considered for the directed billfish fishery were No Action, limiting all participants in the Atlantic HMS recreational fishery to using only non-offset circle hooks when deploying natural baits or natural bait/artificial lure combinations in all HMS fisheries, increasing the minimum size limit for Atlantic white and/or blue marlin, implementing recreational bag limits of one Atlantic billfish per vessel per trip, allowing only catch and release fishing for Atlantic white marlin, and allowing only catch-and-release fishing for Atlantic blue marlin. Only the No Action alternative would have less onerous economic impacts relative to the measures in this rule. However, the No Action alternative would not satisfy the requirements and goals of implementing the ICCAT recommendations under ATCA, rebuilding the Atlantic blue and white marlin fishery under the Magnuson-Stevens Act, or the objectives of the

HMS FMP. While the other alternatives may have additional ecological benefits for billfish, the other alternatives would have larger economic impacts than the selected alternatives and could affect all HMS anglers, not only those who are fishing for billfish.

#### F. BFT Quota Management

The final measures for BFT quota management include revised General category time-periods and subquotas to allow for a formalized winter fishery, clarified procedures for calculating the Angling category school size-class subquota allocation, modification of the BFT specification process and streamlining annual under/overharvest procedures, an individual quota category carryover limit and authorization of the transfer of quota exceeding limit, and revised and consolidated criteria that would be considered prior to performing a BFT inseason action. These measures were designed to minimize economic impacts incurred by fishermen, while enhancing and clarifying BFT quota management and inseason actions.

Revised General category time-periods and subquotas to allow for a formalized winter fishery will likely balance consistent quota allocations and the flexibility to amend them in a timely fashion. This measure will slightly reduce General category quota from early time periods, thereby allowing for a winter General category BFT fishery during the months of December and January, and increasing regional access. By shifting the allocated quota from the June through August time-period, which has an overall higher allocation, to a later time-period any adverse impacts will be mitigated by the increased revenue generated in the later time-period.

The revised procedures for calculating the Angling category school size-class subquota allocation will clarify the procedures NMFS uses in calculating the ICCAT recommendation regarding the 8 percent tolerance for BFT under 115 cm. It would also maintain the north/south dividing line that separates the Angling category. This alternative is not likely to have an economic impact.

The modification of the BFT specification process and streamlining annual under/overharvest procedures will simplify quota allocations by eliminating the need to allocate each domestic quota category's baseline allocation each year, as the allocation percentages and the actual quota equivalents (measured in metric tons) will be codified in the regulations implementing the consolidated HMS FMP at least until ICCAT alters its BFT

TAC recommendation. This measure will have positive economic impacts to the domestic BFT fishery as a whole by allowing BFT fishery participants, either commercial or recreational in nature, to make better informed decisions on how to best establish a business plan for the upcoming season.

Establishing an individual quota category carryover limit for BFT and authorization of the transfer of quota exceeding the limit will have some economic impacts as a result of limiting the amount of underharvest of the BFT quota that could be rolled over from one year to the next within a category. However, this measure was designed to mitigate any impacts by allowing NMFS to redistribute quota exceeding the proposed 100 percent rollover cap to the Reserve or to other domestic quota categories, provided the redistributions are consistent with ICCAT recommendations and the redistribution criteria.

Revised and consolidated criteria that would be considered prior to performing a BFT inseason action will result in slightly more positive economic impacts as the criteria NMFS must consider when making an inseason action determination will be consolidated and consistent regardless of what type of inseason action is being considered. This will minimize confusion and provide additional transparency to the management process.

Other alternatives considered regarding bluefin tuna quota management in addition to the No Action alternatives were establishing General category time-periods, subquotas, and geographic set asides annually via framework actions; establishing monthly General category time-periods and subquotas; revising the General category time-periods and subquotas to allow for a formalized winter fishery with different time-period allocations; eliminating the underharvest quota carryover provisions; and eliminating the BFT inseason actions. These additional alternatives would not likely reduce overall impacts to the fishery as a whole relative to the selected final measures.

#### G. Timeframe for Annual Management of HMS Fisheries

The final measure that would shift the time frame to a calendar year (January 1 to December 31) management cycle was designed to minimize economic impacts on HMS fisheries and simplify HMS fishery management and reporting to ICCAT. This measure will not affect the shark fishery, since that fishery is already operating under a calendar year.

The shift in the other HMS fisheries' timeframe for annual management would establish consistent timing between U.S. domestic and international management programs, reducing the complexity of U.S. reports to ICCAT and creating more transparent analyses in the U.S. National Report. Setting an annual quota and other fishery specifications on a multi-year basis for BFT could mitigate any potential negative impacts associated with reduced business planning periods that may result from a calendar year timeframe. The flexibility established in the billfish measures could partially mitigate any negative regional economic impacts to marlin tournaments, charters, and other related recreational fishing businesses. To facilitate the transition to a calendar year management timeframe for BFT and swordfish, the 2007 fishing year would be abbreviated from June 1, 2007, through December 31, 2007, which could provide slightly higher quotas during that time period and slight positive impacts for fishermen.

Other alternatives considered were to maintain the current fishing year and to shift the fishing year to June 1 - May 31 for all HMS species. These alternatives are not likely to result in economic impacts substantially different than this final rule. However, they would not meet the objectives of this action because these alternatives would not simplify the management program for HMS fisheries and improve the U.S. basis for negotiations at international forums that use calendar year reporting data.

#### H. Authorized Fishing Gears

The final measures to authorize speargun fishing gear for BAYS tunas in the recreational Atlantic tuna fishery, authorize buoy gear in the commercial swordfish handgear fishery, and allow secondary gears (also known as cockpit gears), were designed to reduce the economic impacts to fishermen and even enhance economic opportunities in recreational and commercial fishing. Specifically, the measure authorizing speargun fishing will enhance economic opportunities in the tuna recreational fishery by including a new authorized class of recreational fishing, speargun fishing.

The swordfish handgear fishery may currently utilize individual handlines attached to free-floating buoys; however, the final measure will require that handlines used in HMS fisheries be attached to a vessel. Changing the definition of individual free-floating buoyed lines, that are currently considered to be handlines, to "buoy gear," will allow the commercial

swordfish handgear fishery to continue utilizing this gear type. This measure will explicitly authorize this gear type but limit vessels to possessing and deploying no more than 35 individual floatation devices with each gear having no more than two hooks or gangions attached. The economic impact of this measure will likely be minimal, since the upper limit on the number of buoys is based on information obtained about the fishery through public comment, and based on what NMFS has identified as the manageable upper limit for the commercial sector. Furthermore, few current permit holders reporting fishing with this gear (only seven vessels in 2004) and the use of this gear appears limited to the East Coast of Florida.

Finally, the measure clarifying the allowance of secondary gears (also known as cockpit gears) will likely reduce confusion over the allowable use of secondary gears to subdue HMS captured on primary authorized gears. The use of these secondary gears might result in positive economic benefits from anticipated increases in retention rates.

Other alternatives considered in addition to No Action were to authorize speargun fishing gear in both the commercial tuna handgear and recreational tuna fisheries, authorizing green-stick fishing gear, and authorizing buoy gear in the commercial swordfish handgear fishery with 50 floatation devices with no more than 15 hooks or gangions attached to each gear. None of the non-preferred alternatives would have fewer economic impacts than the preferred alternatives. The alternative to authorize speargun fishing gear in both the commercial tuna handgear and recreational tuna fisheries was not selected because it could result in some additional effort from commercial handgear tuna fishing and potentially impact BFT stocks. Green-stick gear was not preferred because of a lack of data from established monitoring programs to determine the ecological impacts of formally introducing this gear and the potential for increases in fishing effort and landings on YFT and other HMS. Finally, the alternative authorizing buoy gear in the commercial swordfish handgear fishery with 50 floatation devices and no more than 15 hooks or gangions attached was expected to have additional negative ecological impacts compared to the preferred alternative.

#### I. Regulatory Housekeeping Measures

The final measures for regulatory housekeeping items were designed to minimize economic impacts, while also clarifying regulatory definitions and requirements, facilitating species

identification, and enhancing regulatory compliance. The final measure that will differentiate between BLL and PLL gear by using the species composition of catch landed will more clearly define the difference between BLL and PLL gear using performance standards based on the composition of catch landed. This will help to clarify the difference between these two gear types and enhance compliance with time/area closures that place restrictions on these two gear types. There could be some, but likely limited, economic impacts to vessels that may currently fish in gear restricted time/areas closures that do not conform to the BLL and PLL performance standards. This performance based standard could adversely impact those longline vessels that regularly target both demersal and pelagic species on the same trip, and that fish in PLL or BLL closed areas.

Other alternatives considered in addition to the No Action alternative were to specify maximum and minimum number of floats for BLL and PLL gear, require time/depth recorders on all HMS longlines, and base closures on all longline vessels. Only the No Action alternative could have less onerous economic impacts relative to the preferred alternative. However, the No Action alternative would not address the Agency's concerns with differentiating between bottom and pelagic longline gear. The Agency did not prefer the alternative that would specify a maximum and minimum allowable number of commercial fishing floats to distinguish between BLL and PLL fishing gear because floats are not easily defined and the alternative may be impracticable to enforce. The float requirement could also result in unnecessary burden that could diminish the flexibility of vessel operators to participate in different fishing activities, depending on the circumstances. Requiring the use of time/depth recorders was not preferred because they could cost vessels between \$1,400 and \$6,600 to acquire and the reduced efficiencies associated with their use could cause increases in the mortality of discarded fish. The Agency did not select the alternative that based HMS time/area closures on all longline vessels since it would have significant economic impacts.

The final measure for shark identification, which will require that the second dorsal fin and anal fin remain attached on all sharks, addresses issues associated with shark species identification, but will be flexible enough to allow fishermen to remove the most valuable fins in order to minimize the economic impacts of this

alternative. Fishermen could experience, in the short-term, some adverse economic impacts associated with lower revenues associated with keeping the second dorsal and anal fins on sharks. Other alternatives considered in addition to the No Action alternative were to require the dorsal and anal fin on all sharks except lemon and nurse sharks and to require that all fins on all sharks be retained. The No Action alternative and the alternative requiring the dorsal and anal fin on all sharks except lemon and nurse sharks could have fewer economic impacts relative to the preferred alternative. These alternatives, however, would not satisfy enforcement and species identification needs, such as improving the accuracy of dealer reporting of sharks landed by species needed for accurate stock assessments and quota monitoring, and enabling enforcement officers to identify when fishermen illegally keep fins from species that are different from those they land or species that cannot be landed. Furthermore, requiring all fins to remain on all sharks through landing would result in the largest economic burden of any of the alternatives since the current offloading process and the transition of fish between dealers and fishermen is dependent on fins being removed from the shark before the sharks are offloaded.

The final measures that will prohibit the purchase or sale of HMS from vessels in excess of retention limits will enhance compliance with current regulations by consolidating the requirement for both vessels and dealers. These measures will have minimal economic impact on dealers and vessels following the current retention limits. The only additional alternative considered was No Action, which would have less economic impact than the preferred alternatives but would not satisfy the enforcement or monitoring objectives of eliminating the potential for the sale of illegally harvested HMS in excess of commercial retention limits.

The final measure to clarify the regulations for the East Florida Coast closed area will make its outer boundary consistent with the outer boundary of the EEZ. This measure is not expected to have any economic impact since fishing activity is likely to be limited in this small area. The alternative is to retain the current technical error under the No Action alternative, which results in confusion.

The measure to clarify the definition of "handline gear" by requiring that they remained attached to, or in contact with, a vessel is expected to have only minimal economic impacts, since

unattached handline gear would be defined as "buoy gear" and authorized exclusively for use in the directed commercial swordfish fishery. Other alternatives considered were No Action and to require handlines be attached to recreational vessels only. These two alternatives could have fewer economic impacts relative to the selected alternative, but they would not meet the ecological objectives of the final Consolidated HMS FMP of limiting the potential future expansion of the handline sector and possibly reducing the amount of gear lost.

The final measure prohibiting commercial vessels from retaining billfish will not have any economic impacts because current regulations do not allow these vessels to sell billfish that are landed. This alternative will clarify and consolidate the requirements for commercial vessels to make them consistent with the regulations prohibiting vessels with pelagic longline gear from retaining billfish. The only other alternative considered was No Action, which could have less social impacts than the selected alternative but it would not satisfy ecological needs of rebuilding billfish stocks because there is potential that commercial fishermen could retain billfish for their own personal use under the No Action alternative.

The final measure that will allow Atlantic tuna dealers the flexibility to submit reports using the Internet, once this option is available, will potentially simplify reporting and reduce costs. The other alternatives considered were No Action and requiring BFT dealers to report online (with specific exceptions). These alternatives would not result in less economic burden than the final rule because it would provide dealers with the option of a more efficient data reporting option that might better fit with their operations.

The final measures requiring and specifying submission dates of no fishing, cost-earnings, and annual expenditures reporting forms will clarify current regulations and potentially enhance compliance. The other alternative considered was No Action; that alternative would not meet the NMFS' objectives to collect quality data to manage the fishery because fishermen were not providing complete and accurate data. Neither alternative is expected to have any economic impacts.

The final measure that will require vessel owners, or their designee, to report non-tournament recreational landings will clarify and simplify the reporting process by codifying the current prevalent practice of recreational landings being reported by

vessel owners versus individual anglers. The other alternative considered, No Action, might result in less economic burden to small businesses but would not satisfy the goal of improving reporting or other objectives of the Consolidated HMS FMP because NMFS suspects that individual recreational fishermen may not properly report landings.

The final measures will include a provision to conduct additional discussions at ICCAT regarding the long-term implications of allowing unused BFT quota from the previous year being added to the subsequent year's allocation. Depending on the results of these discussions, the regulations and operational procedures may need to be further amended in the future. In the interim, NMFS would maintain the current regulatory text, but would amend the practice of allowing under/overharvest of the set-aside allocation to be rolled into, or deducted from, the subsequent fishing year's set-aside allocation. Other alternatives considered include No Action and amending the regulatory text to clarify that rollover provisions would apply to this set-aside quota. Accumulation of incidental quota under a rollover provision could possibly provide an incentive to target BFT with longline gear, and thus this alternative would not fully reflect the intent of the 2002 ICCAT BFT quota recommendation.

Finally, the final measure that will require recreational vessels with a Federal permit to comply with Federal regulations regardless of where they are fishing, would standardize compliance with HMS regulations for vessels possessing a Federal HMS permit. This will likely simplify compliance with regulations, except in cases where a state has more restrictive regulations. The other alternative considered was No Action, which could have marginally less economic impact than the preferred alternative, but it would not simplify and enhance compliance with HMS recreational fishing regulations.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of the

compliance guide for this final rule is available (see **ADDRESSES**).

**List of Subjects**

**50 CFR Part 300**

Fisheries, Foreign relations, Reporting and recordkeeping requirements, Treaties.

**50 CFR Part 600**

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

**50 CFR Part 635**

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

Dated: September 22, 2006.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, NMFS amends 50 CFR chapters III and VI as follows:

**CHAPTER III—INTERNATIONAL FISHING AND RELATED ACTIVITIES**

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

**Subpart M—International Trade Documentation and Tracking Programs for Highly Migratory Species**

■ 1. The authority citation for subpart M continues to read as follows:

**Authority:** 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 300.182, paragraph (d) is revised to read as follows:

**§ 300.182 HMS international trade permit.**

\* \* \* \* \*

(d) *Duration.* Any permit issued under this section is valid for the period specified on it, unless suspended or revoked.

\* \* \* \* \*

■ 3. In § 300.185, paragraphs (b)(3) and (c)(3) are revised to read as follows:

**§ 300.185 Documentation, reporting and recordkeeping requirements for statistical documents and re-export certificates.**

\* \* \* \* \*

(b) \* \* \*

(3) *Reporting requirements.* A permit holder must ensure that the original statistical document, as completed under paragraph (b)(2) of this section, accompanies the export of such products to their export destination. A copy of the statistical document must be postmarked and mailed by said permit holder to NMFS, at an address designated by NMFS, within 24 hours of

the time the fish product was exported from the U.S. or a U.S. insular possession. Once a system is available, permit holders will also be able to submit the forms electronically via the Internet.

(c) \* \* \*

(3) *Reporting requirements.* For each re-export, when required under this paragraph (c), a permit holder must submit the original of the completed re-export certificate and the original or a copy of the original statistical document completed as specified under paragraph (c)(2) of this section, to accompany the shipment of such products to their re-export destination. A copy of the completed statistical document and re-export certificate, when required under this paragraph (c), must be postmarked and mailed by said permit holder to NMFS, at an address designated by NMFS, within 24 hours of the time the shipment was re-exported from the U.S. Once a system is available, permit holders will also be able to submit the forms electronically via the Internet.

\* \* \* \* \*

**CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE**

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

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

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

■ 5. Section 600.725, paragraph (v), heading “IX. Secretary of Commerce”, is amended by:

A. Redesignating entries 1.B. through 1.J. as entries 1.C. through 1.K., respectively.

B. Redesignating entry 2. as entry 1.L. and entry 3. as entry 2., respectively.

C. Adding entry 1.B.

D. Revising entry 1. introductory paragraph, entry 1.A, and newly redesignated entries 1.I. and 1.L.

The additions and revisions read as follows:

**§ 600.725 General prohibitions.**

\* \* \* \* \*

(v) \* \* \*

Fishery	Authorized gear types
---------	-----------------------

\* \* \* \* \*

**IX. Secretary of Commerce**

1. Atlantic Highly Migratory Species Fisheries (FMP):

A. Swordfish handgear fishery.

A. Rod and reel, harpoon, handline, bandit gear, buoy gear.

Fishery	Authorized gear types
B. Swordfish recreational fishery.	B. Rod and reel, handline.
I. Tuna recreational fishery.	I. Speargun gear (for bigeye, albacore, yellowfin, and skipjack tunas only); Rod and reel, handline (all tunas).
L. Atlantic billfish recreational fishery.	L. Rod and reel.

**PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

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

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

**PART 635 [AMENDED]**

■ 7. In part 635, remove the phrase “Northeast Distant closed area” wherever it appears and add in its place “Northeast Distant gear restricted area”.

■ 8. Section 635.2 is amended by:  
A. Revising the definitions of “East Florida Coast closed area”, “Fishing year”, “Handgear”, “Handline”, and “Shark”.

B. Revising paragraph (5) under the definition of “Management unit”.

C. Removing the definition of “ILAP”.

D. Adding definitions, in alphabetical order, for “Atlantic shark identification workshop certificate”, “BAYS”, “Buoy gear”, “Floatation device”, “Madison-Swanson closed area”, “Protected species safe handling, release, and identification workshop certificate”, “Speargun fishing gear”, and “Steamboat Lumps closed area”.

The additions and revisions read as follows:

**§ 635.2 Definitions.**

\* \* \* \* \*

*Atlantic shark identification workshop certificate* means the document issued by NMFS, or its designee, indicating that the person named on the certificate has successfully completed the Atlantic shark identification workshop.

*BAYS* means Atlantic bigeye, albacore, yellowfin, and skipjack tunas as defined in § 600.10 of this part.

\* \* \* \* \*

*Buoy gear* means a fishing gear consisting of one or more floatation devices supporting a single mainline to which no more than two hooks or gangions are attached.

\* \* \* \* \*

East Florida Coast closed area means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 31°00' N. lat. near Jekyll Island, GA, and proceeding due east to connect by straight lines the following coordinates in the order stated: 31°00' N. lat., 78°00' W. long.; 28°17'10" N. lat., 79°11'24" W. long.; then proceeding along the outer boundary of the EEZ to the intersection of the EEZ with 24°00' N. lat.; then proceeding due west to 24°00' N. lat., 81°47' W. long.; and then proceeding due north to intersect the inner boundary of the U.S. EEZ at 81°47' W. long. near Key West, FL.

\* \* \* \* \*

*Fishing year means—*

(1) For Atlantic tunas and swordfish, before January 1, 2008 — June 1 through May 31. On or after January 1, 2008 — January 1 through December 31.

(2) For Atlantic billfish, On or after January 1, 2007 — January 1 through December 31.

(3) For sharks — January 1 through December 31.

\* \* \* \* \*

*Floation device* means any positively buoyant object rigged to be attached to a fishing gear.

\* \* \* \* \*

*Handgear* means handline, harpoon, rod and reel, bandit gear, buoy gear, or speargun gear.

*Handline* means fishing gear that is attached to, or in contact with, a vessel; that consists of a mainline to which no more than two hooks or gangions may be attached; and that is released and retrieved by hand rather than by mechanical means.

\* \* \* \* \*

*Madison-Swanson closed area* means a rectangular-shaped area in the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 29°17' N. lat., 85°50' W. long.; 29°17' N. lat., 85°38' W. long.; 29°06' N. lat., 85°38' W. long.; 29°06' N. lat., 85°50' W. long.; and 29°17' N. lat., 85°50' W. long.

*Management unit* \* \* \*

\* \* \* \* \*

(5) For sharks, means all fish of the species listed in Table 1 of Appendix A to this part, in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea.

\* \* \* \* \*

*Protected species safe handling, release, and identification workshop certificate* means the document issued by NMFS, or its designee, indicating that the person named on the certificate has successfully completed the Atlantic

HMS protected species safe handling, release, and identification workshop.

\* \* \* \* \*

*Shark* means one of the oceanic species, or a part thereof, listed in Table 1 of Appendix A to this part.

\* \* \* \* \*

*Speargun fishing gear* means a muscle-powered speargun equipped with a trigger mechanism, a spear with a tip designed to penetrate and retain fish, and terminal gear. Terminal gear may include, but is not limited to, trailing lines, reels, and floats. The term “muscle-powered speargun” for the purposes of this part means a speargun that stores potential energy provided from the operator’s muscles, and that releases only the amount of energy that the operator has provided to it from his or her own muscles. Common energy storing methods for muscle-powered spearguns include compressing air and springs, and the stretching of rubber bands.

*Steamboat Lumps closed area* means a rectangular-shaped area in the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 28°14' N. lat., 84°48' W. long.; 28°14' N. lat., 84°37' W. long.; 28°03' N. lat., 84°37' W. long.; 28°03' N. lat., 84°48' W. long.; and 28°14' N. lat., 84°48' W. long.

\* \* \* \* \*

■ 9. In § 635.4, paragraphs (a)(10), (c)(2), (d)(4), (e)(1), (e)(2), (f)(1), (f)(2), (h)(2), (l)(1), (l)(2)(i), (l)(2)(ii)(B), (l)(2)(ii)(C), (l)(2)(viii), (l)(2)(ix), (m)(1), and (m)(2) are revised to read as follows:

**§ 635.4 Permits and fees.**

\* \* \* \* \*

(a) \* \* \*

(10) *Permit condition.* An owner of a vessel with a valid swordfish, shark, HMS Angling, or HMS Charter/Headboat permit issued pursuant to this part must agree, as a condition of such permit, that the vessel’s HMS fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the U.S. EEZ, or outside the U.S. EEZ, and without regard to where such HMS, or gear, are possessed, taken, or landed. However, when a vessel fishes within the waters of a state that has more restrictive regulations pertaining to HMS, persons aboard the vessel must abide by the state’s more restrictive regulations.

\* \* \* \* \*

(c) \* \* \*

(2) A vessel with a valid Atlantic Tunas General category permit issued under paragraph (d) of this section may

fish in a recreational HMS fishing tournament if the vessel has registered for, paid an entry fee to, and is fishing under the rules of a tournament that has registered with NMFS’ HMS Management Division as required under § 635.5(d). When a vessel issued a valid Atlantic Tunas General category permit is fishing in such a tournament, such vessel must comply with HMS Angling category regulations, except as provided in paragraph (c)(3) of this section.

\* \* \* \* \*

(d) \* \* \*

(4) A person can obtain a limited access Atlantic Tunas Longline category permit for a vessel only if the vessel has been issued both a limited access permit for shark and a limited access permit, other than handgear, for swordfish. Limited access Atlantic Tunas Longline category permits may only be obtained through transfer from current owners consistent with the provisions under paragraph (l)(2) of this section.

\* \* \* \* \*

(e) \* \* \*

(1) The only valid Federal commercial vessel permits for sharks are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.

(2) The owner of each vessel used to fish for or take Atlantic sharks or on which Atlantic sharks are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of two types of commercial limited access shark permits: Shark directed limited access permit or shark incidental limited access permit. It is a rebuttable presumption that the owner or operator of a vessel on which sharks are possessed in excess of the recreational retention limits intends to sell the sharks.

\* \* \* \* \*

(f) \* \* \*

(1) The owner of each vessel used to fish for or take Atlantic swordfish or on which Atlantic swordfish are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of three types of commercial limited access swordfish permits: Swordfish directed limited access permit, swordfish incidental limited access permit, or swordfish handgear limited access permit. It is a rebuttable presumption that the owner or operator of a vessel on which swordfish are possessed in excess of the recreational retention limits intends to sell the swordfish.

(2) The only valid commercial Federal vessel permits for swordfish are those

that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.

\* \* \* \* \*

(h) \* \* \*

(2) *Limited access permits for swordfish and shark.* See paragraph (l) of this section for transfers of LAPs for shark and swordfish. See paragraph (m) of this section for renewals of LAPs for shark and swordfish.

\* \* \* \* \*

(l) \* \* \*

(1) *General.* A permit issued under this section is not transferable or assignable to another vessel or owner or dealer; it is valid only for the vessel or owner or dealer to whom it is issued. If a person acquires a vessel or dealership and wants to conduct activities for which a permit is required, that person must apply for a permit in accordance with the provisions of paragraph (h) of this section or, if the acquired vessel is permitted in either the shark, swordfish, or tuna longline fishery, in accordance with paragraph (1)(2) of this section. If the acquired vessel or dealership is currently permitted, an application must be accompanied by the original permit, by a copy of a signed bill of sale or equivalent acquisition papers, and the appropriate workshop certificates as specified in § 635.8.

(2) \* \* \*

(i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraph (1)(2)(ii) of this section and to the limitations on ownership of permitted vessels in paragraph (1)(2)(iii) of this section, an owner may transfer a shark or swordfish LAP or an Atlantic Tunas Longline category permit to another vessel that he or she owns or to another person. Directed handgear LAPs for swordfish may be transferred to another vessel but only for use with handgear and subject to the upgrading restrictions in paragraph (1)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (1)(2)(iii) of this section. Incidental catch LAPs are not subject to the requirements specified in paragraphs (1)(2)(ii) and (1)(2)(iii) of this section.

(ii) \* \* \*

(B) Subsequent to the issuance of a limited access permit, the vessel's horsepower may be increased only once, relative to the baseline specifications of the vessel initially issued the LAP, whether through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the baseline specifications of the vessel initially issued the LAP.

(C) Subsequent to the issuance of a limited access permit, the vessel's length overall, gross registered tonnage, and net tonnage may be increased only once, relative to the baseline specifications of the vessel initially issued the LAP, whether through refitting, replacement, or transfer. An increase in any of these three specifications of vessel size may not exceed 10 percent of the baseline specifications of the vessel initially issued the LAP. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

\* \* \* \* \*

(viii) As specified in paragraph (f)(4) of this section, a directed or incidental LAP for swordfish, a directed or an incidental catch LAP for shark, and an Atlantic Tunas Longline category permit are required to retain swordfish for commercial purposes. Accordingly, a LAP for swordfish obtained by transfer without either a directed or incidental catch shark LAP or an Atlantic tunas Longline category permit will not entitle an owner or operator to use a vessel to fish in the swordfish fishery.

(ix) As specified in paragraph (d)(4) of this section, a directed or incidental LAP for swordfish, a directed or an incidental catch LAP for shark, and an Atlantic Tunas Longline category permit are required to retain Atlantic tunas taken by pelagic longline gear. Accordingly, an Atlantic Tunas Longline category permit obtained by transfer without either a directed or incidental catch swordfish or shark LAP will not entitle an owner or operator to use the permitted vessel to fish in the Atlantic tunas fishery with pelagic longline gear.

(m) \* \* \*

(1) *General.* Persons must apply annually for a dealer permit for Atlantic tunas, sharks, and swordfish, and for an Atlantic HMS Angling, HMS Charter/Headboat, tunas, shark, or swordfish vessel permit. Except as specified in the instructions for automated renewals, persons must submit a renewal application to NMFS, along with a copy of the applicable valid workshop certificate or certificates, if required pursuant to § 635.8, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit if the specific requirements for the requested permit are met, including those described in paragraph (1)(2) of this section, all reports required under the Magnuson-

Stevens Act and ATCA have been submitted, including those described in § 635.5 and § 300.185 of this title, the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section, and the workshop requirements specified in § 635.8 are met.

(2) *Shark, swordfish, and tuna longline LAPs.* The owner of a vessel of the U.S. that fishes for, possesses, lands or sells shark or swordfish from the management unit, takes or possesses such shark or swordfish as incidental catch, or that fishes for Atlantic tunas with longline gear must have the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section. Only persons holding a non-expired limited access permit(s) in the preceding year are eligible to renew a limited access permit(s). Transferors may not renew limited access permits that have been transferred according to the procedures of paragraph (l) of this section.

■ 10. In § 635.5, paragraph (a)(4) is removed; paragraphs (a)(5) and (a)(6) are redesignated as paragraphs (a)(4) and (a)(5), respectively; and paragraphs (a)(1), (b)(2)(i)(A), (b)(2)(i)(B), (b)(3), (c)(2) and (d) are revised to read as follows:

**§ 635.5 Recordkeeping and reporting.**

\* \* \* \* \*

(a) \* \* \*

(1) *Logbooks.* If an owner of an HMS charter/headboat vessel, an Atlantic tunas vessel, a shark vessel, or a swordfish vessel, for which a permit has been issued under § 635.4(b), (d), (e), or (f), is selected for logbook reporting in writing by NMFS, he or she must maintain and submit a fishing record on a logbook form specified by NMFS. Entries are required regarding the vessel's fishing effort and the number of fish landed and discarded. Entries on a day's fishing activities must be entered on the logbook form within 48 hours of completing that day's activities or before offloading, whichever is sooner. The owner or operator of the vessel must submit the logbook form(s) postmarked within 7 days of offloading all Atlantic HMS. If no fishing occurred during a calendar month, a no-fishing form so stating must be submitted postmarked no later than 7 days after the end of that month. If an owner of an HMS charter/headboat vessel, Atlantic tunas vessel, shark vessel, or swordfish vessel, permitted under § 635.4(b), (d), (e), or (f), is selected in writing by NMFS to complete the cost-earnings portion of the logbook(s), the owner or operator must maintain and submit the cost-

earnings portion of the logbook postmarked no later than 30 days after completing the offloading for each trip fishing for Atlantic HMS during that calendar year, and submit the Atlantic Highly Migratory Species Annual Expenditures form(s) postmarked no later than the date specified on the form of the following year.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) *Landing reports.* Each dealer with a valid Atlantic tunas permit issued under § 635.4 must submit a completed landing report on a form available from NMFS for each BFT received from a U.S. fishing vessel. Such report must be submitted by electronic facsimile (fax) or, once available, via the Internet, to a number or a web address designated by NMFS not later than 24 hours after receipt of the BFT. A landing report must indicate the name and permit number of the vessel that landed the BFT and must be signed by the permitted vessel's owner or operator immediately upon transfer of the BFT. The dealer must inspect the vessel's permit to verify that the required vessel name and vessel permit number as listed on the permit are correctly recorded on the landing report and to verify that the vessel permit has not expired.

(B) *Bi-weekly reports.* Each dealer with a valid Atlantic tunas permit issued under § 635.4 must submit a bi-weekly report on forms available from NMFS for BFT received from U.S. vessels. For BFT received from U.S. vessels on the 1st through the 15th of each month, the dealer must submit the bi-weekly report form to NMFS postmarked or, once available, electronically submitted via the Internet not later than the 25th of that month. Reports of BFT received on the 16th through the last day of each month must be postmarked or, once available, electronically submitted via the Internet not later than the 10th of the following month.

\* \* \* \* \*

(3) *Recordkeeping.* Dealers must retain at their place of business a copy of each report required under paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2)(i) of this section for a period of 2 years from the date on which each report was required to be submitted.

(c) \* \* \*

(2) *Billfish and North Atlantic swordfish.* The owner, or the owner's designee, of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/

Headboat category must report all non-tournament landings of Atlantic blue marlin, Atlantic white marlin, and Atlantic sailfish, and all non-tournament and non-commercial landings of North Atlantic swordfish to NMFS by calling a number designated by NMFS within 24 hours of the landing. For telephone reports, the owner, or the owners designee, must provide a contact phone number so that a NMFS designee can call the vessel owner, or the owner's designee, for follow up questions and to confirm the reported landing. The telephone landing report has not been completed unless the vessel owner, or the owner's designee, has received a confirmation number from a NMFS designee.

\* \* \* \* \*

(d) *Tournament operators.* For all tournaments that are conducted from a port in an Atlantic coastal state, including the U.S. Virgin Islands and Puerto Rico, a tournament operator must register with the NMFS' HMS Management Division, at least 4 weeks prior to commencement of the tournament by submitting information on the purpose, dates, and location of the tournament to NMFS. A tournament is not registered unless the tournament operator has received a confirmation number from the NMFS' HMS Management Division. NMFS will notify the tournament operator in writing when a tournament has been selected for reporting. Tournament operators that are selected to report must maintain and submit to NMFS a record of catch and effort on forms available from NMFS. Tournament operators must submit the completed forms to NMFS, at an address designated by NMFS, postmarked no later than the 7th day after the conclusion of the tournament, and must attach a copy of the tournament rules.

\* \* \* \* \*

■ 11. In § 635.6, paragraphs (c)(1) and (c)(2) are revised to read as follows:

**§ 635.6 Vessel and gear identification.**

\* \* \* \* \*

(c) \* \* \*

(1) The owner or operator of a vessel for which a permit has been issued under § 635.4 and that uses handline, buoy gear, harpoon, longline, or gillnet, must display the vessel's name, registration number or Atlantic Tunas, HMS Angling, or HMS Charter/Headboat permit number on each float attached to a handline, buoy gear, or harpoon, and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. The vessel's name or number must be at least 1 inch (2.5 cm) in height in block

letters or arabic numerals in a color that contrasts with the background color of the float or high-flyer.

(2) An unmarked handline, buoy gear, harpoon, longline, or gillnet, is illegal and may be disposed of in an appropriate manner by NMFS or an authorized officer.

\* \* \* \* \*

■ 12. Add § 635.8 under subpart A to read as follows:

**§ 635.8 Workshops.**

(a) *Protected species release, disentanglement, and identification workshops.* (1) Both the owner and operator of a vessel that fishes with longline or gillnet gear must be certified by NMFS, or its designee, as having completed a workshop on the safe handling, release, and identification of protected species before a shark or swordfish limited access vessel permit, pursuant to § 635.4(e) and (f), is renewed in 2007. For the purposes of this section, it is a rebuttable presumption that a vessel fishes with longline or gillnet gear if: longline or gillnet gear is onboard the vessel; logbook reports indicate that longline or gillnet gear was used on at least one trip in the preceding year; or, in the case of a permit transfer to new owners that occurred less than a year ago, logbook reports indicate that longline or gillnet gear was used on at least one trip since the permit transfer.

(2) NMFS, or its designee, will issue a protected species safe handling, release, and identification workshop certificate to any person who completes a protected species safe handling, release, and identification workshop. If an owner owns multiple vessels, NMFS will issue a certificate for each vessel that the owner owns upon successful completion of one workshop. An owner who is also an operator will be issued multiple certificates, one as the owner of the vessel and one as the operator.

(3) The owner of a vessel that fishes with longline or gillnet gear, as specified in paragraph (a)(1) of this section, is required to possess on board the vessel a valid protected species safe handling, release, and identification workshop certificate issued to that vessel owner. A copy of a valid protected species safe handling, release, and identification workshop certificate issued to the vessel owner for a vessel that fishes with longline or gillnet gear must be included in the application package to renew or obtain a shark or swordfish limited access permit.

(4) An operator that fishes with longline or gillnet gear as specified in paragraph (a)(1) of this section must

possess on board the vessel a valid protected species safe handling, release, and identification workshop certificate issued to that operator, in addition to a certificate issued to the vessel owner.

(5) All owners and operators that attended and successfully completed industry certification workshops, held on April 8, 2005, in Orlando, FL, and on June 27, 2005, in New Orleans, LA, as documented by workshop facilitators, will automatically receive valid protected species safe handling, release, and identification workshop certificates issued by NMFS no later than December 31, 2006.

(b) *Atlantic shark identification workshops.* (1) As of December 31, 2007, all Federal Atlantic shark dealers permitted or required to be permitted pursuant to § 635.4(g)(2), or a proxy for each place of business as specified in paragraph (b)(4) of this section, must be certified by NMFS, or its designee, as having completed an Atlantic shark identification workshop.

(2) NMFS, or its designee, will issue an Atlantic shark identification workshop certificate to any person who completes an Atlantic shark identification workshop.

(3) Dealers who own multiple businesses and who attend and successfully complete the workshop will be issued a certificate for each place of business that is permitted to receive sharks pursuant to § 635.4(g)(2).

(4) Dealers may send a proxy to the Atlantic shark identification workshops. If a dealer opts to send a proxy, the dealer must designate a proxy from each place of business covered by the dealer's permit issued pursuant to § 635.4(g)(2). The proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports as required under § 635.5. Only one certificate will be issued to each proxy. If a proxy is no longer employed by a place of business covered by the dealer's permit, the dealer or another proxy must be certified as having completed a workshop pursuant to this section. At least one individual from each place of business covered by the shark dealer permit must possess a valid Atlantic shark identification workshop certificate.

(5) A Federal Atlantic shark dealer issued or required to be issued a shark dealer permit pursuant to § 635.4(g)(2) must possess and make available for inspection a valid Atlantic shark identification workshop certificate at each place of business. A copy of this

certificate issued to the dealer or proxy must be included in the dealer's application package to obtain or renew a shark dealer permit. If multiple businesses are authorized to receive sharks under the dealer's permit, a copy of the workshop certificate for each business must be included in the shark dealer permit renewal application package.

(c) *Terms and conditions.* (1) Certificates, as described in paragraphs (a) and (b) of this section, are valid for three calendar years. All certificates must be renewed prior to the expiration date on the certificate.

(2) If a vessel fishes with longline or gillnet gear as described in paragraph (a) of this section, the vessel owner may not renew a shark or swordfish limited access permit, issued pursuant to § 635.4(e) or (f), without submitting a valid protected species workshop certificate with the permit renewal application.

(3) A vessel that fishes with longline or gillnet gear as described in paragraph (a) of this section and that has been, or should be, issued a valid limited access permit pursuant to § 635.4(e) or (f), may not fish unless a valid protected species safe handling, release, and identification workshop certificate has been issued to both the owner and operator of that vessel.

(4) An Atlantic shark dealer may not receive, purchase, trade, or barter for Atlantic shark unless a valid Atlantic shark identification workshop certificate is on the premises of each business listed under the shark dealer permit. An Atlantic shark dealer may not renew a Federal dealer permit issued pursuant to § 635.4(g)(2) unless a valid Atlantic shark identification workshop certificate has been submitted with permit renewal application. If the dealer is not certified, the dealer must submit a copy of a proxy certificate for each place of business listed on the shark dealer permit.

(5) A vessel owner, operator, shark dealer, or proxy for a shark dealer who is issued either a protected species workshop certificate or an Atlantic HMS identification workshop certificate may not transfer that certificate to another person.

(6) Vessel owners issued a valid protected species safe handling, release, and identification workshop certificate may request, in the application for permit transfer per § 635.4(l)(2), additional protected species safe handling, release, and identification workshop certificates for additional vessels that they own. Shark dealers may request from NMFS additional Atlantic shark identification workshop

certificates for additional places of business authorized to receive sharks that they own as long as they, and not a proxy, were issued the certificate. All certificates must be renewed prior to the date of expiration on the certificate.

(7) To receive either the protected species safe handling, release, and identification workshop certificate or Atlantic shark identification workshop certificate, persons required to attend the workshop must show a copy of their HMS permit, as well as proof of identification to NMFS or NMFS' designee at the workshop. If a permit holder is a corporation, partnership, association, or any other entity, the individual attending on behalf of the permit holder must show proof that he or she is the permit holder's agent and a copy of the HMS permit to NMFS or NMFS' designee at the workshop. For proxies attending on behalf of a shark dealer, the proxy must have documentation from the shark dealer acknowledging that the proxy is attending the workshop on behalf of the Atlantic shark dealer and must show a copy of the Atlantic shark dealer permit to NMFS or NMFS' designee at the workshop.

■ 13. In § 635.20, paragraph (d)(4) is added to read as follows:

**§ 635.20 Size limits.**

\* \* \* \* \*

(d) \* \* \*

(4) The Atlantic blue and white marlin minimum size limits, specified in paragraphs (d)(1) and (d)(2) of this section, may be adjusted to sizes between 117 and 138 inches (297.2 and 350.5 cm) and 70 and 79 inches (177.8 and 200.7 cm), respectively, to achieve, but not exceed, the annual Atlantic marlin landing limit specified in § 635.27(d). Minimum size limit increases will be based upon a review of landings, the period of time remaining in the current fishing year, current and historical landing trends, and any other relevant factors. NMFS will adjust the minimum size limits specified in this section by filing an adjustment with the Office of the **Federal Register** for publication. In no case shall the adjustments be effective less than 14 calendar days after the date of publication. The adjusted minimum size limits will remain in effect through the end of the applicable fishing year or until otherwise adjusted.

\* \* \* \* \*

■ 14. In § 635.21, paragraphs (a)(2), (a)(4), (b), (c)(1), (c)(2)(ii), (c)(2)(iii), (c)(2)(iv), (c)(2)(v) introductory text, (e)(1) introductory text, (e)(1)(i), (e)(1)(ii), (e)(1)(iii), (e)(2)(i), (e)(2)(ii),

and (e)(4)(iii) are revised; and paragraphs (d)(4), (e)(2)(iii), and (f) are added to read as follows:

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

(a) \* \* \*

(2) If a billfish is caught by a hook and not retained, the fish must be released by cutting the line near the hook or by using a dehooking device, in either case without removing the fish from the water.

\* \* \* \* \*

(4) *Area closures for all Atlantic HMS fishing gears.* (i) No person may fish for, catch, possess, or retain any Atlantic highly migratory species or anchor a fishing vessel that has been issued a permit or is required to be permitted under this part, in the areas designated at § 622.34(d) of this chapter.

(ii) From November through April of each year until June 16, 2010, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson closed area or the Steamboat Lumps closed area, as defined in § 635.2.

(iii) From May through October of each year until June 16, 2010, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson or the Steamboat Lumps closed areas except for surface trolling, as specified below under paragraph (a)(4)(iv) of this section.

(iv) For the purposes of paragraph (a)(4)(iii) of this section, surface trolling is defined as fishing with lines trailing behind a vessel which is in constant motion at speeds in excess of four knots with a visible wake. Such trolling may not involve the use of down riggers, wire lines, planers, or similar devices.

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

(c) \* \* \*

(1) If a vessel issued or required to be issued a permit under this part is in a closed area designated under paragraph (c)(2) of this section and has bottom longline gear onboard, the vessel may not, at any time, possess or land any pelagic species listed in Table 2 of Appendix A to this part in excess of 5 percent, by weight, of the total weight of pelagic and demersal species possessed or landed, that are listed in Tables 2 and 3 of Appendix A to this part.

(2) \* \* \*

(ii) In the Charleston Bump closed area from February 1 through April 30 each calendar year;

(iii) In the East Florida Coast closed area at any time;

(iv) In the Desoto Canyon closed area at any time;

(v) In the Northeast Distant gear restricted area at any time, unless persons onboard the vessel comply with the following:

\* \* \* \* \*

(d) \* \* \*

(4) If a vessel issued or required to be issued a permit under this part is in a closed area designated under paragraph (d)(1) of this section and has pelagic longline gear onboard, the vessel may not, at any time, possess or land any demersal species listed in Table 3 of Appendix A to this part in excess of 5 percent, by weight, of the total weight of pelagic and demersal species possessed or landed, that are listed in Tables 2 and 3 of Appendix A to this part.

(e) \* \* \*

(1) *Atlantic tunas.* A person that fishes for, retains, or possesses an Atlantic bluefin tuna may not have on board a vessel or use on board a vessel any primary gear other than those authorized for the category for which the Atlantic tunas or HMS permit has been issued for such vessel. Primary gears are the gears specifically authorized in this section. When fishing for Atlantic tunas other than BFT, primary gear authorized for any Atlantic Tunas permit category may be used, except that purse seine gear may be used only on board vessels permitted in the Purse Seine category and pelagic longline gear may be used only on board vessels issued an Atlantic Tunas Longline category tuna permit, a LAP other than handgear for swordfish, and a LAP for sharks.

(i) *Angling.* Speargun (for BAYS tunas only), and rod and reel (including downriggers) and handline (for all tunas).

(ii) *Charter/Headboat.* Speargun (for recreational BAYS tuna fishery only),

and rod and reel (including downriggers), bandit gear, and handline (for all tunas).

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

\* \* \* \* \*

(2) \* \* \*

(i) Only persons who have been issued a valid HMS Angling or valid Charter/Headboat permit, or who have been issued a valid Atlantic Tunas General category permit and are participating in a tournament as provided in § 635.4(c) of this part, may possess a blue marlin or white marlin in, or take a blue marlin or a white marlin from, its management unit. Blue marlin or white marlin may only be harvested by rod and reel.

(ii) Only persons who have been issued a valid HMS Angling or valid Charter/Headboat permit, or who have been issued a valid Atlantic Tunas General category permit and are participating in a tournament as provided in § 635.4(c) of this part, may possess or take a sailfish shoreward of the outer boundary of the Atlantic EEZ. Sailfish may only be harvested by rod and reel.

(iii) After December 31, 2006, persons who have been issued or are required to be issued a permit under this part and who are participating in a "tournament", as defined in § 635.2, that bestows points, prizes, or awards for Atlantic billfish must deploy only non-offset circle hooks when using natural bait or natural bait/artificial lure combinations, and may not deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination.

\* \* \* \* \*

(4) \* \* \*

(iii) A person aboard a vessel issued or required to be issued a valid directed handgear LAP for Atlantic swordfish may not fish for swordfish with any gear other than handgear. A swordfish will be deemed to have been harvested by longline when the fish is on board or offloaded from a vessel using or having on board longline gear. Vessels that have been issued or that are required to have been issued a valid directed or handgear swordfish LAP under this part and that are utilizing buoy gear may not possess or deploy more than 35 floatation devices, and may not deploy more than 35 individual buoys gears per vessel. Buoy gear must be constructed and deployed so that the hooks and/or gangions are attached to the vertical portion of the mainline. Floatation devices may be attached to one but not both ends of the mainline, and no hooks

or gangions may be attached to any floatation device or horizontal portion of the mainline. If more than one floatation device is attached to a buoy gear, no hook or gangion may be attached to the mainline between them. Individual buoy gears may not be linked, clipped, or connected together in any way. Buoy gears must be released and retrieved by hand. All deployed buoy gear must have some type of monitoring equipment affixed to it including, but not limited to, radar reflectors, beeper devices, lights, or reflective tape. If only reflective tape is affixed, the vessel deploying the buoy gear must possess an operable spotlight capable of illuminating deployed floatation devices. If a gear monitoring device is positively buoyant and rigged to be attached to a fishing gear, it is included in the 35 floatation device vessel limit and must be marked appropriately.

\* \* \* \* \*

(f) *Speargun fishing gear.* Speargun fishing gear may only be utilized when recreational fishing for Atlantic BAYS tunas and only from vessels issued either a valid HMS Angling or valid HMS Charter/Headboat permit. Persons fishing for Atlantic BAYS tunas using speargun gear, as specified in paragraph (e)(1) of this section, must be physically in the water when the speargun is fired or discharged, and may freedive, use SCUBA, or other underwater breathing devices. Only free-swimming BAYS tunas, not those restricted by fishing lines or other means, may be taken by speargun fishing gear. "Powerheads", as defined at § 600.10 of this chapter, or any other explosive devices, may not be used to harvest or fish for BAYS tunas with speargun fishing gear.

■ 15. In § 635.22, paragraphs (b) and (c) are revised to read as follows:

**§ 635.22 Recreational retention limits.**

\* \* \* \* \*

(b) *Billfish.* No longbill spearfish from the management unit may be taken, retained, or possessed shoreward of the outer boundary of the EEZ.

(c) *Sharks.* One shark from either the large coastal, small coastal, or pelagic group may be retained per vessel per trip, subject to the size limits described in § 635.20(e). In addition, one Atlantic sharpnose shark and one bonnethead shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark and one bonnethead shark per person may be possessed on board a vessel. No prohibited sharks, including parts or pieces of prohibited sharks, from the management unit, which are

listed in Table 1 of Appendix A to this part under prohibited sharks, may be retained. The recreational retention limit for sharks applies to any person who fishes in any manner, except to persons aboard a vessel that has been issued an Atlantic shark LAP under § 635.4. If an Atlantic shark quota is closed under § 635.28, the recreational retention limit for sharks may be applied to persons aboard a vessel issued an Atlantic shark LAP under § 635.4, only if that vessel has also been issued an HMS Charter/Headboat permit issued under § 635.4 and is engaged in a for-hire fishing trip.

\* \* \* \* \*

■ 16. In § 635.23, paragraphs (a)(4), (b)(3), and (f)(3) are revised to read as follows:

**§ 635.23 Retention limits for BFT.**

\* \* \* \* \*

(a) \* \* \*

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel. Such increase or decrease will be based on the criteria provided under § 635.27(a)(8). NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing an adjustment with the Office of the **Federal Register** for publication. In no case shall such adjustment be effective less than 3 calendar days after the date of filing with the Office of the **Federal Register**, except that previously designated RFDs may be waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT under § 635.26.

(b) \* \* \*

(3) *Changes to retention limits.* To provide for maximum utilization of the quota for BFT over the longest period of time, NMFS may increase or decrease the retention limit for any size class of BFT, or change a vessel trip limit to an angler trip limit and vice versa. Such increase or decrease in retention limit will be based on the criteria provided under § 635.27 (a)(8). The retention limits may be adjusted separately for persons aboard a specific vessel type, such as private vessels, headboats, or charter boats. NMFS will adjust the daily retention limit specified in paragraph (b)(2) of this section by filing an adjustment with the Office of the **Federal Register** for publication. In no case shall such adjustment be effective less than 3 calendar days after the date

of filing with the Office of the **Federal Register**.

\* \* \* \* \*

(f) \* \* \*

(3) Pelagic longline vessels fishing in the Northeast Distant gear restricted area, under the exemption specified at § 635.21(c)(2)(v), may retain all BFT taken incidental to fishing for other species while in that area up to the available quota as specified in § 635.27(a), notwithstanding the retention limits and target catch requirements specified in paragraph (f)(1) of this section. Once the available quota as specified in § 635.27(a) has been attained, the target catch requirements specified in paragraph (f)(1) of this section apply.

\* \* \* \* \*

■ 17. In § 635.24, paragraphs (a)(1), (a)(2), (b)(1), and the first sentence in paragraph (b)(2) are revised; and paragraph (a)(3) is added to read as follows:

**§ 635.24 Commercial retention limits for sharks and swordfish.**

\* \* \* \* \*

(a) \* \* \*

(1) A person who owns or operates a vessel that has been issued a directed LAP for shark may retain, possess or land no more than 4,000 lb (1,814 kg) dw of LCS per trip.

(2) A person who owns or operates a vessel that has been issued an incidental catch LAP for sharks may retain, possess or land no more than 5 LCS and 16 SCS and pelagic sharks, combined, per trip.

(3) A person who owns or operates a vessel that has been issued an incidental or directed LAP for sharks may not retain, possess, land, sell, or purchase a prohibited shark, including parts or pieces of prohibited sharks, which are listed in Table 1 of Appendix A to this part under prohibited sharks.

(b) \* \* \*

(1) Persons aboard a vessel that has been issued an incidental LAP for swordfish may retain, possess, or land no more than two swordfish per trip in or from the Atlantic Ocean north of 5° N. lat.

(2) Persons aboard a vessel in the squid trawl fishery that has been issued an incidental LAP for swordfish may retain, possess, or land no more than five swordfish per trip in or from the Atlantic Ocean north of 5° N. lat. \* \* \*

■ 18. In § 635.27, paragraphs (a) introductory text, (a)(1) introductory text, (a)(1)(i), (a)(1)(iii), (a)(2), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4)(i), (a)(4)(iii), (a)(5), (a)(6), (a)(7)(i), (a)(7)(ii), (a)(8), (a)(9), (b)(1) introductory text, (c)(1)(i)(A), (c)(1)(i)(C), (c)(1)(ii), (c)(2)(i),

(c)(2)(iv), and (c)(3) are revised; paragraph (a)(7)(iii) is removed; and paragraphs (a)(10) and (d) are added to read as follows:

**§ 635.27 Quotas.**

(a) *BFT*. Consistent with ICCAT recommendations, NMFS will subtract any allowance for dead discards from the fishing year's total U.S. quota for BFT that can be caught, and allocate the remainder to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The total landing quota will be divided among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories. Consistent with these allocations and other applicable restrictions of this part, BFT may be taken by persons aboard vessels issued Atlantic Tunas permits, HMS Angling permits, or HMS Charter/Headboat permits. The BFT baseline annual landings quota is 1,464.6 mt, not including an additional annual 25 mt allocation provided in paragraph (a)(3) of this section. Allocations of this baseline annual landings quota will be made according to the following percentages: General - 47.1 percent (689.8 mt); Angling - 19.7 percent (288.6 mt), which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent (57.1 mt); Purse Seine - 18.6 percent (272.4 mt); Longline - 8.1 percent (118.6 mt), which does not include the additional annual 25 mt allocation provided in paragraph (a)(3) of this section; and Trap - 0.1 percent (1.5 mt). The remaining 2.5 percent (36.6 mt) of the baseline annual landings quota will be held in reserve for inseason or annual adjustments based on the criteria in paragraph (a)(8) of this section. NMFS may apportion a landings quota allocated to any category to specified fishing periods or to geographic areas and will make annual adjustments to quotas, as specified in paragraph (a)(10) of this section. BFT landings quotas are specified in whole weight.

(1) *General category landings quota*. In accordance with the framework procedures of the HMS FMP, NMFS will publish in the **Federal Register**, prior to the beginning of each fishing year or as early as feasible, the General category effort control schedule, including daily retention limits and restricted-fishing days.

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category landings quota. See § 635.23(c)(3)

regarding landings by vessels with an HMS Charter/Headboat permit that are counted against the baseline General category landings quota. The amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the baseline General category landings quota is 47.1 percent (689.8 mt) of the overall baseline annual BFT landings quota, and is apportioned as follows:

(A) June 1 through August 31 - 50 percent (344.9 mt);

(B) September 1 through September 30 - 26.5 percent (182.8 mt);

(C) October 1 through November 30 - 13 percent (89.7 mt);

(D) December 1 through December 31 - 5.2 percent (35.9 mt); and

(E) January 1 through January 31 - 5.3 percent (36.5 mt).

\* \* \* \* \*

(iii) When the coastwide General category fishery has been closed in any quota period specified under paragraph (a)(1)(i) of this section, NMFS will publish a closure action as specified in § 635.28. The subsequent time-period subquota will automatically open in accordance with the dates specified under paragraph (a)(1)(i) of this section.

(2) *Angling category landings quota*. In accordance with the framework procedures of the HMS FMP, prior to each fishing year or as early as feasible, NMFS will establish the Angling category daily retention limits. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 19.7 percent (288.6 mt) of the overall annual U.S. BFT baseline landings quota. No more than 2.3 percent (6.6 mt) of the annual Angling category landings quota may be large medium or giant BFT. In addition, over each 4-consecutive-year period (starting in 1999, inclusive), no more than 8 percent of the overall U.S. BFT baseline landings quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school BFT. The Angling category landings quota includes the amount of school BFT held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

(i) Under paragraph (a)(7)(ii) of this section, 52.8 percent (51.3 mt) of the school BFT Angling category landings quota, after adjustment for the school BFT quota held in reserve, may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining quota (45.9 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(ii) An amount equal to 52.8 percent (86.0 mt) of the large school/small medium BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining quota (76.8 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(iii) An amount equal to 66.7 percent (4.4 mt) of the large medium and giant BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining quota (2.2 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(3) *Longline category quota*. The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels that possess Longline category Atlantic Tunas permits is 8.1 percent (118.6 mt) of the overall U.S. BFT quota. No more than 60.0 percent of the Longline category quota may be allocated for landing in the area south of 31°00' N. lat. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area as specified at § 635.23(f)(3).

(4) \* \* \*

(i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels that possess Purse Seine category Atlantic Tunas permits is 18.6 percent (272.4 mt) of the overall U.S. BFT baseline landings quota. The directed purse seine fishery for BFT commences on July 15 of each year unless NMFS takes action to delay the season start date. Based on cumulative and projected landings in other commercial fishing categories, and the potential for gear conflicts on the fishing grounds or market impacts due to oversupply, NMFS may delay the BFT purse seine season start date from July 15 to no later than August 15 by filing an adjustment with the Office of the **Federal Register** for publication. In no case shall such adjustment be filed less than 14 calendar days prior to July 15.

\* \* \* \* \*

(iii) On or about May 1 of each year, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel permit holders so requesting, adjusted as necessary to account for underharvest or overharvest by each participating vessel or the vessel it replaces from the previous fishing year, consistent with paragraph (a)(10)(i) of this section. Such allocations are freely transferable, in whole or in part, among vessels that have Purse Seine category Atlantic

Tunas permits. Any purse seine vessel permit holder intending to land bluefin tuna under an allocation transferred from another purse seine vessel permit holder must provide written notice of such intent to NMFS, at an address designated by NMFS, 3 days before landing any such bluefin tuna. Such notification must include the transfer date, amount (in metric tons) transferred, and the permit numbers of vessels involved in the transfer. Trip or seasonal catch limits otherwise applicable under § 635.23(e) are not affected by transfers of bluefin tuna allocation. Purse seine vessel permit holders who, through landing and/or transfer, have no remaining bluefin tuna allocation may not use their permitted vessels in any fishery in which Atlantic bluefin tuna might be caught, regardless of whether bluefin tuna are retained.

\* \* \* \* \*

(5) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 3.9 percent (57.1 mt) of the overall U.S. BFT baseline quota. The Harpoon category fishery closes on November 15 each year.

(6) *Trap category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels that possess Trap category Atlantic Tunas permits is 0.1 percent (1.5 mt) of the overall U.S. BFT baseline quota.

(7) \* \* \*

(i) The total amount of BFT that is held in reserve for inseason or annual adjustments and fishery-independent research using quotas or subquotas is 2.5 percent (36.6 mt) of the overall U.S. BFT baseline quota. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of this reserve for inseason or annual adjustments to any category quota in the fishery.

(ii) The total amount of school BFT that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (22.0 mt) of the total school BFT quota for the Angling category as described under paragraph (a)(2) of this section. This is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school BFT held in reserve for inseason or annual adjustments to the Angling category.

(8) *Determination criteria.* NMFS will file with the Office of the **Federal Register** for publication notification of any inseason or annual adjustments.

Before making any adjustment, NMFS will consider the following criteria and other relevant factors:

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

(ii) The catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made.

(iii) The projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year.

(iv) The estimated amounts by which quotas for other gear categories of the fishery might be exceeded.

(v) Effects of the adjustment on BFT rebuilding and overfishing.

(vi) Effects of the adjustment on accomplishing the objectives of the fishery management plan.

(vii) Variations in seasonal distribution, abundance, or migration patterns of BFT.

(viii) Effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota.

(ix) Review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

(9) *Inseason adjustments.* Within a fishing year, NMFS may transfer quotas among categories or, as appropriate, subcategories, based on the criteria in paragraph (a)(8) of this section. NMFS may transfer inseason any portion of the remaining quota of a fishing category to any other fishing category or to the reserve as specified in paragraph (a)(7) of this section.

(10) *Annual adjustments.* (i) If NMFS determines, based on landings statistics and other available information, that a BFT quota for any category or, as appropriate, subcategory has been exceeded or has not been reached, with the exception of the Purse Seine category, NMFS shall subtract the overharvest from, or add the underharvest to, that quota category for the following fishing year. These adjustments would be made provided that the underharvest being carried forward does not exceed 100 percent of each category's baseline allocation specified in paragraph (a) of this section, and the total of the adjusted category quotas and the reserve are consistent with ICCAT recommendations. For the Purse Seine category, if NMFS determines, based on landings statistics and other available information, that a purse seine vessel's allocation, as adjusted, has been exceeded or has not been reached,

NMFS shall subtract the overharvest from, or add the underharvest to, that vessel's allocation for the following fishing year. Purse seine vessel adjustments would take place provided that the underharvest being carried forward does not exceed 100 percent of the purse seine category baseline allocation. Any of the unharvested quota amounts being carried forward, as described in this paragraph, that exceed the 100 percent limit will be transferred to the reserve, or another domestic quota category provided the transfers are consistent with paragraph (a)(8) of this section.

(ii) NMFS may allocate any quota remaining in the reserve at the end of a fishing year to any fishing category, provided such allocation is consistent with the criteria specified in paragraph (a)(8) of this section.

(iii) Regardless of the estimated landings in any year, NMFS may adjust the annual school BFT quota to ensure that the average take of school BFT over each 4-consecutive-year period beginning in the 1999 fishing year does not exceed 8 percent by weight of the total U.S. BFT baseline quota for that period.

(iv) If NMFS determines that the annual dead discard allowance has been exceeded in one fishing year, NMFS shall subtract the amount in excess of the allowance from the amount of BFT that can be landed in the subsequent fishing year by those categories accounting for the dead discards. If NMFS determines that the annual dead discard allowance has not been reached, NMFS may add one-half of the remainder to the amount of BFT that can be landed in the subsequent fishing year. Such amount may be allocated to individual fishing categories or to the reserve.

(v) NMFS will file any annual adjustment with the Office of the **Federal Register** for publication and specify the basis for any quota reductions or increases made pursuant to this paragraph (a)(10).

(b) \* \* \*

(1) *Commercial quotas.* The commercial quotas for sharks specified in paragraphs (b)(1)(i) through (b)(1)(vi) of this section apply to sharks harvested from the management unit, regardless of where harvested. Commercial quotas are specified for each of the management groups of large coastal sharks, small coastal sharks, and pelagic sharks. No prohibited sharks, including parts or pieces of prohibited sharks, which are listed under heading D of Table 1 of Appendix A to this part, may be

retained except as authorized under § 635.32.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) A swordfish from the North Atlantic stock caught prior to the directed fishery closure by a vessel that possesses a directed or handgear swordfish limited access permit will be counted against the directed fishery quota. The annual fishery quota, not adjusted for over- or underharvests, is 2,937.6 mt dw for each fishing year beginning June 1, 2004. The annual quota is subdivided into two equal semiannual quotas of 1,468.8 mt dw: one for June 1 through November 30, and the other for December 1 through May 31 of the following year. After December 31, 2007, the annual quota is subdivided into two equal semiannual quotas: one for January 1 through June 30, and the other for July 1 through December 31.

\* \* \* \* \*

(C) All swordfish discarded dead from U.S. fishing vessels, regardless of whether such vessels are permitted under this part, shall be counted against the annual directed fishing quota.

\* \* \* \* \*

(ii) *South Atlantic swordfish.* The annual directed fishery quota for the South Atlantic swordfish stock for the 2005 fishing year is 75.2 mt dw. For the 2006 fishing year and thereafter, the annual directed fishery quota for south Atlantic swordfish is 90.2 mt dw. The entire quota for the South Atlantic swordfish stock is reserved for vessels with pelagic longline gear onboard and that possess a directed fishery permit for swordfish. No person may retain swordfish caught incidental to other fishing activities or with other fishing gear in the Atlantic Ocean south of 5 degrees North latitude.

(2) \* \* \*

(i) NMFS may adjust the July 1 through December 31 semiannual directed fishery quota or, as applicable, the reserve category, to reflect actual directed fishery and incidental fishing category catches during the January 1 through June 30 semiannual period.

\* \* \* \* \*

(iv) NMFS will file with the Office of the **Federal Register** for publication any inseason swordfish quota adjustment and its apportionment to fishing categories or to the reserve made under paragraph (c)(2) of this section.

(3) *Annual adjustments.* (i) Except for the carryover provisions of paragraphs (c)(3)(ii) and (iii) of this section, NMFS will file with the Office of the **Federal**

**Register** for publication any adjustment to the annual quota necessary to meet the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks. NMFS will provide an opportunity for public comment.

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota will be subtracted from, or added to, the following year's quota for that area. As necessary to meet management objectives, such carryover adjustments may be apportioned to fishing categories and/or to the reserve. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons. NMFS will file with the Office of the **Federal Register** for publication any adjustment or apportionment made under this paragraph (c)(3)(ii).

(iii) The dressed weight equivalent of the amount by which dead discards exceed the allowance specified at paragraph (c)(1)(i)(C) of this section will be subtracted from the landings quota in the following fishing year or from the reserve category. NMFS will file with the Office of the **Federal Register** for publication any adjustment made under this paragraph (c)(3)(iii).

(d) *Atlantic blue and white marlin.* (1) Effective January 1, 2007, and consistent with ICCAT recommendations and domestic management objectives, NMFS will establish the annual landings limit of Atlantic blue and white marlin to be taken, retained, or possessed by persons and vessels subject to U.S. jurisdiction. For the year 2007 and thereafter, unless adjusted under paragraph (d)(2) of this section or by ICCAT recommendation, this annual landings limit is 250 Atlantic blue and white marlin, combined. Should the U.S. recreational Atlantic marlin landing limit be adjusted by an ICCAT recommendation, NMFS will file a notice identifying the new landing limit with the Office of the **Federal Register** for publication prior to the start of the next fishing year or as early as possible.

(2) Consistent with ICCAT recommendations and domestic management objectives, and based on landings statistics and other information as appropriate, if NMFS determines that aggregate landings of Atlantic blue and white marlin exceeded the annual landings limit for a given fishing year, as established in paragraph (d)(1) of this section, NMFS will subtract any overharvest from the landings limit for the following fishing year. Additionally, if NMFS determines that aggregate

landings of Atlantic blue and white marlin were below the annual landings limit for a given fishing year, as established in paragraph (d)(1) of this section, NMFS may add any underharvest, or portion thereof, to the landings limit for the following fishing year. Such adjustments to the annual recreational marlin landings limit, as specified in paragraph (d)(1) of this section, if necessary, will be filed with the Office of the **Federal Register** for publication prior to the start of the next fishing year or as early as possible.

(3) When the annual marlin landings limit specified in paragraph (d)(1) or, if adjusted, as specified in paragraph (d)(2) of this section is reached or projected to be reached, based upon a review of landings, the period of time remaining in the current fishing year, current and historical landings trends, and any other relevant factors, NMFS will file for publication with the Office of the **Federal Register** an action restricting fishing for Atlantic blue and white marlin to catch-and-release fishing only. In no case shall such adjustment be effective less than 14 calendar days after the date of publication. From the effective date and time of such action until additional landings become available, no blue or white marlin from the management unit may be taken, retained, or possessed.

■ 19. In § 635.28, paragraphs (a)(1) and (a)(3) are revised to read as follows:

#### § 635.28 Closures.

(a) \* \* \*

(1) When a BFT quota, other than the Purse Seine category quota specified in § 635.27(a)(4), is reached, or is projected to be reached, NMFS will file a closure notice with the Office of the **Federal Register** for publication. On and after the effective date and time of such action, for the remainder of the fishing year or for a specified period as indicated in the notice, fishing for, retaining, possessing, or landing BFT under that quota is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

\* \* \* \* \*

(3) If NMFS determines that variations in seasonal distribution, abundance, or migration patterns of BFT, or the catch rate in one area, precludes participants in another area from a reasonable opportunity to harvest any allocated domestic category quota, as stated in § 635.27(a), NMFS may close all or part of the fishery under that category. NMFS may reopen the fishery at a later date if NMFS determines that reasonable fishing opportunities are

available, e.g., BFT have migrated into the area or weather is conducive for fishing. In determining the need for any such interim closure or area closure, NMFS will also take into consideration the criteria specified in § 635.27(a)(8).

\* \* \* \* \*

■ 20. In § 635.30, paragraph (c)(2) is revised to read as follows:

**§ 635.30 Possession at sea and landing.**

\* \* \* \* \*

(c) \* \* \*

(2) A person who owns or operates a vessel that has a valid Federal Atlantic commercial shark limited access permit may not fillet a shark at sea. A person may eviscerate and remove the head and fins, except for the second dorsal and anal fin, but must retain the fins with the dressed carcasses. The second dorsal and anal fin must remain on the shark until the shark is offloaded. Wet shark fins may not exceed 5 percent of the dressed weight of the carcasses on board a vessel or landed, in accordance with the regulations at part 600, subpart N, of this chapter.

\* \* \* \* \*

■ 21. In § 635.31, paragraph (a)(1) is revised to read as follows:

**§ 635.31 Restrictions on sale and purchase.**

(a) \* \* \*

(1) A persons that owns or operates a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit, or a valid General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic tunas issued under this part. However, no person may sell a BFT smaller than the large medium size class. Also, no large medium or giant BFT taken by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may be sold (see § 635.23(c)). A persons may sell Atlantic tunas only to a dealer that has a valid permit for purchasing Atlantic tunas issued under this part. A person may not sell or purchase Atlantic tunas harvested with speargun fishing gear.

\* \* \* \* \*

■ 22. In § 635.34, paragraphs (a) and (b) are revised; and paragraph (d) is added to read as follows:

**§ 635.34 Adjustment of management measures.**

(a) NMFS may adjust the catch limits for BFT, as specified in § 635.23; the

quotas for BFT, shark and swordfish, as specified in § 635.27; the marlin landing limit, as specified in § 635.27(d); and the minimum sizes for Atlantic blue and white marlin, as specified in § 635.20.

(b) In accordance with the framework procedures in the Highly Migratory Species Fishery Management Plan, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: maximum sustainable yield or optimum yield based on the latest stock assessment or updates in the SAFE report; domestic quotas; recreational and commercial retention limits, including target catch requirements; size limits; fishing years or fishing seasons; shark fishing regions or regional quotas; species in the management unit and the specification of the species groups to which they belong; species in the prohibited shark species group; classification system within shark species groups; permitting and reporting requirements; workshop requirements; Atlantic tunas Purse Seine category cap on bluefin tuna quota; time/area restrictions; allocations among user groups; gear prohibitions, modifications, or use restriction; effort restrictions; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

\* \* \* \* \*

(d) When considering a framework adjustment to add, change, or modify time/area closures, NMFS will consider, consistent with the FMP, the Magnuson-Stevens Act, and other applicable law, but is not limited to, the following criteria: any Endangered Species Act related issues, concerns, or requirements, including applicable BiOps; bycatch rates of protected species, prohibited HMS, or non-target species both within the specified or potential closure area(s) and throughout the fishery; bycatch rates and post-release mortality rates of bycatch species associated with different gear types; new or updated landings, bycatch, and fishing effort data; evidence or research indicating that changes to fishing gear and/or fishing practices can significantly reduce bycatch; social and economic impacts; and the practicability of implementing new or modified closures compared to other bycatch reduction options. If the species is an ICCAT managed species, NMFS will also consider the overall effect of the U.S.'s catch on that species before implementing time/area closures.

■ 23. In § 635.71, paragraphs (a)(7), (a)(8), (a)(19), (a)(23), (a)(37), (a)(41), (a)(42), (a)(43), (a)(44), (b)(6), (b)(22), (c)(1), (c)(6), (d)(10), (d)(11), (e)(10),

(e)(11), (e)(12), and (e)(15) are revised; and paragraphs (a)(48) through (a)(53), (b)(30) through (b)(35), (c)(7), (c)(8), (d)(14), (e)(16), and (e)(17) are added to read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(7) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 635.5(e) and (f) or § 635.32.

(8) Fail to make available for inspection an Atlantic HMS or its area of custody, as specified in § 635.5(e) and (f).

\* \* \* \* \*

(19) Utilize secondary gears as specified in § 635.21(b) to capture, or attempt to capture, any undersized or free swimming Atlantic HMS, or fail to release a captured Atlantic HMS in the manner specified in § 635.21(a).

\* \* \* \* \*

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

\* \* \* \* \*

(37) Fail to report to NMFS, at the number designated by NMFS, the incidental capture of listed whales with shark gillnet gear as required by § 635.5.

\* \* \* \* \*

(41) Fail to immediately notify NMFS upon the termination of a chartering arrangement as specified in § 635.5(a)(5).

(42) Count chartering arrangement catches against quotas other than those defined as the Contracting Party of which the chartering foreign entity is a member as specified in § 635.5(a)(5).

(43) Fail to submit catch information regarding fishing activities conducted under a chartering arrangement with a foreign entity, as specified in § 635.5(a)(5).

(44) Offload charter arrangement catch in ports other than ports of the chartering Contracting Party of which the foreign entity is a member or offload catch without the direct supervision of the chartering foreign entity as specified in § 635.5(a)(5).

\* \* \* \* \*

(48) Purchase any HMS that was offloaded from an individual vessel in excess of the retention limits specified in §§ 635.23 and 635.24.

(49) Sell any HMS that was offloaded from an individual vessel in excess of the retention limits specified in §§ 635.23 and 635.24.

(50) Fish without being certified for completion of a NMFS protected species

safe handling, release, and identification workshop, as required in § 635.8.

(51) Fish without having a valid protected species workshop certificates issued to the vessel owner and operator on board the vessel as required in § 635.8.

(52) Falsify a NMFS protected species workshop certificate or a NMFS Atlantic shark identification workshop certificate as specified at § 635.8.

(53) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, "buoy gear", as defined at § 635.2, unless the vessel owner has been issued a swordfish directed limited access permit or a swordfish handgear limited access permit in accordance with § 635.4(f).

(b) \* \* \* (6) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a BFT, as specified in § 635.5(c)(1) or (c)(3).

\* \* \* \* \* (22) As the owner or operator of a purse seine vessel, fail to comply with the requirement for possession at sea and landing of BFT under § 635.30(a).

\* \* \* \* \* (30) Fish for any HMS, other than Atlantic BAYS tunas, with speargun fishing gear, as specified at § 635.21(f).

(31) Harvest or fish for BAYS tunas using speargun gear with powerheads, or any other explosive devices, as specified in § 635.21(f).

(32) Sell, purchase, barter for, or trade for an Atlantic BAYS tuna harvested with speargun fishing gear, as specified at § 635.31(a)(1).

(33) Fire or discharge speargun gear without being physically in the water, as specified at § 635.21(f).

(34) Use speargun gear to harvest a BAYS tuna restricted by fishing lines or other means, as specified at § 635.21(f).

(35) Use speargun gear to fish for BAYS tunas from a vessel that does not possess either a valid HMS Angling or HMS Charter/Headboat permit, as specified at § 635.21(f).

(c) \* \* \* (1) As specified in § 635.21(e)(2), retain a billfish harvested by gear other than rod and reel, or retain a billfish on board a vessel unless that vessel has been issued an Atlantic HMS Angling or Charter/Headboat permit or has been issued an Atlantic Tunas General category permit and is participating in a tournament in compliance with § 635.4(c).

\* \* \* \* \* (6) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS

Charter/Headboat category, fail to report a billfish, as specified in § 635.5(c)(2) or (c)(3).

(7) Deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination when participating in a tournament for, or including, Atlantic billfish, as specified in § 635.21(e)(2).

(8) Take, retain, or possess an Atlantic blue or white marlin when the fishery for these species has been restricted to catch and release fishing only, as specified in § 635.27(d).

(d) \* \* \* (10) Retain, possess, sell, or purchase a prohibited shark, including parts or pieces of prohibited sharks, as specified under §§ 635.22(c), 635.24(a)(3), and 635.27(b)(1), or fail to disengage any hooked or entangled prohibited shark with the least harm possible to the animal as specified at § 635.21(d)(3).

(11) Receive, purchase, trade, or barter for Atlantic sharks without a valid Atlantic shark identification workshop certificate or fail to be certified for completion of a NMFS Atlantic shark identification workshop in violation of § 635.8.

\* \* \* \* \* (14) Receive, purchase, trade, or barter for Atlantic shark without making available for inspection, at each of the dealer's places of business authorized to receive shark, a valid Atlantic shark identification workshop certificate issued by NMFS in violation of § 635.8(b).

(e) \* \* \* (10) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, "buoy gear" as defined at § 635.2, unless the vessel owner has been issued a swordfish directed limited access permit or a swordfish handgear limited access permit in accordance with § 635.4(f).

(11) As the owner of a vessel permitted, or required to be permitted, in the swordfish directed or swordfish handgear limited access permit category and utilizing buoy gear, to possess or deploy more than 35 individual floatation devices, to deploy more than 35 individual buoy gears per vessel, or to deploy buoy gear without affixed monitoring equipment, as specified at § 635.21(e)(4)(iii).

(12) Fail to mark each buoy gear as required at § 635.6(c)(1).

\* \* \* \* \* (15) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a North Atlantic swordfish, as specified in § 635.5(c)(2) or (c)(3).

(16) Possess any HMS, other than Atlantic swordfish, harvested with buoy gear § 635.21(e).

(17) Fail to construct, deploy, or retrieve buoy gear as specified at § 635.21(e)(4)(iii).

■ 24. In Appendix A to part 635, revise Table 2 and add Table 3 to read as follows:

Appendix A to Part 635—Species Tables

\* \* \* \* \*

TABLE 2 OF APPENDIX A TO PART 635—PELAGIC SPECIES

- Albacore tuna, Thunnus alalunga
Bigeye tuna, Thunnus obesus
Blue shark, Prionace glauca
Bluefin tuna, Thunnus thynnus
Dolphin fish, Coryphaena hippurus
Oceanic whitetip shark, Carcharhinus longimanus
Porbeagle shark, Lamna nasus
Shortfin mako shark, Isurus oxyrinchus
Skipjack tuna, Katsuwonus pelamis
Swordfish, Xiphias gladius
Thresher shark, Alopias vulpinus
Wahoo, Acanthocybium solandri
Yellowfin tuna, Thunnus albacares

TABLE 3 OF APPENDIX A TO PART 635—DEMERSAL SPECIES

- Atlantic sharpnose shark, Rhizoprionodon terraenovae
Black grouper, Mycteroperca bonaci
Blackfin snapper, Lutjanus buccanella
Blacknose shark, Carcharhinus acronotus
Blacktip shark, Carcharhinus limbatus
Blueline tilefish, Caulolatilus microps
Bonnethead shark, Sphyrna tiburo
Bull shark, Carcharhinus leucas
Cubera snapper, Lutjanus cyanopterus
Dog snapper, Lutjanus jocu
Finetooth shark, Carcharhinus isodon
Gag grouper, Mycteroperca microlepis
Lane snapper, Lutjanus synagris
Lemon shark, Negaprion brevirostris
Mangrove snapper, Lutjanus griseus
Marbled grouper, Dermatolepis inermis
Misty grouper, Epinephelus mystacinus
Mutton snapper, Lutjanus analis
Nurse shark, Ginglymostoma cirratum
Queen snapper, Etelis oculatus
Red grouper, Epinephelus morio
Red hind, Epinephelus guttatus
Red snapper, Lutjanus campechanus
Rock hind, Epinephelus adscensionis
Sand tilefish, Malacanthus plumieri
Sandbar shark, Carcharhinus plumbeus
Schoolmaster snapper, Lutjanus apodus
Silk snapper, Lutjanus vivanus
Snowy grouper, Epinephelus niveatus
Speckled hind, Epinephelus drummondhayi
Spinner shark, Carcharhinus brevipinna
Tiger shark, Galeocerdo cuvieri
Tilefish, Lopholatilus chamaeleonticeps
Vermilion snapper, Rhomboplites aurorubens
Warsaw grouper, Epinephelus nigritus
Yellowedge grouper, Epinephelus flavolimbatus
Yellowfin grouper, Mycteroperca venenosa
Yellowtail snapper, Ocyurus chrysurus