



JUN 15 2011

To All Interested Government Agencies and Public Groups:

Under the National Environmental Policy Act (NEPA), an environmental review has been performed on the following action.

TITLE: Environmental Assessment (EA) for the Final Atlantic Bluefin Tuna (BFT) Quotas and Atlantic Tuna Management Measures (RIN 0648-BA65)

LOCATION: Atlantic Ocean (including Gulf of Mexico and Caribbean Sea)

SUMMARY: In this action, the National Marine Fisheries Service would modify BFT base quotas for all domestic fishing categories, establish BFT quota specifications for the 2011 fishing year, and adjust management measures regarding the Atlantic tuna fisheries (reinstate pelagic longline target catch requirements for retaining BFT in the Northeast Distant Gear Restricted Area; allow the removal of tail lobes from Atlantic tunas; and clarify the transfer-at-sea regulations for Atlantic tunas). This action is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) pursuant to the Atlantic Tunas Convention Act (ATCA) and to achieve domestic management objectives under the Magnuson-Stevens Act. This action is not expected to significantly alter current fishing practices or bycatch mortality rates, and would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or affect critical habitat.

RESPONSIBLE

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The environmental review process led us to conclude that this action will not have a significant effect on the human environment. Therefore, an environmental impact statement was not prepared. A copy of the finding of no significant impact (FONSI) and the supporting EA is enclosed for your information.

Although NOAA is not soliciting comments on this completed EA/FONSI, we will consider any comments submitted that would assist us in preparing future NEPA documents. Please submit any written comments to the Responsible Official named above.

Sincerely,

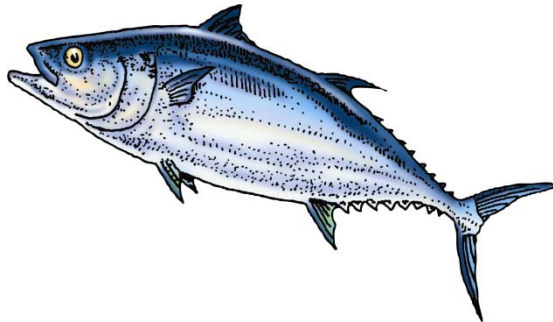
Paul N. Doremus, Ph.D.
NOAA NEPA Coordinator

Enclosure



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

**Final Atlantic Bluefin Tuna
Quotas and Atlantic Tuna Fisheries
Management Measures**



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

May 2011

ABSTRACT

- Final Action:** Modify Atlantic bluefin tuna (BFT) baseline quotas for all domestic fishing categories, establish BFT quota specifications for the 2011 fishing year, and adjust management measures regarding the Atlantic tuna fisheries (reinstate pelagic longline target catch requirements for retaining BFT in the Northeast Distant Gear Restricted Area; allow the removal of tail lobes from Atlantic tunas; and clarify the transfer-at-sea regulations for Atlantic tunas).
- Type of statement:** Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA)
- Lead Agency:** National Marine Fisheries Service (NMFS): Office of Sustainable Fisheries
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- Abstract:** In October 2006, NMFS finalized the Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) and issued implementing regulations, including regulations for the BFT fishery, to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) pursuant to the Atlantic Tunas Convention Act (ATCA) and to achieve domestic management objectives under the Magnuson-Stevens Act. This action would: (1) implement and allocate the ICCAT-recommended U.S. quota for 2011 and 2012, (2) adjust the 2011 U.S. quota and subquotas to account for unharvested 2010 quota allowed by ICCAT to be carried forward to 2011, and to account for a portion of the estimated 2011 dead discards up front; (3) reinstate pelagic longline target catch requirements for retaining BFT in the Northeast Distant Gear Restricted Area; (4) amend the Atlantic tunas possession-at-sea and landing regulations to allow removal of tail lobes; and (5) clarify the transfer-at-sea regulations for Atlantic tunas.

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1.0 PURPOSE AND NEED FOR ACTION

1.1 Management History

Atlantic bluefin tuna (BFT), bigeye tuna, albacore tuna, yellowfin tuna, and skipjack tuna (hereafter referred to as “Atlantic tunas”) are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and of the Atlantic Tuna Conventions Act (ATCA), which authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement recommendations of International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). On May 28, 1999, NMFS published in the Federal Register (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). The 1999 FMP included framework provisions to promulgate annual specifications for the BFT fishery, in accordance with ATCA and the Magnuson-Stevens Act, and to implement the annual recommendations of ICCAT. Since 1982, ICCAT has recommended a Total Allowable Catch of BFT, and since 1991, ICCAT has recommended specific limits (quotas) for the United States and other BFT Contracting Parties.

On October 2, 2006, NMFS published in the Federal Register (71 FR 58058) final regulations, effective November 1, 2006, implementing the Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), which included slightly modified framework provisions. Among other things, the Consolidated HMS FMP maintained an allocation scheme, established in the 1999 FMP, for dividing the baseline annual U.S. BFT quota among several domestic quota categories.

2010 ICCAT Recommendation

In November 2010, ICCAT adopted a western Atlantic bluefin tuna (western BFT) Total Allowable Catch (TAC) of 1,750 metric tons (mt) annually for 2011 and 2012 after considering the results of the 2010 western BFT stock assessment (see Section 3.1) and following protracted negotiations among western BFT Contracting Parties (ICCAT Recommendation 10-03 -- Supplemental Recommendation by ICCAT concerning the western Atlantic BFT Rebuilding Program).

ICCAT Recommendation 10-03 includes a revised allocation scheme that now includes the United Kingdom (in respect of Bermuda), France (in respect of St. Pierre and Miquelon), and Mexico. These three ICCAT Contracting Parties previously received western BFT allocations as specific tonnage directly from the TAC prior to application of the agreed allocation scheme (to the United States, Canada, and Japan). The amount of TAC allocated to the Contracting Parties depends on the amount of the overall recommended TAC. For 2011 and 2012, the net effect is that these Contracting Parties will receive the same amounts as they did in 2009 and 2010 (i.e., 4 mt, 4 mt, and 95 mt, respectively, for the United Kingdom, France, and Mexico).

For 2011 and 2012, the ICCAT Recommendation makes the following allocations from the 1,750-mt TAC for bycatch related to directed longline fisheries in the Northeast Distant gear

restricted area (NED): 15 mt for Canada and 25 mt for the United States. Following subtraction of these allocations directly from the TAC, the recommendation allocates the remainder to the UK (0.23 percent), France (0.23 percent), Mexico (5.56 percent), the United States (54.02 percent), Canada (22.32 percent) and Japan (17.64 percent). For the United States, 54.02 percent of the remaining 1,710 mt is 923.7 mt annually for 2011 and 2012. This represents the *baseline* annual U.S. BFT quota analyzed in this EA. Accounting for the 25-mt NED allocation, the *total* U.S. quota is 948.7 mt annually (i.e., a decrease of 28.7 mt or 2.9 percent from the 2010 total U.S. quota of 977.4 mt).

The current ICCAT recommendation also maintains a provision from previous recommendations allowing a Contracting Party with a quota allocation to make a one-time transfer within a fishing year of up to 15 percent of its quota allocation to other contracting parties with quota allocations, consistent with domestic obligations and conservation considerations. Contracting parties with an allocation of 4 mt or less may transfer up to 100 percent of their allocation. The ICCAT recommendation stipulates that the quota transfer may not be used to cover overharvests, and that a Contracting Party that receives a one-time quota transfer may not re-transfer that quota. Further, as a method for limiting fishing mortality on juvenile BFT, ICCAT continues to recommend a tolerance limit on the annual harvest of BFT measuring less than 115 cm (straight fork length) to no more than 10 percent of a Contracting Party's total BFT quota over the 2011 and 2012 fishing period. The United States implements this provision by limiting the harvest of school BFT (measuring 27 to less than 47 inches curved fork length) as appropriate to not exceed the 10-percent limit over the 2-year period.

Notably, ICCAT Recommendation 10-03 limits the amount of unused quota Contracting Parties may carry forward to 2011 to 10 percent of their total quota. This would limit the amount of 2010 U.S. underharvest carried forward to 2011 to 94.9 mt (10 percent of the 948.7-mt total U.S. quota). Previously, ICCAT Recommendation 06-06 reduced the amount of underharvest parties could carry forward from 100 percent of a Contracting Party's total quota to 50 percent. This aspect of the ICCAT recommendation was maintained through 2010, but ICCAT recommended in 2008 that the amount be reduced effective for 2011 onward (Recommendation 08-04).

Accounting for BFT dead discards

In recommendations that applied from 1999 through 2006, ICCAT historically recommended a deduction of 79 mt from the TAC as an allowance for dead discards, and the U.S. portion of this allowance was 68 mt. ICCAT recommendations from 2006 onward have neither included a recommended dead discard allowance nor specified a dead discard reporting methodology for compliance purposes. Nevertheless, the ICCAT-recommended TAC and U.S. quota are inclusive of dead discards. The United States has accounted for this mortality as part of the domestic specification calculation process for the last several years and reports dead discard estimates to ICCAT annually.

From 2007 through 2010, NMFS accounted for pelagic longline dead discards, as part of the quota specification process, within the Longline category quota, and deducted the best available estimate of dead discards from the current year Longline baseline quota. In the quota specifications for these years, NMFS also carried forward the full amount of prior-year underharvest allowed by ICCAT and distributed the underharvest to: (1) ensure that the Longline category had sufficient quota

to operate during the fishing year after the required accounting for BFT dead discards; (2) maintain 15 percent of the 2010 U.S. quota in the Reserve category for potential transfer to other ICCAT Contracting Parties and other domestic management objectives, if warranted; and (3) provide the non-Longline quota categories a share of the remainder of the underharvest consistent with the allocation scheme established in the Consolidated HMS FMP. It is important to note that the ICCAT recommendation to limit the amount of underharvest carried forward to 10 percent of a Contracting Party's total quota, combined with the level of dead discards in recent years, makes using the method employed in 2007 through 2010 impracticable for 2011 onward. See Section 2.1 for details.

Northeast Distant Water Gear Restricted Area (NED) – retention limits

A condensed history on the management of the pelagic longline fishery is provided here as it pertains to this action, i.e., as it relates to pelagic longline fishing issues in the NED. A more complete summary of HMS management can be found in the Consolidated HMS FMP, in the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Reports, and online at <http://www.nmfs.noaa.gov/sfa/hms/>. The NED, as shown in Figure 1, is the Atlantic Ocean area bounded by straight lines connecting the following coordinates in the order stated: 35°00' N. lat., 60°00' W. long.; 55°00' N. lat., 60°00' W. long.; 55°00' N. lat., 20°00' W. long.; 35°00' N. lat., 20°00' W. long.; 35°00' N. lat., 60°00' W. long. This fishing ground covers virtually the entire span of the western north Atlantic, as far east as the Azores and the Mid-Atlantic Ridge.

NMFS has implemented a series of management measures designed to regulate the incidental catch of BFT in non-directed Atlantic fisheries. In 1981, NMFS prohibited the use of longlines for any directed BFT fishery, implemented incidental catch limits, and established northern and southern management areas where different catch limits applied (46 FR 8012, January 26, 1981). Pelagic longline fishermen were restricted to two BFT per vessel per trip in the southern region and two percent by weight of all other fish on board in the northern region. In 1982, ICCAT recommended a ban on directed fishing for BFT in the Gulf of Mexico. Over the following decade, the value of BFT increased dramatically and fishing practices evolved with respect to incidental catch of BFT. In response, NMFS established various management measures to discourage pelagic longline vessels from developing a directed fishery for this valuable species while allowing for the retention of incidentally caught BFT which included altering target catch requirements and adjusting geographic management areas (57 FR 365, January 6, 1992). Despite these efforts, incidental catch of BFT by U.S. pelagic longline vessels continued. NMFS continued to evaluate management alternatives to achieve a balance between allowing the retention of true incidentally-caught BFT while preventing a directed fishery and reducing discards.

The 1999 FMP established the allocation of 8.1 percent of the United States' overall ICCAT allocated quota for BFT landed by pelagic longline vessels incidental to directed fishing operations targeting other species. The 1999 FMP also included a measure to close an area of ocean off the Mid-Atlantic Bight to pelagic longline fishing during the month of June in an attempt to minimize bycatch of BFT and ensure compliance with ICCAT recommendations. It also considered, but did not implement, further modifications to target catch requirements because of the difficulty in determining catch levels and landings allowances that would likely reduce dead discards.

In the pelagic longline fishery, some species of sea turtles are sometimes caught or become entangled in the fishing gear. Because the federally-permitted pelagic longline fishery may affect sea turtle species listed as threatened or endangered under the Endangered Species Act (ESA), provisions of the ESA, such as Section 7 consultation, apply. During the period of time in which NMFS was undertaking rulemaking in 2000 to prohibit pelagic longline fishing in certain areas and to prohibit live bait use when deploying pelagic longline gear in the Gulf of Mexico, the pelagic longline fleet exceeded the incidental take statement for sea turtles established during the ESA Section 7 Consultation for the 1999 FMP. That, combined with new information on sea turtles and the uncertainty regarding the effect of the closures on sea turtles, resulted in reinitiation of consultation and issuance of a new Biological Opinion (BiOp) (June 30, 2000) which concluded that the continuation of the pelagic longline fishery as proposed was likely to jeopardize the continued existence of leatherback and loggerhead sea turtles. As a result of the June 2000 BiOp jeopardy finding, NMFS needed to implement certain measures to reduce sea turtle bycatch in the pelagic longline fishery. NMFS decided that further analyses of observer data and additional population modeling of loggerhead sea turtles would be needed to determine more precisely the impact of the pelagic longline fishery on sea turtles. Because of this, NMFS reinitiated consultation on the HMS fisheries on September 7, 2000. In the interim, NMFS implemented emergency regulations, based on historical data on sea turtle interactions, to reduce the short-term effects of the pelagic longline fishery on sea turtles, including the closure of a portion of the NED and a requirement that dipnets and line clippers be carried and used on pelagic longline vessels to aid in the release of any captured sea turtle. These regulations published on October 13, 2000 (65 FR 60889).

NMFS issued a BiOp on June 8, 2001 (revised on June 14, 2001) which again concluded that the continued operation of the Atlantic pelagic longline fishery was likely to jeopardize the continued existence of loggerhead and leatherback sea turtles. Accordingly, the BiOp provided a reasonable and prudent alternative (RPA) to avoid jeopardy. The RPA included the following elements: closing the NED area effective July 15, 2001, and conducting a research experiment in this area on various pelagic longline gear modifications to reduce sea turtle bycatch and bycatch mortality in the pelagic longline fishery. The BiOp also included a requirement that all vessels permitted for HMS fisheries post sea turtle handling and release guidelines. This requirement was modified to specify its application only to bottom and pelagic longline vessels by an August 31, 2001, memorandum from the Office of Protected Resources.

On July 13, 2001, NMFS published an emergency rule (66 FR 36711) to implement several of the June 2001 BiOp requirements. On September 24, 2001, NMFS published an amendment to the emergency rule to incorporate the change in requirements for the handling and release guidelines (66 FR 48812). On July 9, 2002, NMFS published the final rule (67 FR 45393) implementing measures required under the June 2001 BiOp on Atlantic HMS to reduce the incidental catch and post-release mortality of sea turtles and other protected species in HMS fisheries. The rule implemented the NED closure, required the length of any gangion to be 10 percent longer than the length of any floatline if the total length of any gangion plus the total length of any floatline is less than 100 meters, and prohibited vessels from having hooks on board other than corrodible, non-stainless steel hooks. The final rule also required all HMS bottom and pelagic longline vessels to post sea turtle handling and release guidelines in the wheelhouse.

During this timeframe, NMFS again proposed changes to the pelagic longline BFT target catch requirements and other modifications to the Longline category regulations (67 FR 78404, December 24, 2002). The May 2003 final rule set the target catch requirements for retention of incidentally-caught BFT as follows: one large medium or giant BFT (i.e., measuring 73 inches or greater) per vessel per trip may be landed, provided that at least 2,000 lb of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold; two large medium or giant BFT may be landed incidentally to at least 6,000 lb of species other than BFT; and three large medium or giant BFT may be landed incidentally to at least 30,000 lb of species other than BFT (68 FR 32414, May 30, 2003). The final rule set Longline category BFT allocations such that the allocation for landing in the area south of 31°00' N. lat. would be no more than 60 percent of the Longline category BFT quota. It also allocated 25 mt for incidental catch by pelagic longline vessels fishing in the NED to implement a provision of the 2002 ICCAT recommendation on western Atlantic BFT (ICCAT Recommendation 02-07), that the United States and Canada receive 25 mt and 15 mt, respectively, for retention of BFT by-catch in their longline fisheries in the vicinity of the management area boundary (45 degrees W. long., north of 10 degrees N. lat.). In the rule implementing the 2003 quotas (68 FR 56788, October 2, 2003), NMFS defined the vicinity of the management area boundary as the NED and allowed retention of 25 mt of BFT caught incidentally to fishing under the NED experimental fishery with no target catch requirements. The rule indicated that that the strict controls of the experiment could have the effect of preventing fishermen from meeting the target catch requirements and, as a result, all BFT incidentally caught during the experiment would have to be discarded if the target catch requirements stood. To avoid a wasteful result, the rule specified that only once the 25 mt limit is reached would the target catch requirements apply. These regulations remain in effect today.

In January 2004, NMFS reinitiated consultation after receiving data that indicated the Atlantic pelagic longline fishery exceeded the incidental take statement for leatherback sea turtles in 2001 – 2002 and for loggerhead sea turtles in 2002. In the spring of 2004, NMFS released a proposed rule to require pelagic longline fishermen to use certain hook and bait types and take other measures to reduce sea turtle takes and mortality. The resulting June 1, 2004 BiOp considered these measures and concluded that the pelagic longline fishery as proposed was not likely to jeopardize the continued existence of loggerhead sea turtles, but was still likely to jeopardize the continued existence of leatherback sea turtles.

On July 6, 2004, NMFS published a final rule (69 FR 40734) pursuant to the 2004 pelagic longline BiOp implementing many gear and bait restrictions and requiring certain sea turtle handling and release tools and methods. Specifically, the 2004 final rule required vessel operators participating in the pelagic longline fishery for Atlantic HMS operating outside of the NED, at all times, to possess onboard and/or use only 16/0 or larger non-offset circle hooks and/or 18/0 or larger circle hooks with an offset not to exceed 10 degrees. Only whole finfish and squid baits could be possessed and/or utilized with the allowable hooks outside of the NED. The 2004 rule also reopened the NED to pelagic longline fishing for Atlantic HMS, but required vessels with pelagic longline gear onboard in that area, at all times, to possess and/or use only 18/0 or larger circle hooks with an offset not to exceed 10 degrees. Within the NED, only whole mackerel and squid baits may be possessed and/or utilized with allowable hooks. Finally, NMFS required specific sea turtle release equipment to

be possessed on board pelagic longline vessels and adherence to specific handling and release techniques for sea turtles.

From 2004 until 2009, NED landings were less than the available quota for that area (25 mt), despite the lack of NED target catch requirements. In 2009, the 25 mt quota in the NED was met during the fishing year, while northern area longline activity was ongoing. As a result, the bluefin tuna target catch requirements specified for the longline category became applicable in the NED from October 20 - December 31, 2009 (74 FR 53671, October 20, 2009). In 2010, NED landings were 9.4 mt.

Atlantic tunas measurement and landing form

Under existing NMFS regulations at 50 CFR § 635.20, the sole criterion for determining the size and/or size class of whole or round (head on) Atlantic tunas is a curved fork length (CFL) measurement. CFL is measured from the tip of the upper jaw to the fork of the tail along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

Under existing NMFS regulations at § 635.20, when the head of an Atlantic tuna is removed, pectoral fin curved fork length (PFCFL) is the legal means of measuring the fish. PFCFL is the length of a fish measured from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

For a BFT with the head removed, the CFL is determined by multiplying the PFCFL by a conversion factor of 1.35. The resulting CFL is the sole criterion for determining the size class of a BFT with the head removed. For a bigeye or yellowfin tuna, NMFS prohibits the removal of the head if the remaining portion of the fish would be less than 27 inches from the fork of the tail to the forward edge of the cut.

Under all of these measurements, the fork of the tail must be intact and attached to the fish to obtain proper CFL and PFCFL measurements.

NMFS regulations regarding possession at sea and landing specify that managed Atlantic tunas landed in an Atlantic coastal port must be maintained through offloading either in round form or eviscerated with the head and fins removed, provided one pectoral fin and the tail remain attached.

Transfer at sea

With regard to Atlantic tunas, the regulations regarding transfer at sea specify that, with a specific exception for owners and operators of a vessel for which a Purse Seine category Atlantic Tunas category permit has been issued, persons may not transfer an Atlantic tuna in the Atlantic Ocean, regardless of where the fish was harvested.

1.2 Need for Action and Objectives

NMFS is analyzing alternatives regarding implementation of the ICCAT-recommended BFT quota and Atlantic tuna fisheries management measures in order to ensure consistency with the

objectives of the Consolidated HMS FMP and its implementing regulations, applicable law, ICCAT Recommendation 10-03, and other ICCAT Recommendations.

BFT Quotas and Quota Specifications

This action is necessary to implement ICCAT Recommendation 10-03, as necessary and appropriate pursuant to ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act, including rebuilding stocks and ending overfishing. The objective of this action is to implement the 2010 ICCAT recommendation and distribute the U.S. BFT quota (adjusted for underharvest) among domestic fishing categories as established and analyzed in the Consolidated HMS FMP.

Note that the published Consolidated HMS FMP is an integrated document that included a Final Environmental Impact Statement (FEIS). That FEIS evaluated the management program structure for BFT Quota management, and as one of the preferred alternatives (later selected as part of NMFS decision) analyzed the range of impacts of the annual BFT quota specification process in the Consolidated HMS FMP (as opposed to a separate annual NEPA analysis), proposing that analytical documents would accompany the annual BFT quota specifications only if the analyses associated with the Consolidated HMS FMP no longer applied (i.e., if ICCAT were to amend its recommendation regarding the total U.S. BFT quota). Through ICCAT Recommendation 10-03, ICCAT has amended its BFT TAC recommendation (last amended in 2008 via Recommendation 08-04). Therefore, in accordance with the approach described in the Consolidated HMS FMP, NMFS is preparing this National Environmental Policy Act (NEPA, 42 U.S.C. *et seq.*) Environmental Assessment (EA) to analyze the resulting BFT quotas and alternatives. Note that 2012 BFT quota specifications would be handled via a separate action.

Because BFT quotas and allocations are codified in the HMS regulations at 50 CFR § 635.27, rulemaking is necessary to modify the baseline U.S. quota (from 952.4 mt to 923.7 mt) and the allocations (in mt) to the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories per the percentage allocation shares set forth in the Consolidated HMS FMP.

It is necessary to establish the 2011 quota specifications in order to adjust the 2011 BFT baseline quota and subquotas to account for the amount of 2010 underharvest (of 2010 adjusted quota) to be carried forward to 2011. Although preliminary 2010 landings estimates indicate an underharvest of approximately 380 mt (see Table 1), the amount the United States may add to its 2011 baseline quota is 94.9 mt. NMFS also would account for a portion of the estimated 2011 dead discards, within the 2011 Longline category quota, through these quota specifications.

NMFS plans to make any daily retention limit adjustments, if needed for the 2011 fishing year, via Federal Register notices separate from the final specifications. Federal regulations at 50 CFR 635.23 allow the establishment and adjustment of General and Angling category retention limits via inseason actions, and NMFS has used inseason actions in the past for this purpose.

Northeast Distant Water Gear Restricted Area (NED) – retention limits

Pursuant to a 2001 Biological Opinion, NMFS closed the NED in July 2002 to HMS-permitted pelagic longline vessels and conducted a research experiment in this area on various

pelagic longline gear modifications to reduce sea turtle bycatch and bycatch mortality in the pelagic longline fishery. The regulations were adjusted to allow vessels to fish in the NED if they met specific gear requirements and practiced safe handling and release of sea turtles during the research experiment. Beginning in November 2003, these vessels were allowed to retain all commercial-sized (large medium and giant) BFT taken incidental to fishing for other species while in that area, up to the 25 mt NED set-aside with no attendant target catch requirement. However, after the research experiment was completed and the NED reopened, NMFS did not reinstate the target catch requirements. Under the current regulations, it is only once the 25-mt set-aside is met that the target catch requirements apply in the NED.

Reinstating the target catch requirements in the NED would result in the same target catch requirements applying to all Longline category participants regardless of where they fish. Over the last several years, many individuals and environmental organizations have expressed concern that the lack of target catch requirements in the NED provides economic incentive to increase fishing effort to retain BFT in what is intended to be an incidental fishery.

The objective of this action is to reimplement uniform target catch requirements for Longline category participants regardless of where they fish. This would help NMFS align BFT catch (landings and discards) with available quotas. Table 2a shows Longline category NED landings and dead discards for 2005 through 2009, and Table 2b shows quotas, landings, and dead discards for the Longline category as a whole. In 2009, approximately 51 mt of BFT were landed from the NED, and total landings were 131 mt, 31 percent greater than the total 100 mt available for the Longline category. Constraining Longline category BFT landings to its quota serves to allow the fleet to continue to participate in directed fisheries (e.g., Atlantic yellowfin tuna (YFT) and swordfish) year-round with less risk of fishery interruption due to insufficient BFT quota availability. Further, it would reduce the need for BFT quota reallocation from directed fisheries or the Reserve category to cover excess pelagic longline BFT landings. To address similar issues, as well as to increase the survival of spawning BFT, NMFS published a final rule to require weak hook use in the Gulf of Mexico pelagic longline fishery (76 FR 18653, April 5, 2011). Both of these efforts regarding the pelagic longline fishery are consistent with the agency's efforts to address bycatch issues and manage BFT catch and landings within available quotas.

Atlantic tunas measurement and landing form

NMFS has received requests from commercial Atlantic tuna fisheries participants in the last few years, including via the HMS Advisory Panel, to allow removal of Atlantic tuna tails at sea to make fish storage more efficient. The objective of the change is to address the request while preserving the ability to obtain the required fish measurements.

Transfer at sea

Following a recent NOAA Administrative Law Judge decision involving the transfer of a BFT at sea [In the Matter of Brant McMullan & Roger A. Gales, Docket No. SE0900591FM (December 7, 2010)], NMFS has decided to clarify the intent of the Atlantic tunas transfer-at-sea regulations and prohibitions. In the future, NMFS may make similar clarifications regarding transfer at sea for other Atlantic highly migratory species via separate actions pertaining to those species. The objective of the clarification is to specify what activities transfer at sea includes with regard to Atlantic tunas.

1.3 Public Involvement

NMFS conducted public outreach on this action, including public hearings held in March and April 2011 in Barnegat, NJ, Manteo, NC, Gloucester, MA, Silver Spring, MD (in conjunction with the April 2011 HMS Advisory Panel (AP) meeting), Portland, ME, and Fairhaven, MA. The draft of this EA was released with the proposed rule for public comment on March 14, 2011, and due in part to public comment, NMFS extended the comment period from 30 to 45 days, closing on April 28, 2011. In addition to the verbal comments at public hearings, NMFS received approximately 2,000 written comments (representing approximately 4,000 groups or individuals) regarding the actions, and these comments were considered in refining the analyses in this Final EA. A summary of the key issues raised during the comment period is provided in Chapter 14, and any final rule issued for this action also would present comments and NMFS' response to comments received during the rulemaking process.

2.0 SUMMARY OF THE ALTERNATIVES

This section describes the alternatives for achieving the objectives identified in Section 1.2. Section 2.1 describes the alternatives NMFS developed for consideration of implementation of the U.S. baseline BFT quota and allocation among domestic fishing categories, and other Atlantic tuna fisheries management measures. For a summary table of the alternatives considered in this EA/RIR/FRFA, see Table 11.

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

This section describes the three alternatives NMFS developed to analyze implementation of the ICCAT-recommended BFT base quota. These alternatives included: No Action, Implementation of the ICCAT-recommended BFT baseline quota, and Implementation of the ICCAT-recommended baseline quota but allocating that quota differently than established in the 2006 Consolidated HMS FMP. Within the first two alternatives, NMFS then set out its proposed allocation of the baseline quota, calculation of the “available” annual quota for 2011, and its proposed allocation of “available” BFT quota among the commercial and recreational domestic fishing categories (i.e., the quota specifications), in a manner consistent with the 2006 Consolidated HMS FMP and implementing regulations.

The total amount of available annual quota is determined by the ICCAT-recommended U.S. baseline BFT quota after consideration of overharvest/underharvest from the previous fishing year and any accounting for estimated dead discards of BFT. In the draft EA for the proposed action, NMFS used the 2009 estimate of 160 mt as a proxy for potential 2011 dead discards because the BFT dead discard estimate for 2010 was not yet available. The 2010 dead discard estimate, 122.3 mt, became available from the NMFS Southeast Fisheries Science Center during the comment period and, therefore, that updated amount is used in this final EA. Estimates of dead discards are only available for the Longline category at this time. Estimates from other BFT gear types and fishing sectors that are not observed at sufficient levels for estimation and that do not report via a logbook are not included in this calculation. Use of the 2010 estimate as a proxy for estimated 2011 dead discards for the final action is appropriate because it is the best available and most complete information NMFS currently has regarding dead discards. When the 2011 BFT dead discard estimate is available (in 2012), it will be reported to ICCAT along with total 2011 BFT landings.

In the proposed rule, under each baseline quota alternative, NMFS also set out its calculation of “available” annual quota and its proposed allocation of that available quota among the commercial and recreational domestic fishing categories (i.e., quota specifications) and its proposed methodology for handling dead discards. NMFS proposed a calculation and allocation methodology consistent with the 2006 Consolidated HMS FMP and implementing regulations but different than the methodology used for the past four years. NMFS received comments on the proposed allocation methodology both at public hearings and in writing during the public comment period. NMFS considered the comments (see Chapter 14) and the updated (2010) dead discard estimate, and after public discussion and input has decided to account for dead discards in a different manner to establish the 2011 BFT quota specifications as described below. Note that these considerations are for the 2011 quota specifications only. NMFS did not change the alternatives regarding the allocation of the

U.S. *baseline* quota for 2011 and 2012. The baseline quotas analyzed in the three alternatives is the same between the proposed and final rule.

To set the final 2011 BFT quota specifications as set out in each of the baseline quota alternatives below, NMFS has decided to account up front (i.e., at the beginning of the fishing year) for half of the estimated dead discards, using the recent 2010 estimate rather than the 2009 estimate used at the proposed rule stage. In the proposed rule, NMFS had proposed to subtract from the overall quota all of the estimated dead discards up front and then allocate the remaining quota among the domestic fishing categories, even though the United States is not required by ICCAT or current regulations to account for the total amount of dead discards until the end of the fishing season. In the final rule, NMFS will account for half of the estimated pelagic longline dead discards up front and deduct that portion of estimated longline discards directly from the Longline category quota. Accounting for dead discards in the Longline category in this way may provide some incentive for pelagic longline fishermen to reduce those interactions that may result in dead discards. Also in response to public comment, NMFS will apply half of the 2010 underharvest that is allowed to be carried forward to 2011 to the Longline category and maintain the other half in the Reserve category. NMFS intends to maintain this underharvest in the Reserve category as needed until later in the fishing year for maximum flexibility in accounting for 2011 landings and dead discards.

NMFS took into consideration a broad range of public comment on the quota specification methodology and allocations in designing this final action. NMFS considers this to be a transitional approach from the method used over the past four fishing years. Current regulations provide that the dead discard estimate may, but is not required to be, subtracted from the annual U.S. quota, and NMFS previously opted to deduct that estimate at the beginning of the year when the quota specifications were established. These final specifications are consistent with HMS regulations, are a logical outgrowth of the originally proposed calculation methodology, and would not affect the base quotas. For the directed fishing categories, under Alternatives A1 and A2, NMFS would apply the allocation scheme established in the Consolidated HMS FMP to the 2011 baseline U.S. BFT quota with no further adjustments. All landings and pelagic longline dead discards will be accounted for and reported to ICCAT, and NMFS will make any ICCAT-required adjustments to future U.S. BFT quotas, as necessary. Details are provided below in Alternatives A1 and A2 under the heading “*Implications for 2011 BFT Quota specifications.*” NMFS is including both the proposed rule alternative and the final alternative considered under each baseline quota alternative analyzed. Quota specifications for 2012 would be addressed in a separate, future action using information on 2011 BFT landings and the best available dead discard estimate at that time.

Alternative A1: No action

Under this alternative, NMFS would not allocate the ICCAT-recommended quota for 2011 and 2012 among domestic fishing categories, defaulting to the 2010 quotas established in June 2010 (75 FR 30732, June 2, 2010). The 2010 quotas and fishing levels serve as baseline conditions for comparison and analytical purposes with the preferred alternative. Under this alternative, the baseline quota for the 2011 and 2012 fishing years would be the same as the 2010 level of 952.4 mt. Table 3 shows the baseline category allocations that would result from implementation of Alternative 1.

Implications for 2011 BFT Quota Specifications

Alternative A1a: Proposed Rule Methodology

In the draft EA and proposed action, NMFS stated that, to establish the 2011 quota specifications, NMFS would subtract the dead discard estimate of 160 mt from the U.S. baseline quota of 952.4 mt and add the full amount of allowed underharvest from 2010, i.e., 10 percent of the 2010 U.S. quota (97.7 mt). As such, in the 2011 quota specifications, the adjusted quota for the 2011 fishing year under the no action alternative would be 890.1 mt (not including the 25-mt allocation for the NED) ($952.4 - 160 + 97.7 \text{ mt} = 890.1 \text{ mt}$). NMFS then would apply the allocation scheme established in the Consolidated HMS FMP to the adjusted total.

Alternative A1b: Final Rule Methodology

Using the approach described at the beginning of this section, following consideration of public comment and the updated estimate of dead discards, NMFS would deduct half of the 2010 dead discard estimate of 122.3 mt from the baseline Longline quota of 77.1 mt established in 2010 and apply half of the 97.7 mt allowed to be carried forward to 2011 to the Longline category, i.e., $77.1 - 61.2 + 47.5 = 63.4 \text{ mt}$ (not including the 25-mt allocation for the NED). NMFS would hold the remainder of the 2010 underharvest that can be carried forward to 2011 (47.4 mt) in the Reserve category, with a baseline allocation of 23.8 mt as established in 2010, for an adjusted Reserve category quota of 71.2 mt. For the directed fishing categories, NMFS would maintain the directed categories at their baseline subquotas, which reflect application of the allocation scheme established in the Consolidated HMS FMP to the 2010 baseline U.S. BFT quota.

The prior ICCAT Recommendation (08-04), allowed the United States to make a one-time transfer within a fishing year of up to 15 percent of its TAC allocation (146.6 mt for 2010) to other Contracting Parties with TAC allocations. In establishing quota specifications in recent years, NMFS has held up to 15 percent of the total U.S. quota in the Reserve category for potential transfer to other ICCAT Contracting Parties and other domestic management objectives. For 2011, however, as described above, NMFS would allocate fully the U.S. baseline and adjusted quotas, including to the Reserve category, for domestic management purposes (see Table 4). Should NMFS consider a transfer of U.S. quota to another ICCAT Contracting Party, NMFS would publish a separate action in the Federal Register, which would provide the details of the transaction considered, including factors such as the amount of quota to be transferred, the projected ability of U.S. vessels to harvest the total U.S. BFT quota before the end of the fishing year, the potential benefits of the transfer to U.S. fishing participants (such as access to the EEZ of the receiving Contracting Party for the harvest of a designated amount of BFT), potential ecological impacts, and the Contracting Party's ICCAT compliance status. As appropriate, additional NEPA analysis would be prepared, if warranted, to analyze any additional action.

Under this alternative, NMFS would manage the recreational BFT fishery by setting the school BFT (measuring 27 to less than 47 inches) subquota at 10 percent of the total 2010 U.S. BFT quota (97.7 mt), by making no adjustments to that subquota (i.e., not apply any underharvest to it), and by setting Angling category daily retention limits appropriate for the harvest of the limited

amount of school BFT subquota. NMFS may adjust a subsequent year's school BFT subquota as needed to be consistent with the ICCAT recommendation.

Alternative A2: Allocation of ICCAT quota to domestic categories in accordance with the 2010 ICCAT Recommendation, Consolidated HMS FMP, and implementing regulations (Preferred Alternative)

Under this alternative, NMFS would apply the allocation scheme established in the Consolidated HMS FMP to the U.S. baseline quota of 923.7 mt in order to determine and codify baseline subquotas for 2011 and 2012. Table 3 shows the baseline category allocations that would result from implementation of Alternative A2. For all categories, NMFS would apply the allocation scheme established in the Consolidated HMS FMP to the baseline quota.

Implications for 2011 BFT Quota Specifications

Alternative A2a: Proposed Rule Methodology

In the draft EA and proposed action, NMFS stated that, to establish the 2011 quota specifications, NMFS would subtract the dead discard estimate of 160 mt from the U.S. baseline quota of 923.7 and add the 94.9 mt of underharvest allowed to be carried forward, for an adjusted total of 858.6 mt ($923.7 - 160 + 94.9$ mt). NMFS then would apply the allocation scheme established in the Consolidated HMS FMP to the adjusted total. The resulting 2011 category subquotas would be as follows: 169.1 mt for the Angling category; 404.4 mt for the General category; 33.5 mt for the Harpoon category; 159.7 mt for the Purse Seine category; 69.5 mt for the Longline category; 0.9 mt for the Trap category; and 21.5 mt held in the Reserve category.

Alternative A2b: Final Rule Methodology

Using the approach described at the beginning of this section, following consideration of public comment and the updated estimate of dead discards, NMFS would deduct half of the 2010 dead discard estimate of 122.3 mt from the 2011 baseline Longline quota of 74.8 mt and apply half of the 97.7 mt allowed to be carried forward to 2011 to the Longline category, i.e., $74.8 - 61.2 + 47.5 = 61.1$ mt adjusted Longline subquota (not including the 25-mt allocation for the NED). NMFS would hold the remainder of the 2010 underharvest that can be carried forward to 2011 (47.4 mt) in the Reserve category, with a baseline allocation of 23.1 mt, for an adjusted Reserve category quota of 70.5 mt). For the directed fishing categories, NMFS would maintain the directed categories at their baseline subquotas, which reflect application of the allocation scheme established in the Consolidated HMS FMP to the 2011 baseline U.S. BFT quota. Table 4 presents the calculations to determine the 2011 quotas and quota specifications.

ICCAT Recommendation 10-03 would allow the United States to make a one-time transfer within a fishing year of up to 15 percent of its TAC allocation (142.3 mt for 2011 and 2012) to other Contracting Parties with TAC allocations. In establishing quota specifications in recent years, NMFS has held up to 15 percent of the total U.S. quota in the Reserve category for potential transfer to other ICCAT Contracting Parties and other domestic management objectives. For 2011, however, as

described above, NMFS would allocate fully the U.S. baseline and adjusted quotas, including to the Reserve category, for domestic management purposes (see Table 4). Should NMFS consider a transfer of U.S. quota to another ICCAT Contracting Party, NMFS would publish a separate action in the Federal Register, which would provide the details of the transaction considered, including factors such as the amount of quota to be transferred, the projected ability of U.S. vessels to harvest the total U.S. BFT quota before the end of the fishing year, the potential benefits of the transfer to U.S. fishing participants (such as access to the EEZ of the receiving Contracting Party for the harvest of a designated amount of BFT), potential ecological impacts, and the Contracting Party's ICCAT compliance status. As appropriate, additional NEPA analysis would be prepared, if warranted, to analyze any additional action.

Under this alternative, NMFS would manage the recreational BFT fishery by setting the school BFT (measuring 27 to less than 47 inches) subquota at 10 percent of the total U.S. BFT quota (94.9 mt), by making no adjustments to that subquota (i.e., not apply any underharvest to it), and by setting Angling category daily retention limits appropriate for the harvest of the limited amount of school BFT subquota. NMFS may adjust a subsequent year's school BFT subquota as needed to be consistent with the ICCAT recommendation.

Alternative A3: Allocation of ICCAT quota to domestic categories in accordance with the 2010 ICCAT recommendation but not the Consolidated HMS FMP

Alternative A3 would use an allocation scheme other than the one established in the Consolidated HMS FMP for the purpose of implementing fishing category subquotas. This alternative would implement the 2010 ICCAT recommendation and allocate the U.S. baseline quota of 923.7 mt in a manner other than per the percentage shares in the Consolidated HMS FMP and implementing regulations.

This alternative could address issues relative to the changing nature of BFT fisheries and BFT distribution. These issues are in part characterized by the growth of a late season General category fishery, ongoing underharvested quota for certain commercial categories (e.g., the Purse Seine category), and recent full quota use and overharvests by the Longline category and the recreational Angling category. The Consolidated HMS FMP addressed several aspects of the changing BFT fishery and included modification to time period subquotas and authorized gear for use in BFT fisheries, among other things. Further consideration of the information provided by the 2010 BFT stock assessment, international deliberations at, and following the 2010 ICCAT meeting, and observed changes in the fishery (e.g., relative year class strength and fish availability) may provide further insight into the larger fishery issues raised by this alternative, and could result in future regulatory or FMP amendments. For the purpose of this analysis, modifications to domestic management of BFT outside the limitations of the Consolidated HMS FMP and current ICCAT recommendations do not satisfy the purpose and need for the action. Therefore, Alternative A3 was considered, but is not analyzed further in this EA.

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

2.2 Issue 2: NED – retention limits for pelagic longline vessels

This section describes the two alternatives NMFS considered with regard to the application of target catch requirements for pelagic longline vessels fishing in the NED.

Alternative B1: No action - no change to the current retention limits applicable to pelagic longline vessels fishing in the NED

Under this alternative, NMFS would continue to allow pelagic longline vessels fishing in the NED to retain all commercial-sized (73 inches and greater) BFT taken incidental to fishing for other species while in that area up to the quota allocated specifically to the NED (currently 25 mt). NMFS would maintain the provision that once the NED allocation (currently 25 mt) has been attained, the target catch requirements that apply to the coastwide pelagic longline fishery apply in the NED (i.e., one large medium or giant BFT per vessel per trip may be landed, provided that at least 2,000 lb of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold; two large medium or giant BFT may be landed incidentally to at least 6,000 lb of species other than BFT; and three large medium or giant BFT may be landed incidentally to at least 30,000 lb of species other than BFT).

Alternative B2: Reinstate target catch requirements for pelagic longline vessels fishing in the NED

Under this alternative, NMFS would remove the exemption from target catch requirements that effectively has applied in the NED since November 2003. NMFS would remove the provision that allows unlimited retention of commercial-sized BFT taken incidental to fishing for other species in the NED up to the amount allocated for the NED (currently 25 mt). Instead, the same target catch requirements (described in the paragraph above) would apply in all areas (i.e., both inside and outside of the NED).

2.3 Issue 3: Atlantic tunas landing form - tails

This section describes the two alternatives NMFS considered with regard to the landing form of Atlantic tunas.

Alternative C1: No action

Under this alternative, NMFS would maintain the regulations regarding Atlantic tunas possession at sea and landing as codified, i.e., that Atlantic tunas must be maintained through offloading either in round form or eviscerated with the head and fins removed, provided one pectoral fin and the tail remain attached.

Alternative C2: Specify that upper and lower lobes of the tail may be removed

Under this alternative, NMFS would clarify the regulations regarding Atlantic tunas possession at sea and landing to specify that as long as the fork of the tail remains intact, the upper

and lower lobes of the tail may be removed (as shown in Figure 2). This would balance the need for maintaining a standardized method of measuring Atlantic tunas with requests to allow Atlantic tunas to be stored at sea in a more efficient manner. This rulemaking will not affect the measurement methodology or requirements for species other than Atlantic tunas.

2.4 Issue 4: Atlantic tunas transfer at sea

This section describes the two alternatives NMFS considered with regard to clarifying “transfer at sea” for Atlantic tunas.

Alternative D1: No action

Under this alternative, NMFS would maintain the regulations regarding Atlantic tunas transfer at sea, as codified. NMFS would provide no further clarification of the meaning of “transfer at sea.”

Alternative D2: Clarify “transfer at sea” for Atlantic tunas

Under this alternative, NMFS would clarify the intent of the Atlantic tunas transfer-at-sea regulations and prohibition. A sentence would be added to the regulatory text regarding transfer at sea of Atlantic tunas that would read: “Notwithstanding the definition of “harvest” at § 600.10, for the purposes of this part, transfer includes, but is not limited to, moving or attempting to move an Atlantic tuna that is on fishing or other gear in the water from one vessel to another vessel.”

3.0 DESCRIPTION OF AFFECTED ENVIRONMENT

This section includes a brief summary of the status of the stocks, fishery participants and gear types, and affected area including habitat and protected species. For a complete description of the biology and status of BFT and the U.S. tuna fishery, including operations, catches, and discards, please see the 2010 HMS Stock Assessment and Fishery Evaluation (SAFE) Report (NMFS 2010), as well as the latest BFT Stock Assessment (SCRS 2010). Also, for information on interactions and concerns with protected species and the Atlantic tuna fisheries, please see Section 7 of the 2010 SAFE Report and the *2004 Final Supplemental Environmental Impact Statement (FSEIS) for a Final Rule to Implement Management Measures to Reduce Bycatch and Bycatch Mortality of Atlantic Sea Turtles in the Atlantic Pelagic Longline Fishery* (NMFS 2004). The action area is the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

3.1 Status of the Stocks

As part of the 2010 western BFT stock assessment, ICCAT's Standing Committee on Research and Statistics (SCRS) presented status and projection information based on two divergent stock recruitment scenarios and indicated there is no strong evidence to choose one scenario over the other. Projected trends in stock size are strongly dependent on estimates of recent recruitment. Generally, under the low recruitment scenario, it is assumed that the stock is not as productive as it once was (i.e., prior to the 1970s) and therefore the maximum sustainable yield (MSY) is fairly low. Under the high recruitment scenario, it is assumed that the stock can be much more productive as it recovers and the maximum sustainable yield target is much higher. The results of the stock assessment were strongly affected by use of a new growth curve that assigns fish above 120 cm (47 inches) to older ages than did the previous growth curve. The implication of this new growth curve in the assessment is that the stock has been subjected to lower fishing mortality (F) rates than previously estimated (SCRS, 2010).

The spawning stock biomass (SSB) trends estimated in the 2010 assessment are consistent with previous analyses in that SSB declined steadily from 1970 to 1992 and has since fluctuated between 21 percent and 29 percent of the 1970 level. In recent years, however, there appears to have been a gradual increase in SSB from the low of 21 percent in 2003 to an estimated 29 percent in 2009. The stock has experienced different levels of F over time, depending on the size of fish targeted by various fleets. Fishing mortality on spawners (ages 9 and older) declined markedly after 2003. The SCRS indicated that the 2003 year-class is estimated to be the largest since 1974, but not quite as large as those prior to 1974. The 2003 year class is expected to begin to contribute to an increase in spawning biomass after several years. The SCRS expressed concern that the year-class estimates subsequent to 2003, while less reliable, are the lowest on record (SCRS, 2010).

Overall, the 2010 assessment showed that, under the low recruitment scenario, the stock is above the biomass that can support MSY (i.e., it is considered rebuilt, overfishing is not occurring, and a TAC of up to 2,500 mt would maintain the stock biomass above the MSY level). Conversely, under the high recruitment scenario, the stock remains overfished with overfishing occurring and will not rebuild by the end of 2018 (under the 20-year rebuilding period that began in 1999) even with no catch. As in prior years, SCRS cautioned that conclusions of the 2010 stock assessment do not

capture the full degree of uncertainty in the assessments and projections, and noted that an important factor contributing to uncertainty is mixing between fish of eastern and western origin (SCRS, 2010).

Taking this information into consideration and following protracted negotiations among western BFT Contracting Parties, ICCAT adopted a western BFT TAC of 1,750 mt annually for 2011 and 2012. This TAC, reduced from 1,800 mt for 2010, is expected to allow for continued stock growth under both the low and high stock recruitment scenarios. A new SCRS stock assessment is expected to be conducted in 2012.

3.2 Fishery Participants, Gear Types, and Affected Area

There are over 32,000 permitted vessels that may participate in the Atlantic tuna fisheries. Vessels permits are issued in five directed fishing categories and two incidental fishing categories (Table 5). Generally, permits are issued for a distinct fishery by gear types, and participants are restricted to the use of only those allowed gears. For directed fisheries on BFT, these gears consist of purse seine, rod and reel, harpoon, handline, bandit gear, and greenstick (which is used primarily to harvest yellowfin tuna). Pelagic longline gear is not an allowed gear type for directed fishing on BFT; it is used to target other HMS species, primarily swordfish, bigeye, and yellowfin tuna. However, NMFS allocates a quota for landings of incidentally-caught BFT by longline and trap gear. Atlantic Tunas, HMS Charter/Headboat, and HMS Angling category permits are issued over the internet, telephone or mail. Regulations currently allow vessels to be permitted in only one category per year and allow for only one permit category change to occur during the permit renewal period. For those applicants who inadvertently select an incorrect category, corrections must occur within 10 calendar days from the permit date of issuance; otherwise, applicants must wait until the following season to change the permit category.

U.S. landings of BFT for the 1998-2010 period are provided in Table 6. The historical level of landings has generally been determined by quotas since 1982. Commercial fisheries are focused on large medium (73 inches to less than 81 inches) and giant (81 inches or greater) BFT, while recreational fisheries are focused on large school/small medium BFT (47 inches to less than 73 inches), with allowances for school (27 inches to less than 47 inches), large medium, and giant BFT. Commercial categories are monitored by a census of landing cards, whereas the recreational catch is monitored primarily by survey, although the states of Maryland and North Carolina have implemented recreational census BFT tagging programs as well.

The BFT fishery has been managed on a fishing year basis (June through May) versus a calendar year basis (January through December) starting with the implementation of the 1999 FMP in 2000 until January 2008, when management reverted to a calendar year basis per implementation of the Consolidated HMS FMP. The 2007 fishing year was June 1, 2007, through December 31, 2007. Therefore, Table 6 landings are presented on a calendar year (versus fishing year) basis for 1996 through 1999, and for 2008 through 2010.

The majority of BFT landings are taken by handgear fisheries in the commercial General category and recreational Angling and Charter/Headboat categories. The distribution of fishing activity for BFT is generalized in Table 7. General category fisheries are focused in New England during the summer and fall, and the South Atlantic during the winter. However, in the last several

years, particularly 2004 through 2008, the availability of commercial-sized BFT to the commercial fisheries, particularly off New England appears to have declined dramatically, while the Canadian commercial quota has been approached or met (SCRS, 2010). The low level of U.S. commercial landings relative to quotas during this time period led the SCRS to consider two plausible explanations in its 2010 stock assessment: “(1) that availability of fish to the U.S. fishery has been abnormally low, and/or (2) the overall size of the population in the western Atlantic declined substantially from the level of recent years. SCRS noted that while there is no overwhelming evidence to favor either explanation over the other, the base case assessment implicitly favors the first hypothesis (regional changes in availability) by virtue of the estimated increase in SSB. The decrease indicated by the U.S. catch rate of large fish is matched by an increase in several other large fish indices.” SCRS noted that substantial uncertainty remains on this issue and more research needs to be done (SCRS 2010).

Recreational fisheries are prosecuted by private vessels fishing in the Angling category and vessels for hire fishing under the Charter/Headboat category. The Consolidated HMS FMP notes that charter/headboats have been targeting school BFT off New York and New Jersey since the early 1900s. School BFT are caught recreationally off Virginia, Delaware, and Maryland during the summer and off New Jersey and New York as the summer progresses. In recent years, school BFT have been increasingly available to southern New England fisheries, in that school BFT have been appearing and caught further north than in the past. Fishery landings and school BFT availability generally decline in the fall with colder water temperatures and degrading fishing conditions. Recreational fishing also takes place for large medium and giant BFT in the South Atlantic winter fishery, and the Consolidated HMS FMP notes that this fishery includes an active charter/headboat fishery. Large school and small medium BFT are landed by private and charter/headboat fisheries in summer and early fall off Virginia, Delaware, Maryland, New Jersey, and Massachusetts, but are overall less accessible to New York, Connecticut and Rhode Island fisheries. Large school and small medium BFT are also available in the South Atlantic winter fishery. In general, BFT fisheries vary from year to year since the exact availability of BFT and the demand for fishing opportunities is unpredictable.

BFT migration throughout the Atlantic is the subject of much research and affects the availability of harvest for regional fisheries. Over the last few years, fishermen have noted a substantial decline in the availability of large medium and giant BFT in the New England area. Commercial landings by General category fishermen, Harpoon category fishermen, and Purse Seine category fishermen have also been suppressed relative to the end of the 1990s and early 2000s, resulting in large underharvests of commercial quotas (Table 6) until 2009. In 2007 through 2010, purse seine activity for BFT was very low; in 2008 and 2010, no BFT were landed using this gear type. Conversely, the ratio of landings to quota was very high for the Angling category, relative to that for other categories, particularly in 2007 through 2009.

Fishing in the NED

Large fishing vessels that fish in these distant waters operate out of Mid-Atlantic and New England ports during the summer and fall months targeting swordfish and tunas, and then move to Caribbean ports during the winter and spring months. Many of the current distant water operations were among the early participants in the U.S. directed Atlantic commercial swordfish fishery. These

larger vessels, with greater ranges and capacities than coastal fishing vessels, enabled the United States to become a significant participant in the North Atlantic swordfish fishery. In the past, some of these vessels have also fished for swordfish in the South Atlantic (i.e., south of 5° N. lat). In recent years however, no U.S. vessels have fished for swordfish in the South Atlantic.

The NED vessels traditionally have been larger than their southeast counterparts because of the greater distances to the fishing grounds. Thus, trips in this fishery tend to be longer than in the other longline fisheries. Homeports for this fishery range from San Juan, Puerto Rico through Portland, Maine, and include New Bedford, Massachusetts, and Barnegat Light, New Jersey. This segment of the fleet was directly affected by the L-shaped closure in 2000 and the NED closure implemented in 2001. A number of these vessels have returned to the NED fishery since the area was reopened in 2004.

3.3 Habitat

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

3.4 Protected Species Interactions in the Atlantic HMS Fisheries

This section examines the interaction between protected species and Atlantic HMS fisheries, including the Atlantic tuna fisheries, managed under the Consolidated HMS FMP. As a point of clarification, interactions are different than bycatch. Interactions take place between fishing gears and marine mammals, and seabirds; while bycatch consists of the incidental take and discards of non-targeted finfish, shellfish, mollusks, crustaceans, sea turtles, and any other marine life other than marine mammals and seabirds. Following a brief review of the three acts (Marine Mammal Protection Act, Endangered Species Act, and Migratory Bird Treaty Act) protecting certain species, the interactions between HMS gears and each species is examined. Additionally, the interaction of seabirds and longline fisheries are considered under the auspices of the United States “National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries” (NPOA – Seabirds).

3.4.1 Interactions and the Marine Mammal Protection Act (MMPA)

The Marine Mammal Protection Act of 1972, as amended, is one of the principal Federal statutes guiding marine mammal species protection and conservation policy. In the 1994 amendments, section 118 established the goal that the incidental mortality or serious injury of marine mammals occurring during the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality rate goal (ZMRG) and serious injury rate within seven years of enactment (i.e., April 30, 2001). In addition, the amendments established a three-part strategy to govern interactions between marine mammals and commercial fishing operations. These include the

preparation of marine mammal stock assessment reports, a registration and marine mammal mortality monitoring program for certain commercial fisheries (Category I and II), and the preparation and implementation of take reduction plans (TRP).

NMFS relies on both fishery-dependent and fishery-independent data to produce stock assessments for marine mammals in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. Draft stock assessment reports are typically published around January and final reports are typically published in the fall. Final 2008 stock assessment reports can be obtained on the web at: <http://www.nmfs.noaa.gov/pr/sars/species.htm> while draft 2010 stock assessment reports are available at: <http://www.nmfs.noaa.gov/pr/sars/draft.htm>.

The following marine mammal species occur off the Atlantic and Gulf Coasts that are, or could be, of concern with respect to potential interactions with HMS fisheries.

<u>Common Name</u>	<u>Scientific Name</u>
Atlantic spotted dolphin	<i>Stenella frontalis</i>
Blue whale	<i>Balaenoptera musculus</i>
Bottlenose dolphin	<i>Tursiops truncatus</i>
Common dolphin	<i>Delphinis delphis</i>
Fin whale	<i>Balaenoptera physalus</i>
Harbor porpoise	<i>Phocoena phocoena</i>
Humpback whale	<i>Megaptera novaeangliae</i>
Killer whale	<i>Orcinus orca</i>
Long-finned pilot whale	<i>Globicephela melas</i>
Minke whale	<i>Balaenoptera acutorostrata</i>
Northern bottlenose whale	<i>Hyperoodon ampullatus</i>
Northern right whale	<i>Eubalaena glacialis</i>
Pantropical spotted dolphin	<i>Stenella attenuata</i>
Pygmy sperm whale	<i>Kogia breviceps</i>
Risso's dolphin	<i>Grampus griseus</i>
Sei whale	<i>Balaenoptera borealis</i>
Short-beaked spinner dolphin	<i>Stenella clymene</i>
Short-finned pilot whale	<i>Globicephela macrorhynchus</i>
Sperm whale	<i>Physeter macrocephalus</i>
Spinner dolphin	<i>Stenella longirostris</i>
Striped dolphin	<i>Stenella coeruleoalba</i>
White-sided dolphin	<i>Lagenorhynchus acutus</i>

Under MMPA requirements, NMFS produces an annual List of Fisheries (LOF) that classifies domestic commercial fisheries, by gear type, relative to their rates of incidental mortality or serious injury of marine mammals. The LOF includes three classifications:

1. Category I fisheries are those with frequent serious injury or mortality to marine mammals;
2. Category II fisheries are those with occasional serious injury or mortality; and

3. Category III fisheries are those with remote likelihood of serious injury or mortality to marine mammals.

The final 2011 MMPA LOF was published on November 8, 2010 (75 FR 68468). With regard to Atlantic tuna fishing, the Atlantic Ocean, Caribbean, and Gulf of Mexico pelagic longline fishery is classified as Category I (frequent serious injuries and mortalities incidental to commercial fishing). The following Atlantic HMS fisheries are classified as Category III (remote likelihood or no known serious injuries or mortalities): Atlantic tuna purse seine; Gulf of Maine and Mid-Atlantic tuna, hook-and-line/harpoon; and Mid-Atlantic, southeastern Atlantic, and Gulf of Mexico pelagic hook-and-line/harpoon fisheries. Commercial passenger fishing vessel (charter/headboat) fisheries are subject to Section 118 and are listed as a Category III fishery. Recreational vessels are not categorized since they are not considered commercial fishing vessels. Beginning with the 2009 LOF, high seas fisheries are included in the LOF. Many fisheries operate in both U.S. waters and on the high seas thereby making the high seas component an extension of a fishery already on the LOF. NMFS categorizes the majority of high seas fisheries on the LOF as Category II based on the lack of marine mammal stock abundance information from the high seas. Exceptions to this are high seas fisheries that also operate in U.S. waters that have already been categorized as I, II, or III. For additional information on the fisheries categories and how fisheries are classified, see <http://www.nmfs.noaa.gov/pr/interactions/lof/>.

Fishermen participating in Category I or II fisheries are required to register under the MMPA and to accommodate an observer aboard their vessels if requested. Vessel owners or operators, or fishermen, in Category I, II, or III fisheries must report all incidental mortalities and serious injuries of marine mammals during the course of commercial fishing operations to NMFS. There are currently no regulations requiring recreational fishermen to report takes, nor are they authorized to have incidental takes (i.e., they are illegal).

The Pelagic Longline Take Reduction Team (PLTRT) was formed to address the incidental mortality and serious injury of long-finned pilot whales (*Globicephala melas*) and short-finned pilot whales (*Globicephala macrorhynchus*) in the mid-Atlantic region of the Atlantic pelagic longline fishery. Under section 118 of the MMPA, the PLTRT is charged with developing a TRP to reduce bycatch of pilot whales in the Atlantic pelagic longline fishery to a level approaching a zero mortality rate within 5 years of implementation of the plan. The PLTRT developed a draft Take Reduction Plan (TRP) and was published along with a proposed rule to implement it on June 24, 2008 (73 FR35623). The final TRP was published on May 19, 2009 (74 FR 23349) effective June 18, 2009. The TRP implemented a suite of management strategies to reduce mortality and serious injury of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery. NMFS finalized the following three regulatory measures: (1) establish a Cape Hatteras Special Research Area (CHSRA), with specific observer and research participation requirements for fishermen operating in that area; (2) set a 20-nm (37.02-km) upper limit on mainline length for all pelagic longline sets within the MAB; and (3) require an informational placard on handling and release of marine mammals be displayed both in the wheelhouse and on the working deck of all active pelagic longline vessels in the Atlantic fishery. NMFS also finalized the following non-regulatory measures: (1) increased observer coverage in the MAB to 12-15 percent to ensure representative sampling of pilot whales and Risso's dolphins; (2)

encourage vessel operators to maintain daily communication with other local vessel operators regarding protected species interactions throughout the pelagic longline fishery with the goal of identifying and exchanging information relevant to avoiding protected species bycatch; (3) recommending that NMFS update the guidelines for handling and releasing marine mammals and NMFS and the industry to develop new technologies, equipment, and methods for safer and more effective handling and release of marine mammals; and (4) recommending NMFS pursue research and data collection goals in the PLTRT regarding pilot whales and Risso’s dolphins. More information on the PLTRT can be found at <http://www.nmfs.noaa.gov/pr/interactions/trt/pl-trt.htm>. A summary of the observed and estimated marine mammal interactions with the pelagic longline fishery is presented in Table 4.6 of the 2010 HMS SAFE Report.

3.4.2 Interactions and the Endangered Species Act (ESA)

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), provides for the conservation and recovery of endangered and threatened species of fish, wildlife, and plants. The listing of a species is based on the status of the species throughout its range or in a specific portion of its range in some instances. Threatened species are those likely to become endangered in the foreseeable future [16 U.S.C. §1532(20)] if no action is taken to stop the decline of the species. Endangered species are those in danger of becoming extinct throughout all or a significant portion of their range [16 U.S.C. §1532(20)]. Species can be listed as endangered without first being listed as threatened. The Secretary of Commerce, acting through NMFS, is authorized to list marine and anadromous fish species, marine mammals (except for walrus and sea otter), marine reptiles (such as sea turtles), and marine plants. The Secretary of the Interior, acting through the U.S. Fish and Wildlife Service (USFWS), is authorized to list walrus and sea otter, seabirds, terrestrial plants and wildlife, and freshwater fish and plant species.

In addition to listing species under the ESA, the service agency (NMFS or USFWS) generally must designate critical habitat for listed species concurrently with the listing decision to the “maximum extent prudent and determinable” [16 U.S.C. §1533(a)(3)]. The ESA defines critical habitat as those specific areas that are occupied by the species at the time it is listed that are essential to the conservation of a listed species and that may be in need of special consideration, as well as those specific areas that are not occupied by the species that are essential to their conservation. Federal agencies are prohibited from undertaking actions that are likely to destroy or adversely modify designated critical habitat.

<u>Marine Mammals</u>	<u>Status</u>
Blue whale (<i>Balaenoptera musculus</i>)	Endangered
Fin whale (<i>Balaenoptera physalus</i>)	Endangered
Humpback whale (<i>Megaptera novaeangliae</i>)	Endangered
Northern right whale (<i>Eubalaena glacialis</i>)	Endangered
Sei whale (<i>Balaenoptera borealis</i>)	Endangered
Sperm whale (<i>Physeter macrocephalus</i>)	Endangered
<u>Sea Turtles</u>	
Green turtle (<i>Chelonia mydas</i>)	Endangered/Threatened*

Hawksbill sea turtle (<i>Eretmochelys imbricata</i>)	Endangered
Kemp's ridley sea turtle (<i>Lepidochelys kempii</i>)	Endangered
Leatherback sea turtle (<i>Dermochelys coriacea</i>)	Endangered
Loggerhead sea turtle (<i>Caretta caretta</i>)	Threatened
Olive ridley sea turtle (<i>Lepidochelys olivacea</i>)	Threatened

Critical Habitat

Northern right whale	Endangered
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Finfish

Smalltooth sawfish (<i>Pristis pectinata</i>)	Endangered
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*Green sea turtles in U.S. waters are listed as threatened except for the Florida breeding population, which is listed as endangered. Due to the inability to distinguish between the populations away from the nesting beaches, green sea turtles are considered endangered wherever they occur in U.S. waters.

3.4.2.1 Sea Turtles

NMFS has taken numerous steps in the past few years to reduce sea turtle bycatch and bycatch mortality in domestic longline fisheries. A summary of those steps can be found in Chapter 4 of the 2010 HMS SAFE Report and Section 1 of this document.

3.4.2.2 Interactions with Seabirds

The NPOA-Seabirds was released in February 2001. The NPOA for Seabirds calls for detailed assessments of longline fisheries, and, if a problem is found to exist within a longline fishery, for measures to reduce seabird bycatch within two years. NMFS, in collaboration with the appropriate Councils and in consultation with the USFWS, will prepare an annual report on the status of seabird mortality for each longline fishery. The United States is committed to pursuing international cooperation, through the Department of State, NMFS, and USFWS, to advocate the development of NPOAs within relevant international fora. NMFS intends to meet with longline fishery participants and other members of the public in the future to discuss possibilities for complying with the intent of the plan of action. Because interactions appear to be relatively low in Atlantic HMS fisheries, the adoption of immediate measures is unlikely.

Gannets, gulls, greater shearwaters, and storm petrels are occasionally hooked by Atlantic pelagic longlines. These species and all other seabirds are protected under the Migratory Bird Treaty Act. Seabird populations are often slow to recover from excess mortality as a consequence of their low reproductive potential (one egg per year and late sexual maturation). The majority of longline interactions with seabirds occur as the gear is being set. The birds eat the bait and become hooked on the line. The line then sinks and the birds are subsequently drowned.

3.5 Measures to Address Protected Species Concerns

NMFS has taken a number of actions designed to reduce interactions with protected species over the last few years. Bycatch reduction measures have been implemented through the 1999 FMP, in Regulatory Amendment 1 to the 1999 FMP (NMFS, 2000), in Regulatory Amendment 2 to the

1999 FMP (NMFS, 2002), in Amendment 1 to the 1999 FMP (NMFS, 2003), and in the June 2004 Final Rule for Reduction of Sea Turtle Bycatch and Bycatch Mortality in the Atlantic Pelagic Longline Fishery (69 FR 40734). NMFS continues to monitor observed interactions with marine mammals and sea turtles on a quarterly basis and reviews data for appropriate action, if any, as necessary. A final rule requiring the possession and use of an additional sea turtle control device as an addition to the existing requirements for sea turtle bycatch mitigation gear in pelagic and bottom longline fisheries was effective October 23, 2008 (73 FR 54721). NMFS finalized the PLTRT TRP effective June 18, 2009 (74 FR 23349) which implemented a suite of management strategies to reduce mortality and serious injury of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery.

4.0 ENVIRONMENTAL CONSEQUENCES OF ANALYZED ALTERNATIVES

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

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

Ecological Impacts

Under Alternative A1, the no action alternative, NMFS would not implement the 2010 ICCAT BFT quota recommendation, and would instead implement the baseline U.S. quota that was in effect in 2010, and then allocate it as set out in the Consolidated HMS FMP, consistent with the 2008 ICCAT recommendation. Alternative 1 would be inconsistent with the Consolidated HMS FMP, ATCA, and the 2010 ICCAT recommendation, because it would implement a quota different than that recently recommended by ICCAT. Thus, it would not meet the purpose for the action (i.e., to implement the new ICCAT recommendation concerning western BFT). The 2011 fishery would be based on the level of quota under the 2008 ICCAT recommendation for 2010 (i.e., 977.44 mt, which is 28.74 mt higher than the level currently recommended), and underharvest from the 2010 fishing year would be added consistent with the 2010 recommendation. As a result, Alternative A1 could have more negative ecological impacts on BFT than Alternative A2. Implementation of the ICCAT-recommended quota for 2011 can be expected to make greater contributions to stock growth than maintaining the 2010 quota.

Consistent with the 2008 recommendation for 2010, Alternative A1 also would allocate a 25 mt set-aside of BFT for pelagic longline fishing in the NED. As BFT caught and landed under this quota would be caught incidental to directed pelagic longline fisheries for other species, there would not be any additional mortality or ecological impacts to the BFT stock from this alternative. There would be no additional impacts to other species either as this alternative would not significantly alter existing fishing patterns or effort of pelagic longline vessels. NMFS would monitor and manage the pelagic longline fishery in this area, and account for the 25 mt, in concert with the ongoing Atlantic tuna dealer reporting mechanisms that are already in place. Per the regulations implementing the Consolidated HMS FMP, regardless of the amount of the NED set-aside harvested or used in a given year, the balance returns to 25 mt at the start of each fishing year, i.e., underharvest of the 2010 NED allocation is not carried forward to the allocation for the 2011 fishing year.

Alternative A2, the preferred alternative for Issue 1, would result in long term positive impacts to BFT stocks because it is consistent with the ICCAT western BFT recommendation. The 28.74 mt-lower quota contained in Alternative A2 would have slightly more positive ecological impacts on BFT than the quota implemented for 2010 (under Alternative A1), and would be consistent with the Consolidated HMS FMP, ATCA, and the 2010 ICCAT recommendation. The 2010 ICCAT-recommended 1,750-mt TAC represents a less than 3-percent reduction from the current TAC level and is expected to allow for continued stock growth under the both the low and

high stock recruitment scenarios. The TAC and resulting quotas comprise a step in a longer-term stock rebuilding program designed to stabilize fishing pressure and allow the stock to rebuild to higher levels. From 2004 through 2008, the amount of the U.S. quota underharvest was large, and the implications of continued underharvests on the stock (i.e., the potential for landings within a large adjusted quota to exceed recommended removals for a given year) have been addressed by ICCAT through revision of the underharvest provision, reducing the amount of quota that can be carried forward to the following year. In its 2008 BFT recommendation, ICCAT specified that after 2010 (i.e., effective for the 2011 fishing year), the amount of underharvest that may be carried forward would be limited to 10 percent of a Contracting Party's total quota. Thus, for 2011, the maximum amount that the United States can carry forward from 2010 is 94.9 mt. The reduction in both the U.S. baseline quota and the maximum amount of underharvest that can be carried forward might result in a slight decrease in negative impacts to other species (including protected species) as a result of an expected slight decrease in fishing effort by handgear, purse seine, and pelagic longline fisheries. However, the amount of quota decrease is not expected to significantly alter existing fishing patterns. NMFS does not expect a decrease in participation in open access BFT fisheries, or a decrease in effort for either open or limited access BFT fishermen that are already participants.

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

As discussed in Section 2.1, the ICCAT BFT TAC recommendations include dead discards. Table 3 presents the calculations to determine the 2011 fishing year U.S. baseline quotas under the preferred alternative. Carrying forward 94.9 mt of unused BFT quota from 2010 is consistent with the ICCAT recommendation.

As discussed in Section 1.1, it would be impracticable to use the method employed in 2007 through 2010 to establish the quota specifications given the change in the amount of underharvest that the United States may carry forward to 2011 (i.e., from approximately 475 mt to 95 mt). The underharvest that can be carried forward (94.9 mt) is insufficient to cover the best estimate of dead discards (122.3 mt). The Longline category baseline quota allocation (currently 8.1 percent of the

baseline U.S. BFT quota) may need to be revisited in the future, although adjustments to the FMP-based allocation scheme would require an amendment to the Consolidated HMS FMP and appropriate additional analysis under NEPA. Such a change is beyond the scope of this rulemaking.

Given the anticipated quota needs of the Longline category for the 2011 fishing year (i.e., accounting for both landings and discards), the preferred alternative is intended to provide sufficient quota to the Longline category to cover the anticipated landings and dead discards of the pelagic longline fishery (using the 2010 estimate as a proxy), while providing incentive for longline fishermen to reduce BFT interactions that result in dead discards. Furthermore, NMFS anticipates that the recently implemented weak hook requirement for pelagic longline vessels fishing for HMS in the Gulf of Mexico will result in reduced BFT bycatch by pelagic longline fishermen in that area, although it is uncertain at this time how great a reduction will be realized. Again, no additional changes in effort or in commercial or longline-specific fishing patterns that would result in increased BFT interactions are expected.

Consistent with the 2010 ICCAT recommendation, Alternative A2 also would allocate a 25 mt set-aside of BFT for pelagic longline fishing in the NED. As BFT caught and landed under this quota would be caught incidental to directed pelagic longline fisheries on other species, there would not be any additional mortality or ecological impacts to the BFT stock from this alternative. There would be no additional impacts to other species as this alternative would not significantly alter existing fishing patterns or effort of pelagic longline vessels. NMFS would monitor and manage the pelagic longline fishery in this area, and account for the 25 mt, in concert with the ongoing Atlantic tuna dealer reporting mechanisms that are already in place. Per the regulations implementing the Consolidated HMS FMP, regardless of the amount of the NED set-aside harvested or used in a given year, the balance returns to 25 mt at the start of each fishing year (i.e., underharvest of the 2010 NED allocation is not carried forward to the allocation for the 2011 fishing year).

BFT Reserve Category Quota and BFT Collection via Authorized Fishing Activities

In 1992, when NMFS established baseline quotas for each category in the BFT fishery based upon the historical share of landings in each category during the period 1983-1991, NMFS also began to hold in reserve specific amounts of quota for inseason adjustments, including for authorized research activities, and established determination criteria (factors NMFS would consider prior to effecting inseason adjustment to any quota category). The baseline quotas were modified in 1995 and 1997 but have remained the same since implementation of the 1999 FMP. Since 1999, and as codified in the current regulations, 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 of the baseline annual U.S. BFT quota. In addition, the total amount of school BFT quota that is held in reserve (the “School Reserve”) for inseason or annual adjustments and fishery-independent research is 18.5 percent of the total school BFT Angling category subquota. NMFS may allocate any portion of the Reserve for inseason or annual adjustments to any category in the fishery through an inseason action. NMFS may allocate any portion of the School Reserve subquota for inseason or annual adjustments to the Angling category through an inseason action. As shown in Table 4, for 2011, the baseline Reserve quota for 2011 and 2012 would be 23.1 mt, and the School Reserve subquota would be 17.6 mt.

NMFS issues Exempted Fishing Permits (EFPs) and Scientific Research Permits (SRPs) for research activities involving the collection of biological samples and data from BFT and other tunas. EFPs and SRPs are issued under the authority of the Magnuson-Stevens Act and/or ATCA. These EFPs and SRPs authorize collections of tunas, as well as other HMS, from Federal waters in the Atlantic Ocean and Gulf of Mexico for the purposes of scientific data collection. Regulations at 50 CFR 600.745 and 50 CFR 635.32 govern scientific research activity, exempted fishing, and exempted educational activity with respect to Atlantic HMS. EFPs are issued to individuals for the purpose of conducting research or other fishing activities using private (non-research) vessels, whereas an SRP would be issued to Agency, state, and academic scientists who are using NOAA or bona fide research vessels as their platforms.

Issuance of EFPs and SRPs may be necessary as the fisheries for BFT may be closed for extended periods during which collection of live animals and/or biological samples would otherwise be prohibited. In addition, sampling may require collecting undersize fish, sampling fish in excess of retention/bag limits, the use of unauthorized gears, the collection of fish without the necessary commercial or recreational permits (as research vessels are not required to obtain such permits), and/or the deployment of archival tags. Researchers are required to submit interim reports regarding collections within five days of the completion of a fishing trip and an annual report within 30 days of the expiration of a permit.

EFPs and SRPs have been issued for a wide range of research involving tagging and biological sampling of BFT. For instance, much research has involved the deployment of archival and pop-up satellite archival tags (PSATs) on BFT to determine BFT stock structure as well as the location and timing of spawning. Other tagging studies have investigated migration routes, residency, spawning areas, mixing, and stock structure of BFT. PSAT work has also been conducted on adult BFT in the Gulf of Mexico during the spawning season to determine estimates of post-release mortality of live BFT while on their spawning grounds during 2010 and will be continued in 2011. Biological sampling was conducted to determine reproduction status, feeding habits, and nutritional condition of fish. In addition, genetic and otolith sampling was conducted on young-of-year fish to determine the mixture of eastern and western origin yearling fish entering the U.S. mid-Atlantic fishery. Pilot studies (described in more detail below) were initiated in 2010 to collect hard parts representative of the recreational and commercial fisheries for use in determining both age and stock structure of the BFT catches. Finally, additional BFT sampling was conducted to supplement LPS length-weight keys used to update length-weight conversion tables.

In all cases, mortality associated with an EFP, SRP, Display, or LOA (except for larvae) is counted against the Reserve category quota, School Reserve subquota, or the quota applicable to the authorized vessels (e.g., if the fish were collected during regular commercial fishing operations and were sold). NMFS issued a total of 24 EFPs, SRPs, and Display Permits, in 2009 for the collection of HMS. Although NMFS authorized collection of 552 BFT, only four were taken that year. NMFS issued a total of 28 EFPs, SRPs, and Display Permits for 2010, including authorization for 307 BFT, of which only seven were taken in 2010. These do not include permits that were issued for research related to the Deepwater Horizon/BP oil spill in the Gulf of Mexico. An additional nine permits and/or amendments to permits already issued under the exempted fishing program were issued for

research related to the oil spill in the Gulf of Mexico in 2010. As of May 10, 2011, NMFS has received applications for 13 EFPs, SRPs, and Display Permits for BFT that authorize approximately 17.1 percent or 2.8 mt of the School Reserve subquota or 63.6 percent or 17.1 mt of the Reserve category quota.

As noted above, the Reserve and School Reserve categories have been used to account for mortality of BFT under EFPs, SRPs, and Display permits as these reserve categories were specifically set up to account for inseason adjustments and authorized research activities. The impacts to the human environment of these and other bluefin tuna quota categories have been previously analyzed in the Consolidated HMS FMP, and specific quota allocations based on ICCAT recommendations have been analyzed in subsequent NEPA analyses. NMFS would continue to use the Reserve and School Reserve categories to account for mortality associated with these types of permits. Mortality associated with these types of permits is usually a small percentage of the amount authorized for research activities, as evidenced by the number of BFT takes reported versus authorized for 2009 and 2010. However, mortality associated with these types of permits would not exceed the Reserve or School Reserve quotas. Therefore, the impacts to the human environment associated with BFT mortality authorized under these permits would be consistent with the analyses conducted under the Consolidated HMS FMP and implementing regulations and no further analysis is needed here.

Economic and Social Impacts

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

Alternative A2 would have slightly negative short-term economic impacts to the United States and local economies compared to alternative A1 because of the slight decrease in quota. However, negative short-term economic impacts from alternative A2 would be distributed among the recreational and commercial sectors and, and are expected to mirror the distribution of the quota allocation in percentages set forth in the Consolidated HMS FMP. Potential socio-economic impacts from this alternative would depend upon the ability of the fishery to harvest the quota. In 2010, approximately 68 percent of the adjusted quota was harvested, resulting in an underharvest of 380 mt. Per the 2010 ICCAT recommendation, only 10 percent of the total U.S. quota, or 94.9 mt, of that underharvest would be carried over to the 2011 fishing year, and the opportunity to harvest the remaining 285 mt of underharvest has been lost. In the long term, positive socio-economic impacts would be expected as the stock grows.

See Section 6.6.1 for potential changes in ex-vessel gross revenues that could be expected to result under Alternative A2. Total ex-vessel gross revenues for fishing years since implementation of the previous (2008) ICCAT recommended U.S. quota were \$3.7 million in 2007, \$5.0 million in 2008, \$6.9 million in 2009, and \$8.9 million in 2010 (see Table 8).

The recreational Angling category baseline quota, which is allocated 19.7 percent of the annual baseline quota, would decrease from 2009 to 2010 by 5.6 mt, and the school BFT subquota (which may be no more than 10 percent of the total U.S. quota) would decrease by 2.8 mt. Although NMFS believes that recreational fisheries have a large influence on the economies of coastal communities, NMFS has little current information on the costs and expenditures of anglers or the businesses that rely on them (NMFS, 2006). Fishery participants from the region spanning from New York through Maryland have historically conveyed the importance of the school size class of BFT to their fishing activities, due in part to prevalence of that size on the fishing grounds nearby. In prior years, impacts of a reduced school BFT quota could be mitigated by shifting effort to large school and small medium size classes, if available. In 2007, 2008, and 2009 however, the full Angling category quota was exceeded, largely due to increased availability and weight of large school/small medium BFT. In 2010, NMFS adjusted the daily retention limit in mid-June, prohibiting landings of small medium BFT. NMFS took that action to prevent overharvest of the 2010 Angling category quota (75 FR 33531, June 14, 2010) and based on the continued observed trend in the recreational fishery toward heavier fish, particularly in the large school and small medium size classes. In regions where school BFT have been the focus of fishing activity, shifting effort to other pelagic species (e.g., striped bass, bluefish, dolphin, and wahoo) may be possible; however, the degree to which shifting effort might mitigate negative economic impacts is unknown.

Conclusion

Alternative A2 is the preferred alternative as it is consistent with the Consolidated HMS FMP, ATCA, ICCAT Recommendation 10-03, and Magnuson-Stevens Act requirements. Ecological impacts between the two analyzed alternatives are similar. The reduction of the U.S. baseline quota and cap on the amount of underharvest that may be carried forward has the potential to decrease BFT fishing effort, which would result in slightly lower impacts to other species. Overall, short-term economic and social impacts to fishermen may be slightly negative for Alternative A2, particularly for Angling category participants as the recreational sector has been able to achieve its subquota in recent years (through 2009), although actual impacts would largely be attributable to the availability of BFT and ability of fishery participants to harvest the quota. In addition, the negative social and economic impacts of exceeding the TAC, which was adopted as part of the overall ICCAT BFT Rebuilding Program, are reduced and, in the long term, may be positive for fishermen as the stock grows. Under each of the alternatives considered, there may be slight differences in the level of economic and social impacts experienced by the specific individuals of the BFT fishery, as well as by participants within a particular fishery sector.

4.2 Issue 2: Target catch requirements for pelagic longline vessels fishing in the NED

Ecological Impacts

There were 259 and 248 vessels permitted in the Atlantic Tunas Longline category in 2009 and 2010, respectively. NMFS examined pelagic longline landings information for vessels fishing in the NED in 2005 through 2009 to determine the potential impacts of an action to reinstate target catch requirements in the NED. Table 9 shows, on an annual basis, the number of pelagic longline vessels and trips in the NED, the number of those vessels and trips on which at least one commercial-sized

BFT was landed, the total number of NED BFT landed, and the amount that would have been required to be released if target catch requirements applied, including a per-vessel average. As noted above, in 2009, the 25- mt NED allocation was attained for the first time. As a result, the BFT target catch requirements specified for the longline category became applicable in the NED from October 20 - December 31, 2009 (74 FR 53671, October 20, 2009). While the amount of BFT landed in 2009 may be considered an anomaly, it raises concerns about the potential for high BFT interactions and challenges for quota management in a quota-limited fishery.

Alternative B1 would maintain the exemption for the pelagic longline fleet fishing in the NED from the target catch requirements that apply in areas outside the NED, up to the NED allocation (currently 25 mt). Table 2a shows landings and dead discards in the NED relative to the available quota. Table 2b shows Longline category total landings, dead discards, and total catch relative to the adjusted Longline category quotas for 2005-2009. Prior to 2009, NED landings were within the 25-mt NED quota. The reduced amount of underharvest that ICCAT allows parties to carry forward, in combination with high recent levels of dead discards, has resulted in a situation in which landings alone could easily meet the adjusted Longline quota. This highlights the importance of limiting incidental BFT interactions during pelagic longline fishing activities.

NMFS anticipates neutral ecological impacts would result from application of target catch requirements in the NED. Generally, application of target catch requirements is not expected to alter fishing practices as the fishery for BFT is incidental to fishing activity on target species such as swordfish. Alternative B2 could result in increased dead discards of BFT, depending on the amount of target catch retained and landed, since the retention of commercial-sized (73 inches or greater) BFT would be limited to one, two, or three fish per trip vs. unlimited per trip, up to the 25 mt quota for the NED. Negative impacts could result from increased bycatch and bycatch mortality of BFT that would have to be discarded because they exceed the target-catch-based retention limit. However, to the extent that the application of target catch requirements in the NED could eliminate the potential incentive for a vessel owner or operator to extend one's fishing trip in order to retain additional BFT, it could reduce the length of a trip, thus reducing bycatch and bycatch mortality of BFT and other species and thus having some positive ecological effect. This action would be unlikely to have any differential impacts on the life history or overall biological distribution of the western Atlantic BFT stock.

Economic and Social Impacts

Application of uniform target catch requirements in all areas is intended, in part, to constrain pelagic longline landings of BFT to the Longline category quota. To the extent that the action allows the fleet to continue to participate in directed fisheries (e.g., YFT and swordfish) year-round with less risk of fishery interruption due to insufficient incidental BFT quota availability, it would have positive economic and social impacts. Further, it would reduce the need for BFT quota reallocation from directed fisheries or the Reserve category to cover dead discards and excess pelagic longline BFT landings, which are intended to be incidental. Additionally, fishery participants have commented that it is unacceptable that a small number of pelagic longline vessels were able to take the 25-mt NED allocation before the vessels that have historically participated in the Grand Banks fishery arrived on the fishing grounds. Reinstatement of the NED target catch requirements would be

consistent with ongoing agency efforts to better align pelagic longline catch with Consolidated HMS FMP objectives and quota allocations.

Because a pelagic longline vessel currently fishing in the NED is allowed to land commercial-sized BFT without trip limits in the NED, up to the 25-mt NED quota, each BFT that is caught but unable to be landed under Alternative B2, which would establish a trip limit, represents reduction in ex-vessel revenues. For example, a trip that landed 4 commercial-sized BFT with 10,000 lb of targeted catch in 2009 would, under the target catch requirements that apply coastwide, be limited to two BFT under Alternative B2. Using an average weight for an NED BFT (403 lb round weight) and average 2009 Longline BFT price (\$4.48/lb round weight), this reduction could represent a loss of \$3,610 (\$1,805 per BFT x 2) for that trip. See Table 10 for ex-vessel average prices by commercial fishing category.

Section 6.6.2 describes the expected economic impact of Alternative A2 for the Longline category as a whole.

Conclusion

The preferred alternative is to reinstate pelagic longline target catch requirements in the NED. It is expected to reduce the risk of overharvest of available quotas, provide for more equitable opportunities for Longline category participants coastwide, and allow the fleet to continue to participate in directed fisheries (e.g., Atlantic yellowfin tuna (YFT) and swordfish) year-round with less risk of fishery interruption due to insufficient BFT quota availability, is consistent with the incidental nature of the Longline category BFT fishery, and is consistent with other ongoing agency efforts to address bycatch issues.

4.3 Issue 3: Atlantic tunas landing form - tails

The action to amend the possession-at-sea and landing regulations, specifying that the Atlantic tuna tail lobes may be removed as long as the fork remains attached, is not expected to have ecological or social and economic impacts. The action was requested to increase storage efficiency. Although some vessel operators may benefit from being able to store additional Atlantic tunas, e.g., in their vessel's hold, NMFS is unable to quantify this potential benefit. Generally, NMFS does not expect this action to result in changes to fishing practices, fishing effort, or any biological, social, or economic impacts. The action also should not result in species identification or enforcement issues.

4.4 Issue 4: Atlantic tunas transfer at sea

The action to clarify the intent of the regulations and prohibition regarding Atlantic tunas transfer at sea is not expected to have ecological or social and economic impacts. The clarification may prevent individuals from circumventing retention limits (which could result in negative impacts ecologically and socio-economically for those who abide by the retention limits), and it should aid in enforcement of the regulations.

4.5 Impacts on Essential Fish Habitat

The Magnuson-Stevens Act established a program to promote the protection of EFH in the review of projects conducted by Federal agencies, or under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat. After the Secretary has identified EFH, Federal agencies are obligated to consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any EFH. The analysis in the Consolidated HMS FMP indicated that most HMS gears are fished in the water column and the impacts on EFH are generally considered negligible. HMS gears do not normally affect the physical characteristics that define HMS EFH such as salinity, temperature, dissolved oxygen, and depth. Similarly, most HMS gears are not expected to impact other fisheries' EFH, with the possible exception of shark bottom longline gear, depending on the area where it is fished. In the Consolidated HMS FMP, a preliminary determination was made that HMS gears, other than shark bottom longline, were not having a negative impact on EFH. Similarly, other state and Federally managed gears were also determined not to have an impact on HMS EFH, with the possible exception of some bottom-tending gears in shark nursery areas in coastal bays and estuaries (for which NMFS anticipates any resulting impacts would be minimal and only temporary in nature). Because this action also would not significantly alter fishing gears or practices, it is anticipated that it would not have any adverse impacts to EFH, and the conclusion for the Consolidated HMS FMP is still applicable, so further consultation is not necessary.

4.6 Impacts on Protected Species

As described in Section 1.1 (Management History), on September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under Section 7 of the ESA. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. This BiOp also concluded that the continued operation of the purse seine and handgear fisheries may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. NMFS has implemented the reasonable and prudent alternatives (RPAs) required by this BiOp.

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

Section 3.4 of this document and Chapter 7 of the 2010 SAFE Report list the 22 marine mammal species that are or could be of concern with respect to potential interactions with HMS fisheries. Those sections discuss interactions and the Endangered Species Act, including six endangered whale species. A summary of marine mammal interactions in the pelagic longline fishery from 1992 through 2005 is provided in Section 3.4.1.2 of the Consolidated HMS FMP and is updated for 2002 through 2009 in the 2010 SAFE Report. As described in Section 3.4, NMFS has finalized several non-regulatory measures in addition to the suite of management strategies implemented under the PLTRP (74 FR 23349, May 19, 2009) to reduce mortality and serious injury of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery.

Relative to the 2008 ICCAT recommendation for 2010, the 2010 ICCAT recommendation decreased the total U.S. BFT quota by 28.74 mt. Therefore, a reduction in overall effort relative to the level at the most recent consultation could be expected. The preferred alternatives for this action, including the allocation of 25 mt to the Longline category for the NED (for incidental BFT catch only) and the action to reinstate target catch requirements in the NED are not expected to significantly alter current fishing practices or bycatch mortality rates in general, and would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes. Therefore, the preferred alternatives in this EA/RIR/FRFA should not have adverse impacts on protected species, or have any further impacts on endangered species, marine mammals, or critical habitat beyond those considered in the 2001 and 2004 BiOps and in the Consolidated HMS FMP. Thus, no further consultation is necessary.

4.7 Environmental Justice Concerns

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

4.8 Coastal Zone Management Act (CZMA) Concerns

NMFS determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of coastal states and U.S. territories on the Atlantic including the Gulf of Mexico and the Caribbean Sea. In March 2011, NMFS provided all coastal states along the eastern seaboard and the Gulf of Mexico (19 states and U.S. territories), including Puerto Rico and the U.S. Virgin Islands with a copy of the proposed rule and draft EA that would modify BFT baseline quotas and adjust management measures regarding the Atlantic tuna fisheries and requested their concurrence. Under 15 C.F.R. § 930.41, states and/or U.S. territories have 60 days to respond after the receipt of the consistency determination and supporting materials. States and U.S. territories can request an extension of up to 15 days. If a response is not

received within those time limits, NMFS can presume concurrence (15 C.F.R. § 930.41(a)).

To date, 12 states replied within the response time period that the proposed regulations were consistent, to the extent practicable, with the enforceable policies of their CMPs (New Hampshire, Rhode Island, Connecticut, New Jersey, Delaware, Virginia, North Carolina, Georgia, Florida, Alabama, Mississippi, and Louisiana). Another seven states and U.S. territories (Maine, Massachusetts, New York, Maryland, South Carolina, Puerto Rico and the U.S. Virgin Islands) did not respond within the response time period, nor did they request an extension in the comment period; therefore, NMFS presumes their concurrence.

4.9 Comparison of Alternatives

Table 11 summarizes the determinations made above regarding ecological, social and economic impacts of all the alternatives considered, organized and subdivided by issue. A brief summary of the legal and administrative issues is also provided. As set forth above, no Environmental Justice (EJ) or CZMA issues were identified.

4.10 Cumulative Impacts

Cumulative impacts are the impacts on the environment which result from the incremental impacts of the action when added to other past, present, and reasonably foreseeable future actions. Cumulative impacts include the total effect on a natural resource, ecosystem, or human community due to past, present, and reasonably foreseeable future activities or actions of federal, non-federal, public, and private entities. Cumulative impacts may also include the effects of natural processes and events, depending on the specific resource. Cumulative impacts include the total of all impacts to a particular resource that have occurred, are occurring, and would likely occur as a result of any action or influence, including the direct and reasonably foreseeable indirect impacts of a federal activity. The goal of this section is to describe the cumulative ecological, economic and social impacts of past, present and reasonably foreseeable future actions with regard to the management measures presented in this document.

Since 1999, management actions pertaining to BFT have had minor positive ecological impacts by continuing to limit BFT mortality by U.S. fishermen in accordance with the strict quota limits set by ICCAT. The 1999 FMP adopted ICCAT's 20-year stock rebuilding program for western Atlantic BFT, which includes, among other things, authority for NMFS to implement ICCAT's BFT quota allocation on a yearly basis through a framework procedure. The FEIS for the Consolidated HMS FMP (NMFS 2006) concluded that the cumulative long-term impact of the final implementing actions, including the ICCAT BFT rebuilding program and annual quota allocation process, would be to establish sustainable fisheries for Atlantic HMS.

In October 2009, Monaco submitted a proposal to list Atlantic bluefin tuna in Appendix I of the Convention on the International Trade in Endangered Species of Wild Flora and Fauna (CITES), which would prohibit international trade of the species. At the March 2010 CITES 15th Conference of Parties meeting in Doha, Qatar, the proposal was not adopted. The U.S. Department of the Interior, which is the lead Federal agency on CITES issues, subsequently issued a press release

indicating that the United States will continue to work with ICCAT parties to conserve and recover BFT.

On May 24, 2010, NMFS received a petition from the Center for Biological Diversity (CBD) to list BFT as threatened or endangered under the ESA and designate critical habitat concurrently with its listing. On September 21, 2010, NMFS announced a 90-day finding (75 FR 57431) that the petition presents substantial scientific information indicating the petitioned action may be warranted. NMFS conducted a species status review of BFT to determine if the petitioned action is warranted. On May 27, 2011, NOAA announced that listing BFT as endangered or threatened is not warranted at this time. NOAA has committed to revisit this decision by early 2013, when more information will be available about the effects of the Deepwater Horizon BP oil spill, the 2012 BFT stock assessment, and the 2012 ICCAT BFT recommendations. NOAA also announced on May 27, 2011, that it is formally designating both the western Atlantic and eastern Atlantic and Mediterranean stocks of BFT as “species of concern” under the ESA. This places the species on a watchlist for concerns about its status and threats to the species.

In April 2011, NMFS published a final rule requiring the use of weak hooks on pelagic longline vessels in the Gulf of Mexico (76 FR 18653, April 5, 2011). The purpose of that action is to reduce pelagic longline catch of BFT in the Gulf of Mexico, the only known spawning area for the western Atlantic BFT stock. Both that action and the NED action in this rule are intended to address BFT bycatch issues in pelagic longline fisheries, including managing BFT catch and landings within available quotas.

ICCAT is next scheduled to review the status of Atlantic BFT stocks in 2012 and to renegotiate the western Atlantic BFT TAC at the November 2012 ICCAT meeting. The 2012 stock assessment may result in recommended changes to the ICCAT BFT rebuilding program in the foreseeable future, which may require a future domestic rulemaking. Any future domestic actions taken in regard to the BFT fishery would remain within the scope of ICCAT recommendations as well as established BFT TACs, consistent with ATCA.

The actions considered in this EA/RIR/FRFA, regarding implementation of the 2010 ICCAT recommendation regarding quota allocations and other Atlantic tunas management measures are not expected to change current fishing practices or increase fishing effort, and therefore should not cause biological impacts not previously considered in the 2001 and 2004 Biological Opinions and addressed in the Consolidated HMS FMP FEIS. Therefore, the cumulative effects analyses presented in the Consolidated HMS FMP EIS, as supported by the cumulative effects analysis in the 2001 BiOp and 2004 BiOps, is hereby incorporated by reference.

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

measures. Table 11 summarizes the determinations made above regarding impacts of the alternatives considered in this action.

5.0 MITIGATION AND UNAVOIDABLE ADVERSE IMPACT

5.1 Mitigating Measures

Under the preferred alternative for Allocation of BFT among domestic fishing categories, NMFS would implement the 2010 ICCAT recommendation for 2011 and 2012 in accordance with domestic legislation and the Consolidated HMS FMP and implementing regulations. The ICCAT-recommended decrease in TAC is intended to have long-term positive ecological benefits and allow for stock growth under both the low and high recruitment scenarios. The U.S. domestic BFT management program includes numerous management measures to implement ICCAT quota and management recommendations and for consistency with the Consolidated HMS FMP. NMFS uses a variety of controls such as BFT subquotas, seasons, retention limits, size limits, and time/area closures to provide reasonable BFT fishing and harvest opportunities over a wide geographic range within available quotas, while minimizing negative environmental impacts.

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

Under the preferred NED target catch requirement alternative, NMFS would reinstate within the NED the target catch requirements that currently apply outside the NED. Implementing the same target catch requirements in all areas for the pelagic longline fleet would mitigate impacts to pelagic longline participants that fish outside the NED by reducing the risk of fishery interruption due to insufficient BFT quota availability. It is intended to reduce bycatch and bycatch mortality of BFT and other species, thus mitigating environmental impacts. It also would reduce the potential need to transfer quota away from directed fishing categories to cover potential Longline category BFT overharvests both inseason and from the following fishing year, if overall U.S. landings were to be exceeded.

Amendment of the regulations to allow removal of Atlantic tuna tail lobes would provide the potential for more efficient fish carcass storage. Neither that action nor the action to clarify the Atlantic tunas transfer-at-sea regulations is expected to have environmental, social, or economic impact. Thus, NMFS has not identified mitigating measures for those issues.

5.2 Unavoidable Adverse Impacts

Although the preferred alternative for Issue 1 would result in a slight decrease in baseline quota, it is consistent with ICCAT Recommendation 10-03, the Consolidated HMS FMP, ATCA, and the Magnuson-Stevens Act. NMFS does not expect a change in current fishing patterns or an increase in fishing effort as compared to pre-2010 levels. The preferred alternative of reinstating pelagic longline target catch requirements in the NED would not alter current impacts on threatened

or endangered species which have been previously analyzed in the 2001 and 2004 Biological Opinions. The action would not significantly modify fishing behavior or gear type, nor would it expand fishing effort because BFT are only allowed to be retained incidentally in the pelagic longline fishery. Thus, the actions analyzed in this EA/RIR/FRFA would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or, in general, significantly alter current fishing practices or bycatch mortality rates.

5.3 Irreversible and Irretrievable Commitment of Resources

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

6.0 ECONOMIC EVALUATION

Note that all dollars are reported in nominal dollars, consistent with methods used in the Consolidated HMS FMP. The following background is provided on the prices and markets and other economic factors to help evaluate the potential economic impact of the rulemaking.

6.1 Prices and Markets

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

Ex-vessel prices (nominal values) per category have fluctuated over the last several years. Accounting for inflation, preliminary average ex-vessel prices for BFT in 2010 were lower for the General category and higher for the Harpoon and Longline categories relative to prices during 2009.

6.2 Ex-vessel Gross Revenues

Ex-vessel gross revenues (nominal values) from recorded sales of BFT in all commercial categories for the last 15 years are presented in Table 8. Revenues for the General category for 2010 were 55 percent higher than for 2009, and were the highest, nominally, since 2002. Revenues for the Harpoon and incidental categories (Longline and Trap) were 59 percent lower and 30 percent lower, respectively, than for 2009. Total revenues in 2010 were the highest, nominally, since 2003. Revenues for the Purse Seine category have fluctuated at a low level over the 2004-2010 period. Because the purse seine vessels did not land any BFT in 2010, there were no associated revenues. The combination of stable or reduced ex-vessel prices (Table 10) and reduced commercial landings (Table 6) had a severe impact on ex-vessel gross revenues in 2006 and 2007, but increased overall ex-vessel prices and landings, particularly in the General category, led to a modest total increase in ex-vessel gross revenues in 2008 through 2010. All categories have generally shown declines since 2001, with the exception of the incidental Longline category.

Before drawing conclusions on trends in gross revenues, it should be emphasized that this discussion focuses on gross revenues only, and not net revenues. Currently, only selected pelagic longline sector vessels are required to report cost-earnings data. Given the lack of cost information and the fact that pelagic longline vessels do not target BFT, it is difficult to draw conclusions concerning net revenues (or profits) to BFT fishermen, many of whom do not use pelagic longline gear. Individual vessels may have experienced an increase in net revenue even with lower gross revenues reported for their fishing category. For example, an owner may have been forced to

perform major repairs on a vessel in 2010, or could have landed fish in a month when market conditions were relatively poor. Thus, trends in gross revenues can only indicate the average trends in gross income and the effect on fishermen's net revenues if their costs remained relatively steady over the period examined. The Consolidated HMS FMP highlights the need for further social and economic studies of HMS industries and fishing communities to assist in the calculation of adequate cost information. The more frequently and thoroughly this can be conducted, the better the estimates of the current net revenues.

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

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

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

Alternative management measures could improve net benefits in the BFT fishery. A control date was implemented on September 1, 1994, and limited access workshops were commenced to consider management regulations that create quasi-property rights in the fishery. The 1996 final rule established freely transferable purse seine quota, in whole or in part, among the seiners. Future amendments to the Consolidated HMS FMP may consider individual transferable quotas for the General and/or Harpoon category fisheries. Even without additional limited access management in the U.S. fishery, restrictive quotas set internationally by ICCAT, as part of the ICCAT Rebuilding

Program recommended in 1998, as modified, should conserve the BFT stock and allow for its recovery.

6.3 Angling and Charter Boat Revenues

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

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

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

The 1999 FMP estimated that in 1997 there were approximately 6,612 charterboat trips targeting BFT from Maine to North Carolina. Of these trips, 2,527 targeted commercial-sized BFT.

A survey of daily charter rates advertised by Atlantic HMS Charter/Headboat permit holders which was included in the Consolidated HMS FMP estimated that the average rate for an all day trip in 2004 was \$1,053. Assuming that the total number of trips in 2004 were the same as 1997, and applying the 2004 average to the total number of trips from 1997 results in a rough estimate of gross revenues for BFT charters in 2004 of about \$7.0 million. These estimated direct revenues exceeded the total gross revenues of all other commercial BFT categories combined for 2005 through 2009 (Table 8), and could be an underestimate of revenues accruing to charterboats because some of the BFT landed are probably sold (only large mediums and giants after the 1992 rule). Additionally, tips which are typically given to the mate (about \$100 per trip) are not included. The producer surplus component of the value of the recreational fishery would thus be these gross revenues minus costs incurred in providing the charterboat services. Charter/headboat cost information has not been updated since preparation of the 1999 FMP, in which variable costs were estimated at \$392 per trip. Producer surplus for operations targeting BFT was estimated at \$408 per trip (\$800 minus \$392).

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

6.4 Bluefin Tuna Fishery Participation

A complete description of participation rates in the BFT fishery is provided in the Consolidated HMS FMP and the 2010 SAFE Report and is not repeated here. However, Table 7 provides a summary of patterns of fishing activities and Table 5 indicates the number of vessels permitted during the 2010 fishing season, by category, to participate in the BFT fishery.

6.5 Bluefin Tuna Processing and Export

The Consolidated HMS FMP and the 2010 SAFE Report include a detailed discussion regarding the export, import, and re-export trade program and market for BFT. As noted above, over the last 6 years, total landings of BFT have generally declined, U.S. ex-vessel prices have fluctuated, and generally, ex-vessel gross revenues have declined. Although the proportion of BFT exported has shown a decreasing pattern since 1996, the majority of domestically harvested commercial BFT (i.e., 75 percent or greater) was exported until 2004. The reduction in amount of exports and decrease in the ex-vessel value of landings since 2003 indicates a corresponding decrease in the value of exports, although these figures are not available for only Atlantic product. According to the HMS BFT Landings Database, approximately one half of the 510 mt of commercial BFT harvested domestically in 2009 were exported. In 2009, the United States imported approximately 362 mt of BFT harvested in the Atlantic Ocean, including the Mediterranean and Gulf of Mexico.

6.6 Expected Economic Impacts of the Alternatives

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

6.6.1 Allocation of BFT among Domestic Fishing Categories

This section analyzes the economic impacts of the alternatives regarding the U.S. *baseline* quota and subquotas expected under the no action and the preferred alternative. Under the no action alternative for Issue 1 (quota allocation), fishery participants would experience positive economic impacts on a scale similar to 2010 if all other factors remain constant (e.g., number of participants, ex-vessel values, catch rates, etc.). Potentially, overall gross revenues to the fishery could approximate those realized in 2010, or 2009 in the case of the Purse Seine and Trap categories, which had no landings in 2010 (Table 8). However, physical availability of BFT to the fisheries would influence realized revenues. The alternative would not significantly alter ex-vessel prices or costs or change economic benefits accrued at a level from 2010.

Alternative A2, which would be consistent with the Consolidated HMS FMP and the 2010 ICCAT recommendation, would reduce the baseline quota by approximately 29 mt. Depending on the overall harvest, average ex-vessel value and average size of the fish caught per category, gross revenues may be reduced as a result of this quota decrease. Comparison of expected economic impacts under this action against those realized in recent years is complicated by the relative unavailability of fish in the New England region in the mid-2000s (as discussed in Section 3.2); ex-vessel gross revenues for fishing years since implementation of the most recent (2008) ICCAT recommended U.S. quota, were \$6.9 million in 2009 and \$8.9 million in 2010.

For 2011 and 2012, the effect of allocations based on the ICCAT-recommended baseline quota of 923.7 mt (i.e., the expected change in ex-vessel gross revenues), was estimated for each category. The General category is allocated 47.1 percent of the annual baseline BFT quota. Based on the 2010 ICCAT recommendation, the General category baseline allocation would decrease from the 2010 level by 13.5 mt. Using the average ex-vessel price-per-pound in round weight for 2010 of \$6.93 (Table 10), this would result in a decrease of \$206,251 to the ex-vessel gross revenues for the category as a whole (Table 8). Similar calculations show reductions for the other categories as follows: A reduction of 1.1 mt for the Harpoon category, which is allocated 3.9 percent of the annual baseline quota, and for which the average ex-vessel price-per-pound in round weight for 2010 was \$5.75, would result in a decrease of \$13,944 to the ex-vessel gross revenues for the category as a whole. A reduction of 2.3 mt for the Longline category, which is allocated 8.1 percent of the annual baseline quota, and for which the average ex-vessel price-per-pound in round weight for 2010 was \$4.48, would result in a decrease of \$25,150 to the ex-vessel gross revenues for the category as a whole. However, the additional allocation of 25 mt to account for incidental BFT catch in the NED, would provide potential ex-vessel gross revenues of \$273,370. Because the Purse Seine category vessels did not have landings in 2010, there is no associated ex-vessel price-per-pound for 2010. No BFT were landed by the Purse Seine and Trap categories in 2010. However, a reduction of 5.3 mt for the Purse Seine category, which is allocated 18.6 percent of the annual BFT baseline quota, and for which the average ex-vessel price-per-pound in round weight for 2009 was \$5.96, could be expected to result in a decrease of \$69,639 to the ex-vessel gross revenues for the category as a whole (based on 2009 price information). Similarly, a reduction of 0.1 mt for the Trap category, which is allocated 0.1 percent of the annual baseline quota, and for which the average ex-vessel price-per-pound in round weight would be the same as for the Longline category in 2010 (\$4.96), would result in a

decrease of \$1,093 to the ex-vessel gross revenues for the category as a whole. Because the directed commercial categories have underharvested their subquotas in recent years, particularly 2004-2008, the potential decreases in ex-vessel revenue above overestimate the probable economic impacts to those categories relative to recent conditions. Additionally, there has been substantial interannual variability in ex-vessel revenues per category in recent years due to recent changes in BFT availability and other factors. Generally, the interannual differences in ex-vessel revenues per category have been larger than the potential impacts described above.

The recreational Angling category baseline quota, which is allocated 19.7 percent of the annual baseline quota, would decrease from 2009 to 2010 by 5.6 mt, and the school BFT subquota (which may be no more than 10 percent of the total U.S. quota) would decrease by 2.8 mt. Although NMFS believes that recreational fisheries have a large influence on the economies of coastal communities, NMFS has little current information on the costs and expenditures of anglers or the businesses that rely on them. Historically, the ability to catch school size BFT has been of great importance to the region spanning from New York through Maryland. Through 2006, impacts of a reduced school BFT quota could be mitigated by shifting effort to large school and small medium size classes, if available. In 2007, 2008, and 2009 however, the full Angling category quota was exceeded, largely due to increased availability and weight of large school/small medium BFT. In 2010, NMFS adjusted the daily retention limit in mid-June, prohibiting landings of small medium BFT. NMFS took that action to prevent overharvest of the 2010 Angling category quota (75 FR 33531, June 14, 2010) and based on the continued observed trend in the recreational fishery toward heavier fish, particularly in the large school and small medium size classes. In regions dependent upon school BFT, shifting effort to other pelagic species (e.g., striped bass, bluefish) may be possible; however, the degree to which shifting effort might mitigate negative economic impacts is unknown.

For 2011, the ICCAT-recommended reduction in the amount of unused quota allowed to be carried forward (from 50 percent to 10 percent of a Contracting Party's total quota) limits the amount of 2010 underharvest the United States may carry forward from 2010 to 94.9 mt. Total 2010 U.S. underharvest was 380 mt. It is difficult to calculate potential revenue losses for the 285 mt difference between the underharvest and what can be carried forward, largely because commercial category revenues depend heavily on the availability of large medium and giant BFT to the fishery. However, assuming that this 285 mt amount would, if available to carry forward, be distributed across all categories as per the Consolidated HMS FMP allocation shares, and assuming the most recent price-per-pound information, NMFS estimates potential gross revenue losses from not having access to this additional quota in 2011 as follows: General category: \$855,561; Harpoon category: \$139,441; Purse Seine category: \$696,389; Longline category: \$251,501; Trap category: \$3,116.

6.6.2 NED – retention limits for pelagic longline vessels

The economic value of reinstating target catch requirements in the NED is difficult to quantify and even more difficult to predict because of the unpredictable nature of fish availability and participant behavior. Target catch requirements are intended, in part, to preserve the incidental nature of the Longline category fishery for BFT while fishing for target species such as swordfish and yellowfin tuna.

Alternative B2 would reinstate the target catch requirements in the NED such that the same limits apply to pelagic longline vessels fishing within and outside of the NED. NMFS analyzed the potential revenue reduction the Longline category would have had in 2009 if the subject limits were in place in the NED in 2009. Information from the 2009 fishing year was used because the most complete logbook and dealer records data are available for that year. As shown in Table 9, 189 BFT were landed in 2009 that would have had to be released if the target catch requirements that apply outside of the NED were in effect inside the NED in 2009. Using the average weight of BFT caught in the NED and landed by the Longline category in 2009 (403 lb) and the average Longline ex-vessel price-per-pound in round weight for 2009 (\$4.48), these 189 BFT (valued at approximately \$1,805 each) represent a potential loss in the Longline category of \$341,228 during the 2009 fishing season. For 2010, the average Longline category NED fish weight was 450 lb and the average ex-vessel price-per-pound for the Longline category was \$4.96. The estimated value of a BFT that could not be landed under target catch requirement restrictions based on updated 2010 information would be approximately \$2,000. Because the number of BFT taken in the NED in 2009 may have been anomalous, it is also useful to examine potential loss had the amount in excess of target catch requirements, had they applied, been similar to the amount in 2008, i.e., 19 BFT. Using the average weight of BFT caught in the NED and landed by the Longline category in 2010 (450 lb) and the average Longline ex-vessel price-per-pound in round weight for 2009 (\$4.96), 19 BFT (valued at approximately \$1,805 each) represent a potential overall loss in the Longline category of \$42,408.

It is important to consider that the continued potential for unlimited landings of BFT in the NED could result in the Longline category BFT quota being met prematurely. The combination of reduced ICCAT quotas, the reduced amount of BFT underharvest that can be carried forward, more complete use of subquotas by directed fishing categories, and the changing availability of fish of various sizes has reduced NMFS' ability to cover one category's overharvest with quota from another category or the Reserve category.

6.6.3 Atlantic tunas landing form - tails

Although some vessel operators may benefit from being able to store additional Atlantic tunas in their vessel's hold, NMFS is unable to quantify the potential benefit of clarifying the possession-at-sea and landing regulations, indicating that the lobes may be removed as long as the fork remains attached. The potential benefit would depend on the amount of Atlantic tunas retained and the size of the hold, which would vary from vessel to vessel. Generally, NMFS does not expect this action to result in changes to fishing practices.

6.6.4 Atlantic tunas transfer at sea

Clarification of the regulations, and the corresponding prohibition, regarding Atlantic tunas transfer at sea may serve as an additional deterrent for those vessels considering circumventing retention limits for personal economic gain. As transferring Atlantic tunas at sea violates the regulations, and therefore an illegal activity, the extent of this activity is unknown, and therefore the economic impact of the change is unquantifiable. Although NMFS does receive ex-vessel prices for Atlantic tunas, the agency currently does not know the frequency with which this illegal activity is occurring, and therefore cannot quantify the economic impact of this clarification to the regulations.

7.0 REGULATORY IMPACT REVIEW

This section assesses the economic impacts of the alternatives presented in this document. The RIR is conducted to comply with E.O. 12866 and E.O. 13563 and provides analyses of the economic benefits and costs of each alternative to the nation and the fishery as a whole. Certain elements required in an RIR are also required as part of an EA. Thus, this section should be considered only part of the RIR. The rest of the RIR can be found throughout this document.

The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits should be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

E.O. 12866 further requires Office of Management and Budget review of proposed regulations that are considered to be “significant.” A significant regulatory action is one that is likely to:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments of communities;
- Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the president’s priorities, or the principles set forth in this Executive Order.

7.1 Description of the Management Objectives

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

7.2 Description of the Fishery

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

7.3 Statement of the Problem

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

7.4 Description of Each Alternative

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

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

NMFS does not foresee that the national net benefits and costs would change significantly in the long term as a result of implementation of this action. The total amount of BFT landed and available for sale under this action is expected to provide slight net positive economic impacts, particularly over the long-term, from fishing at a level that is expected to allow for stock growth. Table 12 indicates the possible net economic benefits and costs of each alternative. The Western Atlantic BFT fishery TAC will be renegotiated in 2012.

7.6 Conclusion

Under E.O. 12866, a regulation is a "significant regulatory action" if it is likely to: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights, and obligation of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The action described in this EA/RIR/FRFA does not meet the above criteria. For example, the economic impacts as reflected in this rule are under the \$100 million threshold. This action raises no novel or legal policy issues as it sets fishing year BFT quotas for all domestic fishing categories consistent with international and domestic law and policy, reinstates target catch requirements for an area in which target catch requirements previously applied (from 1981 until the experiment in the NED began in 2002), and clarifies other Atlantic tuna fisheries regulations. It is not expected to result in any inconsistency with other agency actions. Therefore, under E.O. 12866, the action described in this document has been determined to be not significant for the purposes of E.O. 12866. A summary of the expected net economic benefits and costs of each alternative can be found in Table 12.

8.0 FINAL REGULATORY FLEXIBILITY ANALYSIS

The Final Regulatory Flexibility Analysis (FRFA) is conducted to comply with the Regulatory Flexibility Act (5 USC 601 et. seq.) (RFA). The goal of the RFA is to minimize the economic burden of federal regulations on small entities. To that end, the RFA directs federal agencies to assess whether the proposed regulation is likely to result in significant economic impacts to a substantial number of small entities, and identify and analyze any significant alternatives to the proposed rule that accomplish the objectives of applicable statutes and minimize any significant effects on small entities. Certain data and analysis required in a FRFA are also included in other chapters of this EA. Therefore, the FRFA incorporates the economic impacts identified in the EA by reference as supporting data for this analysis.

8.1 Statement of the Need for and Objectives of this Final Rule

In compliance with section 604(a)(1) of the RFA, the purpose of this rulemaking is, consistent with the Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable law, to implement and allocate the ICCAT-recommended U.S. quota for 2011 and 2012; adjust the 2011 U.S. quota and subquotas to account for unharvested 2010 quota allowed by ICCAT to be carried forward to 2011, and to account for a portion of the estimated 2011 dead discards up front; reinstate pelagic longline target catch requirements for retaining BFT in the NED; amend the Atlantic tunas possession-at-sea and landing regulations to allow removal of tail lobes; and clarify the transfer-at-sea regulations for Atlantic tunas.

8.2 Summary of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis (IRFA), a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made as a Result of Such Comments

Section 604(a)(2) of the RFA requires agencies to summarize significant issues raised by the public in response to the IRFA, a summary of the agency's assessment of such issues, and a statement of any changes made as a result of the comments.

NMFS received numerous comments on the proposed rule (75 FR 13582, March 14, 2011) during the comment period. A summary of these comments and the Agency's responses are included in Chapter 14 and are included in the final rule. Although NMFS did not receive comment specifically on the IRFA, NMFS received some comments that expressing concern about the economic impact of the 2011 BFT quota specifications, as proposed.

Several commenters stated that the proposed deduction of the dead discard estimate from the U.S. BFT baseline quota would result in a de facto reallocation of quota shares from those established in the Consolidated HMS FMP, which would be economically damaging to the directed fisheries. As described in Section 2.1, following consideration of public comment and the availability of updated (2010) dead discard estimates, NMFS has decided to account for one half of the dead discard estimate up front and directly against the Longline category quota, through the specifications process, which will mitigate some of the economic impacts associated with adjusting the baseline quota for dead discards. For the final 2011 quota specifications, the final rule maintains the directed categories at

their baseline quotas, which reflect application of the allocation scheme established in the Consolidated HMS FMP to the 2011 baseline U.S. BFT quota. For the Longline category, NMFS would deduct half of the 2010 dead discard estimate of 122.3 mt from the 2011 baseline Longline quota and apply half of the underharvest allowed to be carried forward to 2011 (i.e., $74.8 - 61.2 + 47.5 = 61.1$ mt). This resulting 61.1 mt quota for the Longline category does not include the 25-mt allocation for the NED. NMFS would hold the remainder of the 2010 underharvest allowed to be carried forward to 2011 (47.4 mt) within the Reserve category, for an adjusted Reserve category quota of 70.5 mt. NMFS intends to maintain this underharvest in the Reserve category until later in the fishing year for maximum flexibility in accounting for 2011 landings and dead discards.

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

Section 604(a)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. The implementation of the ICCAT-recommended baseline annual U.S. BFT quota would apply to all participants in the Atlantic BFT fisheries, all of which are considered small entities, because they either had average annual receipts less than \$4.0 million for fish-harvesting, average annual receipts less than \$6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small Business Administration (SBA) size standards for defining a small versus large business entity in this industry. As shown in Table 5, there are over 32,000 vessels that held an Atlantic HMS Charter/Headboat, Atlantic HMS Angling, or an Atlantic tunas permit as of October 2010. These permitted vessels consist of commercial, recreational, and charter vessels as well as headboats.

Reinstatement of target catch requirements in the NED would affect those Longline category permitted vessels that fish in the NED. As shown in Table 9, over the last 5 years, an annual total ranging from 6 to 10 vessels have reported trips in the NED and an annual total ranging from 4 to 8 vessels have landed BFT from the NED. However, to the extent that this action could avoid the need for fishery interruption due to insufficient BFT quota availability, it could affect all 248 Longline category permitted vessels.

Clarification of the Atlantic tunas landing form and transfer-at-sea regulations would be informative to owners and operators of Atlantic tunas permitted vessels and Atlantic HMS permitted vessels fishing for tunas, although material impacts are not expected to occur from the related changes in this action.

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

Under section 604(a)(4) of the RFA, agencies are required to describe any new reporting, record-keeping and other compliance requirements. The action does not contain any new collection of information, reporting, record keeping, or other compliance requirements.

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

Under section 604(a)(5) of the RFA, agencies are required to describe any alternatives to the rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in Chapters 4 and 6 of this document. Additionally, the Regulatory Flexibility Act (5 U.S.C. § 603 (c) (1)-(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

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

In order to meet the objectives of this rule, consistent with the Magnuson-Stevens Act, ATCA, and the ESA, NMFS cannot establish differing compliance requirements for small entities or exempt small entities from compliance requirements. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. As described below, NMFS analyzed several different alternatives in this rulemaking and provides rationale for identifying the preferred alternatives to achieve the desired objective. The FRFA assumes that each vessel within a category will have similar catch and gross revenues to show the relative impact of the action on vessels.

NMFS has estimated the average impact that the alternative to establish the 2011 and 2012 BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories. As mentioned above, the 2010 ICCAT recommendation reduced the U.S. baseline BFT quota for 2011 and 2012 to 923.7 mt and provides 25 mt for incidental catch of BFT related to directed longline fisheries in the NED. This action would distribute the baseline quota of 923.7 mt to the domestic fishing categories based on the allocation percentages established in the Consolidated HMS FMP.

In 2010, the annual gross revenues from the commercial BFT fishery were approximately \$8.9 million. As of October 2010, there were 8,311 vessels permitted to land and sell BFT under four commercial BFT quota categories (including HMS Charter/Headboat vessels). The commercial categories and their 2010 gross revenues are General (\$7.8 million), Harpoon (\$202,643), Purse Seine (\$0), and Longline (\$878,908).

For the allocation of BFT quota among domestic fishing categories, NMFS analyzed a no action alternative and Alternative A2 (preferred alternative) which would implement the 2010 ICCAT recommendation. NMFS considered a third alternative (A3) that would have allocated the 2010 ICCAT recommendation in a manner other than that designated in the Consolidated HMS FMP. Alternative A3 would result in quota reallocation among categories. The Consolidated HMS FMP addressed several aspects of the changing BFT fishery and included modification to time period subquotas and authorized gear for use in BFT fisheries, among other things. Further consideration of the information provided by the 2010 BFT stock assessment, international deliberations at, and following the 2010 ICCAT meeting, and observed changes in the fishery (e.g., relative year class strength and fish availability) may provide further insight into the larger fishery issues raised by this alternative, and could result in future regulatory or FMP amendments. For the purpose of this analysis, modifications to domestic management of BFT outside the limitations of the Consolidated HMS FMP and current ICCAT recommendations do not satisfy the purpose and need for the action. Additionally, preparation of an FMP amendment would not be possible in the brief period of time between receipt of the ICCAT recommendation, which occurred in late November 2010, and the start of the 2011 fishing year, the bulk of which begins in June. Therefore, Alternative A3 was considered but not analyzed. But, if an FMP amendment were feasible, positive economic impacts would be expected to result on average for vessels in any permit categories that would receive a greater share than established currently in the FMP, and negative economic impacts would be expected to result on average for vessels in permit categories that would receive a lesser share than established in the FMP. Impacts per vessel would depend on the temporal and spatial availability of BFT to participants.

As noted above, Alternative A2 would implement the 2010 ICCAT recommendation in accordance with the Consolidated HMS FMP and consistent with ATCA, under which the United States is obligated to implement ICCAT-approved quota recommendations, as necessary and appropriate. The preferred alternative would implement this quota and have slightly positive impacts for fishermen. The no action alternative would keep the quota at pre-2010 ICCAT recommendation levels (approximately 29 mt more) and would not be consistent with the purpose and need for this action, the Consolidated HMS FMP, and ATCA. The economic impacts to the United States and to local economies would be similar in distribution and scale to 2010 (e.g., annual commercial gross revenues of approximately \$8.9 million, as described above), or recent prior years, and would provide fishermen additional fishing opportunities, subject to the availability of BFT to the fishery, in the short term. In the long term, however, stock growth may be hindered and negative impacts would result.

It is difficult to estimate average potential ex-vessel revenues to commercial participants, largely because revenues depend heavily on the availability of large medium and giant BFT to the fishery. Section 6 describes potential revenue losses per commercial quota category based on each category's baseline quota reduction and price-per-pound information from 2010 (i.e., \$206,251 for the General category, \$13,944 for the Harpoon category, \$25,150 for the Longline category, and \$1,093 for the Trap category); although the Purse Seine category had no BFT landings in 2010, potential revenue losses of \$69,639 were estimated. As described in Section 4, because the directed commercial categories have underharvested their subquotas in recent years, particularly 2004-2008, the potential decreases in ex-vessel revenues above overestimate the probable economic impacts to those categories relative to recent conditions. Additionally, there has been substantial interannual

variability in ex-vessel revenues per category in recent years due to recent changes in BFT availability and other factors. Generally, the interannual differences in ex-vessel revenues per category have been larger than the potential impacts described above.

Data on net revenues of individual fishermen are lacking, so the economic impact of the alternatives is averaged across each category. This is an appropriate approach for BFT fisheries, in particular because available landings data (weight and ex-vessel value of the fish in price-per-pound) allow NMFS to calculate the gross revenue earned by a fishery participant on a successful trip. The available data do not, however, allow NMFS to calculate the effort and cost associated with each successful trip (e.g., the cost of gas, bait, ice, etc.) so net revenue for each participant cannot be calculated. As a result, NMFS analyzes the average impact of the alternatives among all participants in each category.

Success rates vary widely across participants in each category (due to extent of vessel effort and availability of commercial-sized BFT to participants where they fish) but for the sake of estimating *potential* revenue loss *per vessel*, category-wide revenue losses can be divided by the number of permitted vessels in each category (see Table 5). Because HMS Charter/Headboat vessels may fish commercially under the General category quota and retention limits, Charter/Headboat permitted vessels are considered along with General category vessels when estimating potential General category ex-vessel revenue changes. Potential ex-vessel revenue losses are estimated as follows: General category (including HMS Charter/Headboat vessels): \$26; Harpoon category: \$480; Longline category (incidental): \$101; Trap category (incidental): \$182; and Purse Seine category: \$13,928. Section 6 describes potential revenue losses per commercial quota category based on each category not having access to quota that would be available through the carrying forward of 2010 underharvest, were it not for the ICCAT recommendation that limits the amount of underharvest that may be carried forward to 10 percent of a Contracting Party's total quota beginning effective for 2011. Potential ex-vessel revenue losses resulting from this change are estimated as follows: General category (including HMS Charter/Headboat vessels): \$107; Harpoon category: \$4,808; Longline category (incidental): \$1,014; Trap category (incidental): \$519; and Purse Seine category: \$139,278. These values likely overestimate potential revenue losses for vessels that actively fish and are successful in landing at least one BFT.

The reinstatement of target catch requirements for pelagic longline vessels in the NED could, as described in Section 6.6.2, result in a potential loss of \$341,228. If this reduction is calculated for the universe of vessels participating in the NED over the last 5 years (range of 6-10 vessels), it would represent average potential ex-vessel reductions of \$34,123-\$56,871 per vessel. If the reduction is calculated across Longline category vessels, it would be \$1,376 per vessel. In Section 6.6.2, acknowledging that the 2009 number of BFT taken in the NED in 2009 may have been anomalous, NMFS also provided a figure for potential revenue loss of \$42,408. This would represent average potential ex-vessel reductions of \$4,241-\$7,068 per vessel. If the reduction is calculated across Longline category vessels, it would be \$171 per vessel.

However, the preferred alternative is expected to result in the most positive short and long-term economic impacts for the majority of BFT fishery participants, including Longline category participants, as it would increase the likelihood that the Longline category quota will be available

through the end of the year, without interruption, and decrease the potential need for reallocation from directed quota categories or quota reductions in subsequent years to cover Longline category excesses.

The other considered alternative was a no action alternative (maintaining the de facto exemption from target catch requirements for pelagic longline vessels fishing in the NED). The no action alternative risks exceeding the available Longline category quota, particularly in years where availability of commercial-sized BFT is high in the NED during directed pelagic longline activity for target species.

The modifications to the regulations concerning Atlantic tunas possession and landing form and Atlantic tunas transfer at sea are intended to facilitate Atlantic tunas storage and provide clarification, respectively. While these changes would apply to all vessels holding Atlantic tunas, HMS Charter/Headboat, and HMS Angling category permits (totaling approximately 33,000 vessels), they are not expected to have significant economic impacts. Therefore, NMFS has not analyzed alternatives beyond the preferred alternatives and no action. Specific estimates of economic impacts of these preferred alternatives are not quantifiable.

9.0 COMMUNITY PROFILES

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

Profiles for the following communities were included in Chapter 9 of the Consolidated HMS FMP and updated in Chapter 6 of the 2010 SAFE Report. These communities are analyzed for social impacts in this action due to the importance of BFT fishing to the community: Gloucester, MA; New Bedford, MA; Barnegat Light and Brielle/Point Pleasant, NJ; Hatteras, NC; Wanchese, NC; and Venice and Dulac, LA.

The impacts of this rule would be minor in all of these communities. The action to provide the 2010 ICCAT recommended quota decreases potential fishing opportunities (and positive economic impacts) relative to quota levels prior to the 2010 ICCAT recommendation. However, in the long-term, these lower quotas may increase the likelihood of a sustainable fishery in the future. The action to reinstate target catch requirements in the NED is taken in part to increase the likelihood that the Longline category quota is not harvested prematurely, potentially leading to fishery interruption. Therefore, to the extent this action allows for year-round directed pelagic longline fishery operation, it could have positive impacts for communities with pelagic longline fleets, including all of the communities listed above. The other Atlantic tunas management measures in this rule are expected have negligible impacts to these communities.

10.0 OTHER CONSIDERATIONS

10.1 Magnuson-Stevens Act

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

This action is consistent with NS 1 in that it would implement the BFT TAC that was adopted as part of ICCAT's ongoing implementation of the rebuilding program for western Atlantic BFT. The recommended TAC and associated U.S. baseline quota are expected to support stock growth under the three recruitment scenarios analyzed by ICCAT's scientific body. Because the action is based on the 2010 ICCAT recommendation, which took into consideration the results of the 2010 western Atlantic BFT stock assessment by the SCRS, it is based on the best scientific information available (NS 2), including stock assessment data which provide for the management of these species throughout their ranges (NS 3).

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

10.2 Paperwork Reduction Act

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

10.3 E.O. 13132

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

11.0 LIST OF PREPARERS

This EA/RIR/FRFA was prepared by staff of the HMS Management Division, Office of Sustainable Fisheries. Please contact the HMS Management Division, Northeast Regional Office, for a complete copy of current regulations for the Atlantic tunas fisheries.

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12.0 LIST OF AGENCIES AND PERSONS CONSULTED

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

13.0 REFERENCES

- NMFS. 1999. Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks. NOAA, NMFS, Highly Migratory Species Management Division.
- NMFS. 2000. Regulatory Amendment 1 to the 1999 HMS FMP. Reduction of Bycatch, Bycatch Mortality, and Incidental Catch in the Atlantic Pelagic Longline Fishery. NOAA, NMFS, Highly Migratory Species Management Division.
- NMFS. 2002. Regulatory Amendment 2 to the Atlantic Tunas, Swordfish, and Sharks Fishery Management Plan. NOAA, NMFS, Highly Migratory Species Management Division.
- NMFS. 2003. Final Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks. NOAA, NMFS, Highly Migratory Species Management Division.
- NMFS. 2004. Final Supplemental Environmental Impact Statement for a Final Rule to Implement Management Measures to Reduce Bycatch and Bycatch Mortality of Atlantic Sea Turtles in the Atlantic Pelagic Longline Fishery. NOAA, NMFS, Highly Migratory Species Management Division.
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- NMFS. 2010. Stock Assessment and Fishery Evaluation (SAFE) Report for Atlantic HMS Species. NOAA, NMFS, Highly Migratory Species Management Division.
- SCRS. 2010. Report on the Standing Committee on Research and Statistics, ICCAT Standing Committee on Research and Statistics, October 4-8, 2010.

14.0 PUBLIC COMMENT AND AGENCY RESPONSES

NMFS received approximately 2,000 written comments representing approximately 4,000 individuals or organizations, and oral comments were received from the approximately 400 participants who attended the six public hearings (in Barnegat, NJ; Manteo, NC; Gloucester, MA; Silver Spring, MD; Portland, ME; and Fairhaven, MA). The majority of the comments received opposed the 2011 BFT quota specifications as proposed. Below, NMFS summarizes and responds to all comments made specifically on the proposed rule. In addition, NMFS received comments on issues that were not part of this rulemaking. These comments are summarized under “Other Issues” below.

A. BFT Base Quota

Comment 1: NMFS should implement the ICCAT-recommended U.S. quota.

Response: NMFS agrees. Implementing the ICCAT-recommended baseline U.S. BFT quota is necessary for the United States to be in compliance with the current ICCAT western BFT Recommendation, consistent with ATCA. The western Atlantic BFT Total Allowable Catch (TAC), which includes the U.S. quota, is expected to allow for continued BFT stock growth under the both the low and high stock recruitment scenarios considered by ICCAT’s Standing Committee on Research and Statistics (SCRS).

Comment 2: It is arbitrary and capricious for NMFS to adopt quotas relying on the ICCAT western BFT recommendation. A 2008 independent review found ICCAT ineffective at controlling catch and that ICCAT management objectives have not been met. By relying entirely on ICCAT recommendations to set quotas, NMFS has “spurned its legal obligations under the Magnuson-Stevens Act,” specifically violating National Standard 1, which requires that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery, and National Standard 2, which requires that conservation and management measures shall be based upon the best scientific information available. NMFS should not rely solely on ICCAT stock assessments.

Response: NMFS disagrees that adoption of the ICCAT-recommended quota for western BFT is arbitrary and capricious or violates National Standards 1 and 2. NMFS considers the information considered by SCRS in the BFT stock assessments to constitute the best information currently available on which to make BFT fishery management decisions.

The United States is working with other ICCAT Contracting Parties to prevent BFT overfishing and overfished conditions for both stocks while providing reasonable opportunities to fish. At its 2010 annual meeting, ICCAT adopted TACs and other conservation and management measures that are within the range of scientific advice that SCRS provided for both the western and eastern Atlantic stocks. Over the past several years, ICCAT has taken steps to strengthen its control of the eastern Atlantic bluefin tuna fishery, including a shorter fishing season, further reductions in fishing capacity, and stronger monitoring and compliance measures. ICCAT’s 2010 assessment of the eastern BFT stock indicated that maintaining catches at the current TAC will likely allow biomass

to increase if compliance with the current management measures continues. The latest stock assessment concluded that the current western Atlantic TAC should allow spawning stock biomass to increase under both high and low productivity scenarios. The western Atlantic fishery has also had a long history of compliance. In addition, the current ICCAT BFT recommendations for both the western and eastern stocks have a provision that would suspend all bluefin fisheries if SCRS detects a serious threat of stock collapse.

Further, NMFS manages BFT under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA mandates that no regulation promulgated may have the effect of increasing or decreasing any allocation or quota of fish to which the United States agreed pursuant to an ICCAT recommendation.

Comment 3: NMFS should reduce significantly, or eliminate, quotas for fisheries targeting BFT and take immediate measures to reduce incidental mortality.

Response: NMFS is required under the Magnuson-Stevens Act and ATCA to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota. NMFS allocates the U.S. quota among categories to ensure that available fishing opportunities are distributed over as wide a range as possible with regard to time of year, geographic area, and type of participation while maintaining consistency with BFT conservation and management measures. Both the recent action to require the use of weak hooks by pelagic longline vessels fishing for HMS in the Gulf of Mexico and the action in this final rule to reinstate target catch requirements in the NED are consistent with the agency's efforts to address bycatch issues and manage BFT catch and landings within available quotas.

Comment 4: NMFS must consider the scientific information presented in the petition to list BFT as endangered or threatened under the Endangered Species Act (ESA), and CBD's comments on the 90-day finding, before issuing final conservation and management measures, including quotas, for BFT.

Response: Much of the information that was considered in the BFT listing petition status review was also considered by ICCAT and by NMFS in setting the BFT TAC and category quotas, respectively. NMFS proposed and is finalizing these management measures to be effective for June 2011, when ICCAT Recommendation 10-03 enters into force. Although the two efforts were conducted in parallel, the agency's fishery management obligations, including establishing the 2011 quota specifications, continued under ATCA and the Magnuson-Stevens Act during the status review process.

On May 27, 2011, NOAA announced that listing BFT as endangered or threatened is not warranted at this time. NOAA has committed to revisit this decision by early 2013, when more information will be available about the effects of the Deepwater Horizon BP oil spill, the 2012 SCRS BFT stock assessment, and the 2012 ICCAT BFT recommendations. NOAA also announced on May 27, 2011, that it is formally designating both the western Atlantic and eastern Atlantic and Mediterranean stocks of BFT as "species of concern" under the ESA. This places the species on a watchlist for concerns about its status and threats to the species.

B. 2011 BFT Quota Specifications

Comment 5: NMFS should not deduct the dead discard estimate from the base quota. To account for pelagic longline BFT dead discards off the U.S. base quota is unfair as it would result in reduced quotas for the more selective, directed fishing categories. This would result in a de facto reallocation of quota shares from those established in the Consolidated HMS FMP. It would also be economically damaging to the directed fisheries and support industries, and likely would result in shorter seasons and lower retention limits. NMFS is not managing for optimum yield when it allows the Longline category's landings and dead discards to total approximately 28 percent of the U.S. quota.

Response: The United States must account for dead discards, regardless of which fishery they occur in, to comply with ICCAT recommendations. The only dead discard data currently available comes from the longline fishery. Existing BFT quota regulations state that NMFS may subtract dead discards from the U.S. quota and make the remainder available to vessels subject to U.S. jurisdiction. This is an allowable methodology under existing regulations, and was not a new proposal in this rulemaking.

However, as described above, following consideration of public comment and the availability of updated dead discard estimates, NMFS has decided to account for one half of the dead discard estimate up front and directly off the Longline category quota, which will mitigate potential economic impacts commenters associated with adjusting the baseline quota for dead discards. For the directed fishing categories, NMFS is applying the allocation scheme established in the Consolidated HMS FMP to the 2011 baseline U.S. BFT quota with no further adjustments.

It is important to consider that the BFT quota allocations in the Consolidated HMS FMP were based on historic landings and were established initially in 1992. Baseline quotas were modified in 1995 and 1997 but have remained the same since implementation of the 1999 FMP when a separate discard allowance was provided for in the ICCAT BFT recommendation. Following ICCAT's elimination of the dead discard allowance and change to include dead discards within TACs in 2006, NMFS has not modified the allocation scheme to include dead discards into the baseline quotas. The United States has accounted for this mortality as part of the domestic specification calculation process for the last several years and reports dead discard estimates to ICCAT annually. This is one of many issues the agency intends to consider in its review of BFT management in the near future. Regarding the concern about shorter fishing seasons and lower retention limits, specifically for the recreational BFT fishery in 2011, the inseason actions implemented in April (i.e., retention limit adjustment and closure of the southern area BFT trophy fishery) were based on recent changes in the fishery and size of bluefin tuna available to fishermen, not the proposed quota specifications. Finally, NMFS would like to clarify that accounting for dead discards as proposed or as finalized does not alter the Longline category's allocation of the U.S. quota. As proposed and finalized, the Longline category's allocation per the Consolidated HMS FMP is 8.1 percent to allow for landings of BFT, not dead discards. The pelagic longline fleet does not benefit economically from the BFT they must discard dead.

Comment 6: NMFS should not deduct the dead discard estimate from the overall quota (i.e., "off the top") because it would provide no incentive for the pelagic longline fishery to reduce BFT

interactions and dead discards. NMFS should account for these dead discards within the Longline category quota, and, generally, should hold each category accountable for its overharvests.

Response: As discussed above, in these final quota specifications, NMFS is accounting for half of the estimated dead discards within the Longline category up front. This may provide some incentive for pelagic longline fishermen to reduce BFT interactions that may result in dead discards. Reinstating target catch requirements in the NED also may serve as a disincentive to fish in areas where BFT interactions could be high.

As discussed below, the pelagic longline fishery is currently the only fishery for which sufficient data is collected to estimate dead discards. However, an unknown level of dead discards occurs in directed BFT fishing fisheries as well and NMFS will consider how best to modify data collection programs to provide dead discard estimates in the future.

Comment 7: NMFS should consider implementing a 25-percent to 50-percent reduction of the allocated quota to the Longline category for one or more years. The longliners know there need to be some changes, although we do not think it would be appropriate to cut out the pelagic longline fishery entirely.

Response: NMFS does not eliminate the quota for the Longline category in the final rule, although some of the approaches recommended in the comments on the proposed rulemaking would have had that effect. As discussed above, NMFS is accounting for half of the estimated pelagic longline dead discards up front and deducting that portion of expected longline discards directly from the Longline category quota. Accounting for dead discards in the Longline category in this way may provide some incentive for pelagic longline fishermen to reduce those interactions that may result in dead discards. Reinstating pelagic longline target catch requirements for retaining BFT in the NED may also have a similar effect.

Comment 8: The proposed quota specifications are not consistent with the ICCAT provision that Contracting Parties shall minimize dead discards to the extent practicable. Allocating a disproportionate share of the BFT quota to the sector that causes the most discards is inconsistent with ICCAT mandates. The proposed quota specifications also ignore the obligations of the 1982 United Nations Convention on the Law of the Sea, the 1995 United Nations Fish Stocks Agreement, and the 1995 Food and Agriculture Organization Code of Conduct, which call for minimizing catch of non-target species.

Response: The U.S. quota finalized in this action is consistent with ICCAT Recommendation 10-03, the Magnuson-Stevens Act, and ATCA. The U.S. pelagic longline fleet fishes directly for swordfish and Atlantic tunas such as yellowfin tuna and catches BFT incidentally. Dead discards are the result of domestic and international restrictions on the size of BFT that may be retained and requirements that certain amounts of target species (e.g., swordfish and other tunas) be landed in order to keep any BFT. If small BFT are caught, or if insufficient target species have been caught, BFT must be discarded, and some are discarded dead. The agency has historically implemented a series of management measures designed to regulate the incidental catch of BFT in non-directed Atlantic fisheries. Additionally, NMFS currently imposes a time and area closure for the month of

June to prevent BFT longline interactions off the mid-Atlantic coast. As discussed above, NMFS recently finalized a rule requiring the use of weak hooks in the Gulf of Mexico pelagic longline fishery to minimize BFT interactions, is reinstating target catch requirements in the NED through this action, and also will consider options for further regulatory changes to reduce dead discards in the future. Regarding the 1982 United Nations Convention on the Law of the Sea, the 1995 United Nations Fish Stocks Agreement, and the 1995 Food and Agriculture Organization Code of Conduct for Responsible Fisheries, NMFS does not consider this action to be inconsistent with those instruments.

Comment 9: Under ATCA, NMFS is authorized to adopt regulations necessary and appropriate to carry out the purposes and objectives of ICCAT. NMFS has been violating ATCA by allowing a de facto “incidental catch” fishery in the Gulf of Mexico, in violation of the ICCAT recommendation to prohibit directed fishing targeting BFT in that area.

Response: NMFS prohibits directed fishing for BFT in the Gulf of Mexico. However, some level of BFT catch is unavoidable during directed fishing for yellowfin tuna and swordfish. NMFS has historically implemented a series of management measures designed to regulate and limit the incidental catch of BFT in non-directed Atlantic fisheries.

Comment 10: Allocating a disproportionate portion of the BFT quota to the Longline category, which catches BFT only as bycatch, violates National Standard 4, which prohibits discrimination in the allocation of fishing privileges.

Response: National Standard 4 includes provisions that measures shall not discriminate between residents of different states and allocations shall be fair and equitable to all fishermen. NMFS is allocating the baseline U.S. BFT quota consistent with the Consolidated HMS FMP allocation scheme. The action does not discriminate between residents of different states in the allocation of fishing privileges. It is important to note that the directed fishing categories currently do not have the same monitoring requirements as the pelagic longline fleet (e.g., for logbooks and observers) and that improvements in directed fishery data collection could result in changes to the dead discard estimate and to the future management of those fisheries.

In the proposed 2011 quota specifications, NMFS’ goal was to balance the objectives of accounting for dead discards proactively, distributing fishing opportunities in a manner consistent with the Consolidated HMS FMP allocation scheme, and allowing continued operation of commercially valuable fisheries for swordfish and other tunas while controlling the landings of the incidental BFT catches. Through the final action, as described above, NMFS has used an approach that accounts for a portion of the dead discard estimate up front, holds a portion of the unharvested 2010 BFT quota that is allowed to be carried forward to 2011 in the Reserve category for maximum flexibility for end-of-year accounting, and maintains directed fishing categories at their baseline quotas, which reflect application of the allocation scheme established in the Consolidated HMS FMP to the 2011 baseline U.S. BFT quota.

Comment 11: Perpetuating BFT dead discards does not serve the primary values of the BFT resource – food production and recreational opportunities – and thus violates National Standard 5,

which requires that conservation and management measures consider efficiency in the utilization of fishery resources.

Response: NMFS considers efficiency in the utilization of the BFT resource across user groups, consistent with National Standard 5. To meet the multiple goals for the BFT fishery, NMFS considers the importance of all of the national standards when making fishery management decisions, including those intended to provide reasonable fishing opportunities to a wide range of users and gear types, coastwide, throughout the calendar year.

Comment 12: Because the proposed rule did not propose that bycatch be avoided or reduced, it violates National Standard 9, which requires that conservation and management measures minimize bycatch.

Response: The main purpose of the proposed rule was to implement the 2010-ICCAT recommended baseline U.S. BFT quota. The quota specifications were proposed to account for underharvest allowed to be carried forward to 2011 and to account for dead discards. The Consolidated HMS FMP and its implementing regulations minimize bycatch and bycatch mortality to the extent practicable in several ways. Most recently, on April 5, 2011, NMFS published a final rule to require weak hook use in the Gulf of Mexico pelagic longline fishery (76 FR 18653). That action and the action in this final rule to reinstate target catch requirements in the NED are part of the agency's efforts to address bycatch issues and manage BFT catch and landings within available quotas. NMFS may identify additional measures to be taken in the future resulting from further management review.

Comment 13: NMFS should account for dead discards as proposed. This approach is consistent with the method used for the last several years and would allow continued participation in the fishery by all user groups. The 8.1-percent Longline category allocation established in the FMP was based only on historical landings, not catch (i.e., landings and discards). NMFS should continue to explore ways to convert dead discards to landings. Furthermore, NMFS should refer to dead discards as "regulatory discards" since it is domestic regulations that force pelagic longline fishermen to waste BFT bycatch.

Response: From 2007 through 2010, NMFS deducted the estimate of dead discards up front, but directly from the Longline category. In those years, NMFS was able to follow this approach while also providing a landings quota for the Longline category because of large underharvests and the fact that ICCAT allowed an amount equal to half of the U.S. quota to be carried forward to the following year. At the time the proposed rule was prepared, NMFS determined that the same approach would be impracticable given the change in the amount of underharvest that could be carried forward to 2011 (i.e., from 50 percent of the U.S. quota to 10 percent, or from approximately 475 mt to 95 mt). NMFS considers the approach used for these final 2011 quota specifications to be a transitional approach from the method used over the past four fishing years. NMFS acknowledges the implications of the change in the ICCAT western BFT recommendation in 2006 for the pelagic longline fishery, and is attempting to balance the needs of the pelagic longline fleet to continue operations for the directed swordfish and Atlantic tunas fisheries with the needs of directed BFT fishery participants.

Comment 14: The pelagic longline fleet is critical in providing domestic swordfish and Atlantic tunas product and catch data used in highly migratory species stock assessments, and has contributed to scientific sampling efforts. Curtailing longline effort based on BFT bycatch could result in the loss of U.S. swordfish quota (if not used) to other ICCAT contracting parties that do not use safe handling and release practices, consequently having negative impacts to sea turtles and mammals, as well as billfish.

Response: NMFS acknowledges the role of the pelagic longline fishery in providing domestic fish products and important data for HMS stock assessments, such as indices of abundance on the high seas. NMFS recognizes the conservation efforts of the U.S. longline fleet as well as the concerns about potential loss of quota to countries with less protective measures for protected species. Through these final specifications, NMFS is accounting for half of the estimated dead discards against the Longline category up front but also is providing half of the available underharvest to the Longline category to balance the need for continued directed longline operations for swordfish and Atlantic tunas with the need to account for dead discards within the U.S. BFT quota.

Comment 15: Use of the 2009 pelagic longline dead discard estimate as a proxy for 2011 dead discards is inappropriate, in part because the estimate is nearly two years old, and in part because 2009 may have been an anomalous year for pelagic longline BFT catches.

Response: Since the proposed rule was published, NMFS has received and is now using the 2010 dead discard estimate. NMFS considers the 2010 dead discard estimate to be the best information available. By maintaining a portion of the 2010 BFT underharvest (allowed to be carried to 2011) in the Reserve category rather than allocating that amount now, NMFS is maximizing its flexibility regarding accounting for total 2011 landings and dead discards. As the season progresses, NMFS will have more 2011 information to use in making inseason transfer decisions as well as more data on pelagic longline BFT interactions, including dead discards.

Comment 16: In considering a proxy for the 2011 estimate, NMFS should calculate the anticipated reduction in dead discards expected to result from required use of weak hooks in the Gulf of Mexico.

Response: NMFS agrees that the recent implementation of the weak hook requirement for pelagic longline vessels in the Gulf of Mexico should reduce BFT bycatch and dead discards in the Gulf of Mexico. However, the weak hook requirement was not effective until May 5, 2011, mid-way through the BFT spawning season (April through June). This, combined with uncertainties regarding post-release mortality, makes it difficult to quantify now the effect of the weak hook requirement on incidental BFT catch in the Gulf of Mexico. Therefore, the 2010 dead discards estimate is the best available proxy at this time. NMFS will continue to examine this issue and take appropriate action to account for any reductions in dead discards that result from the weak hook rule implementation.

Comment 17: The dead discard estimation methodology is unclear, and there are concerns that the extrapolation method may be amplifying the level of discards.

Response: The United States applies the SCRS-approved methodology to calculate and report

dead discards for both stock assessment purposes and quota compliance purposes. The amount of dead discards is generated by estimating discard rates from data collected by NMFS' Pelagic Observer Program and extrapolating these estimates using the effort (number of hooks) reported in the Pelagic Logbooks. This methodology is applied within each time/area stratum (e.g., catch rates from the Gulf of Mexico are used to estimate discards from the Gulf of Mexico, not the NED). Estimates of dead discards from other gear types and fishing sectors that do not use the pelagic longline vessel logbook are unavailable at this time and thus are not included in this calculation. Changes to the approved method likely would require consideration and approval by the SCRS prior to U.S. implementation.

Comment 18: It is not mandatory for NMFS to project and account for U.S. dead discards at the start of year. ICCAT requires accounting for 2011 landings and dead discards in 2012.

Response: The ICCAT requirement is for countries to report total annual catch (landings and dead discards) in the year following the subject fishing year, i.e., report in the summer of 2012 the 2011 total. Since the change in the ICCAT recommendation to eliminate the dead discard allowance, NMFS has taken a precautionary approach in proactively deducting the estimate of dead discards up front when establishing the final quota specifications for each year. NMFS must also balance its obligation to provide reasonable opportunity to harvest the U.S. quota with the fact that the ICCAT western BFT recommendation includes a provision for reduction of a Contracting Party's quota by 100 percent of the amount in excess of the quota and by 125 percent if overharvest occurs for a second year. As described above, in this final action, NMFS is taking the proactive measure of accounting for half of the estimated pelagic longline dead discards up front and deducting that portion of expected longline discards directly from the Longline category quota. Regardless of the specifications details in the final rule, the total 2011 U.S. BFT landings and pelagic longline dead discards will be accounted for and reported to ICCAT, and NMFS would make any ICCAT-required adjustments to future U.S. BFT quotas, if necessary.

Comment 19: NMFS should find a way to account for at least some portion of the dead discard estimate using the 285 mt of 2010 underharvest that the United States is unable to carry forward under the current ICCAT BFT Recommendation.

Response: In the 2010 BFT final quota specifications, NMFS deducted 172.8 mt (the 2008 dead discard estimate, used as a proxy for estimated 2010 dead discards) up front from the 2010 Longline category baseline quota. It would be inappropriate and inconsistent with the ICCAT BFT Recommendation to account for 2011 estimated dead discards with the amount of 2010 adjusted BFT quota that was unharvested and cannot be carried forward to 2011.

Comment 20: The Massachusetts Division of Marine Fisheries commented that the proposed quota allocation (i.e., providing each quota category its FMP-based share of a quota that has been adjusted up front to account for anticipated dead discards in the pelagic longline fishery) attempts to maintain traditional FMP-based allocations without accounting for the changing nature of the BFT fisheries. The Purse Seine category, which has been allocated 18.6-percent of the U.S. quota, has not landed its full quota since 2003 and has had virtually no landings since 2005. Therefore, strict adherence to allocations based on the FMP-based allocations makes little sense, in the short-term,

given the unlikelihood that this category will land its quota share. NMFS should use inseason management authority to temporarily reallocate unused quota to address discards.

Response: Under the current quota regulations, NMFS is obligated, regardless of their recent inactivity, to make equal allocations of the available Purse Seine category BFT subquota among the Purse Seine category vessels that have requested their 2011 allocations. However, within a fishing year, NMFS may transfer quotas among categories using determination criteria based on consideration of the regulatory determination criteria regarding inseason adjustments and other relevant factors provided under § 635.27(a)(8), such as: 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; review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds; 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; and the effects of the adjustment on accomplishing the objectives of the fishery management plan. Thus, if the Purse Seine subquota is not used, NMFS has the option to transfer that quota allocation to other categories, if appropriate.

Comment 21: The directed BFT fishery participants have successfully avoided dead discards and should not be adversely affected, through reduced quotas and fishing opportunities, in the process of accounting for dead discards for the incidental pelagic longline fishery.

Response: Although NMFS recognizes that commercial fishermen and recreational anglers generally attempt to avoid discarding BFT, some amount of discards is inevitable due to restrictions on size and retention limits, and some amount of the BFT released are already dead or do not survive. As discussed above, the pelagic longline fishery is currently the only fishery for which sufficient data is collected to estimate dead discards. Data collection programs may need to be modified to provide more accurate dead discard estimates in the future. The topic of post-release mortality received substantial attention at the 2010 ICCAT meeting and NMFS anticipates that the issue will be a focus at the 2012 ICCAT meeting when the western BFT Recommendation is renegotiated. Regarding the potential impact of the proposed action on inseason BFT management, see response to Comment 5.

Comment 22: All user groups have discards, some of which are dead, and NMFS should initiate or expand studies to examine dead discard and release mortality rates in the all fishing categories. We should have our own national estimates rather than becoming subject to estimates from other BFT fisheries that may not be comparable to U.S. BFT fisheries.

Response: NMFS agrees that examination of dead discard and release mortality estimates rates in all fishing categories is warranted and will explore methods to account for this mortality in the near future.

Comment 23: Transfers of U.S. quota to other ICCAT contracting parties should be out of the question, particularly since the United States may be quota limited in 2011. Transferring quota would decrease opportunities to U.S. fishermen and may have negative impacts on protected species.

Response: The United States has not received any request for transfer of BFT quota from another ICCAT contracting party. At this point, NMFS is allocating fully the U.S. baseline and

adjusted quotas, including to the Reserve category, for domestic management purposes. Although no transfers are anticipated at this time, if NMFS were later to consider a transfer of U.S. quota to another ICCAT Contracting Party, NMFS would publish a separate action in the Federal Register, which would provide the details of the proposed transaction, including factors such as the amount of quota to be transferred, the projected ability of U.S. vessels to harvest the total U.S. BFT quota before the end of the fishing year, the potential benefits of the transfer to U.S. fishing participants (such as access to the EEZ of the receiving Contracting Party for the harvest of a designated amount of BFT), potential ecological impacts, and the Contracting Party's ICCAT compliance status. Additional NEPA analysis would be prepared, as appropriate, to analyze any additional action.

C. Reinstatement of Target Catch Requirements in the NED

Comment 24: NMFS should implement target catch requirements for pelagic longline vessels fishing in the NED. Limiting the number of BFT that may be retained and landed would serve as a disincentive to target BFT or to fish in areas where interactions could be high.

Response: NMFS agrees and is reinstating target catch requirements in the NED in this final rule.

Comment 25: NMFS should not implement the target catch requirements that apply coastwide for pelagic longline vessels within the NED. The 25-mt quota that ICCAT allocated for bycatch during pelagic longline fishing in the vicinity of the management area boundary was intended to be managed and accounted for distinctly from the U.S. share of the western BFT TAC. Pelagic longline vessels do not target BFT; there are sets on swordfish where the bycatch of BFT cannot be avoided. Furthermore, 2009 was an anomaly with regard to BFT landings in the NED, which generally have been under 10 mt annually. Implementing the target catch requirements that apply coastwide could have the unintended result of increasing BFT dead discards. NMFS should instead consider multi-year accounting for NED landings or a higher trip limit, such as 10 fish.

Response: NMFS must implement ICCAT management measures as they are presented in the formal ICCAT recommendations, including the western BFT recommendation. NMFS acknowledges that the 2009 level of BFT interactions in the NED may have been abnormally high and that the pelagic longline fleet is not targeting BFT. Nonetheless, NMFS maintains that reinstating target catch requirements in the NED may serve as a disincentive for a vessel owner or operator to fish in areas where BFT interactions could be high, or to extend a fishing trip in order to retain additional BFT. NMFS expects that implementing the same target catch requirements in all areas will decrease likelihood that the Longline category quota is harvested prematurely, which could have economic impacts particularly on those vessels that do not fish in the NED. It also would be consistent with ongoing agency efforts to better align pelagic longline catch with Consolidated HMS FMP objectives and quota allocations.

D. Allowing Removal of Atlantic Tunas Tail Lobes

Comment 26: Allowing for Atlantic tunas tails to be trimmed as NMFS proposed is an easy, common-sense measure that will make handling and storage of tunas in fish holds more efficient.

Response: NMFS' proposal to allow removal of the upper and lower lobes of the tail was intended to balance the need to preserve the sole method for measuring Atlantic tunas, i.e., Curved Fork Length, which is taken by measuring to the fork of the tail, with the need for both commercial and recreational participants to store these fish as efficiently as possible. Therefore, NMFS is finalizing the measure as proposed.

Comment 27: It is important that vessels be able to properly store the fish to preserve fish quality, and trimming the lobes would not help for giant BFT that may not fit in the hold. NMFS should allow the tail to be cut but require that the skin be left intact. The tail could then be folded for slushing purposes but be folded back to allow for a proper measurement.

Response: NMFS acknowledges the importance to properly store fish to preserve their quality and also recognizes that allowing the removal of the upper and lower tail lobes may not assist storage in all instances, especially for giant BFT. However, to facilitate enforcement of size limits and to preserve the sole method for measuring Atlantic tunas, NMFS has opted not to allow the tail to be cut prior to being offloaded at this point in time.

E. Clarification of Atlantic Tunas Transfer at Sea

Comment 28: The proposed clarification is necessary to close a regulatory loophole. NMFS should further clarify that transfer includes moving a tuna from fishing or other gear in the water from one vessel to another.

Response: The intent of this clarification is to ensure that fishermen are informed that transferring Atlantic tunas at sea, either by transferring the actual fish, or by transferring fish that remain in water, is prohibited. This also includes moving an Atlantic tuna using some sort of other gear, e.g. using a poly ball to transfer a fish, therefore NMFS agrees that a this concept should be included in the clarification.

Comment 29: NMFS should not overburden itself with further regulations like this that are very difficult to enforce.

Response: NMFS acknowledges that some regulations may be more difficult to enforce than others. However, this change in the regulations is intended to clarify, and enhance the enforceability of, existing regulations controlling effort, including daily retention limits. These effort controls are vital to ensuring all fishery participants have a reasonable opportunity to harvest Atlantic tunas regardless of their geographic or temporal engagement with the fishery. This clarification is also intended to preserve the allocation percentages, both within and across the various quota categories, by constraining landings to individual category quotas. As this change does not impose a new requirement, but merely clarifies and enhances the enforceability of existing regulations, NMFS does not consider it overly burdensome.

F. Other Issues

NMFS received comments on the issues outlined under the eight subheadings below. These suggestions are beyond the scope of this rulemaking. However, in light of the issues involving U.S. quotas and domestic allocations, pelagic longline dead discards, the need to account for dead discards that result from fishing with other gears, and bycatch reduction objectives, as well as public comment, NMFS intends to undertake a comprehensive review of BFT management in the near future to determine whether existing management measures need to be adjusted to meet the multiple goals for the BFT fishery.

1) Bycatch of BFT

NMFS received comments requesting implementation of various actions to address pelagic longline BFT bycatch, including: establish bycatch caps or other incentives to reduce bycatch, such as those based on U.S. northeast species management (e.g., closure of directed fishery when a “choke species” limit is met) or Canadian highly migratory species management (e.g., exclusion zones and quota transfers); establish time/area closures in the Gulf of Mexico; implement dynamic area management; expand the weak hook requirement beyond the Gulf of Mexico (although many expressed this would not be effective or appropriate); require the fleet to use buoy gear or greensticks in the Gulf of Mexico; increase observer coverage and/or real-time monitoring of landings and dead discards, including via VMS; prohibit retention of BFT for sale by pelagic longline vessels; change the FMP allocation to reflect both landings and dead discards; change the allocation scheme to one that promotes fishing with selective fishing gears; adjust the minimum size for BFT retention and implement other regulatory changes that would allow conversion of BFT dead discards to landings, including in the NED. The Massachusetts Division of Marine Fisheries commented that allocation schemes that result in the failure of U.S. fishermen to land the U.S. quota while discarding dead BFT will negatively impact domestic interests in the future. Several commenters recognize the challenge of maximizing swordfish quota utilization with minimizing BFT discards. Many commenters expressed concern that without a bycatch cap and with expected BFT stock growth, pelagic longline BFT interactions would increase. Dead discards could grow without limit, potentially representing a majority of the U.S quota, thereby compromising the directed fisheries.

2) Permit Issues

NMFS received comment that, as the BFT quota is small, NMFS should change all BFT permits from open access to limited access. Regarding swordfish revitalization, NMFS received comment that implementation of an HMS handgear permit would help increase swordfish quota utilization by gears more selective than pelagic longline, thus reducing potential BFT bycatch and dead discards.

3) Inseason Quota Transfers

NMFS received numerous comments that it should use “inseason quota transfers” that were actually recommendations to reallocate quota in a matter inconsistent with the Consolidated HMS FMP.

4) Recreational Fishery Monitoring

NMFS received comments that recreational landings must be tracked in a more timely fashion. Programs like the Massachusetts landing census pilot program, currently under development, should be implemented in all states as soon as possible.

5) ICCAT Negotiations

NMFS received comments that the U.S. delegation should further consider domestic BFT fishery needs (for all HMS fisheries) when setting the U.S. position at ICCAT, that the U.S. delegation should renegotiate the BFT Recommendation, including quotas and the amount of underharvest allowed to be carried forward from one year to the next, should pursue two-year balancing periods for the base quota and NED allocation, and, wherever possible, maximize its ability to fully use the quota over a given period.

6) Consideration of Petition to List BFT as Threatened or Endangered

NMFS received comments that the current management system, which allows a substantial portion of the U.S. quota to be discarded dead, contradicts agency consideration of the petition to list BFT as threatened or endangered under the Endangered Species Act.

7) BFT Boycott

NMFS received a petition from the Center for Biological Diversity, with the names of more than 22,000 people who have pledged not to eat Atlantic and Southern BFT (fished around Australia) and to boycott restaurants with BFT on the menu in order to reduce consumer demand for and conserve both species. The Center for Biological Diversity launched the boycott following the November 2010 ICCAT meeting.

8) November 2009 BFT Regulatory Amendment

The North Carolina Division of Marine Fisheries encourages NMFS to (1) implement the 2009 proposed BFT management measure that would allow the General category season to extend past January 31 if January General category subquota remains available, and (2) establish a separate subquota for the months of February and March, potentially assigning unused prior year quota to that period. This would allow for greater utilization of available U.S. BFT quota.

15.0 FINDING OF NO SIGNIFICANT IMPACT

Atlantic bluefin tuna (BFT) quotas and Atlantic tuna fisheries management measures

The Highly Migratory Species (HMS) Management Division of the Office of Sustainable Fisheries submits the attached Environmental Assessment (EA) for the Atlantic bluefin tuna fisheries for Secretarial review under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This EA considers information contained in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), and was developed as an integrated document that includes a Regulatory Impact Review and Initial Regulatory Flexibility Analysis. The responses in the Finding of No Significant Impact statement are supported by the analyses in the EA as well as in the other NEPA documents referenced. Copies of the EA/Regulatory Impact Review/Final Regulatory Flexibility Analysis are available at the following address:

Highly Migratory Species Management Division, F/SF1
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930
(978) 281-9260

or

<http://www.nmfs.noaa.gov/sfa/hms>

This action would:

- 1) Implement the 2010 quota recommendation for the western Atlantic bluefin tuna stock for 2011 and 2012 by the International Commission for the Conservation of Atlantic Tunas (ICCAT), including baseline subquotas;
- 2) Adjust the 2011 U.S. quota and subquotas to account for unharvested 2010 quota allowed by ICCAT to be carried forward to 2011, and to account for a portion of the estimated 2011 dead discards up front;
- 3) Reinstate pelagic longline target catch requirements for retaining BFT in the Northeast Distant Gear Restricted Area (NED);
- 4) Amend the Atlantic tunas fish size and landing form regulations to allow removal of tail lobes; and
- 5) Clarify the transfer-at-sea regulations for Atlantic tunas

The National Oceanic and Atmospheric Administration Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains criteria for determining the significance of the impacts of an action. In addition, the Council on Environmental Quality regulations at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of context and intensity. Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQs context and intensity criteria. These include:

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

No. The action is not expected to jeopardize the sustainability of BFT, which is the primary target species of fishing operations affected by this action. This action also affects incidental harvest of BFT in the pelagic longline fishery. Overall fishing patterns and behavior in these fisheries are not expected to change as a result of this action, however there may be additional incentive for longline fishermen to reduce their incidental BFT interactions that result in dead discards.

In this action, NMFS would implement the annual U.S. BFT quota in the western Atlantic management area of 948.7 mt for 2011 and 2012, representing a decrease of 28.7 mt from the previous quota of 977.4 mt. NMFS would implement the ICCAT-recommended annual allocation of 25 mt to account for incidental catch of BFT by pelagic longline vessels fishing in the Northeast Distant Area (NED), and would adjust the 2011 fishing category quotas consistent with the 2010 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) (ICCAT Recommendation 10-03) and the Consolidated HMS FMP (NMFS 2006). Because the recommended quota was adopted as part of ICCAT's ongoing implementation of the rebuilding program for western Atlantic BFT and is expected to result in stock growth under both the low and high recruitment scenario, it is not expected to jeopardize the sustainability of BFT. The action to reinstate target catch requirements in the NED for pelagic longline vessels is expected to reduce excessive per-trip landings of BFT in the incidental BFT Longline category fishery.

2. Can the action be reasonably expected to jeopardize the sustainability of any non-target species?

No. The action is not expected to jeopardize the sustainability of any non-target fish species or bycatch because it is expected to result in a decrease in fishing effort compared to 2010 levels due to the slight reduction in U.S. quota from last year. As the overall baseline quota for 2011 and 2012 would be 2.9 percent less than implemented for 2010, and each of the subquotas would be slightly less than 2010 levels, a slight reduction in overall effort relative to the 2010 level could be expected. Additionally, in the last several years, commercial effort and landings have greatly declined, particularly in 2005 through 2009, because of decreased availability of BFT and other factors.

The primary fishing gears used to target BFT (i.e., rod and reel and purse seine) allow for the live release of non-target species to a great degree. The quotas for these sectors of the fishery account for more than 85 percent of the total U.S. annual quota. Primary non-target fish species caught by vessels targeting BFT include yellowfin tuna, bigeye tuna, and other large pelagic species. NMFS has already implemented rebuilding plans, as appropriate, and fishing controls for the primary non-target species.

Handgear and purse seine gear fisheries actions, covered under the June 2001 Biological Opinion (BiOp) for HMS fisheries, were determined not likely to jeopardize the continued existence of endangered or threatened species, including sea turtles. A June 2004 BiOp determined that the continued operation of the pelagic longline fishery (for which direct BFT fishing is not permitted but

for which incidental BFT retention is permitted) is not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley seas turtles, but is likely to jeopardize the continued existence of leatherback sea turtles. NMFS has implemented the Reasonable and Prudent Alternatives required under the 2004 BiOp. The analyses in the 2001 & 2004 BiOps were relevant for the Consolidated HMS FMP, which serves as the baseline FEIS for annual BFT specifications.

On July 6, 2004, NMFS published a final rule (69 FR 40734) implementing additional sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with pelagic longline gear onboard. NMFS is implementing the other RPMs in compliance with the 2004 BiOp. On August 9, 2007, the NMFS Southeast Regional Director determined that, following a review of sea turtle take during the 3-year Incidental Take Statement period, the 2004 BiOp remains valid and does not need to be amended. In addition, through a final rule that published on May 19, 2009 (74 FR 23349) and became effective on June 18, 2009, NMFS established additional management measures to reduce serious injury and mortality of long-finned and short-finned pilot whales, and Risso's dolphins in the U.S. East Coast Atlantic pelagic longline fishery. These measures include a requirement to post a marine mammal handling placard, restrict pelagic longline mainline length to 20 nautical miles in the Mid-Atlantic Bight area, and develop observer and research participation requirements to operate in the Cape Hatteras Special Research Area.

The implementation of the 2010 ICCAT recommended quota and NED allocation is not expected to significantly alter fishing patterns and/or behavior, and therefore should not have adverse impacts on non-target species beyond those considered in the parent EA, 2001 and 2004 BiOps and the Consolidated HMS FMP.

Goals of the Consolidated HMS FMP include implementing rebuilding plans, minimizing bycatch and bycatch mortality for overfished stocks, and managing healthy stocks for optimum yield. Bycatch reduction measures are in place under the HMS Bycatch Reduction Implementation Plan (discussed in Section 3.8 of the Consolidated HMS FMP), and this action would not change any of the bycatch measures in place under the Consolidated HMS FMP, or the effectiveness of those measures. Section 3.4 of this document and Chapter 7 of the 2010 SAFE Report list the 22 marine mammal species that are or could be of concern with respect to potential interactions with HMS fisheries. Those sections discuss interactions and the Endangered Species Act, including six endangered whale species. A summary of marine mammal interactions in the pelagic longline fishery from 1992 through 2005 is provided in Section 3.4.1.2 of the Consolidated HMS FMP and is updated for 2002 through 2009 in the 2010 SAFE Report. The response to Question 5, below, summarizes the finding that marine mammals and ESA-listed species' sustainability would not be jeopardized by this action.

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

No. Although EFH is present in the action area, because this action implements a 28.7-mt reduction in annual quota for the BFT fishery, it is not expected to change BFT fishing patterns or impacts on EFH from the prior year, or to allow substantial damage to ocean and coastal habitats

and/or EFH. As discussed in Chapter 10 of the Consolidated HMS FMP, the primary fishing gears used to harvest BFT (hook and line and purse seine) are fished in the water column and have little impact on coastal resources or bottom substrate. Water column features also are identified as EFH, but there is no evidence that physical effects caused by fishing for HMS are adversely affecting EFH to the extent that detrimental effects can be identified.

4. Can the action be reasonably expected to have a substantial adverse impact on public health and safety?

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

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

No. See response to Question 2 regarding findings of the 2001 and 2004 BiOps. Implementation of reasonable and prudent alternatives, reasonable and prudent measures and terms and conditions of those BiOps is underway, and this action is covered by the scope of those BiOps.

Relative to the 2008 ICCAT recommendation for 2010, the 2010 ICCAT recommendation decreased the total U.S. BFT quota for 2011 and 2012 by 28.7 mt. Therefore, a reduction in overall effort relative to the level at the most recent consultation could be expected due to this drop in U.S. quota. The preferred alternatives for this action, including the allocation of 25 mt to the Longline category for the NED (for incidental BFT catch only) and the action to reinstate target catch requirements in the NED are not expected to significantly alter current fishing practices or bycatch mortality rates in general, and would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes. Therefore the preferred alternatives in this EA/RIR/FRFA should not have adverse impacts on protected species, or have any further impacts on endangered species, marine mammals, or critical habitat beyond those considered in the 2001 and 2004 BiOps and in the Consolidated HMS FMP. Thus, no further consultation is necessary.

In addition, the interactions with non-listed marine mammals are managed in accordance with the MMPA "List of Fisheries" categories for each appropriate sector (including pelagic longline incidental catch of BFT), and this action is not anticipated to change the effort in these fishery sectors in any manner that would increase the potential for interaction with non-listed marine mammals as previously analyzed in the Consolidated HMS FMP.

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

No. The action is not expected to have a significant impact on biodiversity and ecosystem function within the affected area, because the action is not expected to change fishing practices, and/or interactions with non-target and endangered or threatened species. The action would not affect unique geographic areas. In addition, this action is not expected to introduce or spread non-indigenous species.

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

No. There are no significant natural or physical environmental effects associated with the action and no significant social or economic impacts interrelated with natural or physical environmental effects that would result from the action. The action is expected to have some short-term negative socio-economic impacts due to the decrease in quota and subquotas for 2011 and 2012 relative to 2010 although actual impacts would depend on BFT availability to the various fishing gears. In the long-term, positive social and economic impacts can be expected as the stock grows. See Section 6 of this document for an analysis of the predicted economic impacts to the BFT fishery and small business entities.

8. To what degree are the effects on the quality of the human environment expected to be highly controversial?

The effects of this action on the human environment are not expected to be highly controversial. The action would slightly decrease the BFT baseline quotas for 2011 and 2012, would adjust the 2011 quotas consistent with ICCAT Recommendation 10-03 and the Consolidated HMS FMP, would reinstate target catch requirements that historically applied in the NED prior to the administration of an experiment in that area from 2002-2004, and would clarify regulations pertaining to Atlantic tunas landing form and transfer at sea. The percentage shares assigned to each quota category which established the basis for allocating the ICCAT-recommended quota were determined in the 1999 HMS FMP and associated FEIS. These percentage shares were based on allocation procedures that NMFS developed over several years, based on historical share, fleet size, effort, and landings by category, and stock assessment data collection needs.

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

No. This action would not result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas because fishing effort would occur in open areas of the ocean. In addition, there is no park land, prime farmlands, wetlands, or wild and scenic rivers within the action area so there would be no adverse impacts on these areas.

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

No. Effects on the human environment would be similar to those in similar annual actions since 1999, and have been considered in the Consolidated HMS FMP FEIS and in the EA for this action. None of the previous actions resulted in highly uncertain effects or unique or unknown risks. This action would allocate the 2010 ICCAT-recommended BFT quota consistent with the FMP and other ICCAT recommendations.

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

There are no significant cumulative impacts associated with this action in combination with other past, present, or reasonable foreseeable future actions. This action would implement the 2010 ICCAT recommendation for BFT (made for 2011 and 2012) for the 2011 fishing year, and would be consistent with the ongoing implementation of ICCAT's rebuilding program for western Atlantic BFT. NMFS regulations provide tools for the agency to manage quota attainment during the season. Further, any quota overharvests or underharvests that might occur during the fishing year could be addressed in the BFT quota specifications for 2012.

Other recent actions (including numerous BFT inseason actions to adjust daily retention limits for the handgear categories, the 2008 authorization of green-stick gear for BFT, and the recently implemented requirement for weak use by pelagic longline vessels in the Gulf of Mexico) have been consistent with ICCAT recommendations and the Consolidated HMS FMP. Any future domestic actions taken in regard to the BFT fishery would remain within the scope of ICCAT recommendations and the Consolidated HMS FMP. Likewise, all actions in this rule are consistent with those proposed and consulted over in previous Biological Opinions issued under the Endangered Species Act.

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

No. The management measures would occur in inshore and offshore waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea and would not occur in any areas listed or eligible for listing in the National Register of Historic Places. This action would not cause loss or destruction of significant scientific, cultural, or historical resources because there are no significant scientific, cultural, or historic resources within the action area.

13. Can the action reasonably be expected to result in the introduction or spread of a non-indigenous species?

No. The action would reduce the annual BFT quota by 29 mt and reinstate target catch requirements for pelagic longline vessels in the NED. The action does not involve ballast water exchange or travel between ecologically different bodies of water.

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

No. The implementation of ICCAT-recommended annual quotas, and the adjustment of those quotas if needed, are routine procedures which occurs on an annual basis and are consistent with ICCAT Recommendation 10-03 and the Consolidated HMS FMP. The HMS regulations at 50 CFR 635 lay out the approach and boundaries for the action. Reinstatement of target catch requirements for pelagic longline vessels in the NED would represent a return to how NMFS managed the NED prior to the experiment that began in 2002, and during which vessels were exempted from the requirements up to 25 mt of BFT. For these reasons, NMFS considers these decisions limited in nature and unlikely to set precedent or represent a decision in principle about future considerations. The 2011 adjusted quotas would be in place from the effective date through December 31, 2011. A separate action would be taken to establish the 2012 BFT quota specifications and would not be dependent on this action.

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

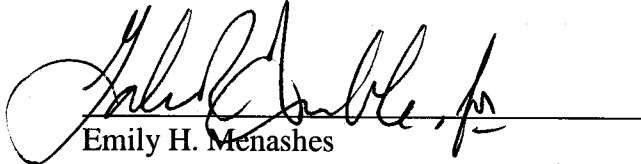
No. The action would be consistent with the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, and the regulations at 50 CFR 635, and is not expected to violate any Federal, state, or local law or requirement imposed for the protection of the environment. NMFS determined that the action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of coastal states and U.S. territories on the Atlantic including the Gulf of Mexico and the Caribbean Sea. This determination was submitted on March 14, 2011, for review by the responsible state agencies under Section 307 of the CZMA. The following states have concurred with the consistency determination: New Hampshire, Rhode Island, Connecticut, New Jersey, Delaware, Virginia, North Carolina, Georgia, Florida, Alabama, Mississippi, and Louisiana. The remaining states and U.S. territories did not respond; therefore, consistency is inferred.

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

No. The action is not expected to result in cumulative adverse effects that could have a substantial effect on target species or non-target species. The action would implement the 2010 ICCAT BFT recommendation for the United States and would be consistent with the ongoing implementation of ICCAT's rebuilding program for western Atlantic BFT and the objectives of the Consolidated HMS FMP as analyzed in the Consolidated HMS FMP FEIS. No increase in fishing effort or change in current fishing practices is expected relative to recent fishing years; rather, a slight decrease is anticipated. The 2010 ICCAT recommendation was made after consideration of scientific and statistical information, including the 2010 BFT stock assessment, and to guide cumulative future management actions of member countries. Reinstatement of target catch requirements for pelagic longline vessels in the NED would represent a return to how NMFS managed the NED prior to the experiment that began in 2002, and during which vessels were exempted from the requirements up to 25 mt of BFT. Further, it would result in uniform target catch requirements for pelagic longline vessels operating in all areas, and could eliminate the potential incentive for a vessel owner or operator to extend one's fishing trip in order to retain additional BFT.

DETERMINATION

In view of the information presented in this document and the analysis contained in the attached EA prepared for the Proposed BFT Quotas and Atlantic Tuna Fisheries Management Measures (and in the FEIS for the Consolidated HMS FMP), it is hereby determined that this action would not significantly impact the quality of the human environment as described above and in the EA. In addition, all impacts to potentially affected areas, including national, regional and local, have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.



Emily H. Menashes
Acting Director, Office of Sustainable Fisheries, NOAA

6.15.2011
Date

16.0 TABLES AND FIGURES

Table 1. Atlantic bluefin tuna adjusted quotas and landings (metric tons) by category for the 2010 fishing year (January 1- December 31, 2010).

Category	2010			
	Baseline Quota	Adjusted Quota	Landings & LL dead discards	% of Adjusted Quota
<i>General</i>	448.6	538.9	528.3	98
<i>Harpoon</i>	37.1	44.6	18.4	41
<i>Longline</i>	102.1	100	88.5	89 (248 if include dead discards)
North	30.9	30	35.3	118
NED	25	25	9.4	38
South	46.2	45	43.8	97
dead discards			Not available – using 160 mt as proxy	
<i>Trap</i>	1.0	1.1	0	0
<i>Purse Seine</i>	177.2	212.8	0	0
<i>Angling</i>	187.6	227.1*	178.5	79
School	97.7	97.7	33	34
Large school/Small medium	85.6	122.5	139.3**	114
Large Medium/Giant (“trophy”)	4.3	6.9*	6.2	90
<i>Reserve</i>	23.8	68.6*	0	
TOTAL	977.4	1,193.2	813.7	68
<i>TOTAL (incl. DD)</i>	<i>977.4</i>	<i>1,193.2</i>	<i>973.7 if assume 160 mt for 2010</i>	<i>82 if assume 160 mt for 2010</i>

Data for the 2010 fishing year are as of January 28, 2011.

Commercial landings information is from the NERO dealer report database.

Recreational landings information is from Large Pelagics Survey estimates, NC catch card data, and the NMFS Automated Landings Reporting System.

Landings of BFT<47” made under Exempted Fishing Permits are counted against the School reserve subquota, part of the School BFT subquota.

* Includes transfer of 1.7 mt from the Reserve category to the Angling category northern area trophy subquota effective June 12, 2010 (75 FR 33531, June 14, 2010)

** Note that Angling category landings of small medium BFT were prohibited, June 12 – December 31, 2010.

Table 2a. Longline category NED landings and dead discards (metric tons), 2005-2009.

	2005	2006	2007	2008	2009
NED quota	25	25	25	25	25
NED landings	12.6	10.1	10.4	8.8	51
NED dead discards	7.7	2.0	1.7	4.7	4.9
NED total catch	20.3	12.1	12.1	13.5	55.9

Total catch=landings + dead discards

Table 2b. Longline category adjusted quotas, landings, and dead discards (including for NED) (metric tons), 2005-2009.

	2005	2006	2007	2008	2009
Adjusted quota	174.8	258.2	225	81.7	99.3
Total landings	57	66	35	75	131
Total dead discards	131	91	90	158	160
Total catch	188	157	125	233	291

Total catch=landings + dead discards

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

	Quota Alternative A1	Quota Alternative A2
ICCAT Recommendation	08-04, specifically for 2010	10-03
Allocation scheme	Consolidated HMS FMP	Consolidated HMS FMP
Western Atlantic Total Allowable Catch (TAC)	1,800 mt	1,750 mt
Annual Total U.S. quota	977.4 mt	948.7
Northeast Distant gear restricted area (NED) set-aside (for use by Longline category)	25 mt	25 mt
Baseline Annual U.S. quota	952.4 mt	923.7 mt
Suballocations:		
Angling category	187.6 mt	182.0 mt
General category	448.6 mt	435.1 mt
Harpoon category	37.1 mt	36.0 mt
Purse Seine category	177.2 mt	171.8 mt
Longline category	77.1 mt	74.8 mt
Trap category	1.0 mt	0.9 mt
Reserve category	23.8 mt	23.1 mt

Baseline comparison only. Does not account for dead discards or under/overharvest.

Table 4. Atlantic bluefin tuna quotas and quota specifications (in metric tons) for the 2011 fishing year (January 1-December 31, 2011).

Category (% share of baseline quota)	Baseline Allocation for 2011 and 2012 (per 2010 ICCAT Recommendation and Consolidated HMS FMP allocations)	2011 Quota Specifications		
		Dead Discard Deduction (1/2 of 2010 proxy of 122.3 mt)	2010 Underharvest to Carry Forward to 2011 (94.9 mt total)	Adjusted 2011 Fishing Year Quota
Total (100)	923.7			957.4
Angling (19.7)	182.0 SUBQUOTAS: School 94.9 Reserve 17.6 North 36.5 South 40.8 LS/SM 82.9 North 39.1 South 43.8 Trophy 4.2 North 1.4 South 2.8			182.0 SUBQUOTAS: School 94.9 Reserve 17.6 North 36.5 South 40.8 LS/SM 82.9 North 39.1 South 43.8 Trophy 4.2 North 1.4 South 2.8
General (47.1)	435.1 SUBQUOTAS: Jan 23.1 Jun-Aug 217.6 Sept 115.3 Oct-Nov 56.6 Dec 22.6			435.1 SUBQUOTAS: Jan 23.1 Jun-Aug 217.6 Sept 115.3 Oct-Nov 56.6 Dec 22.6
Harpoon (3.9)	36.0			36.0
Purse Seine (18.6)	171.8			171.8
Longline (8.1)	74.8 SUBQUOTAS: North (-NED) 29.9 NED 25.0* South 44.9	-61.2	+47.5	61.1 SUBQUOTAS: North (-NED) 24.4 NED 25.0* South 36.7
Trap (0.1)	0.9			0.9
Reserve (2.5)	23.1		+47.4	70.5

*25-mt ICCAT set-aside to account for bycatch of BFT in pelagic longline fisheries in the NED. Not included in totals at top of table.

Table 5. 2010 Atlantic HMS and Atlantic tunas permits as of October 2010.

Category	Number of Permits
General	3,849
Harpoon	29
Purse Seine	5
Longline	248
Trap	6
HMS Angling (Recreational)	24,479
HMS Charter/Headboat	4,174
Total	32,790

Data Source: Atlantic HMS/Tunas Permit Database, as reported in 2010 SAFE Report

Table 6. BFT landings (metric tons) by year and category, 1998 to 2010.

Category	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
General	706	714	725	933	898	595	344	234	160	122	235	327	528
Harpoon	60	59	53	68	41	53	30	23	22	12	22	41	18
Purse Seine	248	247	275	196	208	265	32	178	4	28	0	11	0
Longline North & NED	23	17	12	8	8	25	34	29	28	26	33	77	45
Longline South	24	51	51	28	48	69	58	28	38	9	42	54	44
Trap	1	0	0	0	0	0	0	0	0	0	0.3	0	0
Angling	184	100	50	241	619	392	355	199	187	507	438	566	179
Total	1,246	1,188	1,166	1,484	1,822	1,399	853	691	439	704	773	1,076	814

The BFT fishery was managed on a fishing year basis (June through May) versus a calendar year basis (January through December) starting with the implementation of the 1999 FMP in 2000 until January 2008, when management reverted to a calendar year basis. Landings are presented on a calendar year (versus fishing year) basis for 1996 through 1999, and for 2008 through 2010. The 2007 fishing year was June 1, 2007-December 31, 2007.

Data for the 2010 fishing year are as of January 28, 2011.

Commercial landings information is from the NERO dealer report database.

Recreational landings information is from Large Pelagics Survey estimates, NC catch card data, and the NMFS Automated Landings Reporting System.

Totals are subject to rounding error.

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

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

Table 8. Ex-vessel gross revenues in the U.S. Atlantic bluefin tuna fishery by commercial fishing category, 1998-2010.

Year	General	Harpoon	Incidental (Longline/Trap)	Purse Seine	Total
2010	\$7,814,366	\$202,643	\$878,908	--	\$8,895,917
2009	\$5,040,772	\$498,877	\$1,247,600	\$149,934	\$6,937,183
2008	\$3,975,244	\$313,781	\$722,016	--	\$5,011,041
2007	\$2,259,194	\$160,845	\$807,954	\$451,390	\$3,679,383
2006	\$2,526,052	\$265,951	\$558,022	\$33,819	\$3,383,844
2005	\$3,815,068	\$268,815	\$675,297	\$1,124,305	\$5,883,484
2004	\$5,444,735	\$381,593	\$998,201	\$333,066	\$7,157,595
2003	\$6,027,760	\$658,832	\$691,496	\$2,346,137	\$9,724,224
2002	\$12,199,803	\$518,822	\$486,793	\$2,673,090	\$15,878,508
2001	\$14,070,209	\$964,945	\$398,401	\$2,667,004	\$18,100,558
2000	\$13,686,456	\$751,034	\$731,340	\$3,992,422	\$19,161,253
1999	\$9,858,771	\$1,116,712	\$758,650	\$3,457,119	\$15,191,252
1998	\$7,462,669	\$715,752	\$474,631	\$3,161,708	\$11,814,759

Revenues contained in the table reflect calendar year summaries. Data for 2010 are as of January 27, 2011.

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

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

There were no Purse Seine category landings in 2008 or 2010.

Data Source: BFT Dealer Report Database

Table 9. Vessels and trip information regarding landing of incidental BFT, 2005-2009.

Year	Number of vessels that fished in NED	Number of trips in NED	Number of vessels making trips in NED on which ≥ 1 BFT landed	Number of trips in NED on which ≥ 1 BFT landed	Total number of BFT landed from NED	Annual number of BFT in excess of target catch requirements (TCRs), had they applied in NED	Average annual number of BFT in excess of potential TCRs <i>per vessel</i>
2005	10	36	8	12	61	42	4.2
2006	7	31	7	13	31	11	1.6
2007	6	25	6	14	42	18	3.0
2008	8	21	4	7	30	19	2.4
2009	9	27	8	15	223	189	21

Table 10. Ex-vessel average price (per lb, round weight) for BFT by commercial fishing category, 1998-2010.

Category	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
General	5.01	6.53	8.62	6.78	6.12	5.17	6.77	7.40	7.60	7.82	8.44	7.60	6.93
Harpoon	5.70	8.57	6.42	6.57	5.97	5.88	6.04	5.51	5.45	5.98	6.36	5.50	5.75
Incidental (Longline/Trap)	4.85	5.15	5.36	5.08	4.40	4.52	4.27	3.80	4.84	4.98	4.78	4.48	4.96
Purse Seine	5.78	6.36	6.58	6.17	5.79	4.01	4.73	2.73	4.28	7.31	n/a	5.96	n/a

Prices contained in the table reflect calendar year averages. The BFT fishery was managed on an offset fishing year basis (June through May) versus a calendar year basis (January through December) starting with the implementation of the 1999 HMS FMP in 2000 until January 2008, when management reverted to a calendar year basis. Prices are presented on a calendar year (versus offset fishing year) basis for 1996 through 1999, and for 2008 and 2009. The 2007 fishing year was June 1, 2007-December 31, 2007.

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

There were no Purse Seine category landings in 2008 or 2010.

Data Source: BFT Dealer Report Database

Table 11. Comparison of impacts of alternatives.

Alternative	Ecological Impacts on BFT	Ecological Impacts on other fish species	Protected Species	Economic Impacts	Social Impacts	Administrative/Legal/EJ/CZMA Considerations
Issue 1: BFT QUOTA ALLOCATION						
A1. No Action. Allocate U.S. quota in accordance with 2008 ICCAT western Atlantic BFT recommendation and Consolidated HMS FMP	Negative. Distributes quota according to 2008 ICCAT recommendation for 2010. Higher mortality inconsistent with ICCAT Recommendation 10-03.	No change in fishing patterns and no increase in effort	No change in fishing patterns and no increase in effort	Positive in the short term, due to greater potential gross revenues. Negative in the long term as stock growth is hindered.	Overall positive in the short term. Provides fishing opportunities similar to 2010 level. Negative in the long term as stock growth is hindered.	Inconsistent with ICCAT Recommendation 10-03 and ATCA
A2. Allocate U.S. quota in accordance with 2010 ICCAT recommendation and Consolidated HMS FMP (PREFERRED)	Slightly positive. Consistent with the ongoing implementation of ICCAT's BFT Rebuilding Program. Reduction of U.S. allocation by 28.8 mt expected to result in lower direct BFT fishing mortality.	No change in fishing patterns and no increase in effort	No change in fishing patterns and no increase in effort	Slightly negative in the short-term compared to A1 due to decreased opportunities. Depends on ability of vessels to harvest quota.	Overall positive. Provide additional long-term fishing opportunities by rebuilding the fishery.	Consistent with ATCA, ICCAT Recommendation 10-03 and Consolidated HMS FMP.
A3. Allocate U.S. quota in accordance with 2010 ICCAT recommendation but not Consolidated HMS FMP	Not Analyzed	Not Analyzed	Not Analyzed	Not Analyzed	Not Analyzed	Not Analyzed
Issue 2: NED – TARGET CATCH REQUIREMENTS						
B1. No Action: Target catch requirements apply after NED allocation (25 mt) met	Neutral	Neutral	Neutral	Positive for NED participants (~10 vessels) in short term. Negative for Longline participants outside NED and BFT fishery participants in general if quotas exceeded.	Overall negative because of economic impacts	Could necessitate inseason quota transfers or reductions in subsequent year if available quotas exceeded.
B2. Reinstate target catch requirements in NED. Uniform target catch requirements for pelagic longline vessels in all areas. (PREFERRED)	Neutral	Neutral to positive	Neutral	Negative for NED participants in short term. Positive for BFT fishery participants in general.	Overall positive because of economic impacts	Consistent with other agency actions re: bycatch issues.

Issue 3: ATLANTIC TUNAS LANDING FORM - TAILS						
C1. No Action: Maintain possession-at-sea and landing regulations for Atlantic tunas as codified.	None.	None.	None.	None.	None.	None.
C2. Specify that upper and lower lobes of the tail may be removed. (PREFERRED)	None.	None.	None.	None, although would make storage of Atlantic tunas more efficient.	None, other than providing clarification.	None.
Issue 4: ATLANTIC TUNAS TRANSFER AT SEA						
D1. No Action: Maintain the regulations re: Atlantic tunas transfer at sea, as codified	None.	None.	None.	None.	None.	None.
D2. Clarify “transfer at sea” for Atlantic tunas, i.e., “transfer includes, but is not limited to, moving or attempting to move an Atlantic tuna that is on fishing or other gear in the water from one vessel to another vessel.” (PREFERRED)	None.	None.	None.	None.	None, other than providing clarification. Could deter and prevent circumvention of retention limits.	Follows a recent NOAA Administrative Law Judge decision involving the transfer of a BFT

Table 12. Summary of expected net economic benefits and costs of analyzed alternatives.

Alternative	Net Economic Benefits	Net Economic Costs
Issue 1: BFT QUOTA ALLOCATION		
A1. No Action. Allocate U.S. quota in accordance with 2008 ICCAT western Atlantic BFT recommendation and Consolidated HMS FMP	Positive economic impacts on a scale similar to 2010	Potential long-term cost of future reduced quota
A2. Allocate U.S. quota in accordance with 2010 ICCAT recommendation and Consolidated HMS FMP (PREFERRED)	Less positive impacts than A1, but slightly positive net economic benefit from fishing per ICCAT Recommendation 10-03 and expected resulting stock growth	Opportunity cost of revenue foregone due to quota lower than that previously recommended by ICCAT recommendation
Issue 2: NED – TARGET CATCH REQUIREMENTS		
B1. No Action: Target catch requirements apply after NED allocation (25 mt) met	Continued ex-vessel revenues from unlimited BFT (up to 25 mt), if available on fishing grounds, for NED participants (~10 vessels).	Potential Longline category fishery interruption, need for transfers from directed fishery quotas, or reduction of subsequent year's quotas.
B2. Reinstate target catch requirements in NED (PREFERRED). Uniform target catch requirements for pelagic longline vessels in all areas.	Continued ex-vessel revenues and uninterrupted operations for Longline category participants outside NED and BFT fishery participants in general.	Opportunity cost of revenue foregone for NED participants if incidental BFT catches exceed retention allowed under target catch requirements; would restrain ex-vessel revenues.
Issue 3: ATLANTIC TUNAS LANDING FORM - TAILS		
C1. No Action: Maintain possession-at-sea and landing regulations for Atlantic tunas as codified	No change expected.	No change expected. Some have indicated storage with tails intact is inefficient, but no cost information available for analysis.
C2. Specify that upper and lower lobes of the tail may be removed (PREFERRED)	No change expected, other than storage being potentially more efficient.	
Issue 4: ATLANTIC TUNAS TRANSFER AT SEA		
D1. No Action: Maintain the regulations re: Atlantic tunas transfer at sea, as codified	No change expected.	No change expected.
D2. Clarify “transfer at sea” for Atlantic tunas, i.e., “transfer includes, but is not limited to, moving or attempting to move an Atlantic tuna that is on fishing or other gear in the water from one vessel to another vessel.” (PREFERRED)	No change expected.	No change expected.

Figure 1: Northeast Distant Gear Restricted Area.

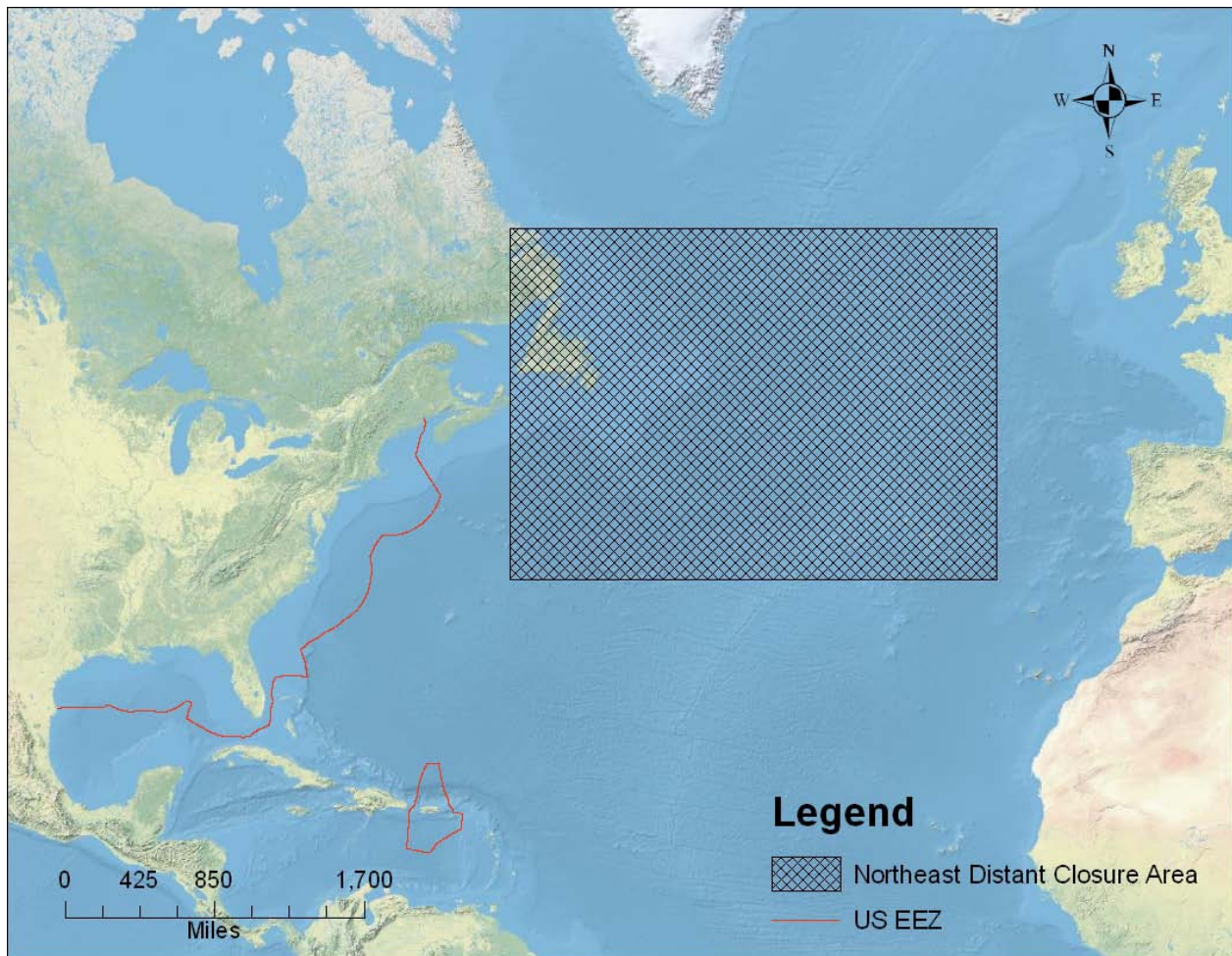


Figure 2: Depiction of allowed removal of the upper and lower lobes of the tail, leaving the fork of the tail intact to preserve the ability to obtain a curved fork length measurement.

