**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 902**

**50 CFR Parts 285, 300, 600, 630, 635, 644, and 678**

**[Docket No. 981216308–9124–02; I.D. 071698B]**

**RIN 0648-AJ67**

# Atlantic Highly Migratory Species (HMS) Fisheries; Fishery Management Plan (FMP), Plan Amendment, and Consolidation of Regulations

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues final regulations to implement the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and Amendment 1 to the Atlantic Billfish Fishery Management Plan (Billfish FMP). This action implements the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), implements the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) as required by the Atlantic Tunas Convention Act (ATCA), and consolidates regulations for HMS conservation and management into one part of the Code of Federal Regulations (CFR) to comply with the President's Regulatory Reinvention Initiative.

**DATES:** This rule is effective July 1, 1999 except that the addition of § 635.25 and the removal and reservation of §§ 285.22 and 644.21(a) are effective May 24, 1999, the revisions to § 600.725(v) will be effective July 26, 1999, § 635.69 will be effective September 1, 1999, and § 635.4(b) will be made effective when the Office of Management and Budget (OMB) approves the information collection contained therein. When approved, NMFS will publish in the **Federal Register** notification of the effective date of § 635.4(b).

**ADDRESSES:** Copies of the HMS FMP, Amendment 1 to the Billfish FMP, the final rule and supporting documents, including the Revised Final Environmental Impact Statements (FEIS) and the Final Regulatory Flexibility Analyses (FRFA), summaries of these items, or information on sources for permit applications and reporting forms can be obtained from Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282, phone (301) 713–2347, fax (301) 713–1917.

**FOR FURTHER INFORMATION CONTACT:** Pat Scida regarding tuna issues at (978) 281–9260; Jill Stevenson regarding swordfish issues at (301) 713–2347; Margo Schulze regarding shark issues at (301) 713–2347; Buck Sutter regarding billfish issues at (727) 570–5447; Karyl Brewster-Geisz regarding limited access at (301) 713–2347; and Chris Rogers regarding the regulatory consolidation at (301) 713–2347.

**SUPPLEMENTARY INFORMATION:** To meet requirements of the Magnuson-Stevens Act, NMFS prepared an FMP for Atlantic tunas, swordfish and sharks and an amendment to the Atlantic Billfish FMP. NMFS published a Notice of Availability of the Draft Amendment 1 to the Billfish FMP on October 9, 1998 (63 FR 54433) with a comment period ending on January 7, 1999, and a Notice of Availability of the Draft HMS FMP on October 26, 1998 (63 FR 57093), with a comment period ending on January 25, 1999. NMFS published a proposed rule to implement the FMPs on January 20, 1999 (64 FR 3154) and extended the comment periods for the FMP documents from January 25 to March 4, 1999, to coincide with the comment period on the proposed rule. NMFS scheduled public hearings to receive comments on the FMPs and proposed regulations, announced in the **Federal Register** on January 22, 1999 (64 FR 3486).

NMFS did not identify a preferred alternative for BFT stock rebuilding in the draft HMS FMP because new information on stock status from the September 1998 stock assessment by the Standing Committee on Research and Statistics (SCRS), as well as the results of negotiations at the November 1998 ICCAT meeting, were not available at the time. On February 25, 1999, NMFS published a Notice of Availability of an addendum to the Draft HMS FMP and proposed supplemental regulations to implement the addendum (64 FR 9298). The addendum and supplemental rule contained alternatives and updated this information only for BFT: BFT rebuilding, domestic allocations, quota adjustment procedures, measures to reduce dead discards of BFT, General category effort controls for the 1999 fishing season, and data collection requirements.

On March 4, 1999, NMFS announced an additional public hearing and further extended the comment period on the FMPs and proposed rules from March 4 to March 12, 1999 (64 FR 10438). All comments received by March 12, 1999, whether specifically directed to any of the documents or to the proposed rule and its supplement, were considered in the decisions on the final documents and the final rule.

Information regarding the management of HMS under the draft HMS FMP and Draft Amendment 1 to the Atlantic Billfish FMP was provided in the preamble to the proposed regulations to implement those FMPs and in the preamble to the supplemental rule to implement the HMS FMP addendum and is not repeated here. Additional background information can be found in the FMPs and supporting documents available from NMFS (see ADDRESSES). Although the codified regulatory text contained in the supplemental proposed rule to implement the HMS FMP addendum has been incorporated into this final rule, the uncodified 1999 bluefin tuna landings quota specifications proposed in that same document will be published elsewhere in this **Federal Register** issue.

NMFS received approximately 5,000 comments via letter, postcard, facsimile, and electronic mail. Many individuals and groups provided verbal and written comments at public hearings. Those comments are summarized here followed by NMFS' responses thereto.

## Comments and Responses

### *General*

Comment 1: Quota management is inappropriate for a recreational fishery. I do not support a recreational closure of any fishery.

*Response*: Recreational landings of bluefin tuna and blue and white marlin are subject to quotas or caps due to international management recommendations. In addition, domestic regulations prohibit retention of certain species by all user groups, including a subset of shark species and spearfish, because these species are either particularly vulnerable or little is known about their status. In the final HMS FMP and Billfish FMP amendment, NMFS implements measures that are designed to increase flexibility and allow continued participation in the recreational fishery despite the caps or quotas. For example, the Billfish FMP amendment manages the recreational fishery primarily through the use of minimum sizes, rather than bag limits or seasonal closures.

*Comment 2*: Our coastal and offshore resources need more protection from

foreign fishing fleets; NMFS is disadvantaging U.S. fishermen; NMFS should not implement all these domestic measures because foreign fleets will catch the fish instead.

*Response*: There is no foreign fishing for HMS within the U.S. EEZ. Atlantic-wide, NMFS works through the ICCAT process as well as bilateral efforts (Canada, Mexico) to address issues of common concern in the management of HMS.

*Comment 3*: NMFS has to implement the strongest possible domestic measures for protecting these fine species [HMS] as a safeguard against inaction at the international level.

*Response*: NMFS agrees that strong domestic measures must be taken to rebuild and maintain HMS. However, for most HMS, international cooperation is essential to a successful management program. The final HMS FMP and Billfish FMP amendment establish a foundation for the development of international rebuilding programs for overfished HMS.

*Comment 4*: These regulations propose to impose a host of restrictions and controls on recreational fishing that are unnecessary and burdensome, and do little or nothing to accomplish the basic goal of rebuilding HMS, including billfish fisheries that are overfished.

*Response*: NMFS disagrees. Rebuilding HMS requires improved monitoring and accounting for all sources of mortality, including recreational fisheries. In addition, NMFS is required under Magnuson-Stevens Act and ATCA to provide comparable monitoring of all fisheries. The final HMS FMP and billfish FMP Amendment provide for new measures that will enhance monitoring and knowledge of all HMS fisheries, including recreational fisheries, and that implement controls on recreational landings under international agreement, such as the limit on school bluefin tuna and on marlin landings. Nevertheless, the final FMP and amendment reflect public comment on recreational restrictions, as some measures have been reduced and/or made voluntary in nature, such as participation in workshops and in observer programs.

*Comment 5*: The regulations should specify that U.S. citizens, while fishing on foreign vessels in foreign waters, may comply with the regulations for that foreign venue, even if they are less restrictive than U.S. regulations, and must comply if they are more restrictive.

*Response*: National standard (NS) 3 requires ''To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.'' Previous Atlantic billfish regulations, implemented solely under the authority of the Magnuson Act, restricted fishing-related activities (possession and retention, size limits, gear limitations and incidental catch restrictions) within the jurisdictional limits of the U.S. EEZ. U.S.-flagged commercial and recreational vessels operating exclusively outside the U.S. EEZ were not affected by these restrictions, although the sale, purchase or barter of Atlantic billfish harvested from the management unit (i.e., for blue and white marlin, the Atlantic Ocean north of 5° N. latitude) was prohibited. However, implementation of Atlantic blue marlin and white marlin regulations under both the Magnuson-Stevens Act and ATCA will make these regulations applicable to all U.S. citizens and U.S.-flagged commercial and recreational vessels, regardless where fishing. NMFS disagrees that such application of the Atlantic billfish regulations is unfair and too restrictive on U.S. fishermen. The regulations will be much more effective if they are extended under the authority of ATCA to cover the operational area of U.S.-flagged vessels in the Atlantic Ocean, and the range of the impacted stock. The rebuilding of Atlantic billfish stocks requires reductions in mortality Atlantic-wide, necessitating management measures for Atlantic billfish throughout their range.

*Comment 6*: The language concerning management through international measures is incompatible with the language of the Magnuson-Stevens Act. It is clear that the United States is to promote optimum yield (OY), rather than become involved with the details of foreign management measures.

*Response*: NMFS supports the promotion of OY in all fisheries, including OY as part of a rebuilding plan for overfished species. For most HMS, international cooperation is essential to a successful management program. In addition to continued bilateral efforts, the final HMS FMP and billfish FMP amendment provide the foundation for the development of international rebuilding programs for overfished HMS.

*Comment 7*: There should be an interim final rule for the public to review and comment upon the final measures before the rule becomes effective.

*Response*: NMFS disagrees. There was an extensive comment period on the draft HMS FMP and draft billfish FMP amendment, the bluefin tuna addendum to the HMS FMP, as well as the proposed rule and supplement to the proposed rule. Nearly 5,000 comments were received, along with record attendance at the 27 public hearings, and AP meetings to address public comment. It is clear that the public was fully aware of and took advantage of the opportunity to comment on these proposals. The final HMS FMP and billfish FMP amendment clearly demonstrate that, where possible, NMFS has effected changes that meet the same objectives but with less impact on the affected communities. Finally, these documents provide a framework for the continued management of these species, and delays will only hinder progress.

*Comment 8*: Framework provisions should be taken out of the FMP, as they are not understood by the public, and there is no oversight on the framework procedures used by NMFS.

*Response*: NMFS disagrees. The purpose of the framework process is to facilitate timely management of HMS. Measures proposed under the framework process will be subject to public comment and at least one public hearing, and if appropriate, an AP meeting as well. NMFS has clarified the objectives to which these framework provisions apply, and somewhat narrowed the range of framework measures from the proposed framework.

*Comment 9*: Commercial interests are favored over good scientific management of the fish, and over interests of the long-standing recreational fishery.

*Response*: NMFS disagrees. The final measures in the HMS FMP and billfish amendment are based on the best scientific information available and include closure of the commercial fishery for sharks, swordfish and pelagic longline fishing of BAYS to all but those active in the fishery. The final shark measures include substantial reductions in commercial quotas and an expanded list of prohibited species. Bluefin tuna are subject to an international rebuilding program, and a foundation is established for the development of an international rebuilding program for swordfish, bigeye tuna, and billfish at future ICCAT meetings. Recreational measures have been honed to focus on those that are most effective while still meeting management goals.

*Comment 10*: The HMS FMP is extremely long and complicated covering many species. It would have been better to have separate hearings on each species rather than all HMS. Timing and location of public hearings need more input from public sector.

*Response*: The development of the HMS FMP has greatly benefitted from the holistic approach to the management of swordfish, sharks, and

tunas. Many of these species are harvested by the same commercial and recreational user groups, and an integrated FMP affords an improved management strategy for all species. The billfish FMP remains separate, however, due to the exclusively recreational nature of this fishery. Nevertheless, NMFS has and will continue to hold joint AP meetings on issues of common concern, and draw important parallels between management of billfish and other HMS. Location and timing of public hearings are developed in consultation with AP members, the location of current participants, and within the schedule required to satisfy a variety of legal constraints and logistic limitations.

*Comment 11*: NMFS has not implemented programs to provide reliable, real time monitoring of recreational catch by private anglers as required by law.

*Response*: NMFS disagrees. The HMS FMP and billfish FMP amendment add to existing recreational data reporting requirements, including expanded permitting and logbook requirements, tournament registration and reporting, and an observer program. Recreational catch and harvest of HMS and billfish are also monitored by the Marine Recreational Fisheries Statistics Survey (MRFSS), the Large Pelagic Survey, mandatory self-reporting of all bluefin tuna landed, and individual state recreational fisheries surveys. In addition, the framework measures in the FMP and amendment allow for expanded recreational monitoring. NMFS will continue to work with the APs and affected public to expand and develop these efforts to improve recreational monitoring.

*Comment 12*: The HMS FMP is biased against the recreational fishing industry and favors commercial fisheries. The HMS FMP does not address the destructive nature of longline fishing. The FMP is overly burdensome for the collection of recreational fisheries data.

*Response*: NMFS disagrees. The HMS FMP is focused on reducing fishing mortality for overfished species of sharks, tunas, and swordfish. The HMS FMP also addresses those resources that are currently considered to be fully fished. The final measures in the HMS FMP include closure of the commercial fishery for sharks, swordfish and pelagic longline fishing of BAYS to all but those active in the fishery. The final shark measures include substantial reductions in commercial quotas and an expanded list of prohibited species. Bluefin tuna are subject to an international rebuilding program, and a foundation is established for the development of an international rebuilding program for swordfish, bigeye tuna, and billfish at future ICCAT meetings. The final HMS FMP and Billfish FMP Amendment provide for new measures that will enhance monitoring and reporting in all HMS fisheries, both commercial and recreational. The final actions reflect public comment on recreational restrictions, as some measures have been reduced and/or made voluntary in nature, such as participation in workshops and in observer programs.

*Comment 13*: Recreational landing estimates for pelagic species are generated from the MRFSS database and these estimates of landings are not accurate.

*Response*: NMFS disagrees. The MRFSS data program is designed to estimate recreational catch and effort over broad areas. While the program admittedly does not capture information on pulse fisheries or rare event fisheries, such as billfish and swordfish, the generated estimates and their proportional standard error estimates give an indication of their statistical validity. The Large Pelagic Survey (LPS) is designed to better capture catch and effort data on HMS. NMFS plans to continue this survey and consider expanding the program to additional geographic areas.

*Comment 14*: Except for billfish, no basis exists for how the agency allocates catch among user groups.

*Response*: NMFS disagrees. NMFS bases all allocation of fishing privileges on NS 4, which requires all allocations, should they be necessary, to be fair and equitable to all such fishermen, be reasonably calculated to promote conservation, and carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

*Comment 15*: NMFS penalizes fishermen who provide data by using those data to place restrictions on the fishermen.

*Response*: NMFS disagrees. NS 1 calls for the prevention of overfishing and NS 2 states that management measures will use the best scientific information available. Data are used to monitor the fishery to prevent overfishing and to support management measures to ensure the future health of the resource. If a fishery is judged to be overfished, all sources of information will be assessed to address the problem. Should fishermen not provide information, or provide inaccurate information, the management measures developed by NMFS to remedy the overfishing could be more burdensome than necessary on the fishing sectors depending on the fishery resource.

*Comment 16*: NMFS should adopt a more precautionary fishing mortality threshold that is lower than the fishing mortality that will result in maximum sustainable yield (MSY).

*Response*: NMFS agrees and has adopted $0.75F_{MSY,}$ which is consistent with precautionary technical guidance for NS 1 established by NMFS scientists.

*Atlantic Billfish*

*Comment 1*: The selected alternatives do not reflect any of the advice given by the Billfish AP.

*Response*: NMFS disagrees. The advice from the Billfish AP was noted under each action in the draft FMP amendment. The agency's rationale for selecting preferred alternatives, including those that were not supported by the Billfish AP was also included in the plan. The Billfish AP was established under section 302(g)(4) of the Magnuson-Stevens Act, ''to assist in the collection and evaluation of information relevant to the development of any fishery management plan or amendment.'' However, it is important to note that decisions and recommendations made by the AP are advisory in nature. Many of the final actions are based on advice from the APs.

*Comment 2*: NMFS violated NS 1 of the Magnuson-Stevens Act and NEPA by not including a viable rebuilding plan for blue and white marlin in the draft FMP amendment.

*Response*: NMFS disagrees. The draft FMP amendment contained elemental components for rebuilding on an Atlantic-wide basis. However, the final amendment more clearly defines the relationship between domestic management actions and international rebuilding alternatives. Domestic measures ensure U.S. compliance with the 1997 ICCAT recommendation. The final FMP includes final actions to establish the foundation for the development of an international 10-year rebuilding plan. NMFS will work with ICCAT member nations to adopt a rebuilding program that meets the standards of the Magnuson-Stevens Act and the NSGs, including an appropriate rebuilding time period, targets, limits, and explicit interim milestones for recovery, expressed in terms of measurable improvements of overfished stocks. The final FMP amendment lists specific management measures that could be a part of the international strategy.

*Comment 3*: NMFS should scrap the draft Atlantic billfish FMP amendment and develop a new document focusing on rebuilding overfished billfish stocks

by reducing bycatch in the U.S. pelagic longline fishery.

*Response*: The multidimensional focus of the draft FMP amendment addressed the 1997 ICCAT recommendation and the U.S. mandates under the Magnuson-Stevens Act and ATCA. The actions taken in the final FMP amendment are critical steps in the ICCAT process, formulating the basis for international regulations that will rebuild overfished billfish stocks. Rebuilding overfished Atlantic billfish stocks is not possible solely by reducing or eliminating bycatch in the U.S. pelagic longline fishery due to the small percentage of mortality caused by U.S. vessels. The HMS FMP will be the primary tool for designing, analyzing and implementing management measures to control bycatch in association with all HMS commercial fisheries, including Atlantic billfish.

*Comment 4*: The management measures included in the Billfish framework provisions should be dropped because they would allow NMFS to implement these regulatory actions without input from the Billfish Advisory Panel or from the public.

*Response*: NMFS disagrees. Both framework adjustment measures and proposed FMP amendments must go through extensive public and analytical review, including development and review by the APs, if appropriate.

*Comment 5*: Actions taken by the United States alone cannot sufficiently reduce billfish mortality levels Atlantic-wide to rebuild overfished billfish stocks. Therefore, management actions taken by NMFS, without the support and adoption by ICCAT, are a waste of time and money.

*Response*: NMFS disagrees. While unilateral management action by the United States cannot rebuild overfished billfish stocks, the United States has been a leader in conservation of Atlantic billfish, and has taken actions (e.g., the 1988 Atlantic billfish FMP) to show our willingness to take the critical steps necessary to conserve these stocks. This fact has been a primary negotiation tool at ICCAT, and it is questionable whether the recent ICCAT actions (i.e., the 1997 and 1998 ICCAT recommendations) could have been possible without these efforts. Therefore, the final actions and framework provisions in the FMP amendment and HMS FMP will form the foundation for the development of rebuilding plans following the 2000 (marlins) and 2001 (sailfish) assessments.

*Comment 6*: NMFS received comments supporting and opposing a 10-year recovery period for blue marlin and white marlin. Comments against the 10-year recovery period include: the recovery time period of 10 years is too long; a shorter time frame could be justified based on the life history characteristics of Atlantic blue and white marlin; the recovery to biomass rebuilding target within 10 years is impossible without international cooperation by Atlantic commercial fishing operations; and rebuild overfished populations as quickly as possible, not in the maximum period allowed by law.

*Response*: NMFS maintains the recovery period of 10 years in the final FMP amendment. Life history is not the sole consideration for determining recovery time period alternatives. The Magnuson-Stevens Act specifies that a recovery period be as short as possible, taking into account the status and biology of any overfished stocks of fish, as well as the needs of fishing communities, recommendations by international organizations in which the United States participates (e.g., ICCAT), and interactions of the overfished stock of fish with the marine ecosystem. The final guidelines for NS 1 indicate that these factors may be used to adjust the rebuilding period up to 10 years. NMFS proposed a 10-year recovery period to minimize negative impacts on recreational and commercial communities/entities. Agreements at ICCAT may dictate that rebuilding of Atlantic billfish may take up to 10 years, indeed even longer.

*Comment 7*: The model used to generate the recovery periods for blue marlin and white marlin may provide overly optimistic projections of the time required for rebuilding.

*Response*: The non-equilibrium stock-production model used to generate recovery periods was based on the best available science at the time the draft FMP amendment was developed. NMFS maintains these results in the final FMP amendment, but will review the applicability of this model following the 2000 (marlins) and 2001 (sailfish) Standing Committee for Research and Statistics (SCRS) stock assessments. Subsequently, modifications may be warranted in the recovery period or other components of the rebuilding plan.

*Comment 8*: The minimum stock size thresholds (MSSTs) selected for Atlantic billfish in the draft FMP amendment are too low and should be more precautionary.

*Response*: NMFS agrees that the MSSTs selected for Atlantic billfish in the draft FMP amendment should be more precautionary. The formulation of MSST for Atlantic billfish using $(1-M)B_{MSY}$, where M is the instantaneous natural mortality rate, is a proxy for the minimum stock size at which rebuilding to the maximum sustainable yield level would be expected to occur within 10 years if the stock or stock complex were exploited at the maximum fishing mortality threshold. Quantitative data necessary to calculate natural mortality rates are not available; however, reasonable values can be estimated based on life history parameters and age structure of the population. Estimates of M range from 0.05 to 0.15 for Atlantic blue marlin, from 0.1 to 0.2 for Atlantic white marlin, and from 0.2 to 0.3 for western Atlantic sailfish. The draft FMP utilized values near the lower-end of the precautionary range; however, based on further analyses, the MSST values selected for the final FMP amendment for Atlantic blue and white marlin and sailfish are $0.95B_{MSY}$, $0.85B_{MSY}$, and $0.75B_{MSY}$, respectively.

*Comment 9*: NMFS received comments both supporting and opposing the extension of the management unit for Atlantic blue and white marlin to the entire Atlantic Ocean, and implementation of regulatory actions under ATCA. These comments include the following: the extension is an important step closing a loophole in the regulations that allows Atlantic billfish to be caught and sold south of 5° N; this measure unfairly restricts U.S. recreational anglers fishing in foreign waters, especially when fishing in foreign tournaments; U.S. commercial vessels operating under foreign contracts or in countries where all fish caught must be landed will be adversely affected; enforcement of these regulations would be impractical and costly for the relatively few U.S.-flagged commercial and recreational vessels operating in foreign waters that would be impacted by this proposed management measure.

*Response*: NMFS agrees with comments supporting the proposed preferred alternative to extend the management unit for Atlantic blue and white marlin to the entire Atlantic Ocean, and implementation of regulatory actions under ATCA. Expansion of the regulatory authority is supported by NS 3 that requires ''To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.'' Implementation of Atlantic billfish regulations under both the Magnuson-Stevens Act and ATCA will make these regulations applicable to all U.S. citizens and U.S.-flagged commercial and recreational vessels, regardless of where they are fishing. NMFS disagrees

that such application of the Atlantic billfish regulations is unfair and too restrictive on U.S. fishermen. Regulations will be much more effective if they are extended under the authority of ATCA to cover the operational area of U.S.-flagged vessels in the Atlantic Ocean. Commercial vessels fishing under lease arrangements in other countries may need to apply for Exempted Fishing Permits (EFPs) in order for the agency to collect necessary management information, and to prevent violations of U.S. law. Since the same vessels potentially catching billfish are also operating under other Atlantic-wide fishing prohibitions (north and south Atlantic swordfish) that require enforcement and monitoring, problems with additional enforcement of billfish regulations impacting U.S. commercial pelagic longline vessels operating in the Atlantic are expected to be minimal.

*Comment 10*: NMFS should implement time/area closures specifically to reduce bycatch of Atlantic billfish.

*Response*: NMFS disagrees. Based on the currently available data, NMFS does not think implementing large closed areas with the sole objective of reducing billfish bycatch is practicable because of the minimal effect on billfish and the significant social and economic impacts on pelagic longline fishermen and their communities. However, NMFS is preparing additional analyses to identify large areas to protect small swordfish and will consider the impacts of these closures on billfish stocks.

*Use of Best Available Science in Billfish Management*

*Comment 1*: NMFS violates NS 2 by ignoring or inappropriately applying available scientific information in the draft FMP amendment.

*Response*: NMFS disagrees. The draft FMP amendment used the most recent data available. Scientific information and data sources used in formulation of the plan include the MRFSS, Large Pelagic Survey, Recreational Billfish Survey, Cooperative Tagging Center, SCRS stock assessments and reports, NMFS research/reports, as well as research funded by the agency and independent research, including publications in scientific journals, preliminary reports on ongoing research, and personal communication with experts in the field. NMFS has developed a comprehensive research and monitoring plan (October, 1998) to support the conservation and management of Atlantic HMS as required by 971(i)(b) of ATCA. The objective of this comprehensive research and monitoring plan is to ensure that NMFS science is of the highest quality and that it advances the agency's ability to make sound management decisions.

*Comment 2*: NMFS should limit regulatory changes to recommendations by committees comprised of professional scientists, not politicians, in order to reflect the best available science.

*Response*: NMFS disagrees. The Magnuson-Stevens Act, ATCA, and ICCAT recognize the highly migratory nature of these international fisheries, which necessitates an interdisciplinary approach to fisheries management. The APs play an important role in advising NMFS not just on science, but on practical constraints, as well as social and economic impacts of various management alternatives.

*Fair and Equitable Allocation of Restrictions/Benefits Among Billfish Fishery Sectors*

Comment 1: NMFS is apparently relying only on reductions in U.S. recreational landings to rebuild overfished billfish stocks, which is inconsistent with NS 4. The recreational billfish community is responsible for only a small portion of Atlantic-wide mortalities and has a record of voluntary conservation as evidenced by the high percentage of released billfish, yet the majority of management measures included by NMFS in the draft Atlantic billfish FMP amendment are unfairly focused on recreational anglers.

*Response*: NMFS agrees that the recreational billfish community is responsible for only a small portion of Atlantic-wide mortalities and commends their voluntary conservation. However, NMFS disagrees that the management measures included in the draft Atlantic billfish FMP amendment were unfairly focused on recreational anglers. The draft FMP amendment specifically stated that the level of reductions in landings required to rebuild overfished billfish stocks will necessitate international cooperation; reduction or even elimination of all sources of U.S. billfish mortality alone is insufficient to achieve rebuilding as the United States is responsible for approximately 5 percent of the Atlantic-wide mortalities of marlin. Reductions of 2,443 mt from 1996 total Atlantic landings will be required to rebuild stocks of blue marlin and 638 mt for white marlin; the total U.S. reported mortality of Atlantic marlin during 1996 was 302.3 mt. The final Atlantic Billfish FMP Amendment includes increases in minimum size limits in order to reduce landings; the 25–percent reduction in blue and white marlin landings will result in reductions of U.S. recreational landings of approximately 21,000 pounds (9.52 mt); however, on a larger scale, this recommendation will result in nearly a 3.4 million decrease in Atlantic-wide marlin landings from 1996 levels by other ICCAT member countries. The 1997 ICCAT recommendation also requires improvement in monitoring, data collection and reporting in all Atlantic billfish fisheries.

*Comment 2*: Continuing the prohibition on commercial landings of Atlantic billfish, while allowing recreational fishermen to land billfish, is unfair and discriminatory.

*Response*: NMFS disagrees. A fundamental element of the 1988 Atlantic billfish FMP was the prohibition of possession and sale of commercially caught billfish within the U.S. EEZ. Allowing recreational fishermen to land billfish is consistent with traditional usage of this fishery. A major objective of the FMP amendment is to develop a rebuilding plan for overfished billfish stocks, and although unilateral actions by the United States will not rebuild these highly migratory species, additional mortalities experienced on these stocks by allowing U.S. commercial harvest would run counter to the objectives of NS 1 and the FMP amendment. The Billfish FMP amendment retains the prohibition of possession and sale of commercially-caught billfish.

*Community Impacts Resulting From Billfish Measures*

*Comment 1*: Destin, FL, Port Aransas, TX, and other coastal towns were not included in the community analysis of the draft Atlantic billfish FMP amendment. The Atlantic billfish recreational fishery is an important component of these locations, therefore, these areas should be included in any analysis of economic and community impacts of management restrictions.

*Response*: NMFS agrees that some towns where the Atlantic billfish recreational fishery is an important component were not included in the community analysis of the draft Atlantic billfish FMP amendment. However, the billfish community profiles included in the draft FMP amendment are not intended as an exhaustive list of where recreational billfish angling is an important component of the local economy and culture, rather they provide a broad perspective on representative areas. Consistent with NS8, the final FMP amendment first identifies and describes representative Atlantic billfish communities (on the basis of geographic location, gear-type

and operational framework of the various components of the fishery) and then assesses their differing nature and the magnitude of the likely effects of this FMP amendment. The final FMP amendment also summarizes anticipated social impacts resulting from the implementation of the Atlantic billfish FMP amendment on a broader scale, based on the comments received during the comment period for the draft FMP amendment and proposed rule. Public hearings for the proposed rule to implement the draft Atlantic billfish FMP amendment were held in a wide range of locations (including Panama City, near Destin and Ft. Walton and Port Aransas) to collect comments from numerous billfish angling communities.

*Comment 2*: Destin, Florida has changed an important billfish tournament to an all-release format based on the economic threat of a potential zero bag limit included in the proposed rule. If sponsorships and participation in the tournament decline because of the change to catch-and-release strategy, the local economy will be negatively impacted, as will charities that have historically received financial support from this event.

*Response*: NMFS evaluated thousands of comments on the issue of economic impacts of an adjustable bag limit and other measures included in the draft plan, some of which merited changes in the final FMP amendment. While the intent of the draft FMP amendment was not to cause severe impacts to communities, the change to a ''no-kill'' tournament format should be applauded and certainly is consistent with the precautionary management strategy of the 1996 Magnuson-Stevens Act. It should be noted that many other tournaments have gone to an all-release format without a reduction in participation. NMFS restates advice of the 1988 Atlantic Billfish FMP, encouraging all tournaments to adopt a catch-and-release philosophy.

*Billfish Harvest Controls and Retention Limits*

*Comment 1*: NMFS should require catch-and-release only of Atlantic billfish by all recreational anglers. Allowing recreational anglers to land billfish is inconsistent and counterproductive with the objectives of the FMP amendment, and undermines the goals of the FMP. Closing the recreational Atlantic billfish fishery, except to catch-and-release, supports the conservation ethic of this recreational user group; will maximize net economic benefits to the nation by managing the fisheries for long term OY; is consistent with the ICCAT recommendation; and meets the critical U.S. leadership goal to promote international conservation.

*Response*: NMFS disagrees. Most recreationally caught billfish are already released, either voluntarily or in compliance with minimum size limits. However, some anglers prefer to land some billfish. Allowing those few fish to be landed is consistent with ICCAT conservation recommendations and recognizes the multi-faceted objectives of domestic and international management of the billfish fishery.

*Comment 2*: NMFS should not prohibit the use of multiple hooks in the Atlantic billfish recreational fishery. Using the precautionary approach as a rationale to support this measure is contrary to the mission statement of NMFS as there is absolutely no science-based justification for this action. Limiting the number of hooks in a lure or bait is an unnecessary regulation because this will not enhance post-release survival rates; and will have no direct benefit to recovery of Atlantic billfish resources. This measure would significantly reduce angler hook-up rates, as well as have a negative economic impact on anglers by requiring purchases of new equipment and on tackle manufacturers.

*Response*: NMFS has not included this proposed action in the final rule. This measure was developed as a result of discussions with the Billfish AP, which includes representatives from the charter boat industry, sport fishing groups, and Fishery Management Council appointees familiar with the recreational billfish industry. The objective of this alternative was to reduce the probability of injury to gills, throat and eyes, thereby decreasing release mortality rates. After NMFS and the Billfish AP reviewed public comments on this issue, the majority of panel members rescinded their support of this measure.

*Comment 3*: NMFS received several different comments regarding the use of dehooking devices, including: NMFS should require the use of dehooking devices by both recreational and commercial fishermen targeting billfish to reduce post-release mortality; NMFS should not mandate but promote the use of dehooking devices by both recreational and commercial fishermen; and NMFS should only allow recreational anglers to utilize hook-removal devices, but still require commercial fishermen to cut their gear to release a billfish because a dehooking device can not practically be used to release a billfish caught on pelagic longline gear, and will result in an increase in bycatch mortality as fishermen use this ''loop-hole'' try to save hooks; and NMFS should allow the removal of the hook by any means, provided that it can be accomplished safely and without increased damage to the hooked fish.

*Response*: The draft FMP amendment preferred alternative was to ''allow the removal of the hook from recreational and commercially caught billfish.'' NMFS maintains this action in the final FMP amendment but does not mandate the use of dehooking devices. Their use as a mechanism to reduce post-release mortality is allowed but not required. There were no conclusive, peer-reviewed scientific results on which to base such a mandate at the time this FMP amendment was developed. However, commercially available dehooking devices have been effective in other commercial and recreational fisheries and have been successfully employed on removing hooks from other large fish. NMFS will include information on such dehooking devices in its pelagic longline workshops, as well as in its educational outreach programs. The final rule implementing the FMP amendment preserves the requirement that billfish that cannot be legally retained must remain in the water at all times, but no longer requires that the line be cut. Instead, the final rule specifies that the hook may be removed, provided that the method of hook removal used does not harm the fish, and may enhance its survival. Proper handling techniques to remove a hooked billfish from commercial or recreational gear will also be included in the pelagic longline workshops, in order to enhance the effectiveness of this final action and minimize the mortality of all releases.

*Comment 4*: It is impossible to determine the size of an Atlantic billfish without removing the fish from the water.

*Response*: NMFS disagrees. The 1988 Atlantic Billfish FMP noted similar comments, but cited advice from the SAFMC Billfish Advisory Panel which stated experienced billfish anglers and captains would have little difficulty in estimating the size of these fish quite accurately. The Plan's intent is ''to encourage the release of all billfishes not needed for tournament competition or of trophy fish, and since tournament anglers generally have no difficulty estimating fish size and trophy fish would be substantially in excess of the minimum sizes, this is not expected to be a major problem'' (SAFMC, 1988). The final rule implementing the FMP amendment preserves the requirement that billfish that cannot be legally retained must remain in the water at all

times. NMFS continues to support this regulation and will use its educational outreach programs for recreational fishermen to instruct them on the proper handling and release of billfish to maximize their survivability.

*Comment 5*: The recreational landings caps for Atlantic blue and white marlin are unfair and unnecessary. If adopted, this proposal would be a significant U.S. policy change for billfish management in the United States from one that controls mortality through size limits and the encouragement of catch and release, to a quota management system. Imposing quotas in recreational fisheries does not work. They are highly disruptive to the orderly conduct of the fishery and weaken confidence in the entire management system.

*Response*: These measures are necessary because blue marlin and white marlin are overfished. Furthermore, the United States is compelled to comply with ICCAT recommendations as required under ATCA, therefore the United States, and all other ICCAT member countries/entities, must reduce landings (i.e., fish brought back to the dock vs. catch which is taken by fishing gear at sea) by at least 25 percent from 1996 levels. The true impact of this recommendation can only be evaluated in terms of Atlantic-wide reductions in marlin landings. The 25–percent reduction in blue and white marlin landings will result in reductions of U.S. recreational landings of approximately 21,000 lb (9.52 mt reductions in marlin landings); however, on a larger scale, this recommendation will result in nearly a 3.4 million pound decrease (over 1,400 mt reductions in marlin landings) in Atlantic-wide marlin landings from 1996 levels by other ICCAT member countries. The final FMP amendment utilizes a size-based strategy to reduce U.S. recreational landings to required levels.

*Comment 6*: NMFS received comments supporting and opposing the recreational retention limit of one Atlantic billfish per vessel per trip. Comments that support the recreational retention limit include: NMFS should implement the proposed recreational retention limit for billfish; the limit of one billfish is appropriate in that it will result in reduced landings of marlin without creating a hardship for the charter boat industry since few billfish are retained by anglers; and a limit of one billfish would be consistent with Florida state regulations. Comments against this measure include: NMFS should eliminate the recreational retention limit of one Atlantic billfish per vessel per trip; given the rare nature of billfish catches, and even rarer incidences of billfish landings, a limit of one billfish per vessel per trip would be ineffective in reducing landings by any significant amount; and this measure would have significant negative economic impacts on tournaments that have a ''grand slam'' category (i.e., prize for landing a blue marlin, white marlin and sailfish).

*Response*: Retention of more than one billfish during a recreational trip is relatively rare, but the recreational retention limit was included in the draft FMP amendment as part of a precautionary management strategy, and to ensure compliance with landing caps established by the 1997 ICCAT recommendation. In the interest of responding to public comment on the impact of implementing recreational retention limits in the Atlantic billfish fishery, and in consideration of the ability of NMFS to manage landings (mortality) with size limits that can be adjusted through interim or proposed and final rule measures, the limit is rejected in the final Atlantic billfish FMP amendment. Reliance on size limits alone to control landings simplifies regulatory constraints and effectively accomplishes the same goal.

*Comment 7*: NMFS should remove the provision providing the AA the authority to adjust the billfish recreational retention limit with 3-day notice, including to a zero bag limit. Imposing an adjustable limit for billfish is excessive and unnecessary regulation of this recreational fishery. Contrary to the Magnuson-Stevens Act and Regulatory Flexibility Act requiring the selection of the least burdensome alternative, the proposed measure imposes the greatest economic uncertainty in the billfish fishery. Tournaments could be canceled, or at least experience significant reduction in participation, solely on the possibility of a prohibition of landing any fish. NMFS could manage this fishery through a minimum size limit in such a way that landings are reduced by at least 25 percent, without closing the fishery.

*Response*: In consideration of the ability of NMFS to manage landings (mortality) with size limits that can be adjusted through interim or proposed and final rule measures, the provision providing the AA additional explicit authority to adjust the retention limit to zero is in the final Atlantic billfish FMP amendment. However, this approach may be reconsidered in the future if management by minimum size limits is insufficiently successful.

*Comment 8*: NMFS should prohibit any billfish from being imported into the United States, regardless of where the billfish are caught (i.e., Pacific or Atlantic Ocean).

*Response*: NMFS agrees that consideration of prohibiting any billfish imports may be warranted in the future.

*Comment 9*: NMFS received comments for and against the proposed preferred minimum size limits, including: the Atlantic billfish size limits in the draft FMP amendment should be implemented; the Atlantic marlin size limits proposed by NMFS are excessive, in that they will reduce landings more than necessary to comply with the 1997 ICCAT recommendation; and the minimum size limits should be in round numbers that are easier to remember, for example 100 inches (254 cm) lower jaw fork length (LJFL) for blue marlin rather than 99 inches (251 cm) LJFL.

*Response*: NMFS agrees with comments supporting the proposed preferred minimum size limits. The increase in minimum sizes for Atlantic blue marlin to 99 inches LJFL, 66 inches (168 cm)LJFL for Atlantic white marlin and 63 inches (160 cm) LJFL for sailfish is the final management action because it would reduce mortality rates by at least 25 percent for each of these overfished species at minimal short-term economic expense with long-term economic benefits.

*Comment 10*: NMFS received comments for and against the proposed preferred alternative to prohibit the retention of longbill spearfish. Comments against this measure include: lack of scientific information on this species is not an adequate reason to prohibit its retention; this measure would only hinder any research efforts; retention should be allowed until further data are made available that indicate this species is overfished; and as an alternative measure, NMFS should establish a toll free number for fishermen to report longbill spearfish landings and use this information for scientific purposes.

*Response*: The absence of adequate scientific information is not a reason for failing to take appropriate conservation and management measures. The precautionary approach asserts ''states should apply the precautionary approach widely to conservation, management, and exploitation of living aquatic resources in order to protect them and preserve their aquatic environment (1995 Food and Agriculture Organization (FAO) International Code of Conduct).'' Longbill spearfish are rarely encountered by commercial fishermen or recreational anglers, and are generally not included as a target species in billfish tournaments. Therefore, this

measure should have only minimal negative social or economic impacts. The status of spearfish stocks is unknown, but the rare nature of this species necessitates a cautious management strategy to avoid any potential negative impacts to the stock.

*Billfish Monitoring, Permitting and Reporting*

*Comment 1*: NMFS should expand the use of sampling protocols utilized in the Gulf of Mexico to other Atlantic coastal areas to improve monitoring of recreational billfish landings.

*Response*: NMFS agrees. The 1997 ICCAT recommendation for improvement in monitoring and data collection, as well as the establishment of landing caps for Atlantic blue and white marlin, has focused attention on the need for improvement in sampling and monitoring programs to ensure that the United States is in compliance with international agreements. The Gulf of Mexico program was instrumental in providing a historical framework for developing the notification and reporting requirements for billfish tournaments, but expansion of this program to other areas may not provide the sampling levels necessary to ensure compliance with the ICCAT recommendation. Additional monitoring and reporting requirements have been added to the FMP amendment, including logbooks, permits and a voluntary observer program for charter-headboat vessels, and mandatory tournament registration.

*Comment 2*: NMFS received several different comments on the proposed outreach programs, including: the proposed outreach programs for recreational billfish anglers are a waste of time and federal resources, recreational anglers already practice conservation in releasing over 90 percent of their catch; the proposed outreach programs will be a valuable addition to the FMP amendment depending on the level of cooperation with state and other federal agencies, fishing constituent groups, etc.; and, attendance at workshops and seminars held as part of this measure should be mandatory.

*Response*: NMFS disagrees that the proposed outreach programs for billfish anglers are a waste of time. Although recreational anglers already release approximately 90 percent of their catch and NMFS has established a catch-and-release fishery management program in the final FMP amendment, release of live fish does not guarantee their survival. Outreach programs established in this amendment will provide proper handling, tagging, measuring and release techniques in order minimize the mortality of all live releases, a proactive approach to meeting several objectives of this FMP amendment. Attendance at workshops by charter boat operators and recreational anglers will not be mandatory, but will be encouraged and promoted through various constituent groups, trade publications and federal and state agencies (e.g., NMFS Office of Intergovernmental and Recreational Fisheries, Sea Grant). It is important to note, however, the success of any outreach program is predicated on reaching the entire billfish recreational angler community, which may eventually require implementation of a permit or other registration procedure.

*Comment 3*: Requiring billfish and other HMS tournaments to notify NMFS four weeks prior to commencement of the tournament is punitive and unnecessary. Without corresponding time and area closures of longline fishing in spawning and nursery areas, mandatory tournament registration is unfairly biased against the recreational fishing industry.

*Response*: NMFS disagrees. The 1997 ICCAT recommendation requires improvement in monitoring, data collection and reporting in all Atlantic billfish fisheries. The tournament notification requirement is critical to developing a sampling frame for tournaments to allow for better monitoring, data collection, and reporting of billfish and other HMS tournaments. Tournament registration also gives NMFS a sampling frame to obtain information on participation level, angler effort, as well as social, economic and fisheries characteristics data. Information from the tournament registration forms will provide a general guide to the total number tournaments, their locations, number of participants, etc. This action will greatly improve NMFS' collection of a data from a significant segment of the recreational HMS fishery at a relatively small social and economic cost. This requirement is comparable to the logbook data that are submitted by charter/headboats, and commercial fishermen in that it collects catch and effort information.

*Comment 4*: The definition of an HMS tournament, including Atlantic billfish, as ''any fishing competition involving Atlantic HMS in which participants must register or otherwise enter or in which a prize or award is offered for catching such fish,'' is too broad.

*Response*: The definition of tournament is intentionally broad so that as much data as possible can be collected to better identify the universe of billfish anglers. While all tournaments will be required to register, tournament directors must report only if selected.

*Comment 5*: The Atlantic billfish tournament reporting form needs to be revised to more closely match the type of information that can practically be collected during a tournament.

*Response*: NMFS will hold joint workshops with fishing organizations and interested members of the public to discuss the best format for accurate reporting of necessary data.

*Comment 6*: Tournaments selected to report should have 100– percent compliance and summary data should be made available to tournament directors, the HMS APs, and ICCAT Advisory Committee in a timely fashion, comparable to other fisheries managed under ICCAT quotas.

*Response*: NMFS will work to ensure that data from tournament reports are promptly collected, compiled, and processed to provide summary data on a timely basis. This information is part of the annual National Report, as well as the annual SAFE report.

*Comment 7*: NMFS should include penalties and/or sanctions for failing to register/and or report catch data.

*Response*: NMFS agrees. The Magnuson-Stevens Act currently provides penalties and permit sanctions for regulations promulgated under the Act. The Magnuson-Stevens Act (section 308(a)) specifies that any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307 shall be liable to the United States for a civil penalty. Section 307(1)(a) of the Magnuson-Stevens Act states that it is unlawful for any person to violate any provision of this Act or any regulation or permit pursuant to this Act. Failure to register and/or report, if selected, is a violation of the regulations and may be forwarded to NOAA General Counsel for review.

*Comment 8*: The draft Atlantic billfish FMP fails to recognize or utilize the cooperative tagging program.

*Response*: NMFS disagrees. The Billfish FMP amendment includes information for Atlantic blue marlin, Atlantic white marlin, and sailfish, on the total number of tagged and released fish over the last 43 years as part of the Cooperative Tagging Center (CTC) program. Information on the geographical area where most of the tagging activity occurred and during what times of year, the average distance tagged fish traveled before recapture, and specific movement patterns exhibited by some fish is also included

in this section. The CTC database was incorporated into maps with other effort sources to assist with determining essential fish habitat designations. The life history characteristics, gleaned in part from the CTC data, were often a factor in the consideration of management actions for the final FMP amendment. Recent support of a single billfish stock is also based in part on tag recoveries, which indicate both trans-Atlantic and trans-equatorial movement of billfish.

*Comment 9*: NMFS should not require permits and logbooks for charter boats.

*Response*: NMFS disagrees. The 1997 ICCAT recommendation required improvements in monitoring, data collection, and reporting from all fisheries that encounter Atlantic billfish. The draft FMP amendment proposed the use of mandatory permits and logbooks for charter/headboat operations. These management measures provide catch and effort data for Atlantic billfish that currently are not well quantified. Therefore, NMFS maintains that permits and logbooks for charter/headboats must be mandatory.

*Comment 10*: The Atlantic blue and white marlin landing caps were generated from reported landings for 1996, when NMFS only minimally estimated landings based on samples of selected billfish tournaments and the Large Pelagic Survey. NMFS has proposed several improvements in monitoring in the FMP amendment that will increase the accuracy of landing estimates, which could unfairly reduce the number of billfish available to be landed, relative to 1996, in order to comply with the 1997 ICCAT recommendation.

*Response*: NMFS agrees that a statistically valid system must be developed to ensure an accurate comparison between 1996 and years after monitoring accuracy is increased. A review of all available information is currently being conducted to obtain the most accurate, scientifically-based landings for 1996. Other methods are also being developed to examine catch and landing rates to determine if these values can be used to reflect the reductions in landings between 1996 and 1998, resulting from the two interim rules (March 24, 1998, 63 FR 14030; and September 29, 1998, 63 FR 51859) implemented to increase size limits of blue and white marlin during 1998 to immediately comply with the 1997 ICCAT recommendation.

*Comment 11*: NMFS should not change the fishing year. The proposed fishing year does not reflect the true operational time frame of the recreational billfish fishery and could disadvantage anglers and tournaments during the spring through potential regulatory changes implemented by NMFS to control landings to comply with ICCAT recommendation. Also, the proposed June 1 to May 31 fishing year is incompatible with ICCAT reporting by calendar year.

*Response*: NMFS disagrees. The June 1 to May 31 fishing year was selected as a final action for the Atlantic billfish FMP to provide NMFS with sufficient time to meet legal requirements for implementing ICCAT recommendations (e.g., notice and comment). NMFS will report billfish and swordfish landings to ICCAT on both a calendar year and fishery year basis. A June to May fishing year is also consistent with most other HMS fisheries, thereby meeting Objective 5 of FMP amendment. If landing caps for Atlantic blue or white marlin are exceeded, as determined by the most recent tournament and other landings data, it is possible that NMFS would raise the minimum size to avoid exceeding the landing caps, which could lead to spring tournaments being negatively impacted. However, it is anticipated that the size limits implemented in the final rule will be sufficient to avoid this possibility.

*Comment 12*: NMFS fails to propose any adequate mechanisms to ensure U.S. compliance with the 1997 ICCAT recommendation for Atlantic billfish, contrary to the mandates of ATCA. The proposed minimum size limits and/or recreational retention limits, and the provision providing the AA authority to adjust the retention limit to zero, will not accurately account for all recreational landings, as required under this ICCAT recommendation.

*Response*: NMFS disagrees. The FMP amendment adopts several new monitoring, permitting, and reporting requirements to better quantify the number of fishermen and effort. These requirements will be evaluated as part of the annual SAFE and National Reports and if determined inadequate, framework provisions in the FMP amendment will be utilized. Framework provisions for possible future actions include vessel permits for all U.S. registered vessels fishing recreationally for Atlantic HMS and a landing tag for all recreationally landed billfish. In the event that the ICCAT-recommended landing caps are close to being reached, NMFS has the authority, under section 305 (d) of the Magnuson-Stevens Act to take appropriate action.

*Comment 13*: The expansion of the management unit for Atlantic blue and white marlin to the entire Atlantic Ocean, and implementation of regulatory actions for all Atlantic billfish under both Magnuson-Stevens Act and ATCA could result in the double reporting of recreational landings from U.S. citizens fishing in foreign waters.

*Response*: NMFS disagrees. The final FMP amendment includes a final action to expand the management unit for Atlantic blue and white marlin to the entire Atlantic Ocean, and implement regulatory actions for Atlantic blue marlin and Atlantic white marlin under both Magnuson-Stevens and ATCA. NMFS will work with the Department of State, and other agencies to ensure that fish are counted accurately and to ensure that accurate catch data are submitted to ICCAT.

*Billfish International Rebuilding Strategy*

*Comment 1*: NMFS should negotiate with ICCAT to prohibit the landing of billfish throughout the Atlantic Ocean.

*Response*: For some ICCAT member countries/entities, billfish are used for subsistence and/or as a source of income, while others may have a ''no discard'' policy. However, this does not preclude these ICCAT member countries/entities from agreeing to additional management measures. The United States must continue to work with other members to reach a practical solution to rebuild Atlantic billfish resources. Indeed, the United States sponsored the 1998 ICCAT resolution calling for additional conservation measures following blue and white marlin stock assessments in 2000 and sailfish stock assessment in 2001. Recovery of overfished Atlantic billfish stocks will require a multi-national approach.

*Comment 2*: It is mathematically impossible for NMFS to reduce U.S. billfish mortalities by 25 percent simply by placing restrictions on the recreational fishery. NMFS should apply the ICCAT-recommended 25 percent reduction to all U.S. sources of mortality, not just billfish landed by recreational anglers.

*Response*: The 1997 ICCAT recommendation requires member countries/entities to ''Reduce, starting in 1998, blue marlin and white marlin landings by at least 25 percent for each species from 1996 landings, such reduction to be accomplished by the end of 1999.'' Although the majority of U.S. billfish mortalities reported to ICCAT are a result of dead discards from the pelagic longline fishery, the ICCAT recommendation only applies to U.S. recreational anglers because they are the only U.S. sector allowed to land billfish. The United States is obligated by ATCA to comply with this recommendation.

An Atlantic billfish bycatch reduction strategy is established using the management tools included in the HMS FMP. Billfish mortality attributed to bycatch in the pelagic longline fleet is managed through the HMS FMP.

*Comment 3*: The United States has existing regulations that limit billfish landings (size limits for recreational anglers, and prohibitions on commercial possession of Atlantic billfish), therefore the 1997 ICCAT recommendation does not apply to this country.

*Response*: NMFS disagrees. The 1997 ICCAT recommendation requires a reduction of Atlantic blue marlin and Atlantic white marlin landings by at least 25 percent from 1996 levels, and there is no provision exempting countries with existing billfish regulations that limit allowable landings. Each member is to advise ICCAT on an annual basis of measures in place or to be taken that reduce landings of marlins or fishing effort. The United States is complying with this recommendation by increasing the minimum size limit of Atlantic blue marlin and white marlin, and continuing the commercial prohibition.

*Economic Impacts Resulting from Billfish Measures*

*Comment 1*: The draft FMP amendment overlooks the negative economic impacts of the preferred alternatives on recreational communities. Preferred alternatives will have negative economic impacts on not just direct participants in the Atlantic billfish fishery but travel-related industries; fishing-related businesses; and local charities that receive large donations from tournaments proceedings.

*Response*: The draft FMP amendment and the supplementary RIR/IRFA identified, based on the best-available information, the potential social and economic impacts of the various management measures, including expenditures by recreational anglers. The IRFA thoroughly discussed the recreational retention limit, along with the zero retention limit provision, and NMFS has dropped this measure from the final FMP amendment. NMFS has also established a voluntary observer program for charter/headboat vessels, in part to reduce the negative economic impacts that would be associated with a mandatory observer program for charter boats, and has dropped the prohibition of multiple hooks.

*Comment 2*: The preferred management measures selected by NMFS ignore the greater economic value of recreational fisheries relative to that of the pelagic longline commercial fishery.

*Response*: NMFS disagrees. The draft FMP amendment and the supplementary RIR/IRFA refer to a 1989 study by Fisher and Ditton of Texas A&M University that provided an estimated economic impact (i.e., money spent) of the recreational component of the billfish fishery to be in excess of $180 million. The draft FMP amendment and the supplementary RIR/IRFA also included an estimate of the total gross revenues foregone from dead discards of all billfish over the eight-year period between 1988 and 1996, $5.3 million, or $664,648 per year. The draft FMP amendment specifically stated: ''While these values are far from insignificant, they are considerably less than the $180 million spent each year by tournament anglers alone, and net economic benefits of $2 million per year.''

*Comment 3*: NMFS should evaluate which industry (recreational or commercial) provides the most economic value to the United States and select management measures accordingly. The recreational billfish community annually generates millions of dollars for the U.S. economy (economic impact) in the pursuit of what essentially constitutes a catch-and-release fishery. Conversely, commercially caught billfish have no value because they must all be discarded. The total ex-vessel value of targeted commercial species (i.e., tuna and swordfish) contributes less to the national economy than recreational highly migratory species anglers. Therefore, NMFS should ban use of pelagic longline gear in the U.S. EEZ.

*Response*: NMFS disagrees. The final RIR and the IRFA discuss common misconceptions of comparing recreational versus ex-vessel economic effects. Additionally, in determining final management actions, the economic value of a fishery is an important consideration, however it is not the sole criterion. NMFS must consider additional factors and consider resultant potential impacts on each fishing sector. While NMFS recognizes the significant economic value of billfish recreational fishery, it does not support banning the use of longline gear.

*Comment 4*: NMFS should reduce billfish bycatch mortality by developing a buyout program to reduce or eliminate pelagic longline vessel effort in the Atlantic Ocean.

*Response*: Consideration of a fishing capacity reduction plan, as well constraints on buyback programs and funding mechanisms were described in the draft FMP amendment. A buyout program can only be effective in the reduction of billfish bycatch if the overall effort (i.e., number of hooks in the water) is reduced. The final FMP amendment action to establish an Atlantic billfish bycatch reduction strategy includes buyout programs as one of six elemental components in the HMS FMP that may be used to effectively reduce effort and longline bycatch mortalities. NMFS may consider establishing a buyout program in the HMS FMP after the rebuilding program in that plan is established, along with limited access.

*Comment 5*: Atlantic billfish tournaments that require landing billfish constitutes ''trade, barter, or sale.'' NMFS should prohibit cash/merchandise prizes in association with these tournaments to reduce the incentive to land Atlantic billfish.

*Response*: NMFS disagrees. Regulations state that the sale or purchase of billfish from its management unit is prohibited (50 CFR 635.31). A survey of tournament rules has shown that a billfish is not required to be given to the tournament to qualify for a prize, rather the fish is only subject to a measurement of its weight. The fish is ultimately retained as the property of the individual submitting the fish for entry in the tournament, therefore no purchase or sale of the billfish has occurred and the regulations have not been violated. Any tournament that violates the prohibition on sale would be subject to civil action. However, the final FMP amendment does not prohibit cash/merchandise prizes in association with billfish tournaments as long as they are not given in exchange for any billfish.

*Atlantic Tunas*

*Comment 1*: NMFS should prohibit longline and net gear (including driftnets and purse seines) in the bluefin, yellowfin, and bigeye tuna fisheries.

*Response*: Driftnet gear is already prohibited in the bluefin tuna fishery and through this final action is prohibited in the fisheries for other Atlantic tunas (bigeye, albacore, yellowfin, skipjack (BAYS tunas). Pair trawls are prohibited in all Atlantic tuna fisheries. Longline gear is restricted in the bluefin tuna fisheries with strict target catch requirements for incidental catch retention. Through this final action, fishermen who wish to enter the BAYS longline fishery are required to obtain limited access permits for both Atlantic swordfish and sharks. As such, access to the BAYS longline fishery is limited. Since pelagic longline gear is used to target swordfish and other fish

species, prohibiting the gear in the Atlantic tuna fisheries would result in increased tuna discards. NMFS maintains that there is no reason at this time to prohibit the use of purse seine gear in the Atlantic tuna fisheries. Bycatch concerns are minimal and access to the fishery is limited.

*Comment 2*: NMFS received numerous comments regarding bluefin tuna landings quota allocation, supporting and opposing limiting the Purse Seine quota to 250 mt. NMFS also received requests to reallocate some Purse Seine quota to other categories (commercial and recreational) to reflect historical participation and/or the increase in fishery participants (e.g., the Angling category). Comments in support of Purse Seine quota reduction include: the Purse Seine allocation is inconsistent with NS 4 in that the allocation is not fair and equitable, a few individuals receive an excessive share of the landings quota, and since Individual Vessel Quotas are transferrable, it is conceivable that a single owner could acquire rights to the entire Purse Seine Quota; NMFS should not incorporate the IVQ system by reference; and NMFS should implement a buyback program for the Purse Seine fishery. Comments in opposition to limiting the Purse Seine category to 250 mt include: the proposed cap was neither presented in the draft HMS FMP nor to the HMS AP for discussion, would be an arbitrary and capricious action, and would be contrary to the Magnuson-Stevens Act provision that NMFS ''allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery;'' the argument that the fishery does not contribute catch per unit effort (CPUE) data is invalid; NMFS should not take this action without conducting a comparative analysis of allocations leading to ''excessive quota shares;'' and the AP, in discussing the issue of Purse Seine quota (as referenced in the proposed rule) was referring to relative quota shares rather than an absolute quota tonnage.

*Response:* As described in the FMP, NMFS bases the quota allocations on consideration of several factors, including the collection of the best available scientific data and the optimization of social and economic benefits. When NMFS established the current limited entry system with non-transferable individual vessel quotas (IVQs) for purse seining in 1982, NMFS considered the relevant factors outlined in section 303(b)(6) of the Magnuson-Stevens Act. In 1992, NMFS established ''base'' quotas for all categories, which were based on the historical share of landings in each of these categories during the period 1983 through 1991. In 1995, NMFS reduced the Purse Seine category base quota by 51 mt, in large part because the Purse Seine category does not provide a catch per unit effort time series used to estimate trends in stock size. This reduced quota was the base for the allocation to purse seines in 1996 through 1998. NMFS believes that limiting the future Purse Seine category to this same quota level is fair and equitable, given that the limited entry (IVQ) system has limited participants who are insulated from increased competition and participation, in contrast to the other categories that are open-access fisheries with increasing participation and intense competition for the quota. Similarly, based on consideration of the historical participation of those in the Purse Seine fishery, NMFS does not believe that the allocation to the Purse Seine category, including any possible transfers of quota within the category, constitutes an excessive share of the bluefin tuna quota.

However, NMFS notes that the AP did not have an opportunity to address the Purse Seine quota in the context of the quota increase. Therefore, NMFS will hold the 8 mt in the Reserve until after the AP has discussed the issue. If NMFS concludes that a different result is appropriate, the Purse Seine category quota would be modified through the framework provisions in the FMP.

NMFS has no plans to consider a vessel buyback in the Purse Seine fishery at this time.

*Comment 3*: NMFS received numerous comments in support of a prohibition on the use of spotter aircraft by vessels (other than Purse Seine category vessels) participating in the bluefin tuna fishery, specifying that the prohibition would, among other reasons: lengthen the season via reduced catch rates, ''level the playing field'' for those fishermen who do not use planes, decrease bycatch and discard of undersized bluefin tuna, affirm the basis for the allowance of multiple landings for the Harpoon category (i.e., dependence on good weather), return the Harpoon category to its traditional fishing methods, and reduce the potential for accidents. NMFS received comment that the final rule should be issued before May 15, 1999, so that vessel owners can choose their appropriate permit category. NMFS also received several comments from opponents of a prohibition, including: NMFS should address the spotter plane issue independently of the FMP and should base its decision on the best available science; NMFS has failed to identify the important fishery-independent data (e.g., on bluefin tuna distribution, behavior, and environmental biology) collected by spotter pilots and has implied in the FMP that CPUE-based indices are the only scientific data of any importance to bluefin tuna management; and arguments to prohibit the use of planes in the bluefin tuna fishery are baseless. Other comments NMFS received regarding the spotter plane issue include: NMFS should make a decision regarding an increase to the Harpoon quota independent of the decision on spotter planes; NMFS should implement a subquota for Harpoon vessels that are assisted by spotter planes; NMFS should implement a daily catch limit of one bluefin tuna per day for Harpoon vessels; and NMFS should hire spotter pilots to conduct scientifically valid, fishery-independent aerial surveys. NMFS also received comment that, since many General category permit holders may obtain a Harpoon category permit if NMFS implements a spotter plane prohibition (for vessels other than in the Purse Seine category), NMFS should increase the Harpoon category quota.

*Response*: NMFS did not implement a final action regarding this issue in the HMS FMP. A separate rulemaking will be undertaken after further deliberation and analyses. NMFS agrees that analysis of the effects of spotter aircraft on vessels participating in the bluefin tuna fishery must be based on the best available science. NMFS intends to complete a final rule on this issue prior to the commencement of the General and Harpoon category fishing seasons, June 1, 1999, and understands that it is preferable to announce the decision prior to the deadline for permit category changes.

*Comment 4*: NMFS should not require that Atlantic tunas other than bluefin tuna be landed with the tail attached; this regulation is unnecessary and restrictive. The current dressing procedures, which leave pectoral fin and the dorsal fins attached, provide the necessary physical features for accurate species identification. Keeping tail fins intact creates processing and storage problems for tunas that will reduce quantity and price.

*Response*: NMFS recognizes the impact of the current required landing form on commercial fishermen, especially longline fishermen. NMFS requires the landing of Atlantic tunas with the tail and one pectoral fin attached to facilitate enforcement of minimum size. However, NMFS is currently analyzing yellowfin and bigeye tuna measurement data to

develop a formula to convert measurements (e.g., pectoral fin to fork measurement or pectoral fin to keel measurement) for yellowfin and bigeye tuna landed with the head removed. NMFS may consider allowing yellowfin and bigeye tuna to be landed with head and tail removed when an appropriate conversion formula is developed.

*Comment 5*: NMFS received numerous comments regarding restricted-fishing days (RFDs), some of which support the status quo, some of which oppose RFDs altogether, and some suggesting alternate schedules, including: in order to extend the General category season, NMFS should implement more RFDs than proposed, e.g., 3 days or more per week (Sundays, Wednesdays, and Fridays or Sundays, Mondays, and Wednesdays) in addition to the days that correspond to Japanese market closures, and NMFS should begin the schedule of RFDs for 1999 in early July.

*Response*: NMFS has considered these comments and agrees additional General category RFDs may increase the likelihood that fishing would continue throughout the summer and fall, and would further distribute fishing opportunities without increasing bluefin tuna mortality. NMFS will announce annually the General category effort control schedule (time period subquotas and RFDs) through a final specifications notice. NMFS intends to announce the 1999 RFD schedule and address comments regarding effort controls in the final specifications, to be published concurrent with this final rule. See Appendix 3 of the final HMS FMP for the 1999 effort control schedule and a discussion of the effort control alternatives.

*Comment 6*: NMFS received some comments in support of the status quo General category time-period subquotas (three periods), and some suggesting alternate schedules, including: NMFS should implement two General category time-period subquotas (e.g., for June-August and September-December) since prices are higher in August than September and to avoid derby conditions in October.

*Response*: NMFS addresses comments regarding effort controls in the 1999 final specifications notice, published concurrent with this final rule. See Appendix 3 in the final HMS FMP for the 1999 effort control schedule and a discussion of the effort control alternatives.

*Comment 7*: NMFS received several comments requesting more certainty regarding the Angling category season, retention limits, and quota allocation, including: NMFS should implement a separate daily retention limit for U.S. Coast Guard inspected vessels; NMFS should separate recreational landings quotas for Charter and private vessels; NMFS should implement more and/or different regional subquotas; NMFS should implement date-certain seasons; NMFS should balance the entire Angling category quota over three years; and NMFS should shift the north/south dividing line for the Angling category. Further comment included: NMFS should establish a set season with daily retention limits and minimum sizes by area and make adjustments for overharvests and underharvests annually vs. inseason. With this approach, the recreational industry and anglers can make plans for the fishing season that will not get disrupted by uncertain changes (i.e., closures and adjustments to the daily retention limit). An improved data collection program would be an important part of this and could be pursued with industry support to provide accurate catch and effort data for quota/stock monitoring purposes and to determine the sub-area quotas/seasons for the following year. The annual assessment of the catch and adjustment of the sub-area quotas should make it easier to analyze and implement a better location for the north/south line and the possibility of a third area in the vicinity of Montauk, New York and north.

*Response*: In the HMS FMP, NMFS describes the challenges in managing and monitoring the recreational fishery for bluefin tuna, with its highly variable catch rates and locations, and the ICCAT restrictions on the catch of school size bluefin tuna. In order to monitor recreational landings of bluefin tuna, NMFS requires cooperation from the recreational community in using the Automated Catch Reporting System and participation in the Large Pelagic Survey. NMFS has the authority and flexibility to open and close the Angling category in sub-areas in order to ensure equitable fishing opportunities. The recent ICCAT recommendation which allows 4 years for countries to balance their landings of school size bluefin tuna also should allow the United States more flexibility in managing this fishery, and NMFS is committed to working with the Advisory Panel, the States, and recreational fishermen in order to better manage the Angling category fishery.

*Comment 8*: NMFS should postpone action on the bycatch measures until it has at least a full year's data from all fishing sectors, in order to proceed in a fair, equitable, and effective manner.

*Response*: NMFS has based the bycatch measures on the best available information. Further, NS 9 requires NMFS to minimize bycatch to the extent practicable.

*Comment 9*: NMFS should permit spearguns as an allowable gear type in the Atlantic tunas Angling category fishery.

*Response*: The fishery for Atlantic tunas is subject to intense competition among the various user groups; the addition of spearguns as an allowable gear type could cause additional conflict among the user groups, and may pose other problems including safety and discard concerns. Therefore, NMFS is not adding spearguns as an allowable gear type at this time.

*Comment 10*: NMFS received numerous comments for and against the proposed recreational daily retention limit of 3 yellowfin tuna per angler. Those in support of the retention limit include: NMFS has ignored the expansion of the recreational yellowfin tuna (and bigeye tuna) effort despite the U.S. commitment to ICCAT to limit effective yellowfin effort to the reported 1992 level, so NMFS should implement recreational restrictions now; a daily retention limit of 3 yellowfin tuna per angler is excessive; NMFS should implement a yellowfin tuna daily retention limit since yellowfin tuna seem to be of less weight than in previous years. Comments in opposition to the retention limit include: As yellowfin tuna are not currently considered overfished, there is no basis for a yellowfin tuna daily retention limit; a limit now may lead to a further reduction of the retention limit in subsequent years, as has happened in the bluefin tuna fishery; NMFS has proposed no commercial limits, so the recreational limit is inequitable; setting a recreational daily retention limit may disadvantage the United States in ICCAT negotiations (if a yellowfin tuna quota is recommended in the future) if it results in decreased U.S. landings; a retention limit would have a negligible impact on fishing mortality since on most trips, each angler lands 3 or fewer yellowfin tuna, and in many areas, captains voluntarily limit each angler to 3 or fewer yellowfin tuna; there is no domestic benefit for the regulation since U.S. landings comprise only approximately 4 percent of the Atlantic landings; and until NMFS has scientific data that show that the implementation of daily retention limits is warranted, NMFS should not take any action that affects only the recreational sector.

*Response*: NMFS acknowledges the importance of yellowfin tuna to the recreational fishing industry. NMFS chooses to take the precautionary approach since the latest SCRS report

indicates that the current fishing mortality rate on yellowfin tuna is probably higher than that which would support maximum sustainable yield on a continuing basis. Further, effort restrictions are consistent with the ICCAT recommendation to limit effective fishing effort for yellowfin tuna to 1992 levels. NMFS has already implemented, or is implementing through the HMS FMP, several restrictions in the commercial yellowfin tuna fisheries, including limited access in the purse seine and longline BAYS fisheries, and the prohibition on pair trawl gear and driftnets in the Atlantic tunas fishery. NMFS maintains that limiting access to the recreational yellowfin tuna fishery is not desirable at this time and that the retention limit is an alternative management measure that is consistent with the ICCAT recommendation. This retention limit for yellowfin tuna is designed to prevent excessive landings in the recreational fishery and maximize long-term fishing opportunities.

*Comment 11*: NMFS should allow dealers more than 5 days after the completion of each bi-weekly reporting period to submit bluefin tuna bi-weekly reports. Price information is not available for bluefin tuna shipped to Japan until 4 days after landing, and allowing dealers only one day to submit the information is unreasonable.

*Response*: NMFS agrees, and understands that the proposed reporting requirement may be difficult for dealers to comply with considering the market for bluefin tuna. Therefore, NMFS is not modifying the current 10-day reporting period for bluefin tuna bi-weekly reports.

*Comment 12*: NMFS should not hold 20 mt of the Angling category school bluefin tuna subquota in reserve, given that NMFS may now balance overharvests and underharvests over a four-year period.

*Response*: Because of high, and highly variable catch rates, the Angling category can easily harvest and exceed its school bluefin tuna subquota. NMFS maintains that holding some school bluefin tuna landings quota in reserve is prudent in that it will help to ensure U.S. compliance with the ICCAT-recommended limit on the retention of school bluefin tuna. NMFS may allocate tonnage from the school bluefin tuna reserve during the season, as appropriate.

*Comment 13*: The provision to add or deduct bluefin tuna underharvest or overharvest, as applicable, should be discretionary only for school bluefin tuna, which can be balanced over a four-year period. For all other size classes, the provision should be mandatory.

*Response*: NMFS agrees and has clarified the regulations to be consistent with the ICCAT recommendation. In the case of bluefin tuna overharvest or underharvest, NMFS must subtract the overharvest from, or add the underharvest to, the appropriate quota category, or subcategory, with the exception of the Angling category school bluefin tuna subcategory, for the following fishing year, provided that the total of the adjusted landings quotas and the Reserve is consistent with the ICCAT Rebuilding Program. In the following year, NMFS also may allocate any remaining landings quota from the Reserve to cover this overharvest, consistent with the established criteria.

For the Angling category school bluefin tuna subcategory, because of the ICCAT-recommended 4-year balancing period, NMFS may subtract the overharvest from, or add the underharvest to, the school bluefin tuna subquota for the following fishing year. NMFS must, prior to the end of the 4-year balancing period, make adjustments to account for overharvest of school bluefin, if necessary to comply with the ICCAT Rebuilding Program.

Quota monitoring in the bluefin tuna fishery is difficult and overharvests are likely, thus accounting for overharvests will not be ''punitive,'' in that one category or subcategory's landings quota overharvest will not be redistributed to other categories. While some comments submitted to NMFS have suggested that categories should be ''rewarded'' or ''punished'' for their under/overharvests as described above, NMFS maintains it is not the intent of ICCAT or a domestic management objective to redistribute quota from one category to another due to overharvest. The ICCAT provision regarding overharvest and underharvest is designed to address consistent mortality, not just compliance.

*Comment 14*: The Angling category fishery should be catch and release only.

*Response*: NMFS considered the elimination of the small fish landings quota for bluefin tuna, but rejected this alternative because the elimination of the school, large school, and small medium bluefin tuna fishery would have adverse social and economic impacts on the recreational and charter/headboat sectors, and would reduce NMFS' ability to collect the best available data on the catches of the broadest range of age classes possible for stock assessment purposes.

*Comment 15*: Commercial yellowfin tuna landings should be reduced by at least 50 percent.

*Response*: As indicated in a previous response, NMFS has taken numerous measures to restrict the commercial yellowfin tuna fisheries. Therefore, NMFS maintains that no further action regarding the commercial yellowfin tuna fisheries is necessary at this time. NMFS is concerned about the level of fishing mortality on this stock, and will continue to monitor the status of the yellowfin tuna fisheries.

*Comment 16*: NMFS should continue to allow the traditional harvest of skipjack, bonito, and bait fish with driftnet gear. This gear has been used off the coast of New Jersey for 11 years. This is a clean fishery with no bycatch of marine mammals or endangered species. The draft HMS FMP shows that skipjack and bonito stocks are underutilized and U.S. catches are at low levels. The fisheries for skipjack and bonito are mixed; a directed fishery for bonito cannot be pursued without skipjack as bycatch.

*Response*: Because the Magnuson-Stevens Act does not include bonito in its definition of HMS, NMFS is not implementing bonito conservation and management measures in this FMP. NMFS recognizes that the prohibition on driftnets for Atlantic tunas would preclude a small coastal driftnet fishery from retaining its catch of skipjack. NMFS may issue EFPs to the limited number of coastal driftnet fishermen affected by the gear prohibition in order to collect more information on this fishery and help determine NMFS' future course of action. Individuals who wish to use driftnet gear when targeting species other than Atlantic tunas may apply to NMFS for an EFP to land incidentally caught Atlantic tunas (other than bluefin).

*Comment 17*: NMFS should allow individuals renting vessels to obtain an Atlantic tunas permit (e.g., for tourists in the U.S. Virgin Islands and Puerto Rico).

*Response*: Any vessel with state registration or U.S. Coast Guard documentation may obtain an Atlantic tunas permit. Individuals chartering or renting a vessel for which NMFS has issued an Atlantic tunas permit are therefore eligible to fish for Atlantic tunas.

*Comment 18*: The existing and proposed bluefin tuna regulations violate the Magnuson-Stevens Act, specifically NS 1. The HMS FMP should include a valid designation of MSY, OY, and EFH, using the precautionary approach, as well as objective and measurable criteria for defining overfishing and the measures for ending overfishing and rebuilding the fishery. The ICCAT rebuilding program also

violates NS 2, which requires the use of the best scientific information available, and it was adopted without public input. NMFS must explain why it is using untested models to set MSY. Additional measures that should be included in the HMS FMP include increased observer coverage, minimization of bycatch in spawning areas such as the Gulf of Mexico, and minimization of bycatch by regulating longline fishing gear.

The HMS FMP and proposed regulations also violate the United Nations Agreement on Straddling Stocks, which requires the application of the precautionary approach in the management of fish such as bluefin tuna.

*Response*: The ICCAT rebuilding program meets the standards of the Magnuson-Stevens Act in that it includes an appropriate time period, targets, limits, and explicit interim milestones for recovery; NMFS indicated in the draft FMP that adoption of the ICCAT rebuilding program would be the preferred alternative if these standards were met. The ICCAT rebuilding program is based on the SCRS stock assessment, which is the best scientific information available. It is consistent with both the Magnuson-Stevens Act and the Atlantic Tunas Convention Act in that it implements a quota equal to the ICCAT-recommended allocation for the United States, and maintains traditional fishing patterns of U.S. vessels. The bluefin tuna rebuilding program is precautionary in that it provides the flexibility to modify the Total Allowable Catch, the MSY target, and/or the rebuilding period based on subsequent scientific advice.

Finally, note that NMFS is implementing a time/area closure and a limitation on length of the mainline to reduce pelagic longline dead discards.

*Comment 19*: In the draft FMP, NMFS has used definitions and methodologies that ascribe higher values to the recreational fishery or the ''existence value'' of HMS than to the ''net economic benefits'' of the commercial fishery. NMFS appears to interpret NS 8 as less equal than NS 1.

*Response*: NMFS disagrees; NMFS is not ascribing higher values to the recreational fishery, or the ''existence value'' of HMS. To prepare this FMP in accordance with the Magnuson-Stevens Act, NMFS has addressed the National Standards for both the commercial and recreational sectors using the best available information. In addition, the NSGs state that the consideration of community impacts must not compromise the achievement of conservation requirements.

*Comment 20*: Regarding public hearings, NMFS should ensure that individuals be provided an environment in which they can express their comments for the record. At a few of the HMS FMP public hearings, some individuals felt physically or otherwise threatened by other attendees while or after making their comments and have expressed that they will not give comments at public hearings until NMFS addresses this issue.

*Response*: NMFS is very concerned about comments that concern for personal safety is hindering the public process. NMFS agrees that all attendees at public hearings should be able to articulate their comments in a safe environment. Public comment is an essential part of rulemaking, and public hearings can be an important element in the public comment process. NMFS acquires good information from the comments presented at public hearings and expects members of the public to conduct themselves appropriately for the duration of the meeting. At the beginning of each public hearing, a NMFS hearing officer explains the meeting ground rules (e.g., attendees will be called to give their comments in the order in which they registered to speak, each attendee will have an equal amount of time to speak, and attendees should not interrupt one another). The hearing officer attempts to structure the meeting so that all attending members of the public are able to comment, if they so choose, regardless of the controversiality of the subject(s). Attendees are expected to respect the ground rules, and if they do not, they will be asked to leave the hearing. In the future, when announcing HMS public hearings or scoping meetings, NMFS will include in the notice a reminder of the ground rules for these meetings.

*Comment 21*: In the FMP, the objectives for bluefin tuna management, especially those regarding the preservation of traditional fisheries and historical fishing patterns, should be listed separately, as should the objectives for the other HMS fisheries, and the seven objectives (three listed in the 1995 bluefin tuna Final EIS and four in a 1992 bluefin tuna final rule) should be included. This will be especially important for future ICCAT negotiations as other nations may seek a portion of the west Atlantic Total Allowable Catch.

*Response*: In preparing one FMP for the management of Atlantic tunas, swordfish, and sharks, NMFS has chosen to list the management objectives together. However, NMFS has added language to the objectives to include preserving traditional fisheries as well as historical fishing patterns and participation.

*Comment 22*: NMFS should allocate the fair share of the 1998 ICCAT-recommended U.S. landings quota increase to the Incidental category, the Harpoon category, and the Purse Seine category, and should ensure that any future landings quota increases be distributed fairly and according to each user group's historical share of the fishery. NMFS does not need to maintain such a large reserve, given the improvements in commercial quota monitoring, the new 4-year balancing period for school bluefin tuna, and the proposed school bluefin tuna reserve. NMFS should allocate 17 mt from the Reserve to the Harpoon category quota, to reflect the Harpoon category's traditional participation in the fishery.

*Response*: The FMP implements percentage share allocations for bluefin tuna, and all categories other than the Purse Seine category will share in the impacts of both quota increases and reductions (see response to comment 2). Bluefin tuna allocation issues were discussed extensively at several HMS AP meetings in 1998, and there was general support for maintaining the 1997/1998 quota allocations (which are based upon the historical share of landings in each of these categories during the period 1983 through 1991, modified in 1995 and 1997). While NMFS agrees that improved commercial bluefin tuna monitoring, along with the 1998 ICCAT recommendation and the measures adopted in this FMP, allow for more flexible management of the fishery, NMFS maintains that the Reserve is necessary to ensure that the United States does not exceed its ICCAT-recommended landings quota, and to utilize it for inseason or post-season transfers as necessary and appropriate.

*Comment 23*: In order to avoid potential bycatch mortality, NMFS should not implement a daily retention limit for the Incidental other subcategory (e.g., for traps), but rather should allow landings until the quota is filled.

*Response*: The FMP eliminates the Incidental permit category for Atlantic tunas, and creates two new categories: ''Longline'' to reflect the existing authorization of directed longline fisheries for tunas other than bluefin tuna, and ''Trap'' to account for unavoidable catch of bluefin tuna by pound nets, traps, and weirs. To address enforcement issues concerning unauthorized landings of bluefin tuna under the Incidental category quota, fixed gear other than ''traps'' and purse seines for non-tuna fisheries will no

longer be allowed to land bluefin tuna. Because of the limited ''Trap'' quota, and the infrequent catch of bluefin tuna by pound nets, traps, and weirs, NMFS maintains that the proposed one fish per year retention limit for the Trap category is sufficient, and will not result in additional bycatch.

*Comment 24*: The comment period for the Bluefin Tuna Addendum was not long enough.

*Response*: NMFS filed the supplemental proposed rule regarding bluefin tuna issues on February 22, 1999, and express-mailed copies of the Bluefin Tuna Addendum to AP members and other consulting parties to maximize time to review the document before the deadline for comments. In response to public requests that additional time was needed to review the Addendum, NMFS subsequently extended the comment period deadline (except for proposed swordfish import restrictions) to March 12, 1999, to allow for 2 weeks of additional comments, and added a public hearing at the end of the scheduled 26 hearings.

*Atlantic Swordfish*

Swordfish Rebuilding

*Comment 1*: NMFS received many comments in support of swordfish rebuilding programs with various timetables, including the adoption of an ICCAT-recommended rebuilding program and rebuilding programs shorter than 10 years.

*Response*: NMFS must implement the ICCAT-recommended quota once it is accepted by the United States, and has supported the development of a rebuilding program for swordfish by ICCAT scientists. NMFS believes a 10-year rebuilding program for North Atlantic swordfish is appropriate. NMFS considered a shorter rebuilding program but seeks to balance a reduction in short-term impacts on small businesses and recovery of the stock.

*Comment 2*: NMFS should ban swordfish fishing for 5 years.

*Response*: The United States cannot reduce the swordfish quota to zero for 5 years; the United States is required by ATCA to adopt ICCAT quotas once the United States accepts the ICCAT recommendation. NMFS is establishing a foundation for working through the ICCAT process, to develop an international rebuilding program for Atlantic swordfish once measures are accepted by the United States. Unilateral action will not rebuild swordfish. Banning U.S. swordfish fishing will not rebuild the stock; international action is necessary.

*Comment* 3: NMFS should have a clear statement of objectives and measures for the international rebuilding of swordfish, contrary to what happened at ICCAT in 1998 with bluefin tuna. Those objectives should include a 10-year rebuilding program with associated quota reductions, closed spawning areas to reduce bycatch of juvenile swordfish, and a reduction in fishing capacity.

*Response*: The ICCAT Advisory Committee (IAC) works with the U.S. commissioners to ICCAT and NMFS to develop the negotiating strategy at ICCAT. The HMS FMP serves as the foundation for developing an international rebuilding program that is consistent with the Magnuson-Stevens Act; the final action states that NMFS believes a 10-year program is appropriate. The IAC and commissioners will seek comment on the U.S. position at ICCAT at five regional meetings in the Fall of 1999 as well as at the IAC meeting scheduled for October 1999.

*Comment 4*: NMFS should include an allowance for having swordfish fillets/steaks on board for personal consumption, similar to the groundfish fishery management plan.

*Response*: NMFS cannot implement this measure at this time because it was not contained in the proposed rule (or draft FMP). However, NMFS has studied similar existing regulations in other fisheries and may raise the issue at a future meeting of the HMS Advisory Panel.

*Comment* 5: NMFS should reinstate the commercial retention limit (trip limit) for swordfish to help maintain higher prices and make sure quotas are not exceeded.

*Response*: NMFS established the commercial retention trip limit in order to slow catch rates. Since that time, many large capacity vessels have left the Atlantic pelagic longline fishery. If a need arises in the future, NMFS will consider other commercial retention limits, as well as other alternatives, for addressing these problems.

*Comment 6*: NMFS should not exempt vessels with a vessel monitoring system (VMS) unit from the swordfish retention limits in the North Atlantic Ocean during a closure of that directed fishery. Vessels could make one set south of the line, come north, and then continue to make sets north of the line and NMFS would not know where the swordfish were caught.

*Response*: VMS is required by all pelagic longline vessels, and regulations have been altered to accommodate this measure, therefore, there is no ''exemption.'' NMFS agrees that VMS does not indicate how many swordfish are caught in a set. However, VMS would reveal if a longline set was made in the (closed) north Atlantic, should such a violation occur. It is not necessary to know the number of fish caught in a closed area to impose civil penalties.

*Comment 7*: When the quota for swordfish landings is met, no swordfish imports should be allowed into the United States.

*Response*: NMFS disagrees. Trade restrictive measures must be based on strong evidence that there are resource conservation benefits to such measures and must be consistent with international legal obligations. Note also that NMFS has implemented a final rule prohibiting the import of Atlantic swordfish less than the ICCAT alternative minimum size, and requiring documentation of the source of all swordfish imports in an effort to better monitor international fishing levels.

*Comment 8*: The swordfish data collected off the coast of south Florida in the 1980s are biased and incomplete. The fishery was severely depleted at that time due to the expansion of the near-shore longline fishery off Florida, which adversely affected juvenile and migrating fish.

*Response*: The data collected on fishing mortality of juvenile and migrating swordfish off Florida in the 1980s are currently the best available scientific information to reflect the historical conditions of that fishery. However, if additional data become available, they could be incorporated in the stock assessment.

*Swordfish Recreational Fishery*

Comment 1: NMFS received many comments on the issue of accounting for recreational fishing mortality, including suggestions for future monitoring programs. These suggestions included maintaining the status quo, establishing a new recreational directed fishery quota, or supporting the proposed measure of subtracting recreational landings from the incidental catch quota.

*Response*: NMFS needs time to assemble the historical data that exist and therefore cannot set a reasonable recreational directed fishery quota at this time. However, NMFS recognizes that effort in this sector is growing as swordfish encounters appear to be increasing in some areas and therefore swordfish recreational landings need to be subtracted from the U.S. swordfish quota. NMFS will subtract recreational swordfish landings from the incidental catch quota and may establish a directed

fishery quota and monitoring program, when and if appropriate.

*Comment 2*: NMFS should establish a recreational swordfish retention limit of 1 swordfish per person per day.

*Response*: NMFS disagrees. Recreational directed fishing mortality is not sufficiently known at this time to determine the impacts of a recreational retention limit for swordfish. Retention limits may be established in the future through the framework process.

*Comment 3*: The proposed regulations imply that if the recreational catch is subtracted from the Incidental catch quota and that quota category closes because the quota is met, then there will be a closure of the recreational fishery.

*Response*: NMFS' intent is to account for all sources of mortality, including the recreational catch of swordfish. Therefore, if the incidental catch quota category is closed, all fishermen who catch swordfish incidentally, including all recreational fishermen, must release them. As noted in Comment 1 in this section, NMFS may consider a subquota for recreationally-caught swordfish in the future.

*Counting Dead Discards Against the Swordfish Quota*

*Comment 1*: NMFS received many comments on the issue of accounting for all sources of mortality on the swordfish stock. These comments supported either unilateral or multilateral (or both) measures to count dead discards against overall quotas.

*Response*: NMFS agrees that accounting for all sources of mortality will enhance rebuilding, and this FMP establishes the foundation to count dead discards against the swordfish quota. NMFS cannot count dead discards against the ICCAT quota unless recommended by ICCAT.

*Comment 2*: If NMFS counts dead discards of swordfish against the quota, then NMFS should eliminate the minimum size and allow fishermen to land and utilize all hooked swordfish.

*Response*: NMFS implemented the alternative ICCAT minimum size of 33 lb dw in 1996 and has implemented a ban on sale of swordfish less than that size in the United States. Counting dead discards against the U.S. quota may serve as an incentive for fishermen to avoid areas of small swordfish concentration. By coupling a minimum size measure with a future time/area closure, NMFS' intent is to reduce U.S. mortality of undersized swordfish.

*Comment 3*: Allocation of quotas should be gear-specific and discards should be counted against these specific gear allocations.

*Response*: NMFS authorized longline, harpoon, and other handgear fishermen to fish for Atlantic swordfish in a directed commercial fishery. NMFS does not intend to further sub-divide the directed quota at this time due to low swordfish landings by handgear fishermen. Dead discards would be counted against the entire category.

*Comment 4*: NMFS counted swordfish dead discards against the quota in the past and it did not make a difference to the stock.

*Response*: NMFS has always monitored and reported dead discards in the commercial swordfish fishery to ICCAT, and this mortality was taken into account in assessing total mortality of swordfish. NMFS wants to account for all sources of mortality, and to create every incentive for vessel operators to minimize bycatch and bycatch mortality of HMS. Rebuilding swordfish stocks requires more than just accounting for dead discards, it requires a decrease in fishing mortality rate to rebuild overfished stocks. In the past, the fishing mortality rate was too high and has resulted in overfishing, regardless of whether dead discards were included in the quota.

*Swordfish Size Limits*

*Comment 1*: NMFS should consider eliminating the minimum size limit for swordfish because other countries keep all their swordfish.

*Response*: A minimum size is effective only if it results in a decrease in catch of small swordfish because fishermen are able to modify their behavior or if the survival of released fish is sufficiently high to offset the fishing mortality that may result. Fishermen have been able to reduce small swordfish bycatch to a certain extent, but additional measures may now be necessary to enhance the effectiveness of the minimum size (e.g., time/area closures.) NMFS recognizes the need for further progress in reducing small swordfish mortality, and will use all available information to consider other measures to do so (e.g., time/area closures, gear modifications, etc.)

*Comment 2*: The United States has failed to comply with ICCAT recommendations to protect juvenile swordfish.

*Response*: NMFS has adopted the alternative minimum size for swordfish, has prohibited the sale of undersized swordfish, and keeps appropriate records of swordfish discards. All of these measures are consistent with ICCAT recommendations to protect small swordfish.

*Comment 3*: NMFS received many comments on the minimum size for swordfish that ranged from maintaining the status quo to adopting a schedule of small annual increases in the swordfish minimum size limit above the current minimum size limit of 33 lb (15 kg) dressed weight (dw). Other comments: include the minimum size in the framework; consider more creative options for minimum sizes such as changing tolerance levels so the swordfish are not wasted; and consider options that would be acceptable in the international context to reduce size compliance issues that would otherwise undercut rebuilding schedules.

*Response*: Reducing mortality of small swordfish is important to the recovery of the stock. Increasing the minimum size in increments over time, however, makes it difficult to assess changes in stock size and structure due to the way size-specific abundance data are collected. Increasing the minimum size might increase longline discards given the fact that swordfish do not segregate by size class throughout the Atlantic. NMFS prefers to maintain the minimum size and implement time/area closures, gear modifications, and other measures to reduce bycatch of undersized swordfish and increase survival of released fish. NMFS has included the swordfish minimum size in the FMP framework and is addressing small swordfish bycatch reduction through development of more effective time/area closures of the pelagic longline fishery.

*Atlantic Sharks*

Shark Fishing Gears

*Comment 1:* NMFS should prohibit commercial fishing gears; NMFS should prohibit longline gear.

*Response*: NMFS disagrees. The final actions in the HMS FMP are expected to meet the conservation goals to rebuild large coastal sharks (LCS) and prevent overfishing of pelagic and small coastal sharks (SCS) while allowing limited commercial harvest of sharks to continue.

*Comment 2*: NMFS should ban shark drift gillnets because of excessive bycatch of finfish and protected species in that fishery, and because the Atlantic Large Whale Take Reduction Plan (ALWTRP) regulations do not address sea turtle and finfish bycatch issues.

*Response*: NMFS is gathering information on the effect of drift gillnets in Atlantic shark fisheries on protected species, juvenile sharks, and other finfish. However, because the limited data available at this time do not indicate high bycatch and bycatch mortality of protected species, juvenile sharks, and other finfish in the shark drift gillnet fishery, NMFS is not

prohibiting use of this gear in shark fisheries at this time, consistent with NS 2 which requires that management measures be based on the best scientific information available. NMFS requires 100 percent observer coverage in the southeast shark drift gillnet fishery at all times to increase data on catch, effort, bycatch and bycatch mortality rates in this fishery.

*Comment 3*: NMFS should not adopt the ALWTRP regulations, which are implemented under the Marine Mammal Protection Act, under Magnuson-Stevens Act because the purposes and goals of the Acts are different.

*Response*: NMFS believes that adoption of these regulations under the Magnuson-Stevens Act will increase effective regulatory consistency by regulating fishing activities under the authority of the Magnuson-Stevens Act to comply with Marine Mammal Protection Act objectives. NMFS is currently considering the implications of several regulations that affect the practice of strikenetting in the shark drift gillnet fishery. These regulations include the List of Fisheries and Gear under the Magnuson-Stevens Act (64 FR 4030), the ALWTRP regulations under the Marine Mammal Protection Act (64 FR 7529), and the proposed rule to implement the HMS FMP (64 FR 3154). NMFS will address any inconsistencies through future regulatory and other actions.

*Comment 4*: NMFS should require 100 percent observer coverage in the southeast shark drift gillnet fishery to make sure that all bycatch is documented.

*Response*: NMFS agrees.

*Comment 5*: The ALWTRP regulations, which are effective in April, 1999, will have huge economic impacts on, and may eliminate, the southeast shark drift gillnet fishery due to the prohibition on night sets.

*Response*: The economic effects of the regulations implementing the ALWTRP were considered in that rulemaking (62 FR 39175, July 22, 1997; 64 FR 7529, February 16, 1999).

*Comment 6*: NMFS should not require 100 percent observer coverage in one fishery; observer coverage should be comparable in all fisheries.

*Response*: NMFS agrees that observer coverage should be comparable in that the level of coverage should be adequate to meet scientific and management data needs. NMFS disagrees that levels of observer coverage must be the same across fisheries that use different gear, fish in different areas, or have different bycatch rates.

*Comment 7*: NMFS should consider converting all shark drift gillnet boats to longline gear to reduce bycatch and the costs of monitoring this fishery.

*Response*: NMFS believes that the combination of the measures in the HMS FMP, including capping the SCS quota, the requirement for 100 percent coverage at all times in southeast shark drift gillnet fishery, and adoption of the ALWTRP regulations under Magnuson-Stevens Act, are appropriate to address bycatch concerns in this fishery at this time.

*Comment 8*: NMFS should require species-specific reporting in the menhaden purse seine fishery, count all dead discards of sharks against the commercial quotas, and encourage use and development of bycatch excluder devices.

*Response*: NMFS agrees that more species-specific reporting and increased observer coverage may be warranted to determine the catch, effort, and bycatch and bycatch mortality rates in the menhaden purse seine fishery. NMFS intends to fully analyze available information and will work with the appropriate regulatory agencies to consider additional management measures in the future as necessary.

*Comment 9*: NMFS should implement the authorized gears for sharks as proposed.

*Response*: NMFS agrees. NMFS is currently considering the implications of several regulations that affect the practice of strikenetting in the shark drift gillnet fishery. These regulations include the List of Fisheries and Gear under the Magnuson-Stevens Act (64 FR 4030), the ALWTRP regulations under the Marine Mammal Protection Act (64 FR 7529), and the proposed rule to implement the HMS FMP (64 FR 3154). NMFS will address any inconsistencies through future regulatory and other actions.

*Sharks-General*

*Comment* 1: The original FMP is working and NMFS should give the regulations a chance to be reflected in the science before making more changes.

*Response*: NMFS disagrees. The final HMS FMP measures for Atlantic sharks are in large part based on 1998 Shark Evaluation Workshop results that indicate that additional reductions in effective fishing mortality are necessary to rebuild LCS. The HMS FMP also implements several precautionary measures for pelagic and SCS in order to prevent these species from being overfished.

*Comment 2*: NMFS should ensure that states implement similar size restrictions for sandbar sharks; effective LCS and SCS management will require coordination with regional councils and states.

*Response*: NMFS has asked states to attend AP meetings and to implement regulations consistent with Federal regulations. Several states have implemented or are in the process of implementing consistent or more stringent shark regulations. NMFS intends to continue to work with the Atlantic and Gulf coastal states, the regional fishery management councils, and the regional commissions to coordinate consistent regulations for sharks in state and Federal waters.

*Comment 3*: NMFS developed management options without international consensus and has failed to pursue comparable shark conservation throughout the range of these species. NMFS should justify implementing unilateral actions when international actions are necessary to rebuild shark stocks.

*Response*: Domestic action is warranted due to the fact that several important nursery areas are located within U.S. waters and that proactive domestic management is a critical element for successful international shark management. NMFS disagrees that it has failed to pursue comparable shark conservation internationally. The United States was a leading participant in the recent FAO Consultation on Shark Conservation and Management, which resulted in the adoption of the Global Plan of Action for Sharks. ICCAT is pursuing additional data collection and analyses on sharks through its current authority. NMFS is also pursuing regional management through cooperative discussions with Canada and Mexico.

*Comment 4*: NMFS must increase observer coverage and port sampling (perhaps to 50 percent of fishing effort) to determine the effectiveness of the measures in the HMS FMP, particularly the effectiveness of minimum sizes to reduce fishing mortality on juvenile sandbar and dusky sharks, and to determine bycatch and bycatch mortality of prohibited species and undersized fish. NMFS should conduct length frequency monitoring on an annual basis.

*Response*: NMFS agrees that observer coverage, port sampling, and length frequency monitoring can be important tools in evaluating the effectiveness of the final actions, including the prohibition on possession of dusky sharks. One of NMFS' goals is to ensure that monitoring and observer coverage meet scientific assessment needs. NMFS

intends to take practicable steps to increase observer coverage.

*Comment 5*: NMFS should consider regional differences in its management.

*Response*: NMFS agrees and has attempted to do so in the development of the HMS FMP. NMFS believes that the establishment of ridgeback and non-ridgeback LCS subgroups and the new procedures to adjust for quota over/underharvest address these concerns.

*Comment 6*: NMFS received several comments regarding minimum sizes for sharks, ranging from a minimum size of 4 feet and 4.5 feet for all sharks, 5 feet for all sharks, 3 feet for all small sharks, 6 feet for large sharks, 6 feet for mako and thresher sharks, 7 feet for LCS, and 8 feet for blue sharks, and support for using slot limits for sharks.

*Response*: NMFS agrees with use of minimum sizes as a tool to reduce effective fishing mortality on sharks. For this tool to be successful, it must be relatively simple, comprehensive, and enforceable. NMFS has selected the most efficient minimum size limit for accomplishing the FMP objectives within these constraints. NMFS may consider additional management measures, including increasing minimum sizes and slot limits, in the future.

*Comment 7*: NMFS should do population assessments in 1999 for pelagic sharks and in 2000 for SCS.

*Response*: NMFS agrees that the stock status of pelagic sharks and SCS should be assessed at the soonest practicable time. The ICCAT SCRS bycatch subcommittee will be analyzing pelagic shark catch rates in May 1999, and the United States will participate in that meeting. Additional stock assessments will be conducted as practicable.

*Comment 8*: NMFS should establish all catch and release or tag and release fishing for sharks.

*Response*: NMFS disagrees. NMFS believes that limited harvest of some sharks subject to reduced retention limits and a minimum size in commercial and recreational fisheries meet the conservation goals to rebuild overfished species and prevent overfishing while minimizing social and economic impacts that an all tag-and-release fishing requirement would impose.

*Comment 9*: NMFS should rebuild coastal sharks within 30 years.

*Response*: NMFS agrees that the 30 year rebuilding program for the non-ridgeback LCS species outlined in the HMS FMP is appropriate. However, for the ridgeback LCS species, NMFS believes that a 39-year rebuilding program is appropriate because of the sandbar shark (the primary ridgeback LCS) life history.

*Comment 10*: Analyses of total mortality may be in error if ''catch'' vs. ''harvest'' data are used, especially for sharks.

*Response*: NMFS agrees and the sections in the final HMS FMP that describe recreational fisheries, particularly for shark recreational fishing mortality, have been clarified and uniformly refer to recreational landings or harvest, not catches, consistent with MRFSS terminology.

*Comment 11*: NMFS should dissolve the Operations Team (OT) because the HMS AP fulfills the OT's role.

*Response*: NMFS agrees.

*Comment 12*: NMFS should initiate species identification training for sharks.

*Response*: NMFS agrees and intends to increase public education and outreach including workshops and the production of an identification guide for all HMS.

*Shark Public Display Permitting and Reporting*

*Comment 1*: NMFS should implement the proposed shark EFP process because it is necessary to track/enforce the regulations.

*Response*: NMFS agrees.

*Comment 2*: NMFS should extend the reporting period to 72 hours at a minimum and ideally to 5 days to allow collectors time to determine whether the animal can adapt to the aquarium (if not, the animals are released alive).

*Response*: NMFS agrees. In the draft HMS FMP, NMFS proposed to require EFP holders to mail in the information cards for authorized collections within 24 hours of collection to increase the ability to track and enforcement of authorized EFP activities. NMFS received several comments that supported extending the reporting period, and that were consistent with the intention of selected EFP process. Therefore, NMFS extends the reporting period to 5 days to allow collectors time to determine the health of the animal.

*Comment 3*: NMFS should not require American Zoo and Aquarium Association (AZA) membership in order to get an EFP because it is expensive and new aquariums cannot join until they've been open for a couple of years.

*Response*: NMFS agrees. The draft HMS FMP did not specifically propose to require AZA membership in order to receive an EFP, but did discuss the possibility of linking EFP issuance to AZA membership due to the detailed protocol and facility requirements for membership. Due to the inability of new aquariums to obtain AZA accreditation and the burden and expense of the accreditation process, NMFS will not require AZA accreditation but will consider AZA accreditation, or equivalent standards, as meeting the requirement to provide adequate facilities for animal husbandry (under merits of the application).

*Comment 4*: NMFS should implement quarterly quotas for EFPs to ensure fair and equitable allocation of animals under the public display quota.

*Response*: NMFS disagrees. The HMS FMP does not establish quarterly quotas for EFPs because the selected annual quota of 60 mt ww should be sufficient to ensure fair and equitable allocation. Should the requests for sharks public display collections increase in the future, NMFS will reconsider the public display quota at that time.

*Comment 5*: NMFS should not implement the public display quota because the take is insignificant, the delays and burden in the current system are manageable, and aquarium people are honest.

*Response*: NMFS does not believe that low harvest levels preclude the need for improvements in monitoring and enforcement capabilities, where practicable. Regarding delays and burden under current regulations, NMFS believes that the benefits of increased monitoring and enforcement capabilities exceed those associated with the status quo.

*Comment 6*: NMFS should evaluate an EFP request based on the number of animals previously collected, not requested.

*Response*: NMFS believes that both the number of animals previously requested and collected must be considered in evaluating an application.

*Comment 7*: NMFS should not require the use of invasive tags which can become infected and are unsightly.

*Response*: NMFS agrees that the least invasive tags are preferable. NMFS implements the requirement that all sharks harvested under the selected public display regulations be immediately tagged with a Hallprint tag issued by NMFS in order to be considered an authorized collection. The tag may be removed from the animal and kept on file once the animal is transported to the aquarium where it will be displayed. NMFS may consider alternative types of tags as costs and practicalities warrant.

*Comment 8*: NMFS should develop species-specific public display quotas, especially for sand tiger sharks.

*Response*: NMFS agrees that species-specific harvest levels are preferable and NMFS may develop species-specific harvest levels as data permit.

*Comment* 9: Aquarium personnel should be allowed to remove the tags when the animal reaches its final destination and to keep the tags on file.

*Response*: NMFS agrees and has modified the HMS FMP and final rule accordingly.

*Comment 10*: NMFS should keep the status quo system because NMFS has not given the EFP process, which was new in 1998, a chance to be evaluated.

*Response*: NMFS disagrees. The current regulations governing EFP issuance have been in place, and NMFS has been issuing EFPs for sharks for the purposes of public display, since 1996. The prohibition on possession of sand tiger sharks, a popular aquarium species, in 1997 increased the requests and issuance of EFPs for public display in 1997 and 1998. Accordingly, NMFS has had three years to evaluate the current regulations and believes that the selected public display permitting and reporting system is preferable because it allows for increased monitoring and enforcement of the authorized collections.

*Comment 11*: NMFS should not count animals and tags for fish that are collected under an EFP but are eventually released alive.

*Response*: NMFS agrees, as long as the sharks are released alive.

*Comment 12*: NMFS should establish a separate public display quota for sharks exported to foreign aquariums.

*Response*: NMFS disagrees. Sharks harvested in Federal waters in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea are taken from the same stocks regardless of their ultimate destination such that NMFS does not believe that separate quotas are warranted.

*Comment 13*: The proposed public display quota of 60 mt ww is reasonable.

*Response*: NMFS agrees.

*Anti-Finning of Sharks*

*Comment 1*: NMFS should implement the proposed total prohibition on finning.

*Response*: NMFS agrees. Extending the prohibition on finning to all species of sharks will greatly enhance enforcement and contribute to rebuilding or maintenance of all shark species.

*Comment 2*: NMFS should not extend the prohibition on finning sharks because it disadvantages U.S. fishermen relative to foreign competitors and NMFS should allow a tolerance for blue shark fins to be landed.

*Response*: NMFS disagrees. Finning of sharks within the Federal management unit has been prohibited since the original shark FMP was implemented in 1993 due to excessive waste associated with this practice. NMFS extends the prohibition on finning to all sharks to enhance enforcement and facilitate stock rebuilding and maintenance.

*Sharks: Prohibited Species*

*Comment 1*: NMFS should implement the prohibitions on possession for all species proposed as part of the policy change from prohibiting species that cannot withstand fishing pressure to one allowing retention of only those species known to be able to withstand fishing pressure.

*Response*: NMFS agrees.

*Comment 2*: NMFS should not include more species into the prohibited species group because enforcement is a problem and it is difficult to distinguish certain sharks from each other.

*Response*: NMFS acknowledges that some of the prohibited species are difficult to distinguish from species that are allowed to be retained. Regarding problems of enforcement, additional training and education in shark identification as well as reducing the number of shark species authorized for retention may facilitate enforcement. The approach taken in the HMS FMP should encourage fishermen who have doubts about the identification of a certain fish to release rather than retain it, thereby reducing fishing mortality of fish that are difficult to identify.

*Comment 3*: The proposed additions to the prohibited species list will increase dead discards because certain sharks are already dead when gear is retrieved. It would be better to utilize the mortality than discard.

*Response*: NMFS acknowledges that, for sharks that come to the vessel dead, adding them to the prohibited species list will increase regulatory discards. NMFS also acknowledges that adding such species to the prohibited species list will prevent utilization of such mortality. However, the benefits of preventing directed fisheries and/or markets for species that may not be able to withstand directed fishing pressure far outweigh the drawbacks of increasing regulatory discards, especially since NMFS believes that the magnitude of such regulatory discards is likely to be minor. As these species could have been retained previously and most have not been landed in large volume to date (except dusky sharks, see below), NMFS believes that most of these species are either not currently marketable or are not frequently encountered.

*Comment 4*: NMFS received numerous comments on the proposal to add dusky sharks to the prohibited species management group, including complete support of the measure as proposed, support of a commercial prohibition with an allowance for recreational catches if there was a high minimum size, support of more regional management since the problems with dusky sharks seem to be mostly in the Atlantic, opposition to the proposal because current regulations provide adequate protection, concerns that a dusky shark prohibition will lead to data degradation because they will be landed as sandbar sharks due to their high market value, and concerns that a prohibition on dusky sharks for the Gulf of Mexico will increase waste and regulatory discards because they all come to the boat dead or because fishermen will discard all sandbar sharks as well because they cannot be distinguished from dusky sharks.

*Response*: By prohibiting possession of dusky sharks, NMFS expects that fishermen will adjust their fishing activities accordingly. Further, although many dusky sharks are dead when brought on board the vessel, some are not dead and requiring their release will reduce fishing mortality. Additionally, other measures in the HMS FMP will reduce fishing effort and, therefore, catch. NMFS also notes that dusky sharks have been placed on the Candidate Species List for the Endangered Species Act due to their stock status, which further justifies a prohibition on possession. The most effective way to reduce fishing mortality would be to prohibit fishing for sharks. However, NMFS believes that the measures in the HMS FMP will allow rebuilding while limited commercial fishing for and harvest of sharks can continue.

*Comment 5*: NMFS should prohibit the possession of sandbar sharks as well as dusky sharks because these species are caught frequently in the same areas on the same gear and because fishermen cannot tell them apart.

*Response*: NMFS disagrees that such a measure, which would essentially close directed commercial shark fisheries, is necessary to meet conservation goals and rebuild sandbar shark stocks. NMFS believes that the combination of final actions in the HMS FMP will rebuild sandbar sharks while allowing limited commercial harvest of sharks to continue.

*Comment 6*: NMFS should consider implementing a minimum size and maximum size for dusky sharks to protect both juveniles and adults. Since the largest sandbar shark is smaller than the largest dusky shark, a maximum size limit may allow fishing on all adult sandbar sharks while limiting fishing on

dusky sharks to only a portion of the population.

*Response*: At this time, NMFS believes that a complete prohibition on dusky sharks is warranted due to their severe population declines and low reproductive rate. NMFS may consider a minimum and maximum size limit as appropriate in the future as dusky shark populations rebuild.

*Comment 7*: Data do not support adding dusky, bignose, and bigeye thresher sharks to the prohibited species list; just because these species are not landed does not mean that they are not out there.

*Response*: NMFS disagrees that data do not support the prohibition on possession of dusky sharks. Catch rate data indicate large population declines of dusky sharks since the 1970s and NMFS is concerned that even bycatch mortality alone may negatively impact this species' ability to rebuild to MSY levels due to its low reproductive rate. Regarding the prohibition on possession of bignose and bigeye thresher sharks, addition of these species to the prohibited species list is a precautionary measure to ensure that directed fisheries and/or markets do not develop; the measure is not based on evidence of stock declines at this time.

*Comment 8*: NMFS should take longfin mako off the prohibited species list and add them to the pelagic list.

*Response*: NMFS disagrees. This species is added to the prohibited species list because it is not currently landed and including it on the prohibited species list will ensure that directed fisheries and/or markets do not develop until it is known that this species can withstand specified levels of fishing mortality.

*Comment 9*: NMFS should not prohibit night sharks because data indicating declines in catches are due to fishermen avoiding areas with night sharks in order to avoid small swordfish.

*Response*: NMFS acknowledges that changes in fishing patterns may affect catches and catch rate data and NMFS has listed this issue as a research area for further investigation. NMFS disagrees that prohibiting possession of night sharks based on existing data is inappropriate at this time; however, NMFS may consider additional management measures, including removing night sharks from the prohibited species management group, as data warrant.

*Comment 10*: NMFS received numerous comments on the proposal to add blue sharks to the prohibited species management group, including that NMFS should not add blue sharks to the prohibited species management group because the catch rate data in the HMS FMP do not warrant a prohibition, that it is unfair and discriminatory to ban harvest of blue sharks in the recreational fishery while the commercial fisheries can kill 273 mt dw of blue sharks through the dead discard quota contrary to NS 4 and section 304(g) of the Magnuson-Stevens Act, that blue sharks are one of the last available species for recreational fisheries as regulations on other species have become more restrictive, that the prohibition on blue sharks would have significant economic impacts because numerous tournaments and charter operations in the mid-Atlantic and northeast target blue sharks, that waste is not as prevalent as the HMS FMP indicates because some tournaments provide blue shark meat to food banks and prisons, and that prohibiting blue sharks will increase regulatory discards, contrary to NS 9.

*Response*: NMFS agrees that blue sharks should not be added to the prohibited species management group. As stated in the draft HMS FMP, NMFS proposed the prohibition on blue sharks to address concerns regarding the high numbers of blue sharks discarded dead in commercial fisheries and to create an incentive to reduce blue shark discards (especially dead discards). NMFS proposed the prohibition on blue sharks for both the commercial and recreational fisheries to be equitable to all user groups. However, NMFS received substantial comments describing the social and economic impacts of the proposal to prohibit possession of blue sharks. In part due to these comments, the upcoming ICCAT SCRS meeting to analyze pelagic shark catch rate data, and the establishment of a blue shark quota against which landings and dead discards will be counted, NMFS withdraws the proposal and does not implement the prohibition on possession of blue sharks. By establishing a blue shark commercial quota and reducing that quota by blue shark dead discards as well as landings, NMFS hopes to create an incentive to maximize the survival of blue sharks caught incidentally to other fishing operations. NMFS will reduce the pelagic shark quota by any overharvest of the blue shark quota to address concerns that dead discards of blue sharks can constitute a significant portion of the pelagic shark quota. If dead discards of blue sharks do not exceed the selected 273 mt dw quota, the pelagic shark quota would not be affected.

*Comment 11*: NMFS should maintain the commercial prohibitions on those species of concern (like blue sharks) but should allow recreational harvest with a high minimum size to continue because the impacts of recreational harvest are so low.

*Response*: NMFS disagrees. As stated in the draft HMS FMP, NMFS proposed the prohibition on possession of several shark species for both the commercial and recreational fisheries to be equitable to all user groups. While bycatch and bycatch mortality rates may warrant an analysis of allowing retention of species by some user groups while denying access to other user groups in the future, NMFS believes that regulations on retention should apply to all user groups equally at this time.

*Comment 12*: Environmental groups should put up some money for a ''dusky fund'' to pay for fishermen to photograph and release all the dusky sharks they catch.

*Response*: This comment is not within NMFS' authority to implement.

*Commercial Shark Fishery*

*Comment 1*: NMFS should ban commercial fishing for sharks, stop all sales of sharks caught offshore of the United States, and not allow any shark parts (especially fins) to be exported or consumed domestically.

*Response*: NMFS disagrees as noted above(under Shark Fishing Gears).

*Comment 2*: NMFS' proposed alternatives will destroy the directed shark fishery and do not provide for sustained participation by directed shark fishermen and their communities, contrary to NS 8.

*Response*: NMFS acknowledges that the final actions will likely have a significant economic impact on some shark fishermen, particularly LCS fishermen. NMFS specifically chose the final actions, as a group, both to minimize social and economic impacts to the extent practicable and to meet the goals of the HMS FMP and the Magnuson-Stevens Act to rebuild overfished fisheries. The final action attempts to maximize fishing opportunities while attaining the rebuilding requirements of the Magnuson-Stevens Act.

*Comment 3*: NMFS should schedule fishery openings for specified periods and adjust the season-specific quotas the following year.

*Response*: NMFS agrees.

*Comment 4*: NMFS should count dead discards and state commercial landings made after Federal closure against the quotas.

*Response*: NMFS agrees.

*Comment 5*: Counting dead discards and state commercial landings after Federal closures against the quotas is

''double-dipping'' in that the assessments already account for dead discards and state landings and taking them off the quotas will doubly reduce the quotas.

*Response*: NMFS disagrees. Dead discards and landings in state waters after Federal closures are included in the stock assessments when evaluating stock status and making projections for rebuilding based on different harvest levels. However, dead discards and landings in state waters after Federal closures have not been included in establishing past total harvest levels, which has likely contributed to the need for recent harvest reductions. If NMFS does not include all mortalities when establishing harvest levels, actual harvest levels are set too high and total mortalities exceed levels that would allow rebuilding.

*Comment* 6: NMFS should establish a secondary target species quota for pelagic longline fisheries to allow secondary catches of LCS and pelagic sharks on pelagic longline vessels to be landed and to reduce waste.

*Response*: NMFS agrees that separate quotas or set-asides may be appropriate for directed and/or incidental fisheries or different gears. NMFS may consider further subdivisions of available shark quotas once limited access is implemented and appropriate quotas or set-asides can be determined.

*Comment 7*: NMFS should promote fuller utilization of catches instead of increasing regulatory discards. NMFS should consider eliminating all discards and requiring fishermen to land all their catches, which would provide true data and eliminate waste.

*Response*: NMFS agrees that fuller utilization of catches, consistent with conservation objectives and other applicable law, is preferable to regulatory discards. NMFS may consider additional management measures, including retention of all catches which are counted against applicable quotas, in the future as appropriate.

*Comment* 8: Measures for commercial fisheries should not be delayed pending development of a vessel buyback program.

*Response*: NMFS agrees.

*Comment 9*: NMFS should buy back commercial shark vessels.

*Response*: NMFS has the authority to administer a vessel buyback program depending on availability of funds.

*Comment 10*: NMFS should move finetooth sharks from the SCS management group to the LCS management group.

*Response*: NMFS disagrees that finetooth sharks should be moved from the SCS management group to the LCS management group at this time because finetooth sharks have not been included in the LCS stock assessments to date. However, NMFS may consider adjustments to management groups under the framework procedure in the future.

*Comment 11*: NMFS should implement quarterly quotas to distribute shark catches more evenly.

*Response*: NMFS disagrees. The HMS FMP establishes several measures to address derby fishing conditions and distribution of shark catches. However, NMFS may consider additional measures, including quarterly quotas, as appropriate in the future.

*Comment 12*: NMFS should have its assessments peer reviewed before taking any further actions, especially since the 1997 regulations are still the subject of legal review.

*Response*: NMFS disagrees. The 1998 stock assessment represents the best available scientific information and peer review prior to implementing these measures is not necessary.

*Comment 13*: NMFS should reduce quotas.

*Response*: NMFS agrees that commercial quota reductions are needed to rebuild LCS. A commercial quota cap is implemented to prevent excessive growth in SCS fisheries. NMFS believes that the actions, including subquotas for porbeagle and blue sharks, under pelagic shark commercial quotas will meet conservation goals at current quota levels.

*Comment 14*: NMFS should hold workshops for commercial shark fishermen using rod and reel.

*Response*: NMFS agrees. NMFS intends to increase public education and outreach efforts including workshops for commercial fishermen.

*Comment 15*: NMFS should not issue any experimental commercial shark fishing permits because LCS are severely overfished and pelagic and SCS are fully fished and any new gears will only increase derby conditions.

*Response*: The status of shark stocks will be considered in decisions on whether to issue experimental fishing permits in commercial fisheries.

*Large Coastal Sharks*

*Comment 1*: NMFS should establish the proposed ridgeback LCS subgroup with the 4.5 ft (137 cm) fork length (FL) minimum size and the non-ridgeback LCS subgroup with the reduced quota of 218 mt dw.

*Response*: NMFS agrees.

*Comment 2*: NMFS should close the directed LCS fishery and apply any available quota for this group to the unavoidable bycatch in the pelagic longline fisheries for other HMS. If it is concluded that these actions would preclude rebuilding of the coastal shark stocks, then neither recreational nor commercial harvest should be allowed until the stocks are rebuilt.

*Response*: NMFS disagrees, as noted in the preceding general shark section.

*Comment 3*: NMFS should deal with sharks on an emergency basis and cut the quota in half again.

*Response*: NMFS is reducing the non-ridgeback LCS and SCS quotas by 66 and 80 percent by weight, respectively, in addition to other measures (e.g., counting dead discards against the quota) that may further reduce the LCS, pelagic, and SCS quotas, consistent with the conservation goals.

*Comment 4*: The ridgeback LCS quota, in addition to the prohibitions on possession of dusky and other sharks, may actually increase fishing mortality on sandbar sharks; NMFS should reduce the quota on ridgeback LCS in addition to the minimum size.

*Response*: NMFS is aware that the prohibitions on possession of dusky and other sharks may increase fishing effort and mortality on sandbar sharks. However, dusky sharks comprised 2 and 5 percent of commercial shark landings in 1996 and 1997, respectively, and other prohibited species comprised less than 1 percent. Therefore, NMFS does not expect increased effort to be significant because the reductions in landings due to the prohibition of these species are not large. Additionally, NMFS believes that the combination of final actions will sufficiently reduce effective fishing mortality to allow rebuilding of sandbar and other ridgeback LCS.

*Comment* 5: The proposed ridgeback vs non-ridgeback separation would skew the LCS quota toward slower-growing ridgebacks and could be extremely detrimental to their recovery. Status quo on the LCS management group except for overall quota levels would be better.

*Response*: NMFS disagrees. The final actions that establish ridgeback and non-ridgeback LCS subgroups with separate management is based in part on the recommendation of the 1998 SEW that ''[e]very effort should be made to manage species separately.'' These actions do not manage on an actual species level because NMFS believes that the identification and enforcement problems of species-specific management are too great at this time. However, these actions will allow for management measures to be more tailored to those species complexes within the larger LCS group with which

different fisheries interact. These actions will establish higher harvest levels, but with a minimum size, for the ridgeback LCS than harvest levels for the non-ridgeback LCS due to the lack of size-depth segregation of the primary non-ridgeback LCS as well as new biological data that indicate that blacktip sharks have a lower reproductive rate than previously thought. For these reasons, NMFS selected a lower non-ridgeback LCS harvest level than that for ridgeback LCS, and does not believe that these actions will be detrimental to ridgeback LCS rebuilding. These separate management measures will allow for more tailored rebuilding programs than managing all 22 species of the LCS management group as an aggregate.

*Comment 6*: NMFS received several comments on minimum sizes for LCS, including support of the proposed limit, opposition to the proposed limit, that NMFS should implement species-specific minimum sizes and not an arbitrary 4.5 ft (137 cm) minimum size, that NMFS should implement a 120 cm minimum size for ridgeback LCS, that NMFS should implement a single minimum size for all LCS, and that NMFS should not implement a minimum size on sharks unless that minimum size is applied to all fishermen throughout the species' range.

*Response*: NMFS agrees that a single minimum size for ridgeback LCS is warranted. A single minimum size of 137 cm FL for all ridgeback LCS, based on the age at first maturity for sandbar sharks, will afford year-round protection in Federal waters for the juvenile and subadult sizes that are the most sensitive to fishing mortality. This minimum size for the ridgeback LCS subgroup is selected because the sandbar shark, the primary species in the commercial and recreational fisheries, segregates by size and depth so that fishing effort can be concentrated on the less sensitive adults. No minimum size is implemented for the non-ridgeback LCS subgroup because the primary species in this subgroup, the blacktip shark, does not segregate by size and depth such that a minimum size may actually increase effective fishing mortality (more small fish would be caught and discarded in order to harvest the same quantity of larger fish). NMFS does not believe that species-specific minimum sizes are practicable at this time due to the lack of species-specific biological information on some species such that the appropriate minimum size is unknown and due to the practical problems of education and enforcement of multiple minimum sizes. NMFS believes that establishing a minimum size for ridgeback LCS is appropriate despite the lack of international management because strong domestic management is critical to establishing the foundation for international management and to compliance with domestic law.

*Comment 7*: Because some small ridgeback LCS will still be caught in deeper water where they will be regulatory discards, a minimum size will increase overall mortality rates because at least some of those small fish will be discarded dead.

*Response*: NMFS is aware that some undersized ridgeback LCS will still be caught in commercial fishing operations, which will be regulatory discards, and that some of these fish will be discarded dead. As stated in the HMS FMP, NMFS believes that such bycatch and bycatch mortality will be minimized to the extent practicable due to the size-depth segregation that sandbar and dusky sharks exhibit that should allow fishing efforts to concentrate on the mature adults. However, should the bycatch and bycatch mortality of undersized ridgeback LCS be higher than anticipated (based on observer data) and impede or jeopardize rebuilding, then NMFS may consider additional management measures to address these issues.

*Comment 8*: The proposed minimum size on ridgeback LCS will increase waste because many undersized fish come to the boat dead. This also encourages illegal fishing activity.

*Response*: NMFS acknowledges that the minimum size on ridgeback LCS may increase regulatory discards due to the inability of fishermen to land undersized fish and may increase waste if undersized fish are brought to the boat dead. As stated in the HMS FMP, NMFS is implementing a minimum size for ridgeback LCS due to observer data which indicate that sandbar sharks, the primary target species, segregate by size and depth so that fishing effort can be concentrated on adult sharks offshore. This size-depth segregation should minimize the amount of undersized fish caught and discarded (both dead and alive) such that regulatory discards and waste should also be minimized. (Due to the lack of depth-size segregation of the primary non-ridgeback LCS species, the blacktip shark, NMFS did not propose or implement a minimum size for this subgroup.) NMFS may consider additional management measures to address concerns regarding regulatory discards and waste due to the selected minimum size on ridgeback LCS as data warrant. Regarding illegal activity, the ridgeback LCS minimum size should be readily enforceable which should minimize illegal harvest.

*Comment 9*: The adoption of a minimum size for ridgebacks is a good attempt to protect juveniles, but the position of forward measurement point is too variable. The first anterior cartilaginous dorsal fin ray (exposed when dorsal fin is removed) would be better.

*Response*: NMFS agrees and changes the acceptable measurement of a dressed ridgeback LCS carcass from the first anterior cartilaginous dorsal fin ray to the precaudal pit or terminal point of the carcass to determine the size of ridgeback LCS.

*Comment 10*: NMFS should restore the 1996 quota levels and implement minimum sizes, time/area closures, and limited access to control effort instead.

*Response*: NMFS disagrees. Status quo harvest levels for LCS (which are 50 percent lower than 1996 harvest levels) would not meet NS 1 to prevent overfishing and rebuild overfished fisheries. NMFS does not believe that minimum sizes, time/area closures, and limited access would sufficiently reduce effective fishing mortality to allow LCS rebuilding under 1996 quota levels.

*Comment 11*: NMFS should maintain the ridgeback LCS quota at 642 mt dw.

*Response*: NMFS agrees, subject to the final actions to take dead discards and state landings after Federal closures off Federal quotas and as reduced by the public display and scientific research quota.

*Comment 12*: NMFS should not reduce the non-ridgeback LCS quota but should leave it at 642.5 mt dw.

*Response*: NMFS disagrees. The final action for non-ridgeback LCS quota levels included a reduction of 66 percent by weight in part due to new biological information on blacktip sharks, and the fact that 1997 quota reduction of 50 percent was not as effective as expected. NMFS believes that without such a reduction in the non-ridgeback LCS quota, these stocks will not rebuild, contrary to NS 1.

*Comment 13*: NMFS should phase in the reduction in the non-ridgeback LCS quota because the 1997 reduction is still under legal review, the 1998 stock assessment for blacktips was poorly founded, and the problem of Mexican catches has not been addressed bilaterally.

*Response*: NMFS disagrees. The alternative to phase in the reduction in the non-ridgeback LCS quota was not selected due to NMFS' concerns that phased-in quota reductions may not be appropriate for species or species complexes that require such long rebuilding periods. Additionally, NMFS

reduced the LCS commercial landings in 1993 when the original shark FMP was established and maintained that landings level until 1997 when NMFS reduced the LCS commercial quota again as an interim measure pending establishment of a long-term rebuilding program. NMFS believes that the 1993 quota and 1997 interim reduction have already essentially phased in the reductions necessary for rebuilding LCS and that no further phase-in is warranted.

*Comment 14*: Limited access will be ineffective.

*Response*: NMFS disagrees. NMFS acknowledges that limited access will not solve all of the problems in the shark commercial fisheries but believes it is a significant first step in addressing overcapitalization.

*Comment 15*: NMFS received comments that the 4,000 lb (1.81 mt) commercial retention limit for LCS fisheries should be maintained, that the commercial retention limit is too high, and that the limit will result in discards.

*Response*: NMFS believes that the commercial LCS retention limit helps to extend the LCS seasons and that decreases in this limit may reduce the profitability of fishing trips and exacerbate derby fishing conditions. NMFS believes that the benefits of preventing derby fishing conditions from worsening, despite potentially increasing discards, outweigh the negative impacts of those discards.

*Comment 16*: A 0.7–percent return rate of sandbar sharks from Mexico constitutes a significant source of mortality and NMFS should consider that mortality in stock assessments.

*Response*: NMFS did consider Mexican catches of sandbar sharks in the 1998 SEW. As stated in the 1998 SEW Final Report, catches of LCS in Mexican fisheries were investigated and results from an intensive monitoring project of the artisanal shark fishery showed that sandbar sharks represented only 0.6 percent of the landings numerically. NMFS believes that these results are illustrative because the artisanal coastal fishery is estimated to account for about 80 percent of the total shark production in the Mexican side of the Gulf of Mexico. The low percentage of sandbar sharks in the Mexican artisanal fishery landings as well as a relatively low percentage of tag returns from Mexican waters did not support inclusion of Mexican landings in the species-specific assessment for sandbar sharks conducted at the 1998 SEW. Should additional information become available indicating that Mexican catches of sandbar sharks are substantial, NMFS will include this information in the stock assessments for this species.

*Small Coastal Sharks*

*Comment 1*: NMFS received several comments on the SCS commercial quota including that the lower cap on SCS harvest is good, that NMFS should set the SCS quota lower than 1997 landings and not higher, that the 10 percent cap was arbitrary and the SCS stocks are declining, that NMFS should cap the SCS quota at 1997 levels and not 10 percent above, and that NMFS should keep the status quo for the SCS quota, at least until limited access is in place.

*Response*: A cap on the SCS quota at 10 percent above 1997 levels will prevent large expansions in the SCS fishery while minimizing social and economic impacts from other shark management measures pending additional assessment of SCS stock status. NMFS acknowledges that the loss of opportunity for substantial fishery expansion may have negative social and economic impacts. NMFS notes that the best available data on SCS indicate that catch rates for Atlantic sharpnose sharks, the dominant species in this management group, are not declining. Regarding the comment to cap the SCS at 1997 levels, not 10 percent above, NMFS notes that this measure is precautionary and that 1998 fishing levels may have increased (1998 landings data are not yet available). A commercial quota cap 10 percent above 1997 levels will minimize negative social and economic impacts if 1998 harvest levels exceeded 1997 levels. NMFS disagrees that status quo for the SCS quota is appropriate because the current quota is based on MSY levels from the assessment that supported the original shark FMP. Concerns have been raised by members of the HMS AP and members of the public that the assessment in the original shark FMP was overly optimistic in its estimation of SCS intrinsic rates of increase and the subsequent levels of fishing mortality that this group can withstand. The final action to cap the SCS quota is selected because of these concerns, because commercial fishery landings statistics may substantially underestimate fishing mortality due to the use of SCS as bait that are not reported as landings, and because it eliminates the potential for excessive growth.

*Comment 2*: NMFS should require species-specific reporting of all SCS catches, landings, and disposition of the catch to determine the extent and impacts of SCS being used for bait.

*Response*: NMFS agrees that additional reporting and observer coverage may be necessary to determine the magnitude of ''cryptic mortality'' of SCS due to the use of SCS as bait. Charter/headboat logbooks and voluntary observers will help collect data on this issue in recreational fisheries. NMFS may consider additional management measures to address this issue.

*Pelagic Sharks*

*Comment 1*: NMFS should keep the status quo for the pelagic shark quota because NMFS should not implement any precautionary caps or get out in front of international management, which will disadvantage any future U.S. allocation and/or influence.

*Response*: NMFS believes that precautionary measures for pelagic sharks are warranted due to concerns regarding the sustainability of current fishing mortality rates and the potential for increased fishing effort on those species known to have limited capacity to withstand fishing pressure (e.g., porbeagle sharks). The final actions to establish a species-specific quota for porbeagle sharks at 10 percent higher than recent landings, to reduce the pelagic shark quota by the porbeagle quota, to establish a quota for blue sharks, and to reduce the pelagic shark quota by any overage of the blue shark quota, are primarily precautionary and do not substantially alter the status quo for pelagic sharks. Breaking out the porbeagle quota does not reduce overall harvest levels for pelagic sharks and the pelagic shark quota will only be reduced if blue shark landings and dead discards exceed 273 mt dw. Since the majority of blue sharks are released alive and anecdotal evidence indicates that many of the blue sharks released dead could be released alive if fishing practices were altered slightly, NMFS believes that the incentive to maximize blue shark survival may result in the blue shark quota not being exceeded and the pelagic shark quota not being reduced. Therefore, these final actions may not substantially alter the status quo but would still establish mechanisms to address fishing mortality rate and bycatch and bycatch mortality concerns in the future. Regarding comments that the United States is getting ahead of international management and disadvantaging U.S. fishermen, NMFS believes that precautionary steps are appropriate even in the absence of international management because preventing overfishing will help ensure that U.S. fishermen are not disadvantaged due to stock declines. Additionally, by taking initiatives for conservation measures, NMFS will have a stronger position at the international table when discussing rebuilding and

maintaining shark stocks subject to international fishing.

*Comment 2*: NMFS received several comments on the proposed porbeagle quota including that NMFS should cap the porbeagle quota at the highest landings and not at 10 percent above, and that NMFS should establish a porbeagle quota but reduce it from recent landings to allow rebuilding.

*Response*: NMFS disagrees. Similar to the rationale for a commercial quota cap for SCS at 10 percent above 1997 levels (the year of highest recorded landings), capping the porbeagle quota at 10 percent above the highest landings level will prevent large expansions in the porbeagle fishery while minimizing social and economic impacts pending additional assessment of porbeagle stock status. NMFS acknowledges that the loss of opportunity for substantial fishery expansion may have negative social and economic impacts. Additionally, NMFS notes that porbeagle sharks, as part of the pelagic shark management group, are considered fully fished and that this measure is precautionary and 1998 fishing levels may have increased (1998 landings data are not yet available).

*Comment 3*: NMFS' data on porbeagle sharks are incomplete and substantially underestimate landings.

*Response*: NMFS has updated the reported landings of porbeagle sharks since the proposed rule, and adjusted the porbeagle quota in the final rule, to establish the porbeagle shark quota at 92 mt dw. NMFS intends to investigate further porbeagle shark landings statistics and may adjust the quota in the future as the data warrant.

*Comment 4*: Establishment of a species-specific quota for porbeagle sharks will create a porbeagle derby.

*Response*: NMFS disagrees. The selected porbeagle shark quota is 10 percent higher than the highest reported landings such that a derby fishery resulting from restrictive quotas is not expected to develop. Nevertheless, given other restrictions on shark fishing, there may be increased fishing pressure on porbeagle sharks, and if so, NMFS will address this in the future.

*Comment 5*: NMFS' approach in establishing precautionary quotas is inconsistent because the porbeagle and SCS quotas are 10 percent higher than highest landings and the blue shark dead discard quota is the average of 10 years. NMFS should establish a 500 mt quota on blue shark landings with a 273 mt dw dead discard cap, and a 250 mt dw quota for porbeagle sharks with 30 mt dw allocated for incidental catches.

*Response*: NMFS did take different approaches in establishing the precautionary quotas for porbeagle and SCS and for the proposed blue shark dead discard quota due to the differences in the fisheries. For porbeagle and SCS, NMFS proposed and implements quotas that are 10 percent higher than the highest reported landings because the intention of these measures is to prevent excessive fishery expansion pending additional stock assessments. Therefore, NMFS believes that essentially capping effort is appropriate at this time. On the other hand, the proposed blue shark dead discard quota was intended to create an incentive to maximize the survival of all blue sharks caught incidentally to other fishing operations while minimizing social and economic impacts and reducing regulatory discards, consistent with the proposal to count dead discards against quotas. In this case, estimates of blue shark dead discards have ranged from approximately 20 to 98 percent of the pelagic shark quota and establishing a dead discard quota 10 percent higher than the highest year's discards would be ineffective in maximizing blue shark survival. Therefore, NMFS proposed to establish a blue shark dead discard quota equivalent to the average of the last 10 years dead discards as a means to create an effective incentive to maximize blue shark survival since the potential for pelagic shark quota reductions due to excessive blue shark dead discards was real. Note that NMFS' final action regarding blue sharks is different than that proposed.

NMFS believes that separate quotas for blue and porbeagle sharks are appropriate but believes that quotas of 773 mt dw and 280 mt dw for blue and porbeagle sharks, respectively, are too high, pending additional stock assessments. NMFS selected 273 mt dw and 92 mt dw for blue and porbeagle sharks, respectively, based on the average of recent dead discards for blue sharks and updated data for porbeagle sharks.

*Comment 6*: NMFS received numerous comments on the proposed dead discard quota for blue sharks including that dead discards of blue sharks should be placed under the pelagic shark quota, that the pelagic shark quota should not be increased to allow for dead discards of blue sharks, that a ''dead discard quota'' goes against the mandates of the Magnuson-Stevens Act and NS 9 to reduce and/or eliminate bycatch and bycatch mortality, that NMFS should encourage full utilization of unavoidable mortality and not require discards, that most blue sharks are released alive anyway, and that NMFS should establish a quota for landings and dead discards of blue sharks to reduce data degradation and underreporting.

*Response*: NMFS establishes a quota for blue sharks of 273 mt dw with any overharvests to come off the pelagic shark quota, in part to create an incentive to reduce blue shark discards, especially dead discards. If NMFS were to take all blue shark dead discards off the pelagic shark quota, the magnitude of reductions in the pelagic shark quota might result in a ''vicious cycle'' in which the entire pelagic shark quota would become regulatory discards, contrary to NS 9. Because blue sharks are caught incidentally in fisheries targeting other species, blue sharks will continue to be caught and some discarded dead. By creating an incentive to reduce blue shark dead discards, this action may result in changes in fishing practices that increase blue shark survival rates. NMFS acknowledges that establishing a quota for blue sharks of 273 mt dw may be interpreted as increasing the pelagic shark quota; however, NMFS notes that the pelagic shark quota established in the original shark FMP was based on landings of pelagic sharks from 1986–1991 and that blue sharks landings have ranged from 1–5 mt dw, such that the original pelagic shark quota did not account for blue shark catches and discards.

*Comment 7*: NMFS should require all live blue sharks be released with a dehooking device.

*Response*: NMFS currently requires that all sharks not retained be released in manner that ensures the maximum probability of survival. Further, NMFS intends to encourage use of dehooking devices as part of its outreach and education efforts.

*Comment 8*: Prohibiting possession of blue sharks in recreational fisheries but allowing commercial fisheries to kill 273 mt dw violates NS 4 and section 304(g) of the Magnuson-Stevens Act.

*Response*: NMFS agrees that the proposals to prohibit possession of blue sharks in both commercial and recreational fisheries and establish a blue shark dead discard quota may have resulted in perceived inequities among user groups. NMFS proposed the prohibition on possession for all fisheries because of concerns that blue sharks could quickly become overfished if directed markets or fisheries developed for them. NMFS proposed to establish a dead discard quota for blue sharks because, in combination with the alternative to count dead discards against quotas, dead discards of blue sharks alone could reduce the entire pelagic shark quota to regulatory discards, contrary to NS 9. However, in

part due to comments received during the public comment period, NMFS has reconsidered the alternatives for blue sharks and has determined that the combination of withdrawing the proposal to prohibit possession of blue sharks (i.e., allowing retention), establishing a quota of 273 mt dw for blue sharks against which commercial landings and dead discards would be counted, and reducing the recreational retention limit for all sharks with the addition of a minimum size will meet the conservation objectives of preventing overfishing, establish mechanisms to implement management measures consistent with the precautionary approach, reduce regulatory waste and discards consistent with NS 9, and promote fair and equitable allocation of resources among user groups consistent with NS 4 and section 304(g) of the Magnuson-Stevens Act.

*Comment 9*: NMFS should not establish species-specific quotas for species of concern but should use target catch requirements to control expansions of landings of incidental catches.

*Response*: NMFS disagrees that species-specific quotas are inappropriate tools to control fishery expansions but may consider target catch requirements in the future.

*Shark Recreational Fishery*

*Comment 1*: NMFS received considerable comments on the proposal to establish catch and release fishing only for all LCS and SCS, including that NMFS should stop all shark harvest in both commercial and recreational fisheries if the recreational fishery must be closed, that the numbers in recreational and commercial shark fisheries do not support a zero bag limit for recreational shark fisheries while still allowing commercial harvest, that NMFS should not reward fishermen who did the damage and penalize historic recreational fishermen, that the recreational bag limits for sharks unfairly impact recreational fishermen and are discriminatory against recreational fishermen, which violates NS 4 and section 304(g), and that recreational fishermen are bearing the brunt of shark conservation.

*Response*: NMFS proposed catch and release only fishing for all LCS and SCS due to the reductions in recreational harvest needed for LCS under the rebuilding program (about 80 percent), the fact that post-release mortality of sharks in recreational fisheries is unknown, and the continued widespread misidentification of juvenile LCS as SCS. However, in part due to comments received, NMFS has reconsidered the combination of actions analyzed for recreational retention limits and has determined that a recreational retention limit of one shark per vessel per trip with a 4.5 ft (137 cm) minimum size, and an allowance of one Atlantic sharpnose shark per person per trip (no minimum size) should meet NS 1 to rebuild overfished fisheries for LCS and address the difficulties in enforcement and continued widespread misidentification of juvenile LCS and SCS. NMFS believes that the final action provides access fairly and equitably to recreational fishermen (in all geographic regions) and commercial fishermen, consistent with conservation goals and NS 4. Regarding comments that recreational fishermen are bearing the brunt of shark conservation, NMFS notes that numerous final actions will establish substantial additional restrictions and negatively impact commercial fishing sectors.

*Comment 2*: NMFS received considerable comments regarding recreational retention limits and minimum sizes, ranging from support for the status quo of 2 sharks per trip with an allowance for 2 Atlantic sharpnose sharks per person per trip, 2 sharks per day, 1 pelagic shark per vessel per day regardless of species, 1 LCS per vessel per day, 1 mako shark per angler, 1 shark per vessel per trip and 1 Atlantic sharpnose per person per trip, 1 LCS and 1 pelagic shark per trip with a 4.5 ft (137 cm) minimum size, 2 SCS per trip and 2 Atlantic sharpnose per trip, 1 shark per person with a maximum of 2 sharks per vessel like the Florida regulations, 2 sharks per trip but no more than one shark of any species, 2 sharks per person per day for all species, no limits on retention for blue sharks, as well as 4.5 ft (137 cm), 6 ft (182 cm), and 300 pound (136 kg) minimum sizes for all sharks.

*Response*: In part due to public comments received, NMFS has reconsidered the proposed recreational shark fishing restrictions and has determined that a recreational retention limit of 1 shark per vessel per trip with a minimum size of 4.5 feet (137 cm) FL and 1 Atlantic sharpnose shark per person per trip (no minimum size) will reduce recreational harvests by the approximately 80 percent necessary to rebuild LCS and prevent overfishing of pelagic and SCS, while also minimizing social and economic impacts.

*Comment 3*: NMFS should not implement a zero recreational limit for sharks and the proposed recreational limits do not provide access to comparable substitute species for the southeast. Anglers in the Southeast Atlantic do not target pelagic sharks but target SCS. Pelagic sharks are an unusual catch because they occur too far offshore (about 80 miles to Gulf Stream) and small open boats can't go that far, which may violate NS 10. A lot of anglers cannot safely reach shortfin mako, oceanic whitetip, and threshers. The proposed recreational limits are biased toward the known NE shark fishery, contrary to NS 4.

*Response*: NMFS agrees that the proposed alternative may have differentially impacted anglers by region in that pelagic sharks are more northern in their distribution, and nearshore anglers who could not expand their fishing into offshore waters where pelagic sharks predominate. In part due to these comments, NMFS has reconsidered the combination of actions analyzed for recreational retention limits and has determined that a recreational retention limit of one shark per vessel per trip with a 4.5 ft (137 cm) minimum size and an allowance of one Atlantic sharpnose shark per person per trip (no minimum size) should meet NS 1 to rebuild overfished fisheries for LCS and prevent overfishing for the fully fished pelagic and SCS. The final action will also address the difficulties in enforcement and continued widespread misidentification of juvenile LCS and SCS by essentially establishing catch and release fishing only for juvenile LCS under the selected minimum size and by allowing retention of Atlantic sharpnose sharks, a SCS species easily identified by white spots on the dorsal side. As many SCS do not reach the selected minimum size, the final action also essentially establishes catch and release only fishing for SCS, except for Atlantic sharpnose. NMFS believes that the final action will provide access to the recreational fishery for anglers in the southeast and Gulf of Mexico regions, consistent with conservation goals and NS 4. NMFS also believes that the final action will provide access to nearshore anglers by allowing retention of species available in these areas, consistent with conservation goals and NS 10.

*Comment 4*: NMFS received several comments on allocation of shark harvest including that NMFS should restore sharks to historic 98 percent recreational catch, that NMFS should allocate shark harvest for recreational fisherman based upon the average landings occurring during the past 3 years (1995–97), that the total allowable take of sharks should not be increased so the commercial allocation should be diminished by an amount equal to the recreational allocation, that NMFS should allocate shark harvest for recreational fishermen based on the last

18 years of landings by number, which will equal about two-thirds of the allowable harvest, and that NMFS should not base management and rebuilding on a single year but should base allocation on a 10–15 year time period.

*Response*: NMFS believes that the LCS rebuilding program, with commercial and recreational harvest levels determined by recent harvest as reduced by rebuilding program measures (described in the HMS FMP and based on the 1998 SEW), is appropriate and will meet NS 1 to rebuild the overfished LCS and prevent overfishing of pelagic and SCS. NMFS believes that allocating 98 percent of shark harvests to recreational fisheries would not account for traditional fishing patterns, would not be fair and equitable, and would not provide for the sustained participation of communities associated with commercial fisheries. Regarding the time period on which management and rebuilding should be based, NMFS believes that the final action, which uses 1995 as a reference point for rebuilding, is appropriate. NMFS reduced the quotas and retention limits based on the 1996 stock assessment, consistent with the allocations established in the 1993 Shark FMP which were based on several years of data. The rebuilding program established in the HMS FMP builds on the 1996 assessment and 1997 quota and retention limit reductions. In establishing the rebuilding program, NMFS analyzed the effectiveness of the 1997 reductions and any additional reductions necessary to rebuild LCS consistent with the Magnuson-Stevens Act. Therefore, the allocations of shark harvest in the HMS FMP are appropriate and reasonable. Regarding the allocation of shark harvest between recreational and commercial sectors, the final actions in the HMS FMP will provide access fairly and equitably to both sectors, consistent with conservation goals.

*Comment 5*: NMFS received several comments on the proposal to require all sharks landed by recreational anglers to have the heads, fins, and tails attached, including support for the proposal, that NMFS should require anglers keep the heads and fins onboard but should not require the fish to kept whole because of problems with seafood safety from inadequate freezing, that NMFS should allow anglers to fillet sharks at sea as long as the tails and claspers are retained, and that the requirement for recreational fishermen only is unfair and should be applied to both recreational and commercial fishermen.

*Response*: While these comments warrant further consideration, NMFS adopts the requirement for recreational fishermen to keep sharks intact while not imposing a new requirement for commercial fishermen at this time. When the Shark FMP was implemented in 1993, commercial fishermen were allowed to remove and discard heads, tails, and fins and to fillet the sharks at sea to allow more of the available vessel hold capacity to be used for storing the shark carcasses that eventually would be sold. A prohibition on filleting sharks at sea for commercial fishermen was implemented in 1997 in order to improve species-specific identification of carcasses at the dock. The basis for this provision may have changed, but additional public discussion is needed before the regulations are modified. While NMFS strives for consistent regulations for all user groups, concerns about quality and safety of seafood sold for public consumption resulting from inadequate freezing of shark carcasses preclude a similar regulation for commercial shark fisheries at this time. Because individual recreational shark fishermen harvest smaller quantities of sharks per trip and take shorter fishing trips relative to commercial operations, recreational fishermen should be able to adequately ice shark carcasses so as not to compromise seafood safety. Requiring recreational fishermen to keep sharks intact will address continued widespread problems with species-specific identification of sharks in recreational fisheries, decrease enforcement costs, and facilitate species-specific assessments and management.

*Comment 6*: NMFS has repeatedly ignored requests to implement conservation measures for mako sharks and NMFS should fully protect shortfin makos because their stocks are down.

*Response*: NMFS is aware that anecdotal evidence regarding catches and catch rates of shortfin mako sharks indicates that the stock size may be declining. Accordingly, the United States will be participating in the ICCAT SCRS meeting to assess catch rates of pelagic sharks in May 1999. Pending the outcome of that meeting and other assessments of shortfin mako stock size, NMFS believes that the final action to reduce the recreational retention limit to one shark per vessel per trip with a 4.5 ft (137 cm) minimum size will provide additional protection for this species. NMFS may consider additional management measures, including alternative length or weight based minimum sizes or prohibitions on possession, in the future as necessary.

*Comment 7*: NMFS should consider a 250–300 lb (113–136 kg) minimum size for blue sharks.

*Response*: Additional management measures for blue sharks, including a species-specific minimum size, may be warranted and NMFS may consider such a measure in the future.

*Comment 8*: NMFS should reduce the Atlantic sharpnose retention limit pending additional stock assessments.

*Response*: NMFS agrees.

*Comment 9*: NMFS should encourage voluntary release of sharks.

*Response*: NMFS agrees. NMFS supports all voluntary release of sharks and intends to develop a public education and outreach program that will encourage catch and release and tagging of all released sharks as part of the implementation of this HMS FMP.

*Comment 10*: NMFS should restrict all recreational fishing to catch and release only during the spring pupping seasons.

*Response*: The final action to establish a recreational retention limit of one shark with a 4.5 ft (137 cm) minimum size is expected to meet NS 1 to rebuild overfished fisheries for LCS, as the minimum size will more effectively address the issue of bycatch of juvenile sharks by affording them protection at all times and areas.

*Comment 11*: NMFS should reduce the LCS recreational retention limits but allow recreational fishermen to continue to target blacktip and spinner sharks.

*Response*: The final action allows recreational fishermen to target all but the prohibited species of sharks subject to the retention limit of one shark per vessel per trip and the 4.5 ft (137 cm) FL minimum size.

*Comment 12*: NMFS should not allow more than 2 hooks per line.

*Response*: Modifications in fishing practices, including limits on the number of hooks per line, may reduce mortality of released fish. NMFS may consider such management measures in the future through the framework provisions.

*Comment 13*: NMFS should consider male harvest only to protect mature females. It is easy to tell male from female sharks.

*Response*: NMFS agrees that male only harvest is a potential management measure that could protect mature females and could be enforced if the male claspers were intact. NMFS may consider additional management measures, including male only harvest, if the final recreational retention limits and restrictions on possession at sea and landing actions do not meet NS 1 to rebuild overfished fisheries for LCS, prevent overfishing for the fully fished

pelagic and SCS, and address the difficulties in enforcement and continued widespread misidentification of juvenile LCS and SCS as expected.

*General Comments on Bycatch Reduction*

*Comment 1*: NMFS' plan is not consistent with NS 9 to minimize bycatch and bycatch mortality, to the extent practicable.

*Response*: NMFS disagrees. Numerous measures in the HMS FMP and Billfish Amendment improve NMFS' ability to monitor, control, and account for bycatch in estimates of total mortality. NMFS is pursuing gear modifications to reduce bycatch and a time/area closure to reduce BFT discards. NMFS is also reducing quotas in directed fisheries, implementing limited access, and planning educational workshops to minimize bycatch mortality. Further, NMFS seeks to count dead discards against the quota, which will create an incentive for fishermen to avoid bycatch species, to the extent that they can. Also, NMFS is developing larger time/area closures in order to protect small swordfish and other bycatch and will present these ongoing analyses to the HMS and Billfish Advisory Panels in June 1999, before publishing a proposed rule in Summer 1999. NMFS has increased reporting requirements in order to collect additional data on bycatch mortality in HMS fisheries. The effectiveness of the bycatch reduction strategy will be assessed annually in the SAFE report and necessary modifications can be made through the framework.

*Comment 2*: Commercial fishermen should have to retain all fish that are dead when handled. This would be counted against their retention limit or quota.

*Response*: NMFS adopted minimum size limits for yellowfin, bluefin, and bigeye tunas, and swordfish, and ridgeback large coastal sharks in order to discourage fishermen from targeting small fish. NMFS intends that ultimately all dead discards of each species will be counted against any quotas that may apply.

*Comment 3*: Bycatch and bycatch mortality in the recreational fishery could never be analyzed and could never be truly known and therefore should not be addressed in this FMP.

*Response*: NMFS disagrees. NMFS has identified the examination of post-release mortality in all hook and line fisheries, recreational and commercial, as a research priority. Further, NMFS subscribes to the precautionary approach and intends, once it can be quantified, to account for post-release mortality in all HMS fisheries.

*Comment 4*: Many different comments were submitted regarding workshops and other outreach to fishermen: NMFS should require mandatory attendance of permit holders at vessel education workshops to inform fishery participants of bycatch and bycatch mortality reduction techniques. NMFS has already begun the workshops even though no take reduction plan is in place. If fishermen have to attend workshops, they should be compensated for a missed day of work. Fishermen at the workshops know more about releasing fish, turtles, and mammals than the people presenting the workshop. NMFS should use television fishing shows to promote the bycatch mortality reduction strategy for HMS.

*Response*: NMFS thinks that outreach may be more useful if the program is voluntary. This will allow NMFS to offer workshops as well as informal meetings with fishermen to share recent information on bycatch reduction strategies and new techniques that may be working in other fisheries and to get feedback from fishermen. NMFS has begun the workshops with several objectives in mind; marine mammal bycatch reduction is only one of those objectives. Other reasons for the workshops have included collection of views on comprehensive management systems for pelagic longline fishery management. NMFS agrees that fishermen have considerable expertise in releasing large animals at sea. However, the presenters at the workshops will also be providing information on successful methods used in other longline fisheries (e.g., the Pacific swordfish fishery) and can convey information about new research results which may help fishermen avoid bycatch species. NMFS appreciates the suggestion of using television and will consider that medium in the future for developing and distributing information about reducing bycatch and bycatch mortality.

*Comment 5*: NMFS should establish a target and timetable for reducing bycatch (e.g., 25–75 percent reduction in 5 years) and implement that bycatch plan through time/area closures, gear restrictions and counting dead discards against quota.

*Response*: This FMP implements a number of measures designed to reduce bycatch and bycatch mortality, including gear modification, quota reductions, a time/area closure, and educational outreach programs, as noted above. Limited access to some of the HMS fisheries may also change the nature of these fisheries. NMFS will evaluate bycatch rates once limited access and these bycatch measures, and an upcoming proposed time/area closure to protect swordfish are implemented in these fisheries before setting targets and timetables that could otherwise be unrealistic.

*Comment 6*: Take reduction measures designed to reduce marine mammal bycatch should not be implemented in this plan under the authority of the Magnuson-Stevens Act. A future take reduction team for pilot whales would likely include representatives from the trawl and pelagic longline fisheries. Because the HMS Division does not cover the trawl fishery and if changes are needed in regulations, it will be easier to make those changes under the MMPA than to amend multiple fishery management plans.

*Response*: NMFS disagrees. NMFS needs to consider cumulative impacts of all regulatory measures on fishermen and the ecosystem as required under legislative mandate. Therefore, it is very useful to consider the take reduction measures in the context of other measures in this plan. Some take reduction measure can be amended by framework measure (e.g., gear modifications, time/area closures), instead of an amendment to the plan. Measures that apply to other Federal fisheries, including the squid, mackerel, and butterfish trawl fishery can also be implemented by the appropriate fishery management plan if NMFS sees fit. NMFS seeks to conserve marine resources in an ecosystem approach, including all bycatch species.

*Comment 7*: Strategies proposed by the Atlantic Offshore Cetacean Take Reduction Team (AOCTRT) more than 2 years ago are outdated and ineffective. Rather than publish a plan at this late date, NMFS should reconvene a new team, including other representatives from other fisheries that interact with the same marine mammal stocks.

*Response*: In this action, NMFS will implement several of the measures recommended by the AOCTRT to reduce incidental mortalities and serious injuries of pilot whales in the pelagic longline fishery. NMFS intends to reconvene the AOCTRT to review updated information regarding pilot whales, and to solicit updated recommendations for the pelagic longline fishery. At that time, recommendations to include other fisheries in the take reduction process will be considered.

*Comment 8*: AOCTRT measures are unfair. Whales have changed their feeding behavior in response to the number of longlines in the water. They now teach their young to take advantage of the fish on the longline.

*Response*: If the take reduction team is reconvened, the team might consider available information from fishermen on this feeding behavior. In the interim, fishermen should do all that they can to reduce interactions with whales.

*Comment 9*: Instead of restricting fishermen, who take relatively few whales, NMFS should shut down shipping and control the actions of the U.S. Navy to reduce interactions with large whales.

*Response*: NMFS is also concerned about adverse effects to whales caused by the shipping industry and ship operations of other federal agencies, including the U.S. Navy. NMFS has taken a number of actions to reduce the likelihood of ship strikes. NMFS collaborates with the U.S. Coast Guard, U.S. Navy, Army Corps of Engineers, as well as state agencies and other organizations to alert ship traffic in U.S. coastal waters to the presence of whales. Additionally, NMFS is required to provide biological opinions on activities of federal agencies that might adversely affect endangered species. Other actions include: regulations that prohibit all approaches within 500 yards (459 m) of any right whale; work toward the development of cooperative agreements with individual shipping companies to examine voluntary measures ships might take to reduce the possibility of ship strikes; and beginning July 1999, a mandatory right whale ship reporting system that will provide information on right whales directly to mariners as they enter right whale habitat and use incoming reports to assist in identifying measures to reduce future ship strikes.

*Comment 10*: NMFS chooses a definition of bycatch that is not consistent with the Magnuson-Stevens Act. Specifically, NMFS defines fish that are caught and released by recreational fishermen as bycatch.

*Response*: NMFS' definition is consistent with the Magnuson-Stevens Act. However, as described in the Billfish Amendment, NMFS does not consider released live billfish to be bycatch because the Amendment establishes a catch and release program for billfish released in the recreational fishery.

*Comment 11*: Atlantic Billfish released alive by recreational fishermen should not be considered bycatch because bycatch is undesirable and should be eliminated or minimized according to NS 9, while the live release of billfish is an encouraged practice.

*Response*: NMFS agrees. Recreational anglers have voluntarily reduced landings of Atlantic billfish since the 1988 Atlantic billfish FMP, becoming essentially a catch-and-release fishery. NMFS realizes that live release of billfish is a beneficial practice and believes that establishing a catch-and-release fishery management program will further foster the already existing catch-and-release practices of recreational billfish fishermen. As a result of the establishment of this Program, all Atlantic billfish that are released alive, regardless of size, are not considered as bycatch, within the constraints of the Magnuson-Stevens Act and the NSGs. This decision is consistent with NS 9, the eleventh objective of this FMP amendment, and the 1997 ICCAT recommendation to promote the voluntary release of Atlantic blue and white marlin. It is also important to note that mortalities associated with all catch-and-release events must still be quantified, with results included in assessment of the stocks.

*Comment 12*: The draft FMP amendment fails to reduce the most obvious cause of billfish mortality, which is pelagic longline fishing. NMFS should ban the use of pelagic longline gear inside the U.S. EEZ to eliminate billfish bycatch, and the United States should work through ICCAT to ban the use of this gear throughout the Atlantic Ocean.

*Response*: NMFS disagrees. Following precedents set in other fisheries, the final FMP amendment indicates that billfish bycatch in the pelagic longline fishery is managed by the HMS FMP because the HMS fisheries are the target fisheries for that gear. The FMP amendment also identifies a final action to establish an Atlantic billfish bycatch reduction strategy, using six management measures implemented in the HMS FMP. This bycatch reduction plan takes a holistic approach in complying with NS 9 to reduce, to the extent practicable, all bycatch in the pelagic longline fishery. The effectiveness of the bycatch reduction measures will be evaluated annually as part of the Stock Assessment and Fishery Evaluation (SAFE) report for Atlantic billfish and HMS fisheries. An annual appraisal will include examination of current programs and research to see if Atlantic billfish bycatch can be reduced further, to the extent practicable. Further, banning all U.S. longline fishing in and of itself would not rebuild Atlantic billfish stocks. A much larger reduction in Atlantic-wide landings would be necessary, as discussed under comment 1 in this section. A consequence of a ban of U.S. pelagic longline fishing would likely be an increase in foreign effort to fill the supply of tuna and swordfish historically provided by U.S. commercial fishermen, who are required to discard all billfish caught. Since foreign vessels retain billfish, an Atlantic-wide increase in billfish landings could be a direct result of increased foreign fishing activities. In addition, NMFS must comply with the Magnuson-Stevens Act, which specifies that NMFS must provide fishing vessels of the United States with a reasonable opportunity to harvest any allocation or quota of an ICCAT species agreed to by the United States.

*Comment 13*: NMFS needs to examine gear modification as a mechanism to reduce billfish bycatch.

*Response*: NMFS agrees. Gear modification is part of the billfish bycatch reduction strategy that is based on management tools available in the final HMS FMP. Additional research on the use of gear and gear configurations to specifically address minimizing bycatch and bycatch mortality is needed prior to implementation for the control of bycatch mortality. The HMS FMP will be the regulatory medium to implement gear modification measures, through the framework process, as new information becomes available.

*Gear Modifications*

*Comment 1*: NMFS received numerous comments regarding gear modifications in the pelagic longline fishery to reduce bycatch mortality. These comments included support for: (1) reduced soak time, (2) limited length of mainline, (3) limited number of hooks, and (4) mandated circle hooks. Comments also indicated that some of these measures are difficult to enforce and therefore, should be voluntary measures.

*Response*: NMFS and the AP considered many of these gear modifications in an earlier draft of the HMS FMP. NMFS rejected many of these alternatives in favor of voluntary measures and increased research on gear modifications.

*Comment 2*: The proposed limit to the length of mainline is not likely to reduce bycatch mortality of mammals if the data indicate that many fishermen already have lines that short.

*Response*: NMFS is implementing this measure to set an interim cap on the length of mainline until the take reduction team reassesses the need for other measures.

*Comment 3*: The measure to require longline vessels to haul their gear in the order it was set should not be implemented.

*Response*: NMFS agrees. This measure is difficult to enforce and observer data are not explicit about how the gear is set and hauled. If the take reduction team

meets again and continues to support this measure, NMFS can do a post-trip interview with observers to get a better idea of how many vessels already do this. Also, NMFS remains concerned about potential safety implications for vessels as this measure may cause them to increase the amount of fuel they carry to accommodate for the extra transit time. Conversely, if vessels do not carry more fuel, this measure may have increased economic impacts as trips would have to be shortened.

*Comment 4*: NMFS should not require the use of circle hooks in the recreational fishery; NMFS should require all recreational anglers to use circle hooks.

*Response*: Further research is required on the impacts of circle hooks relative to hook-up rates, post-release mortality, and hook design before the use of circle hooks should be required for the fishery. NMFS is interested in exploring gear modifications that reduce bycatch mortality and is currently funding research on the use of circle hooks vs. ''J-hooks'' in the pelagic longline fishery. The HMS and Billfish APs discussed the use of circle hooks at a meeting in July 1998. Representatives of the recreational fishing community expressed their support for the use of circle hooks to reduce post-release mortality in non-trolling situations with the reservation that this alternative would be better implemented in a non-regulatory way. Outreach programs for anglers and commercial fishermen will address gear modifications, including circle hooks, that may reduce post-release mortality. The results of ongoing research will be considered when available to address this comment in the future.

*Comment 5*: NMFS should implement gear marking requirements. Another commenter indicated that gear marking requirements will have no effect on reducing bycatch or bycatch mortality of HMS.

*Response*: This rule imposes gear marking requirements, because they will assist in enforcement of time/area closures and BFT catch limits, and could provide information on hooked marine mammals. Time/area closures and longline length restrictions are established to reduce bycatch. While vessel monitoring systems can alert enforcement agents to the presence of fishing gear in a closed area, agents need to approach the gear while it is drifting in the water in order to document a violation. Therefore, gear marking requirements will facilitate enforcement of HMS bycatch reduction measures.

*Comment 6*: NMFS should require vessels to move after one entanglement with a protected species. Moving after one entanglement is unenforceable without mandatory observer coverage and therefore success will be difficult to measure. This measure will have no effect on reducing bycatch of HMS.

*Response*: This rule requires fishermen to move after one entanglement. This measure was recommended by the Atlantic Offshore Cetacean Take Reduction Plan and responds to recent research results indicating the clustering of protected species (marine mammals and sea turtles). Some fishermen already move after one entanglement in order to protect their gear, avoid catching protected species, and fish more efficiently. For fishermen who do not currently do this, it may alleviate some of the problems associated with the capture of protected species and predation on their target species. NMFS agrees that this measure is not likely to reduce bycatch of HMS, however, it was not designed to do that. This measure may be difficult to enforce but NMFS received positive feedback at the July 1998 AP meeting that it would help to reduce bycatch by informing fishermen who do not usually follow this procedure.

*Comment 7*: NMFS should require de-hooking devices on board all vessels. However, NMFS needs to define de-hooking devices and eliminate the use of ''crucifiers,'' a tool reportedly used to release a hook from a fish without having to handle the fish.

*Response*: NMFS considered this alternative and rejected it due to the difficulty in enforcing it. NMFS is not able, at this time, to approve specific de-hooking devices, although the term ''dehooking device'' is defined in the final rule. However, NMFS encourages fishermen to use techniques that minimize injury to the fish and to work towards increasing survival of released individuals.

*Time/Area Closures*

*Comment 1*: NMFS should close critical right whale habitat to pelagic longline and driftnet fisheries.

*Response*: NMFS has prohibited the pelagic driftnet fishery for swordfish. Longline fishermen do not currently fish and are not expected to fish in these areas, therefore the only value of this closure would be to prevent expansion of effort into these areas which is unlikely. Parts of these areas are in state waters. For these reasons, NMFS does not close critical right whale habitat to pelagic longline fishermen. If there are fishery interactions with right whales in the future, NMFS may consider closing these areas to HMS fishermen who interact with this species.

*Comment 2*: NMFS has received several comments on the proposed pelagic longline time/area closure off the mid-Atlantic and New England coasts, specifically with regard to bycatch and safety, including: Since there is little pelagic longline gear interaction with bluefin tuna in the southern portion of the proposed closed area, NMFS should move the southern boundary to 39° N to provide additional fishing opportunities and minimize safety concerns while still significantly reducing dead discards; NMFS should, in accordance with NS 9, achieve reduction in dead discards by changing the longline target catch requirements; the United States has failed to comply with ICCAT recommendations to develop bluefin tuna discard reduction measures; NMFS should analyze and implement additional restrictions, such as number of hooks used, soak time, and other time/area closures in conjunction with the proposed time/area closure, in order to minimize bycatch; NMFS should allow longline fishermen to fish with other allowed gears in an area closed to pelagic longline gear without having to physically remove their pelagic longline spool from the vessel. NMFS also received comment that participants of each category should be responsible for minimizing discards and, if a category is successful in doing so, should receive any resulting catch quota benefit. There were also requests that NMFS better quantify the 60 percent decrease in discards associated with the proposed time/area closure.

*Response*: In response to public comment regarding the southern boundary of the proposed closure area, NMFS reanalyzed the logbook data used for selection of the preferred alternative in the FMP addendum. These new analyses show that an equivalent reduction in discards can be achieved by closing a smaller area. Through this FMP, NMFS closes a 1° x 6° block (21,600 square nautical miles), from 39° to 40° N. and from 68° to 74° W., for the month of June, to pelagic longline gear. The modification of the closed area should mitigate some of the safety concerns. This smaller area also responds to concerns raised by pelagic longline fishermen during the comment period about the safety of small vessels crossing the Gulf Stream. NMFS does plan to continue to analyze the impacts of this revised time/area closure and to investigate the potential benefits of other measures. NMFS' analyses continue to indicate that there is no relationship between target catch and bluefin tuna interaction by pelagic

longline gear. NMFS will add any additions to the U.S. landings quota, resulting from unused discard allowance, to the total U.S. quota. NMFS allows fishermen to use fishing gear while a longline is on board provided the longline gear is secured.

*Comment 3*: NMFS received numerous comments concerning the use of time/area closures for the pelagic longline fishery. A range of comments supported the proposed Florida Straits closure, other nursery areas such as Charleston Bump and areas in the Gulf of Mexico, rotating time/area closures, and a year round ban on longline fishing. Comments also opposed any time/area closure that would have unpredictable results due to redistributed effort. Specific to the proposed area in the Florida Straits, NMFS received many comments, including those of pelagic longline fishermen, that indicated that the proposed area is too small to have the desired conservation effect because fishermen will redistribute effort on the fringe of that closed area. Some commenters found the proposed closure discriminatory because it only targets vessels in a particular area.

*Response*: In response to comments indicating the ineffectiveness of the Florida Straits closure, as well as updated analyses, NMFS defers the implementation of a time/area closure for protection of small swordfish and billfish until a later date. NMFS is committed to reducing bycatch of undersized swordfish and other bycatch. Areas being analyzed include areas between Charleston Bump south to Key West and areas in the Gulf of Mexico. NMFS has scheduled an advisory panel meeting on June 10 and 11, 1999, to discuss new analyses related to larger closed areas than that proposed in the draft FMP. Analyses will also be conducted with respect to redirected pelagic longline effort in other areas, and the effect on target species and bycatch. NMFS is aware of the social and economic impacts a closure may have on fishing communities and will consider those impacts when analyzing the alternatives. AP members and the public will have an opportunity to comment on the alternatives before NMFS publishes a proposed rule, by Summer 1999. NMFS agrees that rotating time/area closures could reduce bycatch mortality of undersized swordfish if NMFS could identify concentrations of undersized swordfish or bycatch finfish in real time.

*Comment 4*: Implementation of a time/area closure requires 100 percent coverage with a vessel monitoring system or 100 percent observer coverage.

*Response*: NMFS agrees that VMS and 100 percent observer coverage are useful ways to enforce time/area closures. NMFS requires all pelagic longline vessels to carry an operating VMS, which is expected to reduce administrative costs of enforcing a time/area closure in comparison to observer coverage.

*Comment 5*: NMFS should include all gears in a time/area closure and require VMS on all vessels. Another commenter indicated that having closures to all fishing gears is contrary to the objectives of a time/area closure. The basis for establishing a time/area closure is to reduce bycatch mortality. The development of fair regulations does not imply the same regulations for all fishing sectors.

*Response*: Regarding time/area closures, NMFS agrees that regulations do not have to be the same across all fishing sectors in order to be fair. Although no-fishing-zones might be appropriate if both the commercial and recreational fishing sectors had similar bycatch mortality impacts on a stock, that is not the case with bycatch mortality of bluefin tuna or swordfish.

*Comment 6*: NMFS has failed to provide detail on the viability of establishing other closed areas to protect juvenile swordfish.

*Response*: NMFS is continuing to conduct analyses on closed areas to protect small swordfish and will provide the necessary information on potential closed areas in the near future.

*Comment 7*: NMFS received many comments, supporting or opposing the use of VMS in the pelagic longline fishery. Some commented that VMS presents a duplicate information collection (parallel to logbook data collection). Others commented that NMFS should provide the VMS to vessel owners because most operations do not have the finances for initial purchase of the units (VMS is economically devastating) and NMFS should pay for future upgrades to the VMS.

*Response*: VMS is important to the enforcement of time/area closures. NMFS requires VMS for all pelagic longline vessels in this final rule because it provides near real-time and very accurate position reports which can be used to identify fishing activity in a closed area. This accuracy and timeliness of the information collection are not duplicative to the logbook program because current data in logbooks are not submitted immediately to NMFS. Other benefits of VMS, in addition to enforcement of closed areas, include safety, communication with shoreside contacts, increased access to weather data for fishermen, and the future potential for real-time catch and bycatch reporting from captains and observers. In an effort to minimize costs to fishermen, NMFS has relaxed proposed specifications in order to approve a lower cost unit. NMFS will not be providing VMS hardware or funding communications costs for fishermen in the pelagic longline fishery. NMFS will publish a **Federal Register** notice indicating approved VMS systems for the HMS pelagic longline fishery. Fishermen should work with VMS manufacturing and service companies to determine what other expenses they may accrue in the future. NMFS does not anticipate that any upgrades will be needed.

*Comment 8*: Neither the draft FMP nor the proposed rule identified the VMS requirement as being subject to Paperwork Reduction Act requirements.

*Response*: NMFS included the information collection burden information related to compliance with the proposed measure to require VMS in the proposed rule (64 FR 3154, January 20, 1999). The draft FMP did not provide information collection burdens for proposed measures.

*Comment 9*: Currently, there is only one certified VMS vendor, which means there is no cost-controlling mechanism to protect users from monopoly action by the vendor.

*Response*: NMFS disagrees. At the time the comment was submitted, there were no VMS units approved yet by NMFS for use in the pelagic longline fishery. INMARSAT-C had been required for a previous pilot program only. NMFS is in the process of approving VMS units and communication service providers. NMFS will publish a notice in the **Federal Register** after the approval process is completed. Fishermen should contact these companies to determine which unit best meets their needs. All of these units comply with NMFS' regulatory standards.

*Time/area Closures to Protect Sharks*

*Comment 1*: NMFS received several comments on time/area closures including that NMFS should close important juvenile and subadult EFH areas (such as breeding and nursery areas) to commercial fishing at key times, that NMFS should close juvenile and subadult EFH year round to directed fishing and retention of shark bycatch, that NMFS should close juvenile and subadult shark EFH at least during the spring pupping season, and that NMFS should not implement any

time/area closures but should intensify cooperative efforts with states to protect habitat.

*Response*: NMFS agrees that additional management measures for important juvenile and subadult EFH areas may be appropriate to facilitate rebuilding of LCS and prevent overfishing of pelagic and SCS. However, numerous final actions in the HMS FMP should meet conservation goals. Given the limited number of nursery and pupping areas in Federal waters, NMFS will continue to work with Atlantic and Gulf coastal states and regional fishery management councils and commissions to coordinate consistent and necessary regulations for sharks in state and Federal waters.

*Comment 2*: NMFS should implement a time/area closure from January 1 through March 15 between Diamond and Cape Lookout Shoals for one season and then assess its effectiveness in protecting juvenile and subadult sandbar and dusky sharks, reducing waste, and easing enforcement.

*Response*: As stated in the HMS FMP, NMFS did consider a time/area closure for sandbar and dusky shark juvenile and subadult wintering EFH off Cape Hatteras, NC, which closely coincides with the area suggested. NMFS did not implement such a closure because the State of North Carolina's proclamation prohibiting commercial retention of all sharks is expected to eliminate the juvenile sandbar and dusky shark winter fishery, thereby addressing effectively the need to protect juveniles in this area. However, additional management measures may be necessary in the future and NMFS may consider time and/or area closures at that time.

*Comment 3*: NMFS should close the juvenile and subadult wintering EFH off North Carolina to directed shark fishing and retention of all shark bycatch.

*Response*: NMFS disagrees for the reasons stated above.

*Comment 4*: Counting dead discards against quotas is not a substitute for reducing shark bycatch and NMFS should consider additional management measures to reduce bycatch and bycatch mortality of sharks.

*Response*: NMFS agrees and does not intend this final action to substitute for other measures. Several final actions will affect bycatch and bycatch mortality rates of sharks in other HMS fisheries as well as bycatch and bycatch rates of other species in shark fisheries. NMFS is not implementing time/area closures of juvenile and subadult EFH because few areas are within NMFS' jurisdiction and because NMFS believes that the combination of final actions in the HMS FMP will reduce effective fishing mortality sufficiently to allow rebuilding. However, NMFS intends to continue working with regional councils, states, and commissions to address bycatch of sharks in other fisheries and to increase observer coverage in directed shark fisheries, particularly the southeast shark drift gillnet fishery, to determine bycatch and bycatch mortality of other species in shark fisheries. NMFS may consider additional management measures, including time/area closures, to reduce bycatch and bycatch mortality in shark fisheries and in other fisheries in the future.

*Safety of Human Life at Sea*

*Comment 1*: A geographically narrow closure area, such as the proposed Florida Straits closure, may entice small vessels to over-extend their range to fish along the fringes of the closed area, in order to avoid incurring costs of re-locating their home ports. Time/area closures, in general, involve a safety risk as fishermen may travel farther from shore in order to fish.

*Response*: NMFS recognizes the safety implications of time/area closures and seeks to minimize these risks to the extent practicable. However, NMFS reminds all vessel operators to maintain caution when undertaking all fishing activities. NMFS is implementing a VMS requirement, which may mitigate some of the safety risk. Further, NMFS is not finalizing the proposal to close the Florida Straits, but will continue analyzing closure boundaries to develop effective measures and to discourage re-distribution of effort around the fringes of the closed area.

*Comment 2*: NMFS needs to work with the National Weather Service to increase the number of nearshore and offshore weather reporting buoys to support more accurate weather forecasting for fishermen.

*Response*: NMFS will forward this comment to the National Weather Service.

*Comment 3*: Restrictive ICCAT quotas encourage unsafe derby fishing conditions; individual transferable quotas (ITQs) may be a practical solution for some HMS fisheries.

*Response*: Under the authority of the Magnuson-Stevens Act, NMFS may not implement ITQs until October 1, 2000. NMFS may consider ITQs for HMS fisheries after that time.

*Comment 4*: Filling out logbooks within 24 hours of hauling a set may be dangerous because it takes away from the time fishermen would normally be getting rest or making repairs to equipment. Longline logbook requirements are far ahead of any other group and further measures are punitive.

*Response*: NMFS has received comments indicating that there are practicality and safety issues associated with this proposed requirement, which was suggested for improved enforceability and accuracy. The operators indicate that they complete their own captain's books shortly following each set, and use these data when completing their logbooks. In response to concerns about safety at sea, the final action has been modified to require that logbooks be completed within 48 hours of hauling a set and before offloading the fish. NMFS finds logbook data very useful and the ability to inspect up-to-date logbooks is a necessary action for enforcement agents.

*Essential Fish Habitat*

Comment 1: It is good that NMFS realizes more research needs to be done regarding EFH. NMFS should avoid the temptation of rushing toward assumptions prior to the availability of scientific information throughout the entire range of Atlantic HMS.

*Response*: NMFS agrees. The EFH portions of the FMP are based on an assessment of the currently available information from published and unpublished fishery-dependent and fishery-independent data (including tag-recapture information), compilations of information from international management bodies, commercial and recreational fishermen, fishery observer data and knowledge of recognized experts. The current descriptions and identifications of EFH for HMS meet the standards of the regulations. NMFS is committed to periodic review of the available information and will revise the EFH sections of the FMP when sufficient new information is available.

*Comment 2*: NMFS should expand the assessment of EFH to include an evaluation of impacts of EFH by fisheries other than those targeted by the HMS fishermen.

*Response*: NMFS agrees. At the time the FMP was prepared, spatial information on the distribution of various fisheries, HMS, other Federal or state fisheries was not accessible. This has been identified as a high priority project for NMFS.

*Comment 3*: NMFS should designate sargassum as EFH for HMS and immediate regulatory action should be taken to protect sargassum from HMS fishing gears and practices, as well as other fishing and non-fishing activities until a complete and thorough study of the impact of removing this EFH is studied and reviewed.

*Response*: As a result of the input from the APs, sargassum has been identified as an important biological component and an integral part of EFH for many of the HMS. Although many HMS frequently co-occur with sargassum, the degree to which sargassum is utilized by HMS and its exact role relative to HMS production has not been clearly documented in the scientific literature and is a matter of current research. A phase-out of sargassum harvesting is currently proposed under the jurisdiction of the SAFMC.

*Comment 4*: NMFS should consider monitoring plankton and seaweed as part of the rebuilding plans for HMS.

*Response*: NMFS agrees that an ecosystem approach is important when managing, and particularly when rebuilding, fisheries. Essential Fish Habitat regulations require that NMFS and the Councils take an ecosystem approach in identifying and conserving habitats that are considered essential to managed fisheries.

*Comment 5*: The HMS FMP and Billfish Amendment do not present a procedural framework for the process of review and mitigation of fishing and non-fishing threats to EFH.

*Response*: In accordance with the EFH regulations, NMFS is establishing streamlined procedures to incorporate EFH concerns into existing environmental reviews. Consultations on actions that may adversely affect HMS or Billfish EFH will be conducted at the regional level, as appropriate.

*Comment 6*: One comment offered specific changes to the broad descriptions of ecological threats associated with oil and gas production based on a more narrow range of industry activities.

*Response*: The statements in the FMP regarding the ecological threats and conservation measures related to offshore oil and gas operations are meant to be broad and all-encompassing, and not site specific. Through the consultation process established under the EFH regulations, NMFS will consider the potential impacts on HMS EFH from proposed oil and gas activities, and any mitigating (e.g., regulatory) measures already in place, as well as their adequacy in protecting and conserving HMS EFH, on a case-by-case basis.

*Comment 7*: The habitat section should be updated with more current information.

*Response*: Recent publications were used in preparing the habitat section. Also, an effort was made to use publications that covered broad geographic areas in a similar, or consistent, manner so that throughout the various regions the same parameters could be described and compared. The habitat sections will be updated as new material becomes available through the SAFE Report and framework revisions, and EFH amendments to the FMP will be prepared if the information warrants.

*Comment 8*: The draft amendment to the Billfish FMP lacks an in-depth discussion of mitigating fishing impacts on EFH.

*Response*: The EFH interim final rule requires that FMPs contain an assessment of adverse impacts from the fishing gears that are used in EFH and that Councils act to minimize adverse impacts to EFH to the extent practicable. Although limited in scope, the best available scientific information on the impacts of HMS fishing gears and practices to habitat is included and discussed in the Atlantic billfish FMP amendment and the HMS FMP. The lack of information is noted in the research and information needs section. As additional information becomes available it will be incorporated in future amendments.

*Comment 9*: Due to the highly migratory nature of these species and NMFS' definition that ''Essential fish habitat means those waters and substrates necessary to fish for spawning, breeding, feeding, or growth to maturity'', nearly everywhere the fish can be found could be considered ''essential''. With many EFH areas outside the U.S. EEZ, the ability to implement any meaningful habitat protection specifically for Atlantic billfish is limited.

*Response*: NMFS agrees that the ability to directly effect conservation of the habitats of billfish and other HMS may be somewhat limited because much of their range lies outside of US waters. The EFH regulations are clear that EFH can only be designated within the US EEZ, but they do allow for the identification of other important habitats outside the U.S. EEZ. The EFH regulations encourage NMFS to engage in consultations, through the appropriate channels, that can further the conservation and enhancement of the key habitats outside the control of the United States. When activities are identified that are degrading the habitat of billfish, consultations will be initiated through agencies such as the State Department or international fishery management bodies, e.g., ICCAT or FAO.

*Permitting, Reporting, and Monitoring*

*Comment 1*: NMFS should require a recreational HMS vessel permit.

*Response*: NMFS currently requires a permit for recreational tuna vessels, but not for private vessels fishing for sharks, swordfish or billfish. However, many of these private vessels participate in HMS tournaments, which are required to register with NMFS, and all charter boats are required to obtain a permit in order to fish for HMS. The social and economic costs of requiring an HMS permit for all recreational vessels exceed the benefits at this time. While recreational vessel permits, such as those for Atlantic tunas, can be useful in determining the universe of potential participants, in the case of billfish and swordfish, encounters are so rare relative to effort expended, a specific permit may not be applicable to this type of fishery. A recreational vessel permit, e.g., a permit for all HMS recreational fisheries, is included in the framework provisions for future consideration.

*Comment 2*: NMFS should require the use of a landing tag for recreational HMS fisheries.

*Response*: A pilot program implemented through state-federal cooperation has been in place for two years in North Carolina to test the use of tags for monitoring the recreational fishery for Atlantic bluefin tuna. Requiring fish to be tagged may be a feasible alternative that could help identify the universe of billfish and swordfish anglers, since anyone who might potentially land a billfish or swordfish would obtain a tag. Further research could shed light on the possibility of designing a viable mechanism can be implemented to identify specific user-groups. A universal HMS recreational landing tag program would require further consideration of self-reporting systems, program design and logistics, as well as obtaining specific public comment on how best to implement an effective tag program. This monitoring tool is included as a framework provision because a landing tag system merits further consideration. AP members noted that landings tags may assist in identification of the universe of Atlantic HMS anglers.

*Comment 3*: NMFS violates the Magnuson-Stevens Act by not making a reasonable effort to quantify the number of vessels, effort, catches, landings, bycatch, and/or trends of landings for the recreational or charter fishing sectors in HMS fisheries.

*Response*: The HMS FMP and the Atlantic billfish FMP amendment provide all available information on the commercial and recreational HMS fisheries, including: estimates of the number of recreational vessels involved,

the type and quantity of fishing gear used, the species of fish involved and their location, actual and potential revenues from the fishery. NMFS has quantified, to the extent practicable, the trends in landings of billfish and other HMS by the recreational sector. Information on the number of private boats and charter boats is more problematic, as noted in the FMP amendment, and is part of the rationale for requiring logbooks and permits, voluntary observers for charter-headboats, and notification and reporting for all billfish tournaments. In this final rule, NMFS establishes a number of measures that will improve estimates of recreational statistics, including mandatory permitting and logbook reporting for charter/headboats, observer coverage, and tournament reporting. Additional measures that can be utilized to further improve monitoring of the recreational, charter and commercial fishing sectors are included in the framework section of the HMS FMP and Atlantic billfish FMP amendment.

*Comment 4*: NMFS should not require mandatory permits and logbooks for charter boats.

*Response*: NMFS disagrees. The 1997 ICCAT recommendation requires improvements in monitoring, data collection, and reporting from all fisheries that encounter Atlantic billfish. These management measures provide catch and effort data for billfish that are currently not well quantified. Furthermore, NMFS seeks to improve data collection in the recreational sectors of all HMS fisheries.

*Comment 5*: NMFS should not require observers on charter boats. This measure is impractical, violates the privacy of recreational anglers, will deter business, result in cancellation of trips, and will have a negative economic impact on the charter fleet and associated industries. NMFS should just place observers on the dock for inspections when boats come back to shore. Monitoring of the charter fleet by NMFS is unnecessary, since anglers release most HMS that are caught. Any federal funds spent on observers should be used to expand monitoring of the commercial pelagic longline fleet.

*Response*: The final FMP establishes a voluntary observer program for charter and headboats, which will minimize the negative economic impact. Observers are a necessary component of fishery management to determine the accuracy of the data collected form logbooks, and will enable NMFS to directly observe recreational catch, hookup and release rates, the condition of released fish, and the species and size composition of the catch. This type of information cannot be obtained solely by dockside or telephone interviews. If statistically meaningful samples cannot be obtained, a mandatory program may be implemented in the future.

*Comment 6*: The HMS tournament reporting form, currently used by NMFS for billfish, is difficult to use for reporting effort and other required information.

*Response*: NMFS has received numerous comments suggesting that the HMS tournament reporting form should be revised. NMFS may consider holding joint workshops with NMFS scientists, representatives of fishing organizations, and interested members of the public to discuss the best format for accurate data reporting.

*Comment 7*: Many charter/headboat vessels targeting HMS already carry a permit and complete a logbook under programs for other fisheries.

*Response*: NMFS is requiring that all HMS charter/headboat owners that fish for HMS obtain an HMS permit, in order for NMFS to identify the universe of charter/headboats targeting HMS. However, NMFS does not intend to duplicate any reporting requirements and will therefore allow charter/headboat owners to submit logbooks to NMFS as they have in the past, consistent with other charter permit conditions. NMFS will send logbook forms to charter/headboat owners who do not currently submit logbooks.

*Comment 8*: NMFS should increase observer coverage of the longline fishery; U.S. has failed to comply with ICCAT recommendations for minimum observer coverage.

*Response*: NMFS continues to strive for a goal of 5 percent observer coverage in the pelagic longline fishery, under a stratified sampling scheme. This level of coverage is required under the ICCAT recommendation for yellowfin and bigeye tunas, and under the NMFS Biological Opinion to monitor takes of endangered species.

*Comment 9*: NMFS should not increase the number of reporting requirements unless NMFS can analyze all the information that is collected.

*Response*: NMFS increases reporting requirements in order to collect more accurate data on all sectors of HMS fisheries, in support of rebuilding programs.

*Comment 10*: The Large Pelagic Survey (LPS) is not adequate to monitor catch of HMS.

*Response*: NMFS disagrees. The LPS is a statistical survey designed to estimate catches of bluefin tuna, which is used both for in-season monitoring as well as year-end estimates of catch. Although it was designed for bluefin, the LPS collects information on other HMS at certain times and in certain areas. The MRFSS is a separate statistical survey designed to provide regional and state-wide estimates of recreational catch for the entire spectrum of marine fish species. Though not designed to account for the unique characteristics of HMS fisheries, the Marine Recreational Fishing Statistics Survey (MRFSS) does collect information on these species. In 1997, NMFS instituted a mandatory Automated Catch Reporting System (ACRS) to supplement monitoring of the recreational bluefin tuna fishery. The LPS is conducted simultaneously in order to provide a measure of comparison for the reported catch estimates. All recreational vessels are required to participate in both the call-in reporting and survey programs. NMFS is also committed to working with the states to develop more effective partnerships for monitoring the recreational bluefin tuna fishery. As part of a pilot program launched in 1998, over 20 reporting stations have been established in North Carolina, and vessels landing recreationally caught bluefin are required to fill out a catch reporting card for each bluefin retained. This program, coordinated by NMFS in cooperation with the North Carolina Division of Marine Fisheries, was continued in 1999. Other mid-Atlantic states, including Maryland and New Jersey, have demonstrated an interest in establishing similar programs. NMFS maintains that a successful tagging program depends upon effective state-federal coordination that takes into account regional differences in the fishery, as well as cooperation with the recreational industry.

NMFS maintains the current system of recreational catch monitoring for HMS, including the LPS, MRFSS, ACRS, and cooperative state tagging programs, combined with the measures implemented in this FMP and the Amendment to the Billfish FMP (charter boat logbooks, mandatory tournament registrations and reporting), are sufficient to monitor recreational catch of HMS. NMFS is committed to improving catch monitoring in both the recreational and commercial fisheries for HMS, and will work with fishery participants, the APs, the Councils, the States, and other interest parties toward this goal.

*Regulatory Flexibility Analysis*

*Comment 1*: The alternatives proposed in the draft FMP will have a disproportionate impact on pelagic longline fishermen and the analyses

contained in the IRFA and the draft HMS FMP do not seriously consider the many options to economic devastation that the pelagic longline industry has presented in the HMS AP process and in other submissions in recent years. Both the Regulatory Flexibility Act and NS 8 require NMFS to work diligently to develop alternatives that could permit rebuilding while moderating the economic impact of such conservation measures.

*Response*: NMFS agrees that many of the final actions will have a significant economic impact on all HMS fishermen, including pelagic longline fishermen. However, NMFS disagrees that it has not seriously considered the many options presented in the HMS AP process or in other submissions. NMFS considered all of the alternatives presented, has considered additional alternatives, and has performed numerous analyses on logbook and observer data in an attempt to minimize economic impacts to the extent practicable on HMS fishermen, including the pelagic longline fishermen. Often times, these analyses indicated to NMFS a more effective method of accomplishing a particular goal while still minimizing economic impacts to the extent practicable. In all cases, NMFS ensures that the public has a chance to participate in the final rulemaking process. NMFS believes that the final actions will achieve the rebuilding goals of the Magnuson-Stevens Act while also minimizing the economic impacts to the extent practicable.

*Comment 2*: It is not appropriate for NMFS to consider employment as a cost which lowers the net economic benefit.

*Response*: NMFS realizes that employment is considered a benefit for the employee, but this is not the definition of net economic benefit. Net economic benefit is the difference between the benefits and costs to the owner of a vessel. Thus, because the owner pays the wages of the employees, labor must be considered a cost to the owner.

*Comment 3*: The FMP fails to include an analysis of the cost of overfishing and depletion of the fishery resources.

*Response*: NMFS disagrees. Although a quantitative analysis of the cost of overfishing was not performed, NMFS provided numerous discussions and qualitative analyses of the costs of overfishing and depletion of the fishery resources. Throughout the FMP NMFS discusses the benefits to fishermen in the long-term as the stocks rebuild and how the costs of fishing will continue to increase and the benefit to the nation will continue to decrease if HMS stocks remain overfished. In addition, NMFS repeatedly states that in the long-term, the economic impacts endured now will be less than the economic impacts endured if HMS fisheries continue to decline and the species become commercially extinct.

*Comment 4*: Pelagic longline fishing should be profitable because it is so diverse. However, the draft FMP concludes that the average annual payout to a vessel owner is only $53,064. This small payout is due to years of cumulative impacts of ever more stringent fishery management measures, the impact of foreign competition, market gluts, and disparate levels of domestic versus international regulation of pelagic longline fishing. The management measures proposed in the draft FMP will put much of the pelagic longline fleet out of business.

*Response*: NMFS agrees that the cumulative impact of the final actions in this FMP may put many pelagic and bottom longline fishermen out of business. However, NMFS believes that the many final actions implemented in this FMP both rebuild overfished fish stocks and minimize the economic impacts to the extent practicable. In the long term, the actions in the FMP will build sustainable stocks that are economically viable. At present, many of these stocks are not at economically viable levels. This is evident in the small profits currently available to the pelagic longline fleet.

*Comment 5*: Requiring pelagic longline vessels to purchase, operate, and maintain a VMS is unfair; the VMS requirement will be economically devastating; the fixed costs of a VMS system fall disproportionately on smaller vessels; NMFS should not force the entire longline fleet to pay for VMS when only 20 vessels fished in the Straits of Florida proposed closure.

*Response*: Although the initial cost of a VMS could be expensive ($1,800 to $5,000), NMFS feels the benefits obtained from such a system justify the costs. Direct benefits to fishermen include: the ability to delay offloading during a closure thus obtaining a better price and allowing pelagic longline fishermen to travel to and from the south Atlantic through the north Atlantic after the closure; the ability to travel across a closed area; additional safety to vessel operators by enabling the Coast Guard to accurately find a vessel in case of an emergency; and in the future, a VMS may allow fishermen to transmit electronic logbooks thus decreasing the time taken to fill out the current logbooks and improving fleet-wide monitoring and predictions of closures. A VMS also allows for effective enforcement of time/area closures, thus helping to rebuild the stock. This FMP only implements one time/area closure, however NMFS believes time/area closures are an effective method of reducing bycatch and can contribute to rebuilding. NMFS intends to implement additional time/area closures in the future. VMS will be important in enforcing these time/area closures.

*Comment 6*: The proposed Florida Straits closure will disproportionately impact the smallest and most economically vulnerable vessels in the fleet. The narrow targeting of the devastating economic impact on a handful of fishermen and fishing communities on Florida's East Coast is illegal and discriminatory. The contribution to rebuilding via reduction of dead discards will not be as great as the economic impacts on this small group of fishermen and will not be effective overall. A more productive approach would be to close larger areas for a shorter period of time. Such an approach would limit, if not preclude, the potential for redistribution of effort, while spreading the economic cost of rebuilding across a broader cross-section of the pelagic longline fleet.

*Response*: NMFS agrees that the proposed Florida Straits time/area closure may not be as effective as a larger time/area closure. However, NMFS does not agree that the proposed time/area closure discriminated against a handful of fishermen. The proposed time/area closure was designed to reduce the bycatch and rebuild the swordfish stocks, as required by the Magnuson-Stevens Act. NMFS did not propose a larger area in an attempt to mitigate the potential negative economic impacts of time/area closures on pelagic longline fishermen. However, the majority of commenters felt that while a time/area closure is necessary, the one proposed would not be effective. Thus, in this FMP NMFS is not implementing the proposed Florida Straits time/area closure. Instead, NMFS will re-examine all the data presented both before and during the comment period and re-analyze the data. A more effective, and probably larger, time/area closure will be proposed shortly after the implementation of this FMP.

*Comment 7*: If NMFS decides to impose such strict regulations on pelagic longline fishermen, NMFS should develop a buyback program; the possibility of a buyback should not be linked to other conservation methods.

*Response*: NMFS agrees that a buyback program might offset some of the economic hardships felt by HMS fishermen. Under section 312 (b) of the

Magnuson-Stevens Act, NMFS may implement a fishing capacity reduction program, such as a vessel or permit buyback, only once limited access has been implemented for the fishery. NMFS may consider a buyback program for commercial fishermen in the shark, swordfish, and tuna longline fisheries once limited access is implemented and funding is available.

*Comment 8*: NMFS' threshold of 50–percent reduction in gross revenues for a vessel to cease fishing operations lacks validity for the pelagic longline fishery. This fishery has already been economically decimated by successive rounds of regulations. A 20–percent reduction would be a more valid threshold.

*Response*: NMFS disagrees that the 50–percent reduction lacks validity. Based on information received during past comment periods, NMFS has determined that many fishermen remain in the fishery long after their gross revenues have been reduced by over 50 percent. While some fishermen may cease operations after 20 percent, information presented to NMFS does not support this threshold for ceasing fishing operations for the majority of participants.

*Comment 9*: The average annual earnings in the IRFA are overestimates. The actual economic situation is worse than NMFS is describing.

*Response*: As discussed in the IRFA, NMFS realizes the need for additional economic data for all HMS fishermen. NMFS has used the best available information and intends to work with the AP to develop a mandatory submission of economic information. There is nothing to preclude any small business from providing voluntarily and on its own initiative any cost data to NMFS for consideration in preparing an IRFA or FRFA. However, no such data have been forthcoming during the entire process of FMP development.

*Comment 10*: The fact that the draft FMP's preferred alternatives will most likely compel most of the pelagic longline fleet to cease operations vitiates the Agency's rosy long-term prognosis that domestic pelagic longline fishing income should increase once rebuilding, as the agency defines it, is well underway. Simply put, the vessels will not be around to fish, nor can the shoreside infrastructure in pelagic longline dependent communities survive these fishing restrictions.

*Response*: NMFS agrees that the final actions will have significant impacts on HMS fishermen and that many fishermen may cease to fish. However, current fishing mortality levels are not sustainable. If NMFS does not impose restrictions now, there may not be any fishery in the future. In addition, the Magnuson-Stevens Act requires NMFS to rebuilding overfished fish stocks to OY and places a time limit for this rebuilding. This FMP will allow NMFS to rebuild HMS.

*Comment 11*: NMFS does not adequately consider cumulative impacts of its management measures.

*Response*: NMFS disagrees. The IRFA contained in the draft HMS FMP explains how NMFS considered the impacts, cumulative and specific, of the proposed management measures. The IRFA found that cumulatively, the management measures would have a significant economic impact. The cumulative impact of the final actions will also have a significant economic impact.

*Limited Access: General*

*Comment 1*: Access to the Atlantic swordfish and shark fisheries should be limited based on historical participation as shown by permits and landings thresholds. The goal should be to limit participants to those who not only currently have permits, but who are actively participating in the fishery.

*Response*: NMFS agrees.

*Comment 2*: NMFS received a range of comments regarding limited access and buyback programs, including: implement the proposed limited access in the swordfish and shark fisheries because both are overcapitalized; the number of vessels permitted to fish must be reduced in order to remove the large amount of latent fishing capacity in these fisheries; implement a permit moratorium first; limited access, as proposed, will maintain the shark derby; reduce the size of the legitimate fishing fleet with a ''buyback'' program like the one implemented in the New England groundfish fishery; implement a buyout program; require 2 limited access permits be bought to obtain 1 limited access permit; implement the limited access proposal because it is the foundation of managing sharks; and reduce the number of shark permits to the lowest levels possible.

*Response*: NMFS believes that the limited access system, as a first step, will reduce latent effort and overcapitalization in both the Atlantic swordfish and shark fisheries. A permit moratorium will not address the severe overcapitalization present in both fisheries. Regarding ''buyback'' programs NMFS recently published a proposed rule on the subject (64 FR 6854). NMFS may consider a buyback program in both fisheries once limited access is established and funding is available.

*Comment 3*: Most of the FMP relies on setting up a limited access program. However, because the limited access program as proposed is a temporary measure it makes it difficult to comment on the rest of the HMS FMP.

*Response*: NMFS disagrees. NMFS does not believe that most of the HMS FMP relies on setting up limited access nor does it consider the limited access program a temporary measure. Most of the other measures could be implemented without limited access. However, the effectiveness of these measures may be hindered if the fisheries remain overcapitalized. Limited access is meant to be a starting point for rationalizing the effort in both the swordfish and shark fisheries with the available quotas.

*Comment 4*: Permit issuance and administration should remain consistent.

*Response*: In developing this limited access program, NMFS employees from management, permit issuance, and enforcement were consulted to ensure consistency between issuing permits under limited access and the way they were issued in the past. Due to limited personnel and resources, NMFS determined that the initial issuance of limited access permits should be from the Office of Sustainable Fisheries, Highly Migratory Species Division. NMFS agrees that the current administration and issuance of permits should be maintained through the Southeast Regional Office at this time, with the exception of the initial limited access permits.

*Comment 5*: Most of the limited access system is incomprehensible and it was impossible to decipher how the limited access proposals apply to each fishery. The administration of permits is inconsistent with regard to who or what entity would be eligible for a limited access permit, depending on the fishery in which the vessel operates.

*Response*: NMFS attempted to make this limited access system as simple as possible to understand, which is difficult given the differences in the current administration of the swordfish and shark fisheries. However, because the rule consolidates regulations for all HMS fisheries, this should become easier over time. In both fisheries, permits will be issued to the current vessel owner. In the shark fishery, if the operator qualified the vessel, the permit is valid only when the operator is on board that vessel and this condition is only required until May 1, 2000, which is the first full year after implementation of limited access. After May 1, 2000, the condition requiring the operator to be on board for limited access permits

issued based on the qualifications of the operator will expire. Through this condition, NMFS intends to ensure that vessel operators, who helped the owner qualify for a shark permit and who may have an investment in the fishery, will not be negatively impacted by limited access.

*Comment 6*: Taking away permits is unconstitutional and it is alarming that NMFS would take away permits for reasons other than illegal activities.

*Response*: There is no property interest in nor right to a permit in the HMS fisheries. NMFS may institute limited access in accordance with the Magnuson-Stevens Act and other applicable law as appropriate.

*Comment 7*: The proposed limited access system has no conservation benefits.

*Response*: NMFS disagrees. As stated in the HMS FMP, limited access is intended to address overcapitalization and latent effort in the Atlantic swordfish and shark fisheries, which contribute to the existing, as well as potential for increases in, the ''race for fish'', market gluts, unsafe fishing conditions, and general economic inefficiency. NMFS believes that limited access has conservation benefits including better identification of active fishermen for educational workshops to reduce bycatch and bycatch mortality, reductions in derby fishing conditions, and improved safety at sea. NMFS further notes that reducing fishing capacity in overcapitalized fisheries is one of the strategies highlighted in the NOAA Fisheries Strategic Plan (May 1997) to increase long-term economic and social benefit to the Nation.

*Comment 8*: NMFS should address the issues surrounding fleet size versus quota availability in the shark fishery.

*Response*: NMFS is aware that the limited access system contained in the HMS FMP, while an important first step, may not address all the problems in the Atlantic shark fisheries, including derby fishing conditions and excess harvesting capacity of the fleet relative to available quota. NMFS may consider additional management measures to address these issues in the future.

*Comment 9*: NMFS should include mahi-mahi (dolphin), little tunny, and wahoo in the HMS limited access system.

*Response*: NMFS disagrees. Management of dolphin and wahoo is currently under development by the South Atlantic Fishery Management Council. Regarding little tunny, the Magnuson-Stevens Act defines ''tuna species'' under Secretarial management as albacore, bluefin, bigeye, skipjack, and yellowfin tuna. Therefore, little tunny is also outside the jurisdiction of the Secretarial plan for tuna species, contained in the HMS FMP.

*Comment 10*: NMFS should allow traditional gears (harpoon, handline, rod and reel) to be used on vessels that also have pelagic longline gear on board and should provide reporting abilities on the logbooks for these gears.

*Response*: NMFS agrees. NMFS believes that use of secondary gear types is reasonable. NMFS may consider modifications to the pelagic logbook reporting forms as appropriate to accommodate catches and landings using secondary gears.

*Comment 11*: NMFS should require that boats must earn equal to or more than 50 percent of their income from pelagic longline fishing to qualify for a permit in the following year.

*Response*: NMFS disagrees that such a requirement is appropriate at this time. However, NMFS may consider additional measures to further reduce the number of limited access permits in the future as necessary to meet conservation goals and increase long-term economic and social benefit to the nation.

*Limited Access: Historical Permits*

*Comment*: The preferred eligibility requirement that participants must have had a permit from July 1, 1994 through December 31, 1997, is reasonable, as are the preferred landings eligibility periods of January 1, 1987 to December 31, 1997 for swordfish landings and January 1, 1991 to December 31, 1997 for shark landings.

*Response*: NMFS agrees.

*Limited Access: Landings Thresholds*

*Comment 1*: The numbers proposed for the directed landings threshold preferred alternative for swordfish are too close to incidental bycatch limits. This could push fishermen who are really incidental into the directed category and encourage extra effort. Raising the threshold to 100 swordfish or 408 sharks in any two years would raise the threshold high enough that incidental fishermen would not be given a directed permit. The $5,000 limit is too low; NMFS should use a $20,000 threshold from all fishing.

*Response*: The landings thresholds are based on $5,000 annual gross revenue from fishing for either swordfish or sharks. NMFS used this level in the past to determine which fishermen are ''substantially dependent'' on the fishery, and NMFS believes this level of gross revenues from fishing is an appropriate threshold between fishermen who are essentially incidental (land a few fish each year as incidental catch) versus directed (actually target the fish at some point during the year). Raising the landings threshold to a level of $20,000 would force fishermen who target and depend on a variety of fish during the year to fish for swordfish or sharks incidentally. The higher threshold could put fishermen who are substantially dependent on the fishery out of business and is contrary to the goal of removing latent effort while allowing participating fishermen to continue to fish.

*Comment 2*: The Larkin *et al.* (1998) price of $2.96 / lb ($6.51 / kg) dressed weight which NMFS used to determine the swordfish landings threshold is wrong. The correct price should be $2.96 / lb ($6.51 / kg) whole weight. This would decrease the $5,000 threshold to 19 swordfish from 25 swordfish.

*Response*: NMFS agrees. However, NMFS believes that 25 swordfish may be a better proxy for the $5,000 threshold given the decrease in average swordfish prices over the past few years and maintains the 25 swordfish per year for two years landings criterion. Alternatively, because the ex-vessel price of swordfish or sharks depends on the size and quality of the fish as well as market conditions, NMFS will also accept documentation indicating that the vessel owner landed at least $5,000 gross revenue worth of swordfish (for a swordfish limited access permit) or shark (for shark limited access permit). This documentation will only be accepted in an application or an appeal.

*Comment 3*: NMFS should allow swordfish and sharks that were tagged and/or released alive to be counted towards the landings eligibility criteria.

*Response*: NMFS disagrees. NMFS believes that the eligibility criteria for both sharks and swordfish are lenient enough that fisherman interested in landing sharks or swordfish should be able to qualify for either a directed or an incidental permit without the help of fish that were released alive. Additionally, while NMFS acknowledges and encourages fishermen to tag and release fish with a minimum of injury, NMFS does not have the ability currently to determine from logbook records which fish were released due to regulatory requirements (minimum size, closed seasons) and therefore would not have been legal landings anyway.

*Comment 4*: NMFS should consider as an alternate eligibility criteria for shark limited access for a directed permit that, for 2 of the past 3 years, 75 percent of income come from commercial fishing with 50,000 lbs (22.67 mt) dw shark

landings. All other permit holders may be given incidental permits.

*Response*: NMFS disagrees. The landings thresholds are based on a level of fishing of $5,000 annual gross revenue from fishing for either swordfish or sharks. NMFS used this level in the past to determine which fishermen are ''substantially dependent'' on the fishery. Raising the landings threshold to 75 percent of income coming from commercial fishing with 50,000 lbs dw shark landings might force fishermen who target and depend on a variety of fish during the year to fish for sharks incidentally. This might put fishermen who are substantially dependent on the fishery out of business and is contrary to the goal of removing latent effort while allowing participating fishermen to continue to fish.

*Comment 5*: NMFS should allow owners to transfer catch history to the operator.

*Response*: The limited access system allows for catch history sales or transfer as long as such sales are documented in a written agreement. NMFS will consider such sales or transfer through the application process.

*Comment 6*: There should be no eligibility requirements for fishermen who fish only in the South Atlantic at this time.

*Response*: NMFS disagrees. On October 24, 1997 (62 FR 55357), NMFS extended the U.S. management authority to include U.S. fishermen fishing for swordfish in the South Atlantic and established that South Atlantic fishermen were subject to the same regulations, including limited access, as North Atlantic fishermen. NMFS believes that limited access is important in the South Atlantic to prevent the severe overcapitalization and excess harvest capacity that exist in the North Atlantic. Once limited access is in place, NMFS may consider different management measures, as appropriate, in the South Atlantic to address issues unique to that fishery.

*Limited Access: Recent History*

*Comment*: NMFS should consider allowing 1998 landings, especially since people left the shark fishery after the 1997 LCS quota reduction, or allowing directed shark permit holders to exchange their shark permits for directed swordfish permits. NMFS should not penalize fishermen for diversification since that is what NMFS wanted people to do.

*Response*: NMFS disagrees. While NMFS is aware that shark fishermen may have left the shark fishery and entered other fisheries after the LCS quota was reduced in 1997, NMFS does not believe that allowing directed shark permit holders to exchange their shark permits for directed swordfish permits is consistent with the goal of limiting access and reducing overcapitalization to the Atlantic swordfish fishery. Regarding 1998 landings, these data are not yet available in usable electronic format and NMFS believes that delaying implementation of limited access for another year will only worsen the overcapitalization that already exists in these fisheries. NMFS regulations allow transfer of limited access permits between private persons/entities.

*Limited Access: Incidental Permits*

*Comment 1*: Incidental permits for Atlantic sharks should be given automatically with an Atlantic swordfish directed permit and vice versa.

*Response*: NMFS agrees that fishermen who initially qualify for an Atlantic swordfish limited access permit (directed or incidental) should be also be provided an incidental shark limited access permit and an Atlantic tunas Longline (formerly incidental) category permit because the gear used to catch swordfish can also catch sharks and tunas incidentally. For the same reasons, NMFS will give fishermen who held an incidental tuna permit in 1998 a shark incidental limited access permit and a swordfish incidental limited access permit. NMFS will not automatically provide directed shark fishermen with incidental swordfish or tuna permits because directed bottom longline shark sets rarely catch swordfish or tunas. Note that NMFS implements the requirement that fishermen who enter the swordfish fishery at a later date are responsible for obtaining all three permits (swordfish limited access, shark limited access, and tuna longline) on their own.

*Comment 2*: The incidental trip limits for sharks are too low. NMFS should, at a minimum, return to the previous proposal of 4 sharks, any species, per vessel per day although evidence has been presented which could increase the LCS trip limit to 9 LCS per day in some regions. The pelagic shark incidental trip limit is inconsistent with NS 9 because it will increase bycatch and waste. Furthermore, the pelagic shark incidental trip limit should be increased because the pelagic shark quota has not been filled.

*Response*: NMFS disagrees. NMFS selected a maximum of 5 LCS per vessel per trip and a maximum of 16 pelagic and SCS, all species combined, per vessel per trip because analyses indicated that very few trips caught numbers of sharks above the these limits. NMFS analyzed the catches (not landings) of LCS, pelagic, and SCS reported in the pelagic logbook for LCS during LCS directed fishery closures and for pelagic sharks when the target species was not reported as sharks. NMFS chose to analyze these trips' catches because NMFS believes that these trips represent truly incidental catches because sharks on these trips either were not the target species or could not be retained. These analyses indicated that during the 1996 LCS closures, over 75 percent of 1,562 trips caught a maximum of one LCS (50 percent of trips did not report catching any LCS), 10 percent of the trips caught a maximum of 9 to 80 LCS (although only one percent of trips caught 80 LCS). Of the 1,631 trips in 1996 where sharks were not targeted, over 75 percent caught a maximum of 5 pelagic sharks (50 percent of trips did not report catching any pelagic sharks), 10 percent caught a maximum of 25 to 286 pelagic sharks (only one percent of trips caught 286 pelagic sharks). Estimates based on 1997 data were similar but slightly lower. NMFS believes that the selected retention limits for incidental shark permit holders are appropriate because very low percentages of trips caught more than these limits.

Additionally, NMFS believes that many of the permits holders who reported large catches of pelagic sharks may qualify for a directed shark permit (if they landed those sharks) such that the incidental retention limits would not apply and the fish could be landed, thus reducing bycatch and waste. If they did not land their catches of pelagic sharks, then receiving an incidental shark permit would not impact their current fishing practices, and bycatch would not be increased although it would also not be reduced. Should such fishermen decide that they would like to land their incidental shark catches above the incidental retention limits, they could obtain a directed limited access permit because the permits are transferable. For LCS caught during LCS closures, NMFS is aware that these fish are regulatory discards and that the final actions in the HMS FMP may increase the duration of LCS closures and the associated regulatory discards. However, NMFS does not believe that increasing the incidental retention limits is appropriate because it would likely result in landings exceeding the allowable limits and delayed rebuilding for these species. For these reasons, NMFS believes that the selected retention limits for incidental shark permit holders are appropriate and that

regulatory discards will be minimized to the extent practicable.

*Comment 3*: Incidental fisheries should be tightly controlled with quotas.

*Response*: NMFS agrees.

*Limited Access: Swordfish Handgear*

*Comment 1*: The preferred alternative that handgear permits be issued to those who can prove a historical participation in the fishery is reasonable.

*Response*: NMFS agrees.

*Comment 2*: The handgear permit should be transferable to ensure the category will not be phased out if the recovery period takes as long as expected or longer.

*Response*: NMFS agrees and implements transferability of handgear permits for use with handgear only. However, a handgear permit may not be transferred for use with a longline. To further encourage the use of handgear, NMFS may consider allowing incidental or directed permits to be transferred for use with handgear only in the future. This could allow for an increase in the share of the handgear permits in the fishery once the stock recovers.

*Comment 3*: The preferred alternative for swordfish handgear eligibility is better than previous proposals, but the qualification period does not begin early enough to accommodate traditional fisheries. If limited access for all swordfish gear is necessary, the qualification criteria should also allow crew members on traditional harpoon boats to be eligible for a vessel permit to fish in the harpoon fishery.

*Response*: NMFS disagrees. The permit qualification period for swordfish begins with the start of mandatory reporting and permitting. At that time, swordfish fishermen could indicate on their permit applications that they were using harpoons but this was not required. In addition, NMFS does not have any records identifying the crew on these traditional harpoon vessels. However, if the crew members are still fishing and own a vessel, they may be able to qualify for a handgear permit based on the earned income requirement.

*Comment 4*: The harpoon fishery should remain an open access fishery due to the size selectivity of the gear, the high costs of entry into the fishery, and the low likelihood that open access for the harpoon fishery would lead to overcapitalization and overfishing. A moratorium institutionalizes the exclusion of a historic fishery that was driven from the fishery by the longline fishery and the lack of large fish. Harpooning is the most selective gear type in the fishery and encouraging participation is therefore preferable to institutionalizing participation in a less-selective fishery.

*Response*: NMFS agrees that the traditional handgear segment should have a place in the fishery. However, NMFS believes that leaving the handgear segment of the swordfish fishery open access would allow for the same potential for overcapitalization that has already occurred in the other segments of the Atlantic swordfish fishery.

*Limited Access: BAYS Tunas*

*Comment 1*: Fishermen with a Longline category Atlantic tunas permit (formally Incidental category) should be given a swordfish and shark limited access permit. However, this alternative may need to be modified so that directed tuna permits apply only if used with the same gear that qualified the holder for the swordfish permit.

*Response*: NMFS agrees and will automatically provide those tuna fishermen who held an Incidental category Atlantic tunas permit in 1998 an incidental shark and swordfish limited access permit for use only with authorized gears (tuna fishermen who meet the directed fishery eligibility criteria will receive directed limited access permits). In both cases, the majority of commercial fishermen would be using pelagic longline gear. Note that NMFS implements the requirement that fishermen who enter the tuna longline fishery at a later date are responsible for obtaining all three permits (swordfish, shark, and tuna longline) on their own.

*Comment 2*: Bottom longline shark fishermen displaced from their fishery should not be given tuna longline permits. They should be bought out or retrained instead.

*Response*: NMFS agrees that directed shark fishermen should not automatically be provided a tuna Longline category permit because directed bottom longline shark sets rarely catch tuna. Additionally, similar to the rationale for swordfish limited access permits, NMFS does not believe that automatically providing directed shark permit holders with tuna Longline category permits is consistent with the ICCAT recommendation to limit effective fishing effort for yellowfin tuna to 1992 levels or the goal of limiting access and reducing overcapitalization in the fully to overfished Atlantic tunas fishery.

*Limited Access: Appeals Process*

*Comment 1*: The appeals process should not be handled by the Chief of the HMS Division, but by some other administrative procedure.

*Response*: The permit process consists of two parts: the applications and the appeals. Due to limited personnel and resources, the applications (the first part of the process) will be handled by the Chief of the HMS Division because all the information and data used to make the initial determinations are available in this Division. NMFS agrees that the appeals (the second part of the process) should be handled by a separate administrative procedure. Therefore, the appeals will be handled by appeals officers who will be NOAA employees, but not employees who work in the HMS Division, in order to separate the two decision-making processes. The final agency decision will be made by the Director of the Office of Sustainable Fisheries.

*Comment 2*: Hardship cases should be included in the appeals procedure.

*Response*: NMFS disagrees. In the draft HMS FMP, NMFS did not propose to consider hardship cases because any definition of a ''hardship'' would make it extremely difficult to ensure consistency between decisions on the appeals, and NMFS believes that not allowing hardship cases will ensure that everyone is treated equally with no extraneous information harming or helping their case. This rationale has not changed.

*Comment 3*: NMFS should allow oral hearings.

*Response*: NMFS has not selected to allow oral hearings due to the logistical problems and potential inconsistencies with fairness and equity under NS 4.

*Limited Access: Harvest Limits*

*Comment*: The harvest limit for Atlantic swordfish should be increased to 50 percent of the marketable highly migratory species on board, but not to exceed 15 in number per vessel per trip. Other percentages may be acceptable depending on analyses. NMFS should implement directed catch criteria for pelagic sharks to help prevent directed pelagic shark fisheries from developing.

*Response*: NMFS disagrees. NMFS believes that target catch limit requirements can cause an increase in mortality by requiring fishermen to fish more than they normally would in order to retain the fish they have already caught. As stated in the HMS FMP, NMFS believes a straight retention limit is easier to enforce and understand. Once limited access is in place, NMFS may explore further options for determining optimal bycatch and incidental allowances.

*Limited Access: Transferability*

*Comment 1*: The preferred alternatives regarding the transferability of directed and incidental permits are reasonable.

*Response*: NMFS agrees.

*Comment 2*: The draft FMP allows for the splitting of permits (4–37), but the basis for limited access is to limit capacity (by allowing a vessel that was issued both swordfish and shark limited access permits to sell one permit while retaining the other, the harvesting capacity of the overall fleet will increase with the addition of a second vessel where there had been only one). This is inconsistent and conflicts with the stated intent of limited access. NMFS should adopt transferability requirements consistent with those in the Multispecies and Scallop FMPs. These plans allow transfers of permits to new owners only with the sale of a vessel or to other replacement vessels, provided that the new vessel complies with certain upgrading restrictions.

*Response*: NMFS disagrees. NMFS believes that selected transferability restrictions are consistent with the intent of this limited access program of reducing latent effort and rationalizing effort with the available quota. NMFS does not believe that fishermen should have to sell their vessel just because they want to leave the swordfish or shark fisheries. Accordingly, fishermen may transfer their permit with or without the sale of the vessel. However, once they sell their permit, they are out of the fishery. Thus, the capacity and effort in the fishery remain the same.

*Comment* 3: Non-transferable individual quotas would be the best second step of limited access because any fish not harvested would be conserved, and transferable individual quotas ensure that all fish are harvested.

*Response*: NMFS may consider transferable and/or non-transferable quotas, as well as other management measures to address fleet size and available quotas, in future rulemaking in conjunction with the HMS AP.

*Comment 4*: NMFS should allow people who transfer or sell permits without the vessel to keep their permit inactive (not attached to a vessel) for a while so there is sufficient time to find and purchase a sea-worthy vessel. Otherwise, people may have to rush and buy a replacement vessel so they don't lose their permit when they want to sell their current vessel.

*Response*: NMFS agrees. As is currently allowed in other limited access fisheries, vessel owners may sell their vessel and retain the limited access permits as long as they inform NMFS in writing that the permit is inactive within 30 days of the vessel sale. The vessel owner may then obtain a replacement vessel to which the limited access permit(s) will be transferred, subject to upgrading and ownership restrictions, as applicable.

*Limited Access: Upgrading*

*Comment 1*: NMFS should adopt the New England and Mid-Atlantic Fishery Management Council (NEFMC, MAFMC) upgrading restrictions to address consistency issues across fisheries.

*Response*: NMFS agrees.

*Comment 2*: NMFS should not adopt the same upgrading restrictions as the NEFMC and MAFMC. The majority of fishermen affected by the limited access system for the Atlantic swordfish and shark fisheries do not participate extensively in fisheries that are under the jurisdiction of these councils. The vessel length and horsepower upgrading restrictions developed by the Councils, which are appropriate for trawl fisheries, are not appropriate for longline fisheries. Further, increasing vessel length is an important part of increasing safety at sea, especially for vessels fishing further and further offshore due to time/area closures and other regulations.

*Response*: NMFS believes that regulatory consistency across fisheries is important to reduce confusion and burdens on fishermen that participate in multiple fisheries under multiple jurisdictions. However, NMFS is aware that the upgrading restrictions adopted by the NEFMC and MAFMC may limit fishermen's abilities to address safety at sea issues related to vessel length and that the upgrading restrictions are more tailored to trawl vessels than the longline vessels. Therefore, NMFS implements the restrictions on vessel upgrading as a final measure at this time to prevent substantial increases in the harvesting capacity of HMS vessels but will consider alternative criteria to control the harvesting capacity in ways that minimize safety concerns. NMFS will assemble data on hold capacity, consider requesting hold capacity information on permit applications, and work with the AP and affected public to consider proposing HMS-specific vessel upgrading restrictions that account for necessary upgrades in horsepower and vessel length to address safety concerns.

*Limited Access: Ownership Limits*

*Comment*: None of the ownership restrictions proposed (restricting the number of vessels that any entity could own to no more than five percent of the permitted vessels or no restrictions on ownership) are reasonable.

*Response*: NMFS disagrees. NMFS believes that ownership restrictions are an effective tool for preserving the historical small owner/operator nature of the fishery. As such, NMFS will restrict the number of Atlantic swordfish or shark vessels any one entity can own to no more than five percent of the directed swordfish or shark permitted vessels in the directed fisheries.

**Issues for Future Consideration**

There are issues that were not changed from the proposed rule that NMFS intends to consider further. These issues include the purse seine quota cap, prohibiting certain shark species, the practice of strikenetting in the shark drift gillnet fishery, commercial shark landing condition, use of fishing gears and gear definitions, etc. As explained above, NMFS will request the HMS AP to reconsider the purse seine cap in the context of the ICCAT Rebuilding Program. As to prohibited shark species, under the SAFE process, NMFS will annually evaluate the list of species for which possession is authorized under the management policy that only allows possession of those shark species known or expected to be able to withstand fishing mortality. NMFS is currently considering the implications of several regulations that affect the practice of strikenetting in the shark drift gillnet fishery. NMFS received comments that requiring recreational anglers to keep sharks intact while allowing commercial fishermen to head and fin sharks is unfair. While NMFS strives for consistent regulations among user groups, concerns about quality and safety of seafood sold for public consumption resulting from inadequate freezing of shark carcasses preclude the same regulation for both user groups. However, these comments warrant further consideration. NMFS will continue to consult with the public and the HMS and Billfish Advisory Panels on these issues.

**Changes From the Proposed Rule**

NMFS made numerous technical and substantive changes from the proposed rule in response to the comments received, to incorporate relevant final rules issued after the proposed rule was published, and to achieve consistency with regulations in other CFR parts.

Changes to incorporate other rulemakings included the supplemental rule to implement the addendum to the HMS FMP (64 FR 9298, February 25, 1999), the final rule to prohibit the use

of driftnet gear (64 FR 4055, January 27,1999), and the final rule to restrict imports of undersized Atlantic swordfish (64 FR 12903, March 16, 1999).

Several technical corrections were made to clarify the regulations and to remove obsolete regulatory text. Regarding BFT dealer reports, NMFS no longer uses an interactive voice response system for daily landing reports. Clarification for the reporting of BFT not sold to a licensed dealer includes requiring a licensed dealer to tag and report a fish not sold to it upon the request of the person who landed the fish. Also the regulations pertaining to angling reports of BFT landings for states with tagging systems in place were clarified. A clarification was made to indicate that no BSD is required for southern bluefin tuna imports. The annual landings quota for the north Atlantic swordfish stock was changed to reflect values previously published for the 1999 fishing year. Clarifications were made pertaining to the installation and operation of vessel monitoring systems. Obsolete references regarding the ICCAT port inspection scheme were removed. Notice provisions for changing the commencement dates of tuna fishing seasons were removed because such changes would now be accomplished by framework action under the FMP. The regulations pertaining to the use and possession on board of authorized gear for the Atlantic tunas fisheries were revised to make clear that the category specific gear restrictions apply only to the taking of BFT.

Several changes were made to achieve consistency with regulations contained in other parts of the Code of Federal Regulations. The listing of approved information collections at 15 CFR part 902 was updated to account for the consolidation of HMS regulations into 50 CFR part 635. Given the restructuring of permit categories and clarifications on allowable fishing gear, the authorized gear listing at 50 CFR 600.725(v) was updated. Cross references to 50 CFR part 285 were updated to 50 CFR part 635 for the trade documentation requirements for Pacific bluefin tuna at 50 CFR part 300.

A number of changes to the regulations were made in response to comments received on the proposed rule. To reduce the reporting burden given that FAX/OCR technology has been installed, NMFS has removed the requirement for BFT dealers to mail daily landing reports of BFT and extended the reporting deadline for the HMS bi-weekly report to 10 days after the close of the reporting period. NMFS changed the requirement for attendance at educational workshops for all longline operators to establish a voluntary program for both recreational and commercial fishermen. In the billfish fishery, NMFS is not implementing retention limits but will make adjustments to the minimum size limits as necessary to ensure that landings do not exceed authorized levels. These adjustments would be made via interim emergency rule or proposed and final rule under framework measures in the amendment. Additionally, the proposed prohibition on the use of multiple hooks when fishing for billfish is not implemented.

On a trial basis, the proposed observer program for private/charter recreational fishing trips is being implemented as a voluntary rather than mandatory program. However, observers are required for all shark drift gillnet trips.

Another change is removal of the proposed exemption of the requirement to obtain a HMS Charter/Headboat permit for vessels having a Charter/Headboat permit issued under any northeast or southeast regional FMP. However, this permit requirement will not be made effective until OMB approval for the increased reporting burden is obtained.

The proposed time/area closure for the Florida Straits to protect small swordfish is not implemented. A more effective closure is needed to reduce small swordfish bycatch. NMFS will convene a meeting of the HMS AP to address this issue and will publish a proposed rule by September 1999. The northeastern United States time/area closure designed to reduce incidental take of BFT by pelagic longlines has been reduced in size from that initially proposed due to public comment regarding safety and economic impact, as well as revisions in the analyses conducted regarding this closure. NMFS will not close the proposed areas to protect northern right whales at this time because pelagic longline fishermen have not fished in those areas in the past and are not expected to in the future. If interactions between pelagic longline gear and right whales in these areas become likely to occur, NMFS will seek appropriate action under the authority of the Marine Mammal Protection Act.

The prohibition on the retention of blue sharks, as proposed for both the commercial and recreational fishing sectors, is not implemented. The shark recreational catch limit is changed to one shark of any allowed species per vessel per trip, with a minimum size of 4.5 ft (137 cm). In addition, one Atlantic sharpnose per angler per trip is allowed, with no minimum size.

**Classification**

These final regulations are published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator has determined that these regulations are necessary to implement the recommendations of ICCAT and are necessary for the management of the Atlantic tunas, swordfish, shark and billfish fisheries.

NMFS prepared an initial regulatory flexibility analysis to assess the impacts on small entities of the provisions of the proposed rule that would implement the HMS FMP. Based on public comments, as described above, NMFS changed certain provisions for the final rule to mitigate the impacts on small entities and prepared a FRFA.

Logbook data indicate that fishermen routinely enter and exit HMS fisheries and this dynamic participation suggests that the universe should not be limited only to ''active'' participants; i.e., those who landed HMS in a given year. For example, NMFS found that of the over 2,000 permitted shark fishermen in 1995 and 1996, only 352 landed at least one large coastal sharks in both years. However, in both years over 500 fishermen landed at least one large coastal sharks; additional fishermen landed pelagic and small coastal sharks. Limiting the universe to the 352 permit holders who participated in the large coastal sharks fishery in both years would ignore the potential loss of opportunity experienced by permit holders who did participate in only one of those two years but who are regularly ''active'' in the fishery. Logbooks also show the multi-species nature of HMS fisheries. Few fishermen rely solely on one species of HMS or even on multiple species of HMS. Instead, fishermen fish for, and rely on, other species in addition to HMS including but not limited to mackerel, snapper-grouper, reef fish, dolphin, and oilfish. Previous studies in the area of natural resource valuation have shown that people, including fishermen, value the mere existence of opportunities regardless of whether they actually make use of them or not, and are willing to pay for the existence of options, which is separate from the profit that they could earn from exercising those options.

In the HMS FMP, the proposed rule and supplement, specific economic concerns for small entities included the time/area closure for pelagic longline fishermen in the Florida Straits and the northeastern United States, the non-ridgeback LCS quota reduction, and limited access measures for the swordfish and shark fisheries. Based on comments received, NMFS has not

implemented the Florida Straits closure and will convene a meeting of the HMS and Billfish APs to address time/area closures more effectively. Additionally, NMFS reduced the size of the northeastern United States closed area. NMFS concluded that alternative time/area closures could have less severe economic impacts on the pelagic longline fishery participants while addressing the bycatch concerns for BFT, undersized swordfish, and billfish.

NMFS concluded that separation of the LCS management group into ridgeback and non-ridgeback LCS and reduction of the quota for non-ridgeback LCS was the best alternative to rebuild overfished LCS stocks while minimizing adverse economic impacts on LCS fishermen because it allows higher harvest levels than those maintained if the LCS management group were kept as a single group. This measure should rebuild ridgeback LCS stocks consistent with the Magnuson-Stevens Act requirements to rebuild overfished fisheries and to consider the impacts of fishery resources on communities. NMFS estimates that some participants may cease business operations due to this action, but that more may cease operations under other alternatives that would not minimize economic impacts to this extent.

The limited access system implemented in this final rule affects all current permit holders in the Atlantic swordfish and shark fisheries and those vessels fishing for Atlantic tunas with longlines. The intent of limited access is to exclude only those fishermen whose logbook records indicate they are neither active nor dependent on the swordfish and shark fisheries, except that current tuna longline fishermen would automatically receive a swordfish or shark limited access permit to authorize landing of incidental catch. Based on comments received, NMFS adjusted the qualifying criteria to further reduce the likelihood of removing any active entity dependent on the fishery.

In summary, the final regulatory flexibility analyses found that, overall, the final actions for bluefin tuna and swordfish rebuilding and the bluefin tuna time/area closure may have some negative economic impact. In addition, the combination of final actions for sharks (quota reductions, minimum sizes, retention limits, and counting dead discards and state landings after Federal closures against Federal quotas) may result in the elimination of the directed commercial fisheries for large coastal sharks, and may substantially impact commercial fisheries for pelagic sharks and small coastal sharks in the U.S. exclusive economic zone. In addition, because these regulations will have a significant impact on commercial fishermen, the HMS FMP will likely also impact related parties and communities such as processors and bait/gear suppliers. Some of the final actions (the mid-Atlantic time/area closure, vessel monitoring system) may increase costs.

However, as a group, the final actions in the HMS FMP were specifically chosen both to minimize any economic impacts to the extent practicable and to meet the goals of the HMS FMP and the Magnuson-Stevens Act, namely to prevent overfishing and rebuild overfished stocks. In the long term, the economic impacts endured now will be less than the economic impacts endured if HMS fisheries continue to decline and become commercially extinct.

The RIR/FRFA for the HMS FMP provides further discussion of the economic effects of all the alternatives considered in the final HMS FMP. A copy of the FRFA is available from NMFS (see ADDRESSES).

To ensure that the impacts of the Amendment 1 to the Atlantic Billfish FMP were fully analyzed, NMFS prepared an IRFA pursuant to 5 U.S.C. 603 without regard to whether the proposed action would have a significant economic impact on a substantial number of small entities. Aspects of the proposed rule that could have affected small entities in the billfish fisheries included a retention limit of one Atlantic billfish per vessel per trip and a provision that would reduce the retention limit for blue and/or white marlin to zero if landing limits were reached. NMFS received comments that tournaments may be canceled or may experience a significant reduction in participation if fishermen are not allowed to land a billfish that meets the legal size constraints. NMFS concluded that the alternative of minimum size limits with the possibility of increased size limits through framework regulatory adjustments could restrict landings to the allowable level without undue economic impacts.

The RIR/FRFA for Amendment 1 to the Atlantic Billfish FMP provides further discussion of the economic impacts of all the alternatives considered. A copy of the RIR/FRFA is available from NMFS (see ADDRESSES).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This final rule contains new and revised collection-of-information requirements, subject to review and approval by OMB under the PRA, and restates several previously approved requirements. In particular, five new reporting requirements would include position reports from a vessel-monitoring system for all pelagic longline vessels; gear marking and vessel identification requirements for longline and shark gillnet gear, and for handgear and harpoon floats; permits for all HMS Charter/Headboat vessels; logbooks for all Atlantic tuna vessels and HMS Charter/Headboat vessels; and revised reporting procedures for exempted fishing permits. The following specific reporting and recordkeeping requirements have been approved by OMB or are pending OMB approval (as noted):

1. Requirement for HMS Charter/Headboat permits in § 635.4, estimated at 30 minutes per initial permit application and 6 minutes per renewal, will be submitted for OMB clearance. NMFS reserves the effective date of the requirement until OMB approval is obtained.

2. Atlantic tunas vessel permits in § 635.4 (approved under OMB control number 0648–0327), estimated at 30 minutes per initial permit application and 6 minutes per renewal; and Atlantic tunas dealer permits in § 635.4 (approved under OMB control number 0648–0202), estimated at 5 minutes per permit action.

3. Shark and swordfish vessel permits in § 635.4 (approved under OMB control number 0648–0205), estimated at 20 minutes per permit action; and shark and swordfish dealer permits in § 635.4 (approved under OMB control number 0648–0205), estimated at 5 minutes per permit action. Importer permitting requirements for swordfish in § 635.4, estimated at 5 minutes per application, have been approved by OMB under 0648–0205.

4. Dealer reporting and recordkeeping requirements for Atlantic bluefin tuna in § 635.5 (approved under OMB control number 0648–0239), estimated at 3 minutes for daily reports, 14 minutes per bi-weekly report of fish purchases, and 1 minute to affix tags and label containers.

5. Dealer reporting and recordkeeping requirements for Atlantic swordfish and sharks in § 635.5 (approved under OMB control numbers 0648–0013) estimated at 15 minutes per bi-weekly report of fish purchases and 3 minutes per negative report. Importer reporting

requirements for swordfish in § 635.5, estimated at 15 minutes per bi-weekly report, have been approved by OMB under 0648–0013.

6. Vessel reporting and recordkeeping requirements for swordfish and sharks in § 635.5 (currently approved under OMB control number 0648–0016) estimated at 10 minutes per logbook entry, including the attachment of tally sheets, and 2 minutes for a negative catch report or a no-fishing report. OMB has approved (0648–0371) a request from NMFS to consolidate the swordfish and shark logbooks with new vessel reporting requirements for Atlantic tunas and HMS charter/headboats in § 630.5 estimated at 12 minutes per logbook entry and 2 minutes for a negative catch report. NMFS intends to randomly select 10 percent of the tuna vessels and all HMS charter/headboats on an annual basis. While NMFS intends to consolidate HMS logbooks under a new information collection, there will be an initial trial period for tuna vessels and HMS charter/headboats with the pelagic logbook forms currently approved under 0648–0016. After evaluation of the program, NMFS will request OMB approval to issue logbooks tailored to the specific reporting requirements of individual fishery segments.

7. Fishing tournament registration and selective reporting in § 635.5 (approved under OMB control number 0648–0323) estimated at 10 minutes per report.

8. Swordfish and shark limited access permit documentation requirements in § 635.16 (approved under OMB control number 0648–0325) estimated at 1.5 hours per response.

9. Vessel identification requirements for permitted HMS vessels in § 635.6 estimated at 45 minutes per vessel, have been approved by OMB under control number 0648–0373.

10. HMS gear marking requirements in § 635.6, estimated at 15 minutes per action and pertaining to longline gear (terminal floats and hi-flyers), shark nets (terminal floats) and harpoon and handgear floats, have been approved by OMB under control number 0648–0373.

11. Notification for at-sea observer requirements for Atlantic tuna, swordfish, and shark vessels in § 635.7, estimated at 2 minutes per response, has been approved by OMB under control number 0648–0374.

12. Position reporting and communication from a vessel monitoring system in § 635.69, estimated at 0.033 seconds per position report or 5 minutes per vessel per year, 4 hours for installation, and 2 hours for annual maintenance, has been approved by OMB under control number 0648–0372.

13. BFT purse seine inspection requests in § 635.21 (approved under OMB control number 0648–0202) estimated at 5 minutes per request.

14. Angler reporting of trophy BFT and reporting by commercial vessels of large medium and giant BFT that are not sold to dealers as required in § 635.5 (approved under OMB control number 0648–0239) are estimated at 3 minutes per report, and Angler reporting of school and medium tuna in § 635.5 (approved under OMB control number 0648–0328) is estimated at 5 minutes per response.

15. HMS catch and release program requirements in § 635.26 (approved under OMB control number 0648–0247) estimated at 2 minutes per tagging card.

16. Documentation requirements for sale of billfish in § 635.31 (approved under OMB control number 0648–0216) estimated at 20 minutes for dealers purchasing from vessels and 2 minutes for subsequent purchasers.

17. Swordfish Certificate of Eligibility in § 635.46, estimated at 60 minutes per document, has been approved under OMB control number 0648–0363. Bluefin tuna statistical documents in § 635.42, estimated at 20 minutes per fish import report, and government validation of BSDs in § 635.44, estimated at 2 hours per occurrence, have been approved by OMB under control number 0648–0040.

18. Revised application and reporting requirements for EFPs in § 635.32, estimated at 30 minutes per application, 5 minutes per fish collection report, and 30 minutes per annual summary report, have been approved by OMB under control number 0648–0309.

19. Archival tag reporting requirements in § 635.33, estimated at 1.5 hours for implantation reports and 30 minutes per fish catch report, have been approved by OMB under control number 0648–0338.

Written requests for purse seine allocations for Atlantic tunas as required under § 635.27 are not currently approved by OMB. Requests for purse seine allocations are not subject to the PRA because, under current regulations, a maximum of five vessels could be subject to reporting under this requirement. Since it is impossible for 10 or more respondents to be involved, the information collection is exempt from the PRA clearance requirement.

Certificate of eligibility requirements for imports of fish subject to trade restrictions under § 635.40 are not currently approved by OMB. These regulations were required under ATCA and were originally issued prior to the enactment of the PRA. NMFS will consult with OMB prior to implementing any trade restrictions under this section. While ATCA and the implementing regulations at § 635.40 authorize unilateral trade action by the United States, it is more likely that multilateral action would be taken upon a recommendation of ICCAT. In such case, notice and comment rulemaking procedures under ATCA would apply and OMB clearance for information collections would be requested prior to issuance of a proposed rule.

The AA, under 5 U.S.C. 553(d)(3), finds that it would be contrary to the public interest to delay the effective date of the billfish minimum size limits, the pelagic longline time/area closure, and the bluefin tuna quota and effort control specifications for 30 days. The AA finds that these measures are necessary to initiate rebuilding of overfished stocks, to manage fisheries that are currently active, and to comply with international obligations.

Given NMFS' ability to rapidly communicate these regulations to fishing interests through the FAX network, NOAA weather radio, and HMS Infoline, the AA has determined there is good cause for a waiver of the 30-day delay in the effective date because such delay would be contrary to the public good. The AA is delaying the effective dates of the VMS and charter boat and headboat permit requirements, and the effective dates of these requirements are listed above.

NMFS requested a formal consultation under section 7 of the ESA on the HMS fisheries as managed under the HMS FMP and Billfish Amendment. The consultation request concerned the possible effects of management measures in the Amendment 1 to the Billfish FMP and the HMS FMP, including implementation of AOCTRP measures for the pelagic longline fishery and ALWTRP measures for the southeast shark gillnet fishery. In a BO issued on April 23, 1999, NMFS concluded that: (1) continued operation of the shark gillnet fishery may adversely affect, but with management measures previously implemented under the ALWTRP and contained in the HMS FMP, is not likely to jeopardize the continued existence of the north Atlantic right whale; (2) continued operation of the shark gillnet fishery may adversely affect, but is not likely to jeopardize the continued existence of humpback, fin or sperm whales, or Kemp's ridley, green, loggerhead, hawksbill or leatherback sea turtles; (3) continued operation of the pelagic longline and purse seine

fisheries may adversely affect, but is not likely to jeopardize the continued existence of any endangered or threatened species under NMFS jurisdiction; and (4) continued operation of the HMS handgear fisheries may adversely affect, but is not likely to jeopardize the continued existence of any endangered or threatened species under NMFS jurisdiction.

NMFS also concluded that no component of the HMS fisheries would result in adverse modification of critical habitat designated for the northern right whale. These conclusions are based upon the effectiveness of measures implemented in this final rule, the attainment of adequate observer coverage in applicable fisheries, and full implementation of the requirements of the May 29, 1997 BO as amended on August 5 and 29, 1997, and July 10, 1998.

NMFS has determined that the final actions in these plans are consistent to the maximum extent practicable with the coastal zone management programs of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management programs. The draft HMS FMP, draft Billfish Amendment, and draft Addendum to the HMS FMP were submitted to the responsible state agencies for their review under Section 307 of the Coastal Zone Management Act. The States of New York, Virginia, North Carolina, South Carolina, Mississippi, and Louisiana certified that the HMS FMP and Billfish Amendment concur with their applicable CZMA regulations. The States of Rhode Island and Delaware certified that the HMS FMP concurs with their applicable CZMA regulations. The States of Massachusetts, Connecticut, Pennsylvania, New Jersey, Georgia, and Texas certified that the Billfish Amendment concurs with their applicable CZMA regulations. The States of Pennsylvania, Virginia, and Georgia certified that the Addendum to the HMS FMP concurs with their applicable CZMA regulations. NMFS presumes that the remaining states that did not respond also concur.

The State of Georgia objected to the HMS FMP based on the continuing operation of the southeast shark drift gillnet fishery in Federal waters off its state waters. NMFS shares the State of Georgia's concern regarding bycatch and bycatch mortality rates in this fishery and is gathering information on the effect of drift gillnets in Atlantic shark fisheries on protected species, juvenile sharks, and other finfish. However, because the limited data available at this time do not indicate high bycatch and bycatch mortality of protected species, juvenile sharks, and other finfish in the shark drift gillnet fishery, and because bycatch of endangered species in this fishery is regulated under the Endangered Species Act already, NMFS is not prohibiting use of this gear in shark fisheries at this time, consistent with National Standard 2 which requires that management measures be based on the best scientific information available. In the HMS FMP, NMFS requires 100–percent observer coverage in the southeast shark drift gillnet fishery at all times to increase data on catch, effort, bycatch and bycatch mortality rates in this fishery. Thus, the final action is consistent with Georgia's Coastal Zone Plan to the maximum extent practicable. NMFS encourages the State of Georgia to submit any data collected through state activities and will continue to work with the State to address the issues with this fishery.

This final rule has been determined to be significant for purposes of E.O. 12866.

NMFS prepared a FEIS for the HMS FMP and an FEIS for the Billfish FMP Amendment. The Environmental Protection Agency published the notice of availability of the FEIS for the HMS FMP on March 19, 1999, and the notice of availability of the FSEIS for the Atlantic billfish FMP amendment on March 26, 1999. Although the FMP and amendment discuss concerns with safety at sea, the final actions are not expected to have any substantial adverse impacts on public health or safety. The cumulative long-term impact of the final actions is to establish sustainable fisheries for Atlantic tunas, swordfish, sharks, and billfish. In the case of overfished stocks (west Atlantic bluefin tuna, bigeye tuna, north Atlantic swordfish, large coastal sharks, blue marlin, white marlin and sailfish), achievement of this long-term goal is dependent upon rebuilding the stocks. The final actions will not jeopardize the productive capacity of the target species. Although in some cases the final actions may cause an increase in fishing pressure on non-target stocks, such as dolphin and wahoo, these effects have been considered and are not expected to jeopardize the productive capacity of the non-target fish species. Furthermore, the final actions are not expected to have any adverse effects on ocean and coastal habitats. The measures established in this final rule are expected to reduce the rate of serious injury and mortality caused to marine mammals by the pelagic longline and shark drift gillnet fisheries and are not expected to result in cumulative adverse impacts that might have a substantial effect on endangered and threatened species. In fact, the over-arching goal of the FMP and the Atlantic billfish FMP amendment is to implement rebuilding plans to reduce directed and bycatch mortality rates for overfished stocks Atlantic-wide and to manage healthy stocks for the optimum yield. As no significant negative environmental impacts are expected to result from the final actions, no mitigating measures are adopted.

**List of Subjects**

*15 CFR Part 902*

Reporting and recordkeeping requirements.

*50 CFR Part 285*

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

*50 CFR Part 300*

Exports, Fish, Fisheries, Fishing, Imports, Labeling, Marine resources, Penalties, Reporting and recordkeeping requirements, Transportation, Treaties, and Wildlife.

*50 CFR Parts 600, 630, 635, 644, and 678*

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

Dated: May 18, 1999.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapters II, III, and VI are amended as follows:

## 15 CFR Chapter IX

## PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

2. Effective July 1, 1999, in § 902.1, paragraph (b), the table is amended by removing, in the left column under 50 CFR, all of the entries for parts 285, 630, 644, and 678, and, in the right column in corresponding positions, the control numbers, and by adding, in numerical order, the following entries to read as follows:

### § 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

| CFR part or section where the information collection requirement is located | Current OMB control number (All numbers begin with 0648–) |
|---|---|
| * * * * * | |
| 50 CFR | |
| * * * * * | |
| 300.27 | -0040 |
| * * * * * | |
| 635.4(d) | –0327 and –0205 |
| 635.4(g) | –0202 and –0205 |
| 635.5(a) | –0371 and –0328 |
| 635.5(b) | –0013 and –0239 |
| 635.5(c) | –0339 |
| 635.5(d) | –0328 |
| 635.5(e) | –0323 |
| 635.6(c) | –0373 |
| 635.7(c) | –0374 |
| 635.16 | –0325 |
| 635.21(d) | –0202 |
| 635.26 | –0247 |
| 635.31(b) | –0216 |
| 635.32 | –0309 |
| 635.33 | –0338 |
| 635.42 | –0040 |
| 635.43 | –0040 |
| 635.44 | –0040 |
| 635.46(b) | –0363 |
| 635.69(a) | –0372 |
| * * * * * | |

## 50 CFR Chapter II

## PART 285—ATLANTIC TUNAS FISHERIES [REMOVED]

3. Under the authority of 16 U.S.C. 971 *et seq.*, part 285 is removed effective July 1, 1999 except that § 285.22 is removed and reserved effective May 24, 1999.

## 50 CFR Chapter III

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

4. The authority citation for part 300 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 16 U.S.C. 951-961 and 971 *et seq.*; 16 U.S.C. 973-973r; 16 U.S.C. 2431 *et seq.*; 16 U.S.C. 3371-3378; 16 U.S.C. 3636(b); 16 U.S.C. 5501 *et seq.*; and 16 U.S.C. 1801 *et seq.*

5. Effective July 1, 1999, in § 300.21, the definition for ''tag'' is revised to read as follows:

### § 300.21 Definitions.

* * * * *

*Tag* means the dealer tag, a flexible self-locking ribbon issued by NMFS for the identification of bluefin tuna under § 300.26, or the BSD tag specified under § 635.42 (a)(2) of this title.

* * * * *

### §§ 300.24, 300.25, and 300.26 [Amended]

6. Effective July 1, 1999, in §§ 300.24, 300.25 and 300.26, the term ''the Regional Director'', wherever it appears, is replaced by ''NMFS''.

7. Effective July 1, 1999, in § 300.25, paragraph (a)(1) is revised to read as follows:

### § 300.25 Pacific bluefin tuna—Dealer recordkeeping and reporting.

* * * * *

(a) * * *

(1) The report required to be submitted under this paragraph (a) must be postmarked within 10 days after the end of each 2-week reporting period in which Pacific bluefin tuna were exported. The bi-weekly reporting periods are defined as the first day to the 15th day of each month and the 16th day to the last day of the month.

* * * * *

8. Effective July 1, 1999, in § 300.26, paragraph (d) is revised to read as follows:

### § 300.26 Pacific bluefin tuna—Tags.

* * * * *

(d) *Removal.* A NMFS-issued numbered tag affixed to any Pacific bluefin tuna at the option of any permitted dealer under paragraph (c) of this section or any tag affixed to any Pacific bluefin tuna to meet the requirements of § 635.42(a)(2) of this title must remain on the tuna until the tuna is cut into portions. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the number on each tag attached to each tuna or its parts must be written legibly and indelibly on the outside of any package or container.

* * * * *

9. Effective July 1, 1999, § 300.27 is revised to read as follows:

### § 300.27 Pacific bluefin tuna—Documentation requirements.

Bluefin tuna imported into, or exported or re-exported from the customs territory of the United States is subject to the documentation requirements specified in §§ 635.41 through 635.44 of this title.

10. Effective July 1, 1999, in § 300.28, paragraphs (b) and(c) are revised to read as follows:

### § 300.28 Pacific bluefin tuna—Prohibitions.

* * * * *

(b) Remove any NMFS-issued numbered tag affixed to any Pacific bluefin tuna at the option of any permitted dealer or any tag affixed to a Pacific bluefin tuna to meet the requirements of § 635.42(a)(2) of this title, before removal is allowed under § 300.26, or fail to write the tag number on the shipping package or container as specified in § 300.26.

(c) Reuse any NMFS-issued numbered tag affixed to a Pacific bluefin tuna at the option of a permitted dealer or any tag affixed to a Pacific bluefin tuna to meet the requirements of § 635.42(a)(2) of this title or reuse any tag number previously written on a shipping package or container as prescribed by § 300.26.

## 50 CFR Chapter VI

## PART 600–MAGNUSON-STEVENS ACT PROVISIONS

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

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

12. Effective July 1, 1999, in § 600.10, the definition for ''Drift gillnet'' is removed and the definitions for ''Albacore'', ''Angling'', ''Atlantic tunas'', ''Atlantic Tunas Convention Act'', ''Bigeye tuna'', ''Billfish'', ''Bluefin tuna'', ''Blue marlin'', ''Carcass'', ''Catch limit'', ''Charter boat'', ''Fillet'', ''Fish weir'', ''Headboat'', ''Land'', ''Longbill spearfish'', ''Postmark'', ''Purchase'', ''Round'', ''Sailfish'', ''Sale or sell'', ''Skipjack tuna'', ''Swordfish'', ''Trip'', ''White marlin'', and ''Yellowfin tuna'' are added in alphabetical order to read as follows:

### § 600.10 Definitions.

* * * * *

*Albacore* means the species *Thunnus alalunga*, or a part thereof.

* * * * *

*Angling* means fishing for, attempting to fish for, catching or attempting to catch fish by any person (angler) with a hook attached to a line that is hand-held or by rod and reel made for this purpose.

* * * * *

*Atlantic tunas* means bluefin, albacore, bigeye, skipjack, and yellowfin tunas found in the Atlantic Ocean.

*Atlantic Tunas Convention Act* means the Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971–971h.

* * * * *

*Bigeye tuna* means the species *Thunnus obesus*, or a part thereof.

*Billfish* means blue marlin, longbill spearfish, sailfish, or white marlin.

*Bluefin tuna* means the species *Thunnus thynnus*, or a part thereof.

*Blue marlin* means the species *Makaira nigricans*, or a part thereof.

* * * * *

*Carcass* means a fish in whole condition or that portion of a fish that has been gilled and/or gutted and the head and some or all fins have been removed, but that is otherwise in whole condition.

* * * * *

*Catch limit* means the total allowable harvest or take from a single fishing trip or day, as defined in this section.

* * * * *

*Charter boat* means a vessel less than 100 gross tons (90.8 mt) that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire.

* * * * *

*Fillet* means to remove slices of fish flesh from the carcass by cuts made parallel to the backbone.

* * * * *

*Fish weir* means a large catching arrangement with a collecting chamber that is made of non-textile material (wood, wicker) instead of netting as in a pound net.

* * * * *

*Headboat* means a vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire.

* * * * *

*Land* means to begin offloading fish, to offload fish, or to arrive in port or at a dock, berth, beach, seawall, or ramp.

*Longbill spearfish* means the species *Tetrapturus pfluegeri*, or a part thereof.

* * * * *

*Postmark* means independently verifiable evidence of the date of mailing, such as a U.S. Postal Service postmark, or other private carrier postmark, certified mail receipt, overnight mail receipt, or a receipt issued upon hand delivery to a representative of NMFS authorized to collect fishery statistics.

* * * * *

*Purchase* means the act or activity of buying, trading, or bartering, or attempting to buy, trade, or barter.

* * * * *

*Round* means a whole fish—one that has not been gilled, gutted, beheaded, or definned.

* * * * *

*Sailfish* means the species *Istiophorus platypterus*, or a part thereof.

*Sale* or *sell* means the act or activity of transferring property for money or credit, trading, or bartering, or attempting to so transfer, trade, or barter.

* * * * *

*Skipjack tuna* means the species *Katsuwonus pelamis*, or a part thereof.

* * * * *

*Swordfish* means the species *Xiphias gladius*, or a part thereof.

* * * * *

*Trip* means the time period that begins when a fishing vessel departs from a dock, berth, beach, seawall, ramp, or port to carry out fishing operations and that terminates with a return to a dock, berth, beach, seawall, ramp, or port.

* * * * *

*White marlin* means the species *Tetrapturus albidus*, or a part thereof.

*Yellowfin tuna* means the species *Thunnus albacares*, or a part thereof.

13. Effective July 1, 1999, § 600.15 is amended by redesignating paragraphs (a)(7) through (a)(11) as paragraphs (a)(11) through (a)(15), respectively, by redesignating paragraphs (a)(2) through (a)(6) as paragraphs (a)(5) through (a)(9), respectively, and by adding paragraphs (a)(2) through (a)(4) and paragraph (a)(10) to read as follows:

**§ 600.15 Other acronyms.**

(a) * * *

(2) *ATCA*–Atlantic Tunas Convention Act

(3) *BFT* (Atlantic bluefin tuna) means the subspecies of bluefin tuna, *Thunnus thynnus thynnus*, or a part thereof, that occurs in the Atlantic Ocean.

(4) *BSD* means the ICCAT bluefin tuna statistical document.

* * * * *

(10) *ICCAT* means the International Commission for the Conservation of Atlantic Tunas.

* * * * *

14. Effective July 26, 1999, in § 600.725, paragraph (v), the table is amended by revising all entries under the last subheading ''Secretary of Commerce'' to read as follows:

**§ 600.725 General prohibitions.**

* * * * *

(v) * * *

| Fishery | Allowable gear types |
|---|---|
| * * * * | * |
| **Secretary of Commerce** | |
| Atlantic Tunas, Swordfish and Sharks FMP: | |
| A. Swordfish handgear fishery | A. Rod and reel, harpoon, handline, bandit gear. |
| B. Pelagic longline fishery | B. Longline. |
| C. Shark drift gillnet fishery | C. Gillnet. |
| D. Shark bottom longline fishery | D. Longline. |
| E. Shark handgear fishery | E. Rod and reel, handline, bandit gear. |
| F. Tuna purse seine fishery | F. Purse seine. |
| G. Tuna recreational fishery | G. Rod and reel, handline. |
| H. Tuna handgear fishery | H. Rod and reel, harpoon, handline, bandit gear. |
| I. Tuna harpoon fishery | I. Harpoon. |
| Atlantic Billfish FMP: | |
| Recreational fishery | Rod and reel. |

## PART 630—ATLANTIC SWORDFISH FISHERY [REMOVED]

15. Under the authority of 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*, part 630 is removed effective July 1, 1999.

16. Part 635 is added and is effective July 1, 1999, except that § 635.25 is effective May 24, 1999, § 635.69 is effective September 1, 1999, and § 635.4(b) will be effective on a date to be announced and published after OMB approves the information collection requirements, to read as follows:

## PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

### Subpart A—General

Sec.
635.1 Purpose and scope.
635.2 Definitions.
635.3 Relation to other laws.
635.4 Permits and fees.
635.5 Recordkeeping and reporting.
635.6 Vessel and gear identification.
635.7 At-sea observer coverage.

### Subpart B—Limited Access

635.16 Limited access permits.

### Subpart C—Management Measures

635.20 Size limits.
635.21 Gear operation and deployment restrictions.
635.22 Recreational retention limits.
635.23 Retention limits for BFT.
635.24 Commercial retention limits for sharks and swordfish.
635.25 Interim Provisions
635.26 Catch and release.
635.27 Quotas.
635.28 Closures.
635.29 Transfer at sea.
635.30 Possession at sea and landing.
635.31 Restrictions on sale and purchase.
635.32 Specifically authorized activities.
635.33 Archival tags.
635.34 Adjustment of management measures.

### Subpart D—Restrictions on Imports

635.40 Restrictions to enhance conservation.
635.41 Species subject to documentation requirements.
635.42 Documentation requirements.
635.43 Contents of documentation.
635.44 Validation requirements.
635.45 Import restrictions for Belize, Honduras, and Panama.
635.46 Import restrictions on swordfish.
635.47 Ports of entry.

### Subpart E—International Port Inspection

635.50 Basis and purpose.
635.51 Authorized officer.
635.52 Vessels subject to inspection.
635.53 Reports.

### Subpart F—Enforcement

635.69 Vessel monitoring systems.
635.70 Penalties.
635.71 Prohibitions.
**Appendix A to Part 635—Species Tables**

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

### Subpart A—General

#### § 635.1 Purpose and scope.

(a) The regulations in this part govern the conservation and management of Atlantic tunas, Atlantic billfish, Atlantic sharks, and Atlantic swordfish under the authority of the Magnuson-Stevens Act and ATCA. They implement the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks, and the Fishery Management Plan for Atlantic Billfishes. The Atlantic tunas regulations govern conservation and management of Atlantic tunas in the management unit. The Atlantic billfish regulations govern conservation and management of Atlantic billfish in the management unit. The Atlantic swordfish regulations govern conservation and management of North and South Atlantic swordfish in the management unit. North Atlantic swordfish are managed under the authority of both ATCA and the Magnuson-Stevens Act. South Atlantic swordfish are managed under the sole authority of ATCA. The shark regulations govern conservation and management of sharks in the management unit, solely under the authority of the Magnuson-Stevens Act. Sharks are managed under the authority of the Magnuson-Stevens Act.

(b) Under section 9(d) of ATCA, NMFS has determined that the regulations contained in this part with respect to Atlantic tunas are applicable within the territorial sea of the United States adjacent to, and within the boundaries of, the States of New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana and Texas, and the Commonwealths of Puerto Rico and the Virgin Islands. NMFS will undertake a continuing review of State regulations to determine if regulations applicable to Atlantic tunas, swordfish or billfish are at least as restrictive as regulations contained in this part and if such regulations are effectively enforced. In such case, NMFS will file with the Office of the Federal Register for publication notification of the basis for the determination and of the specific regulations that shall or shall not apply in the territorial sea of the identified State.

#### § 635.2 Definitions.

In addition to the definitions in the Magnuson-Stevens Act, ATCA, and § 600.10 of this chapter, the terms used in this part have following meanings. If applicable, the terms used in this part supercede those used in § 600.10:

*Archival tag* means a device that is implanted or affixed to a fish to electronically record scientific information about the migratory behavior of that fish.

*ATCA Certificate of Eligibility (COE)* means the certificate that must accompany any applicable shipment of fish pursuant to a finding under 16 U.S.C. 971d (c)(4) or (c)(5).

*Atlantic HMS* means Atlantic tunas, billfish, sharks, and swordfish.

*Atlantic Ocean*, as used in this part, includes the North and South Atlantic Oceans, the Gulf of Mexico, and the Caribbean Sea.

*BFT landings quota* means the portion of the ICCAT BFT catch quota allocated to the United States against which landings of BFT are counted.

*Billfish Certificate of Eligibility (COE)* means a certificate that accompanies a shipment of billfish indicating that the billfish or related species, or parts thereof, are not from the respective Atlantic Ocean management units.

*BSD tag* means a numbered tag affixed to a BFT issued by any country in conjunction with a catch statistics information program and recorded on a BSD.

*Caudal keel* means the horizontal ridges along each side of a fish at the base of the tail fin.

*CFL* (curved fork length) means the length of a fish 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.

*CK* means the length of a fish measured along the body contour, i.e., a curved measurement, from the point on the cleithrum that provides the shortest possible measurement along the body contour to the anterior portion of the caudal keel. The cleithrum is the semicircular bony structure at the posterior edge of the gill opening.

*Convention* means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro, Brazil, on May 14, 1966, 20 U.S.T. 2887, TIAS 6767, including any amendments or protocols thereto, which are binding upon the United States.

*Conventional tag* means a numbered, flexible ribbon that is implanted or affixed to a fish that is released back into the ocean that allows for the identification of that fish in the event it is recaptured.

*Dealer tag* means the numbered, flexible, self-locking ribbon issued by NMFS for the identification of BFT sold to a permitted dealer as required under § 635.5(b)(2)(ii).

*Dehooking device* means a device intended to remove a hook embedded in a fish in order to release the fish with minimum damage.

*Designated by NMFS* means the address or location indicated in a letter to permit holders or in a letter accompanying reporting forms.

*Division Chief* means the Chief, Highly Migratory Species Management Division, NMFS (F/SF1), 1315 East-West

Highway, Silver Spring, MD, 20910; (301) 713–2347.

*Downrigger* means a piece of equipment attached to a vessel and with a weight on a cable that is in turn attached to hook-and-line gear to maintain lures or bait at depth while trolling. The downrigger has a release system to retrieve the weight by rod and reel or by manual, electric, or hydraulic winch after a fish strike on the hook-and-line gear.

*Dress* means to process a fish by removal of head, viscera, and fins, but does not include removal of the backbone, halving, quartering, or otherwise further reducing the carcass.

*Dressed weight (dw)* means the weight of a fish after it has been dressed.

*EFP* means an exempted fishing permit issued pursuant to § 600.745 of this chapter or to § 635.32.

*Eviscerated* means a fish that has only the alimentary organs removed.

*Export* means a shipment to a destination outside the customs territory of the United States for which a Shipper's Export Declaration (Customs Form 7525) is required. Atlantic HMS destined from one foreign country to another, which transits the United States and for which a Shipper's Export Declaration is not required to be filed, is not an export under this definition.

*Exporter* means the principal party responsible for effecting export from the United States as listed on the Shipper's Export Declaration (Customs Form 7525) or any authorized electronic medium available from U.S. Customs.

*Finlet* means one of the small individual fins on a tuna located behind the second dorsal and anal fins and forward of the tail fin.

*First transaction in the United States* means the time and place at which a fish is filleted, cut into steaks, or processed in any way that physically alters it after being landed in or imported into the United States.

*Fishing record* means all records of navigation and operations of a fishing vessel, as well as all records of catching, harvesting, transporting, landing, purchasing, or selling a fish.

*Fishing vessel* means any vessel engaged in fishing, processing, or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

*Fishing year* means—

(1) For Atlantic tunas, billfish, and swordfish—June 1 through May 31 of the following year; and

(2) For sharks—January 1 through December 31.

*FL* (fork length) means the straight-line measurement of a fish from the tip of the snout to the fork of the tail. The measurement is not made along the curve of the body.

*Giant BFT* means an Atlantic BFT measuring 81 inches (206 cm) CFL or greater.

*Handgear* means handline, harpoon, rod and reel or bandit gear.

*High-flyer* means a flag, radar reflector, or radio beacon transmitter attached to a longline.

*Highly migratory species (HMS)* means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; sharks (listed in Appendix A to this part); white marlin; blue marlin; sailfish; and longbill spearfish.

*ILAP* means an initial limited access permit issued pursuant to § 635.4.

*Import* means the release of HMS from a nation's Customs' custody and entry into the territory of that nation. HMS are imported into the United States upon release from U.S. Customs' custody pursuant to filing an entry summary document (Customs Form 7501) or filing by any authorized electronic medium. HMS destined from one foreign country to another, which transit the United States and for which an entry summary is not required to be filed, are not an import under this definition.

*Importer*, for the purpose of HMS imported into the United States, means the importer of record as declared on U.S. Customs Form 7501 or by any authorized electronic medium.

*Intermediate country* means a country that exports to another country HMS previously imported by that nation. Shipments of HMS through a country on a through bill of lading or in another manner that does not enter the shipments into that country as an importation do not make that country an intermediate country under this definition.

*LAP* means a limited access permit issued pursuant to § 635.4.

*Large coastal shark (LCS)* means one of the species, or a part thereof, listed in paragraph (a) of Table 1 in Appendix A to this part.

*Large medium BFT* means a BFT measuring at least 73 inches (185 cm) and less than 81 inches (206 cm) CFL.

*Large school BFT* means a BFT measuring at least 47 inches (119 cm) and less than 59 inches (150 cm) CFL.

*LJFL* (lower jaw-fork length) means the straight-line measurement of a fish from the tip of the lower jaw to the fork of the caudal fin. The measurement is not made along the curve of the body.

*Management unit* means in this part:

(1) For Atlantic tunas, longbill spearfish, blue marlin and white marlin, means all fish of these species in the Atlantic Ocean;

(2) For sailfish, means all fish of this species in the Atlantic Ocean west of 30° W. long.;

(3) For North Atlantic swordfish, means all fish of this species in the Atlantic Ocean north of 5° N. lat.;

(4) For South Atlantic swordfish, means all fish of this species in the Atlantic Ocean south of 5° N. lat.; and

(5) For sharks, means all fish of these species in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea.

*Mid-Atlantic Bight* means the area bounded by straight lines connecting the mid-Atlantic states' internal waters and extending to 71° W. long. between 35° N. lat. and 43° N. lat.

*Non-ridgeback large coastal shark* means one of the species, or a part thereof, listed in paragraph (a)(2) of Table 1 in Appendix A to this part.

*North Atlantic swordfish or North Atlantic swordfish stock* means those swordfish occurring in the Atlantic Ocean north of 5° N. lat.

*Northeastern United States closed area* means the area bounded by straight lines connecting the following coordinates in the order stated: 40°00' N. lat., 74°00' W. long.; 40°00' N. lat., 68°00' W. long.; 39°00' N. lat., 68°00' W. long.; and 39°00' N. lat., 74°00' W. long.

*Operator*, with respect to any vessel, means the master or other individual aboard and in charge of that vessel.

*Pectoral fin* means the fin located behind the gill cover on either side of a fish.

*Pelagic shark* means one of the species, or a part thereof, listed in paragraph (c) of Table 1 in Appendix A to this part.

*PFCFL* (pectoral fin curved fork length) means the length of a beheaded fish 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.

*Prohibited shark* means one of the species, or a part thereof, listed in paragraph (d) of Table 1 in Appendix A to this part.

*Restricted-fishing day (RFD)* means a day, beginning at 0000 hours and ending at 2400 hours local time, during which a person aboard a vessel for which a General category permit for Atlantic Tunas has been issued may not fish for, possess, or retain a BFT.

*Ridgeback large coastal shark* means one of the species, or a part thereof, listed in paragraph (a)(1) of Table 1 in Appendix A to this part.

*School BFT* means a BFT measuring at least 27 inches (69 cm) and less than 47 inches (119 cm) CFL.

*Shark* means one of the oceanic species, or a part thereof, listed in Tables 1 and 2 in Appendix A to this part.

*Small coastal shark (SCS)* means one of the species, or a part thereof, listed in paragraph (b) of Table 1 in Appendix A to this part.

*Small medium BFT* means a BFT measuring at least 59 inches (150 cm) and less than 73 inches (185 cm) CFL.

*South Atlantic swordfish or south Atlantic swordfish stock* means those swordfish occurring in the Atlantic Ocean south of 5° N. lat.

*Swordfish Certificate of Eligibility (COE)* means the certificate that accompanies a shipment of imported swordfish indicating that the swordfish or swordfish parts are not from the Atlantic Ocean or, if they are, are derived from a swordfish weighing more than 33 lb (15 kg) dw.

*Tournament* means any fishing competition involving Atlantic HMS in which participants must register or otherwise enter or in which a prize or award is offered for catching or landing such fish.

*Tournament operator* means a person or entity responsible for maintaining records of participants and results used for awarding tournament points or prizes, regardless of whether fish are retained.

*Trip limit* means the total allowable take from a single trip as defined in § 600.10 of this chapter.

*Weighout slip* means a document provided to the owner or operator of the vessel by a person who weighs fish or parts thereof that are landed from a fishing vessel. A document, such as a ''tally sheet,'' ''trip ticket,'' or ''sales receipt,'' that contains such information is considered a weighout slip.

*Young school BFT* means an Atlantic BFT measuring less than 27 inches (69 cm) CFL.

### § 635.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and in paragraphs (b) and (c) of this section.

(b) In accordance with regulations issued under the Marine Mammal Protection Act of 1972, as amended, it is unlawful for a commercial fishing vessel, a vessel owner, or a master or operator of a vessel to engage in fisheries for HMS in the Atlantic Ocean, unless the vessel owner or authorized representative has complied with specified requirements including, but not limited to, registration, exemption certificates, decals, and reports, as contained in part 229 of this title.

(c) General provisions on facilitation of enforcement, penalties, and enforcement policy applicable to all domestic fisheries are set forth in §§ 600.730, 600.735, and § 600.740 of this chapter, respectively.

(d) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing, or exempted educational activity, as specified in § 635.32.

### § 635.4 Permits and fees.

Information on permits and permit requirements may be obtained from the Division Chief or where otherwise stated in this part.

(a) *General.* (1) *Authorized activities.* Each permit issued by NMFS authorizes certain activities, and persons may not conduct these activities without the appropriate permit, unless otherwise authorized by NMFS in accordance with this part.

(2) *Vessel permit inspection.* The owner or operator of a vessel of the United States must have the appropriate valid permit on board the vessel to fish for, take, retain, or possess Atlantic tunas, when engaged in commercial or recreational fishing, and to fish for, take, retain or possess Atlantic swordfish or sharks when engaged in commercial fishing. The vessel operator and must make such permit available for inspection upon request by NMFS or a person authorized by NMFS. The owner of the vessel is responsible for satisfying all of the requirements associated with obtaining, maintaining, and making available for inspection, all valid vessel permits.

(3) *Property rights.* Limited access vessel permits or any other permit issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the takings provision of the Fifth Amendment of the U.S. Constitution. Rather, limited access vessel permits represent only a harvesting privilege that may be revoked, suspended, or amended subject to the requirements of the Magnuson-Stevens Act or other applicable law.

(4) *Dealer permit inspection.* A dealer permit issued under this section, or a copy thereof, must be available at each of the dealer's places of business. A dealer must present the permit or a copy for inspection upon the request of a NMFS-authorized officer.

(5) *Display upon offloading.* Upon transfer of Atlantic HMS, the owner or operator of the harvesting vessel must present for inspection the vessel's Atlantic tunas, shark, or swordfish permit to the receiving dealer. The permit must be presented prior to completing any applicable landing report specified at § 635.5(a)(1), (a)(2) and (b)(2)(i).

(6) *Sanctions and denials.* A permit issued under this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(7) *Alteration.* A vessel or dealer permit that is altered, erased, mutilated, or otherwise modified is invalid.

(8) *Replacement.* NMFS may issue a replacement permit upon the request of the permittee. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (b) of this section, may be charged for issuance of the replacement permit.

(9) *Fees.* NMFS may charge a fee for each application for a permit or for each transfer or replacement of a permit. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from NMFS, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified in the instructions provided with each application form. Each applicant must include the appropriate fee with each application or request for transfer or replacement. A permit will not be issued to anyone who fails to pay the fee.

(b) *HMS Charter/Headboat Permits.* (1) The owner of a charter boat or headboat used to fish for, take, retain, or possess any Atlantic HMS must obtain an HMS Charter/Headboat permit.

(2) While persons aboard a vessel that has been issued an HMS Charter/Headboat permit are fishing for or are in possession of Atlantic HMS, the operator of the vessel must have a valid Merchant Marine License or Uninspected Passenger Vessel License, as applicable, issued by the U.S. Coast Guard pursuant to regulations at 46 CFR part 10. Such Coast Guard license must be carried on board the vessel.

(c) [Reserved.]

(d) *Atlantic Tunas vessel permits.* (1) The owner of each vessel used to fish for or take Atlantic tunas or on which Atlantic tunas are retained or possessed must obtain, in addition to any other required permits, a permit in one and only one of the following categories: Angling, Charter/Headboat, General, Harpoon, Longline, Purse Seine, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas vessel permit or a valid HMS Charter/Headboat permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, size classes, and gear applicable to the permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel's valid permit is in the General, Harpoon, Charter/Headboat, Longline, Purse Seine, or Trap category of the Atlantic Tunas permit or is a valid HMS Charter/Headboat permit. Persons may not sell Atlantic tunas caught on board a vessel issued a permit in the Angling category.

(3) Except for purse seine vessels for which that permit has been issued under this section, a vessel owner may change the category of the vessel's permit no more than once each year and only from January 1 through May 15. From May 16 through December 31, the vessel's permit category may not be changed, regardless of a change in the vessel's ownership.

(4) A person can obtain an Atlantic Tunas Longline category permit for a vessel only if the owner of the vessel has both a limited access permit for shark and a limited access permit for swordfish.

(5) An owner of a vessel with an Atlantic Tunas permit in the Purse Seine category may transfer the permit to another purse seine vessel that he or she owns. In either case, the owner must submit a written request for transfer to NMFS, to an address designated by NMFS, and attach an application for the new vessel and the existing permit. NMFS will issue no more than 5 Atlantic Tunas Purse Seine category permits.

(e) *Shark vessel LAPs*. (1) As of July 1, 1999, the only valid Federal commercial vessel permits for shark are those that have been issued under the limited access criteria specified in § 635.16.

(2) The owner of each vessel used to fish for or take Atlantic sharks or on which Atlantic sharks are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of two types of commercial limited access shark permits: Shark directed limited access permit or shark incidental limited access permit. See § 635.16 regarding the initial issuance of these two types of permits. It is a rebuttable presumption that the owner or operator of a vessel on which sharks are possessed in excess of the recreational retention limits intends to sell the sharks.

(3) A commercial limited access permit for sharks is not required if the vessel is recreational fishing and retains no more sharks than the recreational retention limit, is operating pursuant to the conditions of a shark EFP, or that fishes exclusively within state waters.

(4) An owner issued a permit pursuant to this part must agree, as a condition of such permit, that the vessel's shark fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the EEZ, landward of the EEZ, or outside the EEZ, and without regard to where such shark or gear are possessed, taken, or landed. However, when a vessel fishes in the waters of a state that has more restrictive regulations on shark fishing, persons aboard the vessel must abide by the state's more restrictive regulations.

(f) *Swordfish vessel LAPs*.

(1) The owner of each vessel used to fish for or take Atlantic swordfish or on which Atlantic swordfish are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of three types of commercial limited access swordfish permits: swordfish directed limited access permit, swordfish incidental limited access permit, or swordfish handgear limited access permit. See § 635.16 regarding the initial issuance of these three types of permits.

(2) As of July 1, 1999, the only valid commercial Federal vessel permits for swordfish are those that have been issued under the limited access criteria specified in § 635.16.

(3) A commercial Federal permit for swordfish is not required if the vessel is recreational fishing.

(4) Unless the owner has been issued a swordfish handgear permit, a limited access permit for swordfish is valid only when the vessel has on board a valid commercial limited access permit for shark and a valid Atlantic Tunas Longline category permit for such vessel.

(g) *Dealer permits*—(1) *Atlantic tunas*. A person that receives, purchases, trades for, or barters for Atlantic tunas from a fishing vessel of the United States or who imports or exports bluefin tuna, regardless of ocean area of origin, must possess a valid dealer permit.

(2) *Shark*. A person that receives, purchases, trades for, or barters for Atlantic sharks from a fishing vessel of the United States must possess a valid dealer permit.

(3) *Swordfish*. A person that receives, purchases, trades for, or barters for Atlantic swordfish from a fishing vessel of the United States or who imports swordfish, regardless of origin, must possess a valid dealer permit. Importation of swordfish by nonresident corporations is restricted to those entities authorized under 19 CFR 141.18.

(h) *Applications for permits*. An owner of a vessel or a dealer must submit to NMFS, at an address designated by NMFS, a complete application and required supporting documents at least 30 days before the date on which the permit is to be made effective. Application forms and instructions for their completion are available from NMFS.

(1) *Atlantic tunas vessel permits*. (i) An applicant must provide all information concerning his or her identification, vessel, gear used, fishing areas, fisheries participated in, the corporation or partnership owning the vessel, and income requirements requested by NMFS and included on the application form.

(ii) An applicant must also submit a copy of the vessel's valid U.S. Coast Guard documentation or, if not documented, a copy of its valid state registration and any other information that may be necessary for the issuance or administration of the permit as requested by NMFS. The owner must submit such information to an address designated by NMFS.

(iii) NMFS may require an applicant to provide documentation supporting the application before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (a)(7) of this section.

(2) *Limited access permits for swordfish and shark*. See § 635.16 for the issuance of ILAPs for shark and swordfish. See paragraph (l) of this section for transfers of ILAPs and LAPs for shark and swordfish. See paragraph (m) of this section for renewals of LAPs for shark and swordfish.

(3) *Dealer permits*. (i) An applicant for a dealer permit must provide all the information requested on the application form necessary to identify the company, its principal place of business, and mechanisms by which the company can be contacted.

(ii) An applicant must also submit a copy of each state wholesaler's license held by the dealer and, if a business is owned by a corporation or partnership, the corporate or partnership documents requested on the application form.

(iii) An applicant must also submit any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(i) *Change in application information*. A vessel owner or dealer must report any change in the information contained in an application for a permit within 30 days after such change. The report must be submitted in writing to NMFS, to an address designated by NMFS with the issuance of each permit. In the case of a vessel permit for Atlantic tunas or an HMS Charter/Headboat permit, the vessel owner or operator must report the change by phone or internet to a number or website designated by NMFS. A new permit will be issued to incorporate the new information, subject to limited access provisions specified in paragraph (l)(2) of this section. For certain information changes, NMFS may require supporting documentation before a new permit will be issued. If a change in the permit information is not reported within 30 days, the permit is void as of the 31st day after such change.

(j) *Permit issuance*. (1) NMFS will issue a permit within 30 days of receipt of a complete and qualifying application. An application is complete when all requested forms, information, and documentation have been received, including all reports and fishing or catch information required to be submitted under this part.

(2) NMFS will notify the applicant of any deficiency in the application, including failure to provide information or reports required to be submitted under this part. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(3) For issuance of ILAPs for shark and swordfish, see § 635.16.

(k) *Duration*. A permit issued under this section will be valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904, the vessel or dealership is sold, or any other information previously submitted on the application changes, as specified in paragraph (i) of this section.

(l) *Transfer*--(1) *General*. A permit issued under this section is not transferable or assignable to another vessel or owner or dealer; it is valid only for the vessel and owner or dealer to whom it is issued. If a person acquires a vessel or dealership and wants to conduct activities for which a permit is required, that person must apply for a permit in accordance with the provisions of paragraph (h) of this section; or, if the acquired vessel is permitted in either the shark or swordfish fishery, in accordance with paragraph (l)(2) of this section. If the acquired vessel or dealership is currently permitted, an application must be accompanied by the original permit and by a copy of a signed bill of sale or equivalent acquisition papers.

(2) *Shark and swordfish LAPs*. (i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraph (l)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section, an owner may transfer a shark or swordfish ILAP or LAP to another vessel that he or she owns or to another person. Directed handgear ILAPs and LAPs may be transferred to another vessel but only for use with handgear and subject to the upgrading restrictions in paragraph (l)(2)(ii) of this section. Incidental catch ILAPs and LAPs are not subject to the requirements specified in paragraphs (l)(2)(ii) and (l)(2)(iii) of this section.

(ii) An owner may upgrade a vessel with a commercial swordfish or shark limited access permit, or transfer the limited access permit to another vessel, and be eligible to retain or renew a limited access permit only if the upgrade or transfer does not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage from the vessel baseline specifications.

(A) The vessel baseline specifications are the respective specifications (length overall, gross registered tonnage, net tonnage, horsepower) of the vessel that was issued an initial limited access permit.

(B) The vessel's horsepower may be increased only once throughout the validity of each permit, whether through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the horsepower of the vessel's baseline specifications, as applicable.

(C) The vessel's length overall, gross registered tonnage, and net tonnage may be increased only once throughout the validity of each permit, whether through refitting, replacement, or transfer. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

(iii) No person may own or control more than 5 percent of the vessels for which swordfish directed commercial permits have been issued or more than 5 percent of the vessels for which shark directed commercial permits have been issued.

(iv) In order to transfer an ILAP or LAP to a replacement vessel, the owner of the vessel issued the ILAP or LAP pursuant to this part must request NMFS, at an address designated by NMFS, to transfer the ILAP or LAP to another vessel, subject to requirements specified in paragraph (l)(2)(ii) of this section, if applicable. The owner must return the current valid ILAP or LAP to NMFS with a complete application for a LAP, as specified in paragraph (h) of this section, for the replacement vessel. Copies of both vessels' U.S. Coast Guard documentation or state registration must accompany the application.

(v) For ILAP or LAP transfers to a different person, the transferee of an ILAP or LAP must request NMFS, at an address designated by NMFS, to transfer the original ILAP or LAP, subject to requirements specified in paragraphs (l)(2)(ii) and (l)(2)(iii) of this section, if applicable. The following must accompany the completed application: The original ILAP or LAP with signatures of both parties to the transaction on the back of the permit, the bill of sale of the ILAP or LAP. A person must include copies of both vessels' U.S. Coast Guard documentation or state registration for ILAP or LAP transfers involving vessels.

(vi) For ILAP or LAP transfers with the sale of the permitted vessel, the transferee of the vessel and ILAP or LAP issued to that vessel must request NMFS, at an address designated by NMFS, to transfer the ILAP or LAP, subject to requirements specified in paragraphs (l)(2)(ii) and (l)(2)(iii) of this section, if applicable. The following must accompany the completed application: The original ILAP or LAP with signatures of both parties to the transaction on the back of the permit, the bill of sale of the ILAP or LAP and the vessel, and a copy of the vessel's U.S. Coast Guard documentation or state registration.

(vii) The owner of a vessel issued an ILAP or LAP who sells the permitted vessel, but retains the ILAP or LAP, must notify NMFS within 30 days after the sale of the change in application information in accordance with paragraph (i) of this section. If the owner wishes to transfer the ILAP or LAP to a replacement vessel, he/she must apply and follow the procedures in paragraph (l)(2)(iv) of this section.

(viii) As specified in paragraph (f)(4) of this section, a directed or incidental ILAP or LAP for swordfish, a directed or an incidental catch ILAP or LAP for shark, and an Atlantic tunas Longline category permit are required to retain swordfish. Accordingly, a LAP for swordfish obtained by transfer without

either a directed or incidental catch shark LAP or an Atlantic tunas Longline category permit will not entitle an owner or operator to use a vessel to fish in the swordfish fishery.

(ix) As specified in paragraph (d)(4) of this section, a directed or incidental ILAP or LAP for swordfish, a directed or an incidental catch ILAP or LAP for shark, and an Atlantic tunas Longline category permit are required to retain Atlantic tunas. Accordingly, an Atlantic tunas Longline category permit obtained by transfer without either a directed or incidental catch swordfish or shark LAP will not entitle an owner or operator to use a vessel to fish in the Atlantic tunas fishery.

(m) *Renewal*—(1) *General.* Persons must apply annually for a vessel or dealer permit for Atlantic tunas, sharks and swordfish, and HMS Charter/Headboats. Persons must apply annually for an Atlantic tunas or HMS Charter/headboat vessel permit. A renewal application must be submitted to NMFS, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit provided that the specific requirements for the requested permit are met, including those described in § 635.4 (l)(2), all reports required under the Magnuson-Stevens Act have been submitted, including those described in ' 635.5, and the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section.

(2) *Shark and swordfish LAPs.* As of June 1, 2000, the owner of a vessel of the United States that fishes for, possesses, lands, or sells shark or swordfish from the management unit, or takes or possesses such shark or swordfish as incidental catch, must have a LAP issued pursuant to the requirements in ' 635.4(e) and (f). However, any ILAP that expires on June 30, 2000, is valid through June 29, 2000. Only valid ILAP or LAP holders in the preceding year are eligible for renewal of a LAP. ILAP and LAP holders who have transferred their permits are not eligible for renewal.

**§ 635.5 Recordkeeping and reporting.**

Information on HMS vessel and dealer reporting requirements may be obtained from the Division Chief or where otherwise stated in this part.

(a) *Vessels*—(1) *Logbooks.* If an owner of an HMS Charter/Headboat vessel, an Atlantic Tunas vessel, or a commercial shark or swordfish vessel, for which a permit has been issued under § 635.4(c), (d), (e), or (f), is selected for logbook reporting in writing by NMFS, he or she must maintain and submit a fishing record on a logbook specified by NMFS. Entries are required regarding the vessel's fishing effort and the number of fish landed and discarded. Entries on a day's fishing activities must be entered on the form within 48 hours of completing that day's activities and, for a 1-day trip, before offloading. The owner or operator of the vessel must submit the logbook form(s) postmarked within 7 days of offloading all Atlantic HMS.

(2) *Weighout slips.* If an owner of a permitted vessel is required to maintain and submit logbooks under paragraph (a)(1) of this section, and Atlantic HMS harvested on a trip are sold, the owner or operator must obtain and submit copies of weighout slips for those fish. Each weighout slip must show the dealer to whom the fish were transferred, the date they were transferred, and the carcass weight of each fish for which individual weights are normally recorded. For fish that are not individually weighed, a weighout slip must record total weights by species and market category. A weighout slip for sharks prior to or as part of a commercial transaction involving shark carcasses or fins must record the weights of carcasses and any detached fins. The owner or operator must also submit copies of weighout slips with the logbook forms required to be submitted under paragraph (a)(1) of this section.

(3) *BFT not sold.* If a person who catches and lands a large medium or giant BFT from a vessel issued a permit in any of the commercial categories for Atlantic tunas does not sell or otherwise transfer the BFT to a dealer who has a dealer permit for Atlantic tunas, the person must contact a NMFS enforcement agent, at a number designated by NMFS, at the time of landing such BFT, provide the information needed for the reports required under paragraph (b)(2)(i) of this section, and, if requested, make the tuna available so that a NMFS enforcement agent or authorized officer may inspect the fish and attach a tag to it. Alternatively, such reporting requirement may be fulfilled if a dealer who has a dealer permit for Atlantic tunas reports the BFT as being landed but not sold on the reports required under paragraph (b)(2)(i) of this section. All BFT landed but not sold will be applied to the quota category according to the permit category of the vessel from which it was landed.

(b) *Dealers.* Persons who have been issued a dealer permit under § 635.4 must submit reports to NMFS, to an address designated by NMFS, and maintain records as follows:

(1) *Atlantic HMS.* (i) Dealers that receive Atlantic swordfish and Atlantic sharks from U.S. vessels must report all Atlantic tunas (including BFT), Atlantic swordfish and Atlantic sharks received from U.S. vessels on a form available from NMFS. (ii) Dealers must report all imports of BFT and swordfish on forms available from NMFS.

(iii) Reports of Atlantic swordfish and shark dealers, including reports of imported swordfish and bluefin tuna, received on the first through the 15th of each month must be postmarked no later than the 25th of that month. Reports of such fish received on the 16th through the last day of each month must be postmarked not later than the 10th of the following month. For swordfish imports, a dealer must attach a copy of each certificate of eligibility to the report required under paragraph (b)(1)(i) of this section. If a dealer has not received Atlantic swordfish or Atlantic sharks from U.S. vessels, during a reporting period, he or she must submit a report to NMFS, to an address designated by NMFS so stating, and the report must be postmarked as specified for the reporting period. A negative report is not necessary for Atlantic swordfish imports.

(iv) The reporting requirement of paragraph (b)(1)(i) of this section may be satisfied by a dealer if he or she provides a copy of each appropriate weighout slip or sales record, provided such weighout slip or sales record by itself or combined with the form available from NMFS includes all of the required information and identifies each fish by species.

(v) The dealer may mail or fax such report to an address designated by NMFS or may hand-deliver such report to a state or Federal fishery port agent designated by NMFS. If the dealer hand-delivers the report to a port agent, a dealer must deliver such report no later than the prescribed postmark date for the reporting period.

(2) *Requirements for BFT*—(i) *Reports of BFT.* Each dealer must submit a completed landing report on each BFT received, to NMFS, at an address designated by NMFS, by electronic facsimile (fax) not later than 24 hours from receipt of the fish. The landing report must be signed by the permitted vessel's owner or operator immediately upon transfer of the fish and must indicate the name and permit number of the vessel that landed the fish. The dealer must inspect the vessel's permit to verify that the required vessel name and vessel permit number as listed on the permit are correctly recorded on the landing report. The dealer must also submit a bi-weekly report on forms

supplied by NMFS for transfers from U.S. vessels and for imports of BFT. For BFT received on the first through the 15th of each month, the dealer must submit the bi-weekly report forms to NMFS postmarked no later than the 25th of that month. Reports of receipt of such BFT received on the 16th through the last day of each month must be postmarked not later than the 10th of the following month.

(ii) *Dealer Tags.* NMFS will issue numbered dealer tags to each person issued a dealer permit for Atlantic tunas under § 635.4. A dealer tag is not transferable and is usable only by the dealer to whom it is issued. Dealer tags may not be reused once affixed to a tuna or recorded on a package, container, or report.

(A) *Affixing dealer tags.* A dealer or a dealer's agent must affix a dealer tag to each BFT purchased or received immediately upon its offloading from a vessel. The dealer or dealer's agent must affix the tag to the tuna between the fifth dorsal finlet and the caudal keel.

(B) *Removal of dealer tags.* A dealer tag affixed to any BFT under paragraph (b)(2)(ii)(A) of this section or a BSD tag affixed to an imported BFT must remain on the tuna until the tuna is cut into portions. If the BFT or BFT parts subsequently are packaged for transport for domestic commercial use or for export, the dealer or the BSD tag number must be written legibly and indelibly on the outside of any package or container. Such tag number must be recorded on any document accompanying shipment of BFT for commercial use or export.

(3) *Recordkeeping.* Dealers must retain at their place of business a copy of each written report required under paragraphs (b)(1)(i) through (b)(1)(iii) and paragraph (b)(2)(i) of this section for a period of 2 years from the date on which each report was required to be submitted.

(c) *Anglers.* The owner of a vessel permitted in the Atlantic tunas Angling or Atlantic tunas or HMS Charter/Headboat category must report all BFT landed under the Angling category quota to NMFS through the automated catch reporting system by calling 1–888–USA-TUNA. Alternative BFT reporting procedures may be established by NMFS in cooperation with states and may include such methodologies as telephone, dockside or mail surveys, mail in or phone-in reports, tagging programs, or mandatory check-in stations. A census or a statistical sample of persons fishing under the Angling category may be used for these alternative reporting programs, and owners of selected vessels will be notified by NMFS or by the cooperating state agency of the requirements and procedures for reporting BFT. Each person so notified must comply with those requirements and procedures. Additionally, NMFS may determine that BFT landings reporting systems implemented by the states, if mandatory, at least as restrictive, and effectively enforced, are sufficient for Angling category quota monitoring. In such case, NMFS will file with the Office of the Federal Register for publication notification indicating that compliance with the state system satisfies the reporting requirement of this paragraph (c).

(d) *Tournament operators.* A tournament operator must notify NMFS of the purpose, dates, and location of the tournament conducted from a port in an Atlantic coastal state, including the U.S. Virgin Islands and Puerto Rico, at least 4 weeks prior to commencement of the tournament. NMFS will notify a tournament operator in writing, when his or her tournament has been selected for reporting. The tournament operator that is selected must maintain and submit to NMFS a record of catch and effort on forms available from NMFS. Tournament operators must submit completed forms to NMFS, at an address designated by NMFS, postmarked no later than the 7th day after the conclusion of the tournament and must attach a copy of the tournament rules.

(e) *Inspection.* Any person authorized to carry out enforcement activities under the regulations in this part has the authority, without warrant or other process, to inspect, at any reasonable time, catch on board a vessel or on the premises of a dealer, logbooks, catch reports, statistical records, sales receipts, or other records and reports required by this part to be made, kept, or furnished. An owner or operator of a fishing vessel that has been issued a permit under § 635.4 must allow NMFS or an authorized person to inspect and copy any required reports and the records, in any form, on which the completed reports are based, wherever they exist. An agent of a person issued a vessel or dealer permit under this part, or anyone responsible for offloading, storing packing, or selling regulated HMS for such permittee, shall be subject to the inspection provisions of this section.

(f) *Additional data and inspection.* Additional data on fishing effort directed at Atlantic HMS or on catch of Atlantic HMS, regardless of whether retained, may be collected by contractors and statistical reporting agents, as designees of NMFS, and by authorized officers. A person issued a permit under § 635.4 is required to provide requested information about fishing activity, and a person, regardless of whether issued a permit under § 635.4, who possesses an Atlantic HMS is required to make such fish or parts thereof available for inspection by NMFS or its designees upon request.

**§ 635.6 Vessel and gear identification.**

(a) *Vessel number.* For the purposes of this section, a vessel's number is the vessel's official number issued by either by the U.S. Coast Guard or by the appropriate state agency.

(b) *Vessel identification.* (1) An owner or operator of a vessel for which a permit has been issued under § 635.4 must display the vessel's number–

(i) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(ii) In block arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

(iii) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) long and at least 10 inches (25.4 cm) in height for all other vessels.

(2) The owner or operator of a vessel for which a permit has been issued under § 635.4 must keep the vessel's number clearly legible and in good repair and ensure that no part of the vessel, its rigging, its fishing gear, or any other material on board obstructs the view of the vessel's number from an enforcement vessel or aircraft.

(c) *Gear identification.* (1) The owner or operator of a vessel for which a permit has been issued under § 635.4 and that uses a handline, harpoon, longline, or gillnet, must display the vessel's name, registration number or Atlantic Tunas permit number on each float attached to a handline or harpoon and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. The vessel's name or number must be at least 1 inch (2.5 cm) in height in block letters or arabic numerals in a color that contrasts with the background color of the float or high-flyer.

(2) An unmarked handline, harpoon, longline, or gillnet, is illegal and may be disposed of in an appropriate manner by NMFS or an authorized officer.

(3) In addition to gear marking requirements in this paragraph (c)(1), provisions on gear marking for the southeast U.S. shark gillnet fishery to implement the Atlantic Large Whale Take Reduction Plan are set forth in § 229.32(b) of this title.

**§ 635.7 At-sea observer coverage.**

(a) *Applicability*. NMFS may select for observer coverage any vessel that has an Atlantic HMS, tunas, shark or swordfish permit issued under § 635.4. Vessels permitted in the HMS Charter/Headboat and Atlantic Tunas Angling and Charter/Headboat categories will be requested to take observers on a voluntary basis. When selected, vessels issued any other permit under § 635.4 are required to take observers on a mandatory basis.

(b) *Selection of vessels*. NMFS will notify a vessel owner, in writing, when his or her vessel is selected for observer coverage. Vessels will be selected to provide information on catch, bycatch and other fishery data according to the need for representative samples.

(c) *Notification of trips*. The owner or operator of a vessel that is selected under paragraph (b) of this section must notify NMFS, at an address designated by NMFS, before commencing any fishing trip that may result in the incidental catch or harvest of Atlantic HMS. Notification procedures and information requirements such as expected gear deployment, trip duration and fishing area will be specified in a selection letter sent by NMFS.

(d) *Assignment of observers*. Once notified of a trip, NMFS will assign an observer for that trip based on current information needs relative to the expected catch and bycatch likely to be associated with the indicated gear deployment, trip duration and fishing area. If an observer is not assigned for a fishing trip, NMFS will issue a waiver for that trip to the owner or operator of the selected vessel. If an observer is assigned for a trip, the operator of the selected vessel must arrange to embark the observer and shall not fish for or retain any Atlantic HMS unless the NMFS-assigned observer is aboard. At no time shall a person aboard a vessel fish for Atlantic sharks with a gillnet or possess sharks on board a vessel with a gillnet on board unless a NMFS-approved observer is aboard the vessel.

(e) *Requirements*. The owner or operator of a vessel on which a NMFS-approved observer is embarked, regardless of whether required to carry the observer, must comply with §§ 600.725 and 600.746 of this chapter and—-

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties.

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

## Subpart B–Limited Access

**§ 635.16 Limited access permits.**

As of July 1, 1999, the only valid commercial vessel permits for shark and swordfish are those that have been issued under the limited access criteria specified in this section. If the Federal commercial shark permit issued to the vessel owner prior to July 1, 1999, was based on the qualifications of the operator, then a shark limited access permit will be issued to the qualifying vessel owner, subject to the provisions in this part, with the requirement that the operator must be on board the vessel to fish for, take, retain, or possess Atlantic sharks in state or Federal waters. This requirement expires May 30, 2000.

(a) *Eligibility requirements for ILAPs*—(1) *Directed permits*. To be eligible for a directed ILAP in the shark or swordfish fishery, a vessel owner must demonstrate past participation in the respective fishery by having—

(i) Been the owner of a vessel that was issued a valid permit for the respective fishery at any time from July 1, 1994, through December 31, 1997.

(ii) Documented shark or swordfish landings from the respective federally permitted vessel that he or she owned, of at least $5,000 per year in value or in number per year as follows—

(A) One hundred and two sharks per year for any 2 calendar years, from January 1, 1991, through December 31, 1997, provided the landings after July 1, 1993, occurred when the permit was valid, or

(B) Twenty-five swordfish per year for any 2 calendar years, from January 1, 1987, through December 31, 1997, provided the landings occurred when the permit was valid.

(iii) Been the owner of a vessel in the respective fishery that—

(A) Had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, or

(B) Had a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998.

(2) *Incidental catch permits*. To be eligible for an incidental ILAP in the shark or swordfish fishery, a vessel owner must demonstrate past participation in the respective fishery by having—

(i) Been the owner of a vessel that was issued a valid permit for the respective fishery at any time from July 1, 1994, through December 31, 1997; and

(ii) Documented landings from the respective federally permitted vessel that he or she owned of at least—

(A) Seven sharks from January 1, 1991, through December 31, 1997, provided the landings after July 1, 1993, occurred when the permit was valid; or

(B) Eleven swordfish from January 1, 1987, through December 31, 1997, provided the landings occurred when the permit was valid; and

(iii) Been the owner of a vessel in the respective fishery that—

(A) Had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, or

(B) Had a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998; and

(iv) Met either the gross income from fishing or the gross sales of fish requirement specified in paragraph (a)(3)(i) or (ii) of this section; or

(v) Been the owner of a vessel that had a permit for Atlantic tuna in the Incidental category at any time from January 1, 1998, through December 31, 1998; or

(vi) Been the owner of a vessel that is eligible for a directed or incidental ILAP for swordfish (incidental shark ILAPs only).

(3) *Handgear permits*. To be eligible for a swordfish handgear ILAP—

(i) The owner's gross income from commercial fishing (i.e., harvest and first sale of fish) or from charter/headboat fishing must be more than 50 percent of his or her earned income, during one of the 3 calendar years preceding the application, or

(ii) The owner's gross sales of fish harvested from his or her vessel must have been more than $20,000, during one of the 3 calendar years preceding the application, or

(iii) The owner must provide documentation of having been issued a swordfish permit for use with harpoon gear, or

(iv) The owner must document his or her historical landings of swordfish with handgear through logbook records, verifiable sales slips or receipts from registered dealers or state landings records.

(b) *Landings histories*. For the purposes of the landings history criteria in paragraphs (a)(1)(ii) and (a)(2)(ii) of this section:

(1) The owner of a permitted vessel at the time of a landing retains credit for the landing unless ownership of the vessel and the landings history has been transferred and there is a written agreement signed by both parties to the transfer, or there is other credible written evidence that the original owner transferred the landings history to the new owner.

(2) A vessel's landings history may not be divided among owners. A transfer of credit for landings history must be for the entire record of landings under the previous owner.

(3) Vessel landings histories may not be consolidated among vessels. Owners may not pool landings histories to meet the eligibility requirements.

(c) *Alternative eligibility requirements for initial permits*. (1) Persons who acquired ownership of a vessel and its landings history after December 31, 1997, are exempt from the requirement to have owned a federally permitted shark or swordfish vessel at any time during the period July 1, 1994, through December 31, 1997. The acquired landings history must meet the criteria for a directed or incidental catch permit specified in paragraph (a)(1)(ii)(A), (a)(1)(ii)(B), (a)(2)(ii)(A) or paragraph (a)(2)(ii)(B) of this section, and such persons must have had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, or a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998.

(2) If a person first obtained a shark or swordfish permit in 1997, the required landings for a directed or incidental catch permit specified in paragraphs (a)(1)(ii) and (a)(2)(ii) are modified as follows:

(i) To qualify for a directed shark or swordfish ILAP, respectively, such persons must document landings from a federally permitted vessel of at least:

(A) One hundred and two sharks in calendar year 1997, provided such landings occurred when the permit was valid, or

(B) Twenty-five swordfish in calendar year 1997, provided such landings occurred when the permit was valid.

(ii) To qualify for an incidental shark or swordfish catch ILAP, respectively, such persons must document landings from a federally permitted vessel of at least one shark or swordfish in calendar year 1997, provided such landings occurred when the permit was valid.

(d) *Procedures for initial issuance of LAPs*—(1) *Notification of status*. NMFS will send all written correspondence regarding limited access permits by certified mail.

(i) Shortly after the final rule is published, the Division Chief will notify each owner of a vessel who had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, each owner of a vessel who had a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998, and each owner of a vessel that had a valid Atlantic tuna Incidental category permit at any time from January 1, 1998, through December 31, 1998, of the initial determination of the owner's eligibility for a directed or incidental catch ILAP. The Division Chief will make the initial determination based on the criteria in paragraphs (a)(1), (a)(2), and (c)(2) of this section and on records available to NMFS and mail the appropriate permit. The Division Chief will not make initial determinations of eligibility for a vessel permit under the alternative eligibility requirements specified in paragraph (a)(3) or (c)(1) of this section; persons that believe they qualify for a LAP under these criteria must apply to the Division Chief.

(ii) If NMFS determines that all qualifications for a directed or incidental catch ILAP have been met and that no further action is required, the appropriate permit for the vessel will be included with the notification. An ILAP issued by NMFS will be valid through the expiration date indicated on the permit.

(iii) A person must apply to the Division Chief for the appropriate permit if—

(A) He or she does not agree with the initial determination;

(B) He or she believes that he or she qualifies for a directed or incidental catch ILAP but did not receive a letter from the Division Chief regarding eligibility status; or

(C) He or she believes that he or she qualifies for a swordfish handgear permit.

(2) *Applications for ILAPs*. (i) Applicants may obtain application forms and instructions from the Division Chief. The vessel owner must submit a completed signed application form and all required supporting documents.

(ii) An application for a directed or incidental catch ILAP must be submitted to the Division Chief postmarked no later than September 1, 1999. An application for an initial swordfish handgear permit must be submitted to the Division Chief postmarked no later than December 1, 1999. Any application received by the Division Chief after these dates will not be considered.

(iii) Each application must be accompanied by documentation showing that the criteria for the requested permit have been met. Vessel landings of sharks in numbers of fish or value through June 30, 1993, may be documented by verifiable sales slips or receipts from registered dealers or by state landings records. Vessel landings of sharks in numbers of fish after July 1, 1993, and all vessel landings of swordfish in numbers of fish may be documented only by fishing vessel logbook records that NMFS received before March 2, 1998. Vessel landings of sharks or swordfish in value may be documented by verifiable sales slips or receipts from registered dealers or by state landings records. NMFS will not apply any landing of fish by number of fish or value that occurred when the vessel did not have a valid Federal permit.

(iv) Information submitted on an application and documentation in support of an application is subject to verification by comparison with Federal, state, and other records and information. Submission of false information or documentation may result in disqualification from initial participation in the shark, swordfish, or tunas fisheries and may result in Federal prosecution.

(v) If the Division Chief receives an incomplete application in a timely manner, NMFS will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of receipt of the Division Chief's notification, the application will be considered abandoned.

(3) *Actions on applications*. Within 30 days of receipt of a complete application, the Division Chief will take one of the following actions:

(i) If the eligibility requirements are met, the Division Chief will issue the appropriate ILAP which will be valid through the marked expiration date.

(ii) If, based on the information and documentation supplied with the application, the Division Chief determines that the applicant does not meet the eligibility criteria for the requested vessel permit, the Division Chief will deny the application in a letter to the applicant. If, based on the documentation supplied, the Division Chief believes the applicant is qualified for an incidental catch vessel permit instead of the requested directed ILAP, he or she will notify the applicant of the denial of the requested directed ILAP but will issue the incidental catch ILAP.

(4) *Appeals*. (i) If an application for an ILAP is denied or if an incidental catch ILAP is issued instead of the requested directed ILAP, the applicant may appeal

the denial to the Director. The sole grounds for appeal will be that the original denial by the Division Chief was based on incorrect or incomplete information. No other grounds will be considered. An appeal must be in writing, must be submitted to the Director postmarked no later than 90 days after receipt of the notice of denial, must specify the grounds for the appeal, and must include documentation supporting the grounds for the appeal. Documentation of vessel landings that the Director may consider in support of an appeal is described in paragraph (d)(2)(iii) of this section. Photocopies of documentation (e.g., permits, logbook reports) will be acceptable for initial submission. The Director may request originals at a later date, which would be returned to the appellant.

(ii) Upon receipt of a complete written appeal with supporting documentation, the Director may issue a provisional ILAP that is valid for the period during the appeal. This provisional permit will be valid only for use with the specified gear and will be subject to all regulations contained in this part.

(iii) The Director will appoint an appeals officer who will review the appeal documentation and other available records. If the information and documentation presented in the appeal are insufficient, inconsistent with vessel ownership, landings history, and other information available from NMFS' records, or cannot be verified, the appeals officer may notify the appellant that the information supplied is not adequate to warrant issuance of the requested permit. The appellant will have 30 days from the date of receipt of the notification to submit to the appeals officer corroborating documents in support of the appeal or to submit a revised appeal. After the written appeal documentation is complete, the appeals officer will make findings and a recommendation, which shall be advisory only, to the Director within 60 days of receipt of the appeal.

(iv) The Director will make a final decision on the appeal and send the appellant notice of the decision. The Director's decision is the final administrative action of the Department of Commerce on the application.

(v) If the appeal is denied, the provisional permit will become invalid 5 days after receipt of the notice of denial. If the appeal is accepted, NMFS will issue an appropriate permit.

(e) *Transfer of LAPs*. For provisions on transfer of limited access permits, see § 635.4(l).

(f) *Renewal of LAPs*. For provisions on renewal of limited access permits, see § 635.4(m).

## Subpart C—Management Measures

### § 635.20 Size limits.

(a) *General*. The CFL will be the sole criterion for determining the size and/or size class of whole (head on) Atlantic tunas.

(b) *BFT size classes*. The size class of a BFT found with the head removed shall be determined using pectoral fin curved fork length (PFCFL) multiplied by a conversion factor of 1.35. The CFL, as determined by conversion of the PFCFL, will be the sole criterion for determining the size class of a beheaded BFT. The conversion factor may be adjusted after consideration of additional scientific information and fish measurement data, and will be made effective by filing with the Office of the Federal Register for publication notification of the adjustment.

(c) *BFT, bigeye tuna, and yellowfin tuna*. (1) No person shall take, retain, or possess a BFT, bigeye tuna, or yellowfin tuna in the Atlantic Ocean that is less than 27 inches (69 cm) CFL;

(2) Applying the conversion factor from PFCFL to CFL for a beheaded BFT in § 635.20(b) means that no person shall retain or possess a BFT, with the head removed, that is less than 20 inches (51 cm) PFCFL.

(3) No person shall remove the head of a bigeye tuna or yellowfin tuna if the remaining portion would be less than 27 inches (69 cm) from the fork of the tail to the forward edge of the cut.

(d) *Billfish*. (1) No person shall take, retain or possess a blue marlin taken from its management unit that is less than 99 inches (251 cm), LJFL.

(2) No person shall take, retain or possess a white marlin taken from its management unit that is less than 66 inches (168 cm), LJFL.

(3) No person shall take, retain or possess shoreward of the outer boundary of the EEZ a sailfish taken from its management unit that is less than 63 inches (160 cm), LJFL.

(e) *Sharks*. (1) No person shall take, retain, or possess shoreward of the outer boundary of the EEZ any species classified as a ridgeback LCS shark, taken from its management unit that is less than 54 inches (137 cm), fork length, or, if the head and fins have been removed, 30 inches (76 cm) as a straight line from the first dorsal fin ray to the precaudal pit. If the precaudal pit has been removed, such measurement will be to the posterior edge of the carcass. For the purposes of enforcing the minimum size, it is a rebuttable presumption that any ridgeback shark from which the head and fins have been removed is a ridgeback LCS shark.

(2) All sharks landed under the recreational retention limits specified at § 635.22(c), other than Atlantic sharpnose sharks, must have the head, tail, and fins attached and be at least 54 inches (137 cm), FL. There is no minimum size limit for Atlantic sharpnose sharks.

(f) *Swordfish*. (1) No person shall take, retain, or possess a north or south Atlantic swordfish taken from its management unit that is less than 29 inches (73 cm), CK, or 33 lb (15 kg) dressed weight. A swordfish that is damaged by shark bites may be retained only if the remainder of the carcass is at least 29 inches (73 cm) CK, or 33 lb (15 kg) dw. No person shall import into the United States an Atlantic swordfish weighing less than 33 lb (15 kg) dressed weight, or a part derived from a swordfish that weighs less than 33 lb (15 kg) dressed weight.

(2) Except for a swordfish landed in a Pacific state and remaining in the state of landing, a swordfish, or part thereof, weighing less than 33 lb (15 kg) dressed weight will be deemed to be an Atlantic swordfish harvested by a vessel of the United States and to be in violation of the minimum size requirement of this section unless such swordfish, or part thereof, is accompanied by a certificate of eligibility attesting that the swordfish was lawfully imported. Refer to § 635.46(b) for the requirements related to the certificate of eligibility.

(3) A swordfish, or part thereof, will be monitored for compliance with the minimum size requirement of this section from the time it is landed in, or imported into, the United States up to, and including, the point of first transaction in the United States.

### § 635.21 Gear operation and deployment restrictions.

(a) *All Atlantic HMS fishing gears*. (1) An Atlantic HMS harvested from its management unit that is not retained must be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water.

(2) If a billfish is caught by a hook, the fish must be released by cutting the line near the hook or by using a dehooking device, in either case without removing the fish from the water.

(b) *General*. No person shall use any gear to fish for Atlantic HMS other than those gears specifically authorized in this part. A vessel using or having on board in the Atlantic Ocean any unauthorized gear may not have on board an Atlantic HMS.

(c) *Pelagic longlines*. Pelagic longlines include any longline placed or

occurring in water depths greater than 50 fathoms (91 m).

(1) From July 1, 1999, through June 30, 2000, no person may deploy a pelagic longline that is more than 24 nautical miles (44.5 km) in length in the Mid-Atlantic Bight.

(2) In the Northeastern United States closed area from June 1 through June 30 each year, no person may deploy a pelagic longline. In this area, during this time, no person shall retain an Atlantic tuna or swordfish on board a vessel that has a pelagic longline on board, unless the mainline, hooks, and floats are secured.

(3) When a marine mammal or sea turtle is hooked or entangled by pelagic longline gear, the operator of the vessel must immediately release the animal, retrieve the pelagic longline gear, and move at least 1 nm (2 km) from the location of the incident before resuming fishing. Reports of marine mammal entanglements must be submitted to NMFS consistent with regulations in § 229.6 of this title.

(d) *Authorized gear*—(1) *Atlantic tunas*. A person that retains or possesses an Atlantic bluefin tuna may not have on board or use any gear other than that authorized for the category for which the Atlantic tunas or HMS permit has been issued for the harvesting vessel. When fishing for Atlantic tunas other than BFT, fishing gear authorized for any permit category may be used, except that purse seine gear may be used only on board vessels permitted in the Purse Seine category. When fishing for BFT, a person must use only the gear types authorized for the Atlantic tunas or HMS permit category of the fishing vessel:

(i) *Angling*. Rod and reel (including downriggers) and handline.

(ii) *Charter/Headboat*. Rod and reel (including downriggers), bandit gear, and handline.

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

(iv) *Harpoon*. Harpoon.

(v) *Longline*. Longline.

(vi) *Purse Seine*. Purse seine.

(A) *Mesh size*. A purse seine used in directed fishing for BFT must have a mesh size equal to or smaller than 4.5 inches (11.4 cm) in the main body (stretched when wet) and must have at least 24–count thread throughout the net.

(B) *Inspection of purse seine vessels*. Persons that own or operate a purse seine vessel conducting a directed fishery for Atlantic tunas must have their fishing gear inspected for mesh size by an enforcement agent of NMFS prior to commencing fishing for the season in any fishery that may result in the harvest of Atlantic tunas. Such persons must request such inspection at least 24 hours before commencement of the first fishing trip of the season. If NMFS does not inspect the vessel within 24 hours of such notification, the inspection requirement is waived. In addition, at least 24 hours before commencement of offloading any BFT after a fishing trip, such persons must request an inspection of the vessel and catch by notifying NMFS. If, after notification by the vessel, NMFS does not arrange to inspect the vessel and catch at offloading, the inspection requirement is waived.

(vii) *Trap*. Pound net and fish weir.

(2) *Billfish*. (i) Persons may possess a blue marlin or white marlin in or take a blue marlin or a white marlin from its management unit only if it is harvested by rod and reel. Regardless of how taken, persons may not possess a blue marlin or a white marlin in or take a blue marlin or a white marlin from its management unit on board a vessel using or having on board a pelagic longline.

(ii) Persons may possess a sailfish in or take a sailfish shoreward of the outer boundary of the U.S. EEZ only if it is harvested by rod and reel. Regardless of how taken, persons may not possess a sailfish in, or take a sailfish, shoreward of the outer boundary of the U.S. EEZ on board a vessel using or having on board a pelagic longline.

(3) *Sharks*. (i) No person may possess a shark shoreward of the outer boundary of the EEZ if the shark was taken from its management unit by any gear other than handgear, longline or gillnet.

(ii) No person may fish for sharks with a gillnet with a total length of 2.5 km or more. No person may have on board a vessel a gillnet with a total length of 2.5 km or more.

(iii) Provisions on gear deployment for the southeast U.S. shark drift gillnet fishery to implement the Atlantic Large Whale Take Reduction Plan are set forth in § 229.32(f) of this title.

(iv) While fishing for Atlantic sharks with a gillnet, the gillnet must remain attached to the vessel at one end.

(4) *Swordfish*. (i) No person may possess north Atlantic swordfish taken from its management unit by any gear other than handgear or longline, except that such swordfish taken incidentally while fishing with a squid trawl may be retained, subject to restrictions specified in § 635.24(b)(2). No person may possess south Atlantic swordfish taken from its management unit by any gear other than longline.

(ii) An Atlantic swordfish may not be retained or possessed on board a vessel with a gillnet. A swordfish will be deemed to have been harvested by gillnet when it is onboard, or offloaded from a vessel using or having on board a gillnet.

(iii) A person aboard a vessel issued a directed handgear ILAP or LAP for Atlantic swordfish may not fish for swordfish with any gear other than handgear. A swordfish will be deemed to have been harvested by longline when it is on board, or offloaded from a vessel using or having on board longline gear.

### § 635.22 Recreational retention limits.

(a) *General*. Recreational retention limits apply to a longbill spearfish taken from or possessed in the Atlantic EEZ, to a shark taken from or possessed in the Atlantic EEZ, and to a yellowfin tuna taken from or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel retention limit and the cumulative retention limit based on the number of persons aboard. The retention limits apply to a person who fishes in any manner, except to a person aboard a vessel who has been issued a commercial vessel permit under § 635.4 for the appropriate species/species group. Federal recreational retention limits may not be combined with any recreational retention limit applicable in state waters.

(b) *Billfish*. No longbill spearfish from the management unit may be possessed shoreward of the outer boundary of the EEZ.

(c) *Sharks*. One shark from either the large coastal, small coastal or pelagic group may be retained per vessel per trip, subject to the size limits described in § 635.20(d), and, in addition, one Atlantic sharpnose shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark per person may be possessed on board a vessel. No prohibited sharks listed in Table 1(d) of Appendix A to this part may be retained.

(d) *Yellowfin tuna*. Three yellowfin tunas per person per day may be retained. Regardless of the length of a trip, no more than three yellowfin tuna per person may be possessed on board a vessel.

### § 635.23 Retention limits for BFT.

The retention limits in this section are subject to the quotas and closure provisions in §§ 635.27 and 635.28.

(a) *General category*. (1) No person aboard a vessel that has a General category Atlantic Tunas permit may possess, retain, land, or sell a BFT in the

school, large school, or small medium size class.

(2) On an RFD, no person aboard a vessel that has a General category Atlantic Tunas permit may possess, retain, land, or sell a BFT in the large medium or giant size class. On days other than RFDs, when the General category is open, one large medium or giant BFT may be caught and landed from such vessel per day. NMFS will annually publish a schedule of RFDs in the **Federal Register**. An RFD applies only when the General category fishery is open.

(3) Regardless of the length of a trip, no more than a single day's retention limit of large medium or giant BFT may be possessed or retained aboard a vessel that has a General category Atlantic Tunas permit. On days other than RFDs, when the General category is open, no person aboard such vessel may continue to fish, and the vessel must immediately proceed to port once the applicable limit for large medium or giant BFT is retained.

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel. Such increase or decrease will be based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing with the Office of the Federal Register for publication notification of the adjustment. Such adjustment will not be effective until at least 3 calendar days after notification is filed with the Office of the Federal Register for publication.

(b) *Angling category*. BFT may be retained and landed under the daily limits and quotas applicable to the Angling category by persons aboard vessels permitted in Atlantic tunas Angling category as follows:

(1) *Large medium and giant BFT*. (i) No large medium or giant BFT may be retained, possessed, landed, or sold in the Gulf of Mexico, except one per vessel per year may be landed if caught incidentally to fishing for other species.

(ii) One per vessel per year may be retained, possessed, and landed outside the Gulf of Mexico.

(iii) When a large medium or giant BFT has been caught and retained under this paragraph (b)(1), no person aboard the vessel may continue to fish, the vessel must immediately proceed to port, and no such BFT may be sold or transferred to any person for a commercial purpose.

(2) *School, large school, or small medium BFT*. One per vessel per day may be retained, possessed, or landed. Regardless of the length of a trip, no more than a single day's allowable catch of school, large school, or small medium BFT may be possessed or retained.

(3) *Changes to retention limits*. To provide for maximum utilization of the quota for BFT spread over the longest period of time, NMFS may increase or decrease the retention limit for any size class BFT or change a vessel trip limit to an angler limit and vice versa. Such increase or decrease will be based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. NMFS will adjust the daily retention limit specified in paragraph (b)(2) of this section by filing with the Office of the Federal Register for publication notification of the adjustment. Such adjustment will not be effective until at least 3 calendar days after notification is filed with the Office of the Federal Register for publication.

(c) *HMS or Tunas Charter/Headboat*. Persons aboard a vessels permitted in Atlantic HMS or Tunas Charter/Headboat category may retain and land BFT under the daily limits and quotas applicable to the Angling category or the General category as follows:

(1) When fishing in the Gulf of Mexico, the restrictions applicable to the Angling category specified in paragraph (b)(1) of this section apply.

(2) When fishing other than in the Gulf of Mexico when the fishery for the General category is closed, the restrictions applicable to the Angling category specified in paragraphs (b)(1) through (b)(3) of this section apply.

(3) When fishing other than in the Gulf of Mexico and when the fishery under the General category has not been closed under § 635.28, a person aboard a vessel that has an HMS or Atlantic Tunas Charter/Headboat permit may fish under either the retention limits applicable to the General category specified in paragraphs (a)(2) and (a)(3) of this section or the retention limits applicable to the Angling category specified in paragraphs (b)(2) and (b)(3) of this section. The size category of the first BFT retained will determine the fishing category applicable to the vessel that day.

(d) *Harpoon category*. Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land multiple giant BFTs per day. An incidental catch of only one large medium BFT per vessel per day may be retained, possessed, or landed.

(e) *Purse Seine category*. Persons aboard a vessel permitted in the Atlantic Tunas Purse Seine category,

(1) May retain, possess, land, or sell large medium BFT in amounts not exceeding 15 percent, by weight, of the giant BFT landed on that trip, provided that the total amount of large medium BFT landed by that vessel during the fishing year does not exceed 10 percent, by weight, of the total amount of giant BFT allocated to that vessel for that fishing year.

(2) May retain, possess or land BFT smaller than the large medium size class that are taken incidentally when fishing for skipjack tuna or yellowfin tuna in an amount not exceeding 1 percent, by weight, of the skipjack tuna and yellowfin tuna landed on that trip. Landings of BFT smaller than the large medium size class may not be sold and are counted against the Purse Seine category BFT quota allocated to that vessel.

(f) *Longline category*. Persons aboard a vessel permitted in the Atlantic Tunas Longline category may retain, possess, land, and sell large medium and giant BFT taken incidentally in fishing for other species. Limits on such retention/possession/landing/sale are as follows:

(1) For landings south of 34°00' N. lat., one large medium or giant BFT per vessel per trip may be landed, provided that, for the months of January through April, at least 1,500 lb (680 kg) and for the months of May through December, at least 3,500 lb (1,588 kg), either dw or round weight, 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.

(2) For landings north of 34°00' N. lat., landings per vessel per trip of large medium and giant BFT may not exceed 2 percent by weight, either dw or round weight, of all other fish which are legally caught, retained, and offloaded from the same trip and which are recorded on the dealer weighout slip as sold.

(g) *Trap category*. Persons aboard a vessel permitted in the Atlantic Tunas Trap category may retain, possess, land, and sell each fishing year only one large medium or giant BFT that is taken incidentally while fishing for other species with a pound net or fish weir. No other Atlantic tunas caught in a pound net or fish weir may be retained.

**§ 635.24 Commercial retention limits for sharks and swordfish.**

The retention limits in this section are subject to the quotas and closure provisions in §§ 635.27 and 635.28.

(a) *Sharks*. (1) Persons who own or operate a vessel that has been issued a directed ILAP or LAP for shark may retain, possess or land no more than 4,000 lb (1,814 kg), dw, of LCS per trip.

(2) Persons who own or operate a vessel that has been issued an incidental catch ILAP or LAP for sharks may retain, possess or land no more than 5 LCS and 16 SCS and pelagic sharks, combined, per trip.

(b) *Swordfish*. (1) Persons aboard a vessel that has been issued an incidental ILAP or LAP for swordfish may retain, possess, or land no more than two swordfish per trip in or from the Atlantic Ocean north of 5° N. lat.

(2) Persons aboard a vessel in the squid trawl fishery that has been issued an incidental ILAP or LAP for swordfish may retain, possess, or land no more than five swordfish per trip in or from the Atlantic Ocean north of 5° N. lat. A vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawls on board and when squid constitute not less than 75 percent by weight of the total fish on board or offloaded from the vessel.

**§ 635.25 Interim provisions.**

(a) *Billfish size limits*. (1) No person shall take, retain or possess a blue marlin taken from its management unit that is less than 99 inches (251 cm), LJFL.

(2) No person shall take, retain or possess a white marlin taken from its management unit that is less than 66 inches (168 cm), LJFL.

(3) No person shall take, retain or possess shoreward of the outer boundary of the EEZ a sailfish taken from its management unit that is less than 63 inches (160 cm), LJFL.

(b) *Pelagic longline closed area*. (1) Pelagic longlines include any longline placed or occurring in water depths greater than 50 fathoms (91 m).

(2) The Northeastern United States closed area means the area bounded by straight lines connecting the following coordinates in the order stated: 40°00' N. lat., 74°00' W. long.; 40°00' N. lat., 68°00' W. long.; 39°00' N. lat., 68°00' W. long.; and 39°00' N. lat., 74°00' W. long.

(3) In the Northeastern United States closed area from June 1 through June 30 each year, no person may deploy a pelagic longline. In this area, during this time, no person shall retain an Atlantic tuna or swordfish on board a vessel that has a pelagic longline on board, unless the mainline, hooks, and floats are secured.

(c) *Bluefin tuna (BFT) quota specifications*. Consistent with ICCAT recommendations, NMFS will subtract any allowance for dead discards from the fishing year's (June 1-May 31) total U.S. quota for BFT that can be caught and allocate the remainder to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The total landing quota will be divided among the General, Angling, Harpoon, Purse Seine, Longline, and Trap categories. Consistent with these allocations and other applicable restrictions of this part, BFT may be taken by persons aboard vessels issued Atlantic Tunas permits or HMS Charter/Headboat permits. Allocations of the BFT landings quota will be made according to the following percentages: General - 47.1 percent; Angling - 19.7 percent, which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent; Purse Seine - 18.6 percent or 250 mt, whichever is less; Longline - 8.1 percent; and Trap - 0.1 percent. The remaining 2.5 percent of the BFT landings quota will be held in reserve for inseason adjustments, to compensate for overharvest in any category other than the Angling category school BFT subquota or for fishery independent research. In such case that the total annual landings quota when applied to the percentage allocation for the purse seine category exceeds 250 mt, the amount over 250 mt shall be allocated to the reserve. NMFS may apportion a landings quota allocated to any category to specified fishing periods or to geographic areas. BFT landings quotas are specified in whole weight.

(1) *General category landings quota*. Prior to each fishing year (June 1-May 31), NMFS will set the General category effort control schedule, including time-period subquotas and restricted-fishing days, through proposed and final specifications published in the **Federal Register**.

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS or Atlantic tunas Charter/Headboat permit has been issued are counted against the General category landings quota. See § 635.23(c)(3) regarding landings by vessels with an HMS or Atlantic tunas Charter/Headboat permit that are counted against the General category landings quota. The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the General category landings quota is 47.1 percent of the overall U.S. BFT landings quota, less 10 mt which is set aside for an area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72° 27' W. long (Shinnecock Inlet) and running SSE 150° true, and north of 38°47' N. lat. as specified in § 635.27(a)(1)(iii). This 47.1 percent, less the 10 mt set aside as specified in § 635.27(a)(1)(iii), is apportioned as follows:

(A) June 1 through August 31—60 percent;

(B) September 1 through September 30—30 percent; and

(C) October 1 through May 31—10 percent.

(ii) NMFS will adjust each period's apportionment based on overharvest or underharvest in the prior period.

(iii) When the coastwide General category fishery has been closed in any quota period under § 637.28(a)(1), NMFS may publish notification in the **Federal Register** to make available all or part of the 10 mt landings quota set aside for an area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W. long. (Shinnecock Inlet) and running SSE 150 true, and north of 38°47' N. lat. The daily catch limit for the set-aside area will be one large medium or giant BFT per vessel per day. Upon the effective date of the set-aside fishery, fishing for, retaining, or landing large medium or giant BFT is authorized only within the set-aside area. Any portion of the set-aside amount not harvested prior to the reopening of the coastwide General category fishery in the subsequent quota period established under paragraph (a)(1)(i) of this section may be carried over for the purpose of renewing the set-aside fishery at a later date.

(2) *Angling category landings quota*. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an Angling category Atlantic Tunas permit or an HMS or Atlantic Tunas Charter/Headboat permit has been issued is 19.7 percent of the overall annual U.S. BFT landings quota. No more than 2.3 percent of the annual Angling category landings quota may be large medium or giant BFT and, over each 4–consecutive-year period, no more than 8 percent of the overall U.S. BFT landings quota may be school BFT. The Angling category landings quota includes the amount of school BFT held in reserve as specified under paragraph (a)(7)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

(i) Under paragraph (a)(7)(ii) of this section, 47.2 percent of the school BFT Angling category landings quota, minus the school BFT quota held in reserve, may be caught, retained, possessed, or landed south of 38° 47' N. lat.

(ii) An amount equal to 47.2 percent of the large school/small medium BFT Angling category quota, may be caught, retained, possessed, or landed south of 38° 47' N. lat.

(iii) An amount equal to 66.7 percent of the large medium and giant BFT Angling category quota may be caught, retained, possessed, or landed south of 38° 47' N. lat.

(3) *Longline category quota*. The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels for which Longline category Atlantic tunas permits have been issued is 8.1 percent of the overall U.S. BFT quota. No more than 78.9 percent of the Longline category quota may be caught, retained, possessed, or landed in the area south of 34°00' N. lat.

(4) *Purse Seine category quota*. (i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Purse Seine category Atlantic Tunas permits have been issued is 18.6 percent of the overall U.S. BFT landings quota, or 250 mt, whichever is less. The purse seine fishery under this quota commences on August 15 each year.

(ii) An owner of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued must apply in writing to NMFS at an address designated by NMFS, for an allocation of BFT from the Purse Seine category quota. The application must be postmarked no later than April 15 for an allocation of the quota that becomes available on August 15.

(iii) On or about May 1, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel permit holders so requesting. Such allocations are freely transferable, in whole or in part, among vessels that have Purse Seine category Atlantic Tunas permits. An owner of a purse seine vessel intending to fish for more than one allocation in any fishing season must provide written notice of such intent to NMFS at an address designated by NMFS, 15 days before commencing fishing. An owner of a purse seine vessel who transfers his or her allocation to another purse seine vessel may not use his or her vessel in any fishery in which BFT might be caught for the remainder of the fishing year after his or her allocation is transferred.

(iv) An owner of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued may apply to NMFS to permanently consolidate Purse Seine category vessel permits issued under § 635.4. Upon written approval of consolidation by NMFS, the Purse Seine Category Atlantic Tunas Permit of a transferring vessel will be canceled, and the receiving owner may apply for allocations of BFT commensurate with the number of consolidated permits. An owner of a purse seine vessel whose permit is canceled through consolidation may not use his or her vessel in any purse seine fishery in which BFT might be caught.

(5) *Harpoon category quota*. The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels for which Harpoon category Atlantic Tunas permits have been issued is 3.9 percent of the overall U.S. BFT quota.

(6) *Trap category quota*. The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Trap category Atlantic Tunas permits have been issued is 0.1 percent of the overall U.S. BFT quota.

(7) *Reserve*. (i) The total amount of BFT that is held in reserve for inseason adjustments and fishery-independent research using quotas or subquotas other than the Angling category school BFT subquota, is 2.5 percent of the overall U.S. BFT quota. Consistent with paragraph (a)(7)(iii) of this section, NMFS may allocate any portion of this reserve for inseason adjustments to any category quota in the fishery, other than the Angling category school BFT subquota.

(ii) The total amount of school BFT that is held in reserve for inseason adjustments and fishery independent research is 18.5 percent of the total school BFT quota for the Angling category as described under paragraph (a)(2) of this section, which is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(7)(iii) of this section, NMFS may allocate any portion of the school BFT held in reserve for inseason adjustments to the Angling category.

(iii) NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustment. Before making any such adjustment, NMFS will consider the following factors:

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

(B) The catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no allocation is made.

(C) The projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year.

(D) The estimated amounts by which quotas for other gear categories of the fishery might be exceeded.

(E) Effects of the transfer on BFT rebuilding and overfishing.

(F) Effects of the transfer on accomplishing the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks.

(d) *Prohibitions*. In addition to the prohibitions specified in § 600.725 of this chapter, it is unlawful for any person or vessel subject to the jurisdiction of the United States to violate any provision of this section, ATCA, the Magnuson-Stevens Act, or any other rules promulgated under ATCA or the Magnuson-Stevens Act.

**§ 635.26 Catch and release.**

(a) *BFT*. (1) Notwithstanding the other provisions of this part, an angler may fish for BFT under a tag-and-release program, provided the angler tags all BFT so caught, regardless of whether previously tagged, with conventional tags issued or approved by NMFS, returns such fish to the sea immediately after tagging with a minimum of injury, and reports the tagging and, if the BFT was previously tagged, the information on the previous tag. If NMFS-issued or NMFS-approved conventional tags are not on board a vessel, all anglers aboard that vessel are ineligible to fish under the tag-and-release program.

(2) Persons may obtain NMFS-issued conventional tags, reporting cards, and detailed instructions for their use from the NMFS Cooperative Tagging Center. Persons may use a conventional tag obtained from a source other than NMFS to tag BFT, provided the use of such tags is registered each year with the Cooperative Tagging Center and the NMFS program manager has approved the use of a conventional tag from that source. An angler using an alternative source of tags wishing to tag BFT may contact the NMFS Cooperative Tagging Center at the Southeast Fishery Science Center.

(3) An angler registering for the HMS tagging program is required to provide his or her name, address, phone number and, if applicable, the identity of the alternate source of tags.

(b) *Billfish*. NMFS is encouraging further catch and release of Atlantic billfish by establishing a recreational catch-and-release fishery management program, consistent with the guidance of § 600.350(c).

(c) *Sharks*. Notwithstanding the other provisions of this part, a person may fish for white sharks (*Carcharodon carcharias*) with rod and reel, provided

the person releases such fish to the sea immediately with a minimum of injury, and that such fish may not be removed from the water.

**§ 635.27 Quotas.**

(a) *BFT*. Consistent with ICCAT recommendations, NMFS will subtract any allowance for dead discards from the fishing year's total U.S. quota for BFT that can be caught and allocate the remainder to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The total landing quota will be divided among the General, Angling, Harpoon, Purse Seine, Longline, and Trap categories. Consistent with these allocations and other applicable restrictions of this part, BFT may be taken by persons aboard vessels issued Atlantic Tunas permits or HMS Charter/Headboat permits. Allocations of the BFT landings quota will be made according to the following percentages: General - 47.1 percent; Angling - 19.7 percent, which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent; Purse Seine - 18.6 percent or 250 mt, whichever is less; Longline - 8.1 percent; and Trap - 0.1 percent. The remaining 2.5 percent of the BFT landings quota will be held in reserve for inseason adjustments, to compensate for overharvest in any category other than the Angling category school BFT subquota or for fishery independent research. In such case that the total annual landings quota when applied to the percentage allocation for the purse seine category exceeds 250 mt, the amount over 250 mt shall be allocated to the reserve. NMFS may apportion a landings quota allocated to any category to specified fishing periods or to geographic areas. BFT landings quotas are specified in whole weight.

(1) *General category landings quota*. Prior to each fishing year, NMFS will set the General category effort control schedule, including time-period subquotas and restricted-fishing days, through proposed and final specifications published in the **Federal Register**.

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS or Atlantic tunas Charter/Headboat permit has been issued are counted against the General category landings quota. See § 635.23(c)(3) regarding landings by vessels with an HMS or Atlantic tunas Charter/Headboat permit that are counted against the General category landings quota. The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the General category landings quota is 47.1 percent of the overall U.S. BFT landings quota, less 10 mt which is set aside for an area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72° 27' W. long (Shinnecock Inlet) and running SSE 150° true, and north of 38°47' N. lat. as specified in § 635.27(a)(1)(iii). This 47.1 percent, less the 10 mt set aside as specified in § 635.27(a)(1)(iii), is apportioned as follows:

(A) June 1 through August 31—60 percent;

(B) September 1 through September 30—30 percent; and

(C) October 1 through May 31—10 percent.

(ii) NMFS will adjust each period's apportionment based on overharvest or underharvest in the prior period.

(iii) When the coastwide General category fishery has been closed in any quota period under § 637.28(a)(1), NMFS may publish notification in the **Federal Register** to make available all or part of the 10 mt landings quota set aside for an area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W. long. (Shinnecock Inlet) and running SSE 150 true, and north of 38°47' N. lat. The daily catch limit for the set-aside area will be one large medium or giant BFT per vessel per day. Upon the effective date of the set-aside fishery, fishing for, retaining, or landing large medium or giant BFT is authorized only within the set-aside area. Any portion of the set-aside amount not harvested prior to the reopening of the coastwide General category fishery in the subsequent quota period established under paragraph (a)(1)(i) of this section may be carried over for the purpose of renewing the set-aside fishery at a later date.

(2) *Angling category landings quota*. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an Angling category Atlantic Tunas permit or an HMS or Atlantic Tunas Charter/Headboat permit has been issued is 19.7 percent of the overall annual U.S. BFT landings quota. No more than 2.3 percent of the annual Angling category landings quota may be large medium or giant BFT and, over each 4–consecutive-year period, no more than 8 percent of the overall U.S. BFT landings quota may be school BFT. The Angling category landings quota includes the amount of school BFT held in reserve as specified under paragraph (a)(7)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

(i) Under paragraph (a)(7)(ii) of this section, 47.2 percent of the school BFT Angling category landings quota, minus the school BFT quota held in reserve, may be caught, retained, possessed, or landed south of 38° 47' N. lat.

(ii) an amount equal to 47.2 percent of the large school/small medium BFT Angling category quota, may be caught, retained, possessed, or landed south of 38° 47' N. lat.

(iii) an amount equal to 66.7 percent of the large medium and giant BFT Angling category quota may be caught, retained, possessed, or landed south of 38° 47' N. lat.

(3) *Longline category quota*. The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels for which Longline category Atlantic tunas permits have been issued is 8.1 percent of the overall U.S. BFT quota. No more than 78.9 percent of the Longline category quota may be caught, retained, possessed, or landed in the area south of 34°00' N. lat.

(4) *Purse Seine category quota*. (i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Purse Seine category Atlantic Tunas permits have been issued is 18.6 percent of the overall U.S. BFT landings quota, or 250 mt, whichever is less. The purse seine fishery under this quota commences on August 15 each year.

(ii) An owner of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued must apply in writing to NMFS at an address designated by NMFS, for an allocation of BFT from the Purse Seine category quota. The application must be postmarked no later than April 15 for an allocation of the quota that becomes available on August 15.

(iii) On or about May 1, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel permit holders so requesting. Such allocations are freely transferable, in whole or in part, among vessels that have Purse Seine category Atlantic Tunas permits. An owner of a purse seine vessel intending to fish for more than one allocation in any fishing season must provide written notice of such intent to NMFS at an address designated by NMFS, 15 days before commencing fishing. An owner of a purse seine vessel who transfers his or her allocation to another purse seine vessel may not use his or her vessel in any fishery in which BFT might be caught for the remainder of the fishing

year after his or her allocation is transferred.

(iv) An owner of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued may apply to NMFS to permanently consolidate Purse Seine category vessel permits issued under § 635.4. Upon written approval of consolidation by NMFS, the Purse Seine Category Atlantic Tunas Permit of a transferring vessel will be canceled, and the receiving owner may apply for allocations of BFT commensurate with the number of consolidated permits. An owner of a purse seine vessel whose permit is canceled through consolidation may not use his or her vessel in any purse seine fishery in which BFT might be caught.

(5) *Harpoon category quota*. The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels for which Harpoon category Atlantic Tunas permits have been issued is 3.9 percent of the overall U.S. BFT quota.

(6) *Trap category quota*. The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Trap category Atlantic Tunas permits have been issued is 0.1 percent of the overall U.S. BFT quota.

(7) *Reserve*. (i) The total amount of BFT that is held in reserve for inseason adjustments and fishery-independent research using quotas or subquotas other than the Angling category school BFT subquota, is 2.5 percent of the overall U.S. BFT quota. Consistent with paragraph (a)(7)(iii) of this section, NMFS may allocate any portion of this reserve for inseason adjustments to any category quota in the fishery, other than the Angling category school BFT subquota.

(ii) The total amount of school BFT that is held in reserve for inseason adjustments and fishery independent research is 18.5 percent of the total school BFT quota for the Angling category as described under paragraph (a)(2) of this section, which is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(7)(iii) of this section, NMFS may allocate any portion of the school BFT held in reserve for inseason adjustments to the Angling category.

(iii) NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustment. Before making any such adjustment, NMFS will consider the following factors:

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

(B) The catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no allocation is made.

(C) The projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year.

(D) The estimated amounts by which quotas for other gear categories of the fishery might be exceeded.

(E) Effects of the transfer on BFT rebuilding and overfishing.

(F) Effects of the transfer on accomplishing the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks.

(8) *Inseason adjustments*. Within a fishing year, NMFS may transfer quotas among categories or, as appropriate, subcategories. If it is determined, based on the factors in paragraphs (a)(7)(iii)(A) through (a)(7)(iii)(F) of this section and the probability of exceeding the total quota, that vessels fishing under any category or subcategory quota are not likely to take that quota, NMFS may transfer inseason any portion of the remaining quota of that fishing category to any other fishing category or to the reserve as specified in paragraphs (a)(7)(i) and (a)(7)(ii) of this section. NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustment.

(9) *Annual adjustments*. (i) If NMFS determines, based on landings statistics and other available information, that a BFT quota in any category or, as appropriate, subcategory has been exceeded or has not been reached, NMFS shall subtract the overharvest from, or add the underharvest to, that quota category for the following fishing year, provided that the total of the adjusted category quotas and the reserve is consistent with a recommendation of ICCAT regarding country quotas, the take of school BFT, and the allowance for dead discards.

(ii) NMFS may allocate any quota remaining in the reserve at the end of a fishing year to account for overharvest in any fishing category, provided such allocation is consistent with the criteria specified in paragraph (a)(7)(iii) of this section.

(iii) Regardless of the estimated landings in any year, NMFS may adjust the annual school BFT quota to ensure that the average take of school BFT over each 4–consecutive-year period beginning in the 1999 fishing year does not exceed 8 percent by weight of the total U.S. BFT quota for that period.

(iv) If NMFS determines that the annual dead discard allowance has been exceeded in one fishing year, NMFS shall subtract the amount in excess of the allowance from the amount of BFT that can be landed in the subsequent fishing year by those categories accounting for the dead discards. If NMFS determines that the annual dead discard allowance has not been reached, NMFS may add one-half of the remainder to the amount of BFT that can be landed in the subsequent fishing year. Such amount may be allocated to individual fishing categories or to the Reserve.

(v) NMFS will file with the Office of the Federal Register for publication notification of the amount subtracted or added and the basis for the quota reductions or increases made pursuant to paragraphs (a)(9)(i) through (a)(9)(iv) of this section.

(b) *Sharks*—(1) *Commercial quotas*. The commercial quotas for shark specified in paragraphs (b)(1)(i) through (b)(1)(iv) of this section apply to sharks harvested from the management unit, regardless of where harvested. Commercial quotas are specified for each of the management groups of large coastal sharks, small coastal sharks, and pelagic sharks.

(i) *Large coastal sharks*. The annual commercial quota for large coastal sharks is 816 mt dw, apportioned between ridgeback and non-ridgeback shark and divided between two equal semiannual fishing seasons, January 1 through June 30, and July 1 through December 31. The length of each season will be determined based on the projected catch rates, available quota, and other relevant factors. NMFS will file with the Office of the Federal Register for publication notification of each season's length at least 30 days prior to the beginning of the season. The quotas for each fishing season (unless otherwise specified in the **Federal Register** as provided in paragraph (b)(1)(iv) of this section are as follows:

(A) Ridgeback shark—310 mt dw.

(B) Non-ridgeback shark–98 mt dw.

(ii) *Small coastal shark*s. The annual commercial quota for small coastal shark is 359 mt dw, (unless otherwise specified in the **Federal Register** as provided in paragraph (b)(1)(iv) of this section) divided between two equal semiannual seasons, January 1 through June 30, and July 1 through December 31. The quota for each semiannual season is 179.5 mt, dw.

(iii) *Pelagic sharks*. The annual commercial quotas for pelagic sharks are 92 mt dw for porbeagle sharks and 488 mt dw for all other pelagic sharks (unless otherwise specified in the

**Federal Register** as provided in paragraph (b)(1)(iv) of this section). These quotas are divided between two equal semiannual periods, January 1 through June 30, and July 1 through December 31. The quotas for each semiannual period are as follows:

(A) Porbeagle sharks—46 mt dw.

(B) Pelagic sharks, other than porbeagle sharks—244 mt dw.

(C) Blue sharks—136.5 mt dw.

(iv) *Annual adjustments.* (A) NMFS will adjust the next year's semiannual quotas for large coastal, small coastal, and pelagic sharks to reflect actual landings during any semiannual period. For example, a commercial quota underage or overage in the season that begins January 1 will result in an equivalent increase or decrease in the following year's quota for the season that begins January 1, provided that the annual quotas are not exceeded. NMFS will file with the Office of the Federal Register for publication notification of any adjustment at least 30 days prior to the start of the next fishing season.

(B) NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded at least 30 days prior to the start of the next fishing season.

(C) Sharks discarded dead are counted against the applicable directed fishery quota. Sharks taken and landed from state waters are counted against the applicable directed fishery quota.

(2) *Public display quota.* The annual quota for persons who collect sharks from any of the management groups under an EFP is 60 mt whole weight (43 mt dw). All sharks collected under the authority of an EFP, subject to restrictions at § 635.32, will be counted against this quota.

(c) *Swordfish.* (1) Consistent with ICCAT recommendations, the fishing year's total amount of swordfish that may be caught, retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction is divided into quotas for the North Atlantic swordfish stock and the South Atlantic swordfish stock. The quota for the North Atlantic swordfish stock is further divided into semi-annual directed fishery quotas and an incidental catch quota for fishermen targeting other species. A swordfish from the North Atlantic swordfish stock caught prior to the directed fishery closure by a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued is counted against the directed fishery quota. A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental catch permit for swordfish has been issued, landed consequent to recreational fishing, or caught after the effective date of a closure of the directed fishery from a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued is counted against the incidental catch quota. The entire quota for the South Atlantic swordfish stock is reserved for longline vessels for which a directed fishery permit for swordfish has been issued; retention of swordfish caught incidental to other fishing activities is prohibited in the Atlantic Ocean south of 5° N. lat.

(i) *North Atlantic swordfish stock.* (A) The annual directed fishery quota for the North Atlantic swordfish stock is 2033.2 mt dw, divided into two equal semiannual quotas of 1016.6 mt dw, one for June 1 through November 30, and the other for December 1 through May 31 of the following year.

(B) The annual incidental catch quota for the North Atlantic swordfish stock is 300 mt dw.

(ii) *South Atlantic swordfish stock.* The annual directed fishery quota for the South Atlantic swordfish stock is 289 mt dw. Incidental harvest of swordfish is prohibited in the Atlantic Ocean south of 5° N. lat.

(2) *Inseason adjustments.* (i) NMFS may adjust the December 1 through May 31 semiannual directed fishery quota to reflect actual catches during the June 1 through November 30 semiannual period, provided that the fishing year's directed fishery quota is not exceeded.

(ii) If NMFS determines that the annual incidental catch quota will not be taken before the end of the fishing year, the excess quota may be allocated to the directed fishery quota.

(iii) If NMFS determines that it is necessary to close the directed swordfish fishery prior to the scheduled end of a semi-annual fishing season, any estimated overharvest or underharvest of the directed fishery quota for that semi-annual season will be used to adjust the annual incidental catch quota accordingly.

(iv) NMFS will file with the Office of the Federal Register for publication notification of any inseason swordfish quota adjustment and its apportionment made under this paragraph (c)(2) of this section.

(3) *Annual adjustments.* (i) Except for the carryover provisions of paragraph (c)(3)(ii) of this section, NMFS will file with the Office of the Federal Register for publication notification of any adjustment to the annual quota necessary to meet the objectives of the Fishery Management Plan for Atlantic Tuna, Swordfish and Sharks. NMFS will provide at least 30 days opportunity for public comment.

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota shall be subtracted from, or added to, the following year's quota for that area. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons. NMFS will file with the Office of the Federal Register for publication notification of any adjustment or apportionment made under this paragraph (c)(3)(ii).

**§ 635.28 Closures.**

(a) *BFT.* (1) When a BFT quota, other than the Purse Seine category quota specified in § 635.27(a)(4), is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication notification of closure. On and after the effective date and time of such notification, for the remainder of the fishing year or for a specified period as indicated in the notice, fishing for, retaining, possessing, or landing BFT under that quota is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

(2) From August 15 through December 31, the owner or operator of a vessel that has been allocated a portion of the Purse Seine category quota under § 635.27(a)(4) may fish for BFT. Such vessel may be used to fish for yellowfin, bigeye, albacore, or skipjack tuna at any time, however, landings of BFT taken incidental to fisheries targeting other Atlantic tunas or in any fishery in which BFT might be caught will be deducted from the individual vessel's quota for the following BFT fishing season (i.e., August 15 through December 31). Upon reaching its individual vessel allocation of BFT, the vessel may not participate in a directed purse seine fishery for Atlantic tunas or in any fishery in which BFT might be caught for the remainder of the fishing year.

(3) If NMFS determines that variations in seasonal distribution, abundance, or migration patterns of BFT, or the catch rate in one area, precludes anglers in another area from a reasonable opportunity to harvest a portion of the Angling category quota, NMFS may close all or part of the fishery under that category and may reopen it at a later date if NMFS determines that BFT have migrated into the other area. In determining the need for any such interim closure or area closure, NMFS will consider:

(i) The usefulness of information obtained from catches of a particular geographic area of the fishery for

biological sampling and for monitoring the status of the stock;

(ii) The current year catches from the particular geographic area relative to the catches recorded for that area during the preceding 4 years;

(iii) The catches from the particular geographic area to date relative to the entire category and the likelihood of closure of that entire category of the fishery if no interim closure or area closure is effected; and

(iv) The projected ability of the entire category to harvest the remaining amount of BFT before the anticipated end of the fishing season.

(b) *Sharks*. (1) The commercial fishery for large coastal sharks will remain open for fixed semiannual fishing seasons, as specified at § 635.27(b)(1)(i). From the effective date and time of a season closure until additional quota becomes available, the fishery for large coastal sharks is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant to § 635.4.

(2) When a semiannual quota for small coastal sharks or pelagic sharks specified in § 635.27(b)(1)(ii) and (b)(1)(iii) is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication a notice of closure at least 14 days before the effective date. From the effective date and time of the closure until additional quota becomes available, the fishery for the appropriate shark species group is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant to § 635.4.

(3) When the fishery for a shark species group is closed, a fishing vessel issued a commercial permit pursuant to § 635.4 may not possess or sell a shark of that species group, and a permitted shark dealer may not purchase from a fishing vessel a shark of that species group, whether or not the fishing vessel has a commercial permit for shark, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage.

(c) *Swordfish*—(1) *Directed fishery closure*. When the annual or semiannual directed fishery quota specified in § 635.27(c)(1)(i) or (ii) is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication notification of closure at least 14 days before the effective date. From the effective date and time of the closure until additional directed fishery quota becomes available, the directed fishery for the appropriate stock is closed and the following catch limits apply:

(i) When the directed fishery for the North Atlantic swordfish stock is closed,

(A) No more than 15 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel using or having on board a longline. However, legally taken swordfish from the South Atlantic swordfish stock may be possessed in the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel with a longline provided the harvesting vessel does no fishing on that trip in the Atlantic Ocean north of 5° N. lat. and reports positions with a vessel monitoring system, as specified in § 635.69. NMFS may adjust the incidental catch retention limit by filing with the Office of the Federal Register for publication notification of the change at least 14 days before the effective date. Changes in the incidental catch limits will be based upon the length of the directed fishery closure and the estimated rate of catch by vessels fishing under the incidental catch quota.

(B) No more than 2 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel that has been issued a handgear permit under § 635.4(f)(1) provided that such swordfish were not taken with a harpoon.

(ii) When the directed fishery for the South Atlantic swordfish stock is closed, swordfish from that stock taken incidental to fishing for other species may not be retained.

(2) *Incidental catch closure*. When the annual incidental catch quota specified in § 635.27(c)(1)(i) is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication notification of closure. From the effective date and time of such notification until an additional incidental catch quota becomes available, no swordfish may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state, and a swordfish in or from the Atlantic Ocean north of 5° N. lat. may not be sold. However, legally taken swordfish from the South Atlantic swordfish stock may be possessed in the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel with a longline, provided the harvesting vessel does not fish on that trip in the Atlantic Ocean north of 5° N. lat. and reports positions with a vessel monitoring system, as specified in § 635.69.

**§ 635.29 Transfer at sea.**

(a) Persons may not transfer an Atlantic tuna, blue marlin, white marlin, or swordfish at sea in the Atlantic Ocean, regardless of where the fish was harvested. However, an owner or operator of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued under § 635.4 may transfer large medium and giant BFT at sea from the net of the catching vessel to another vessel for which a Purse Seine category Atlantic Tunas permit has been issued, provided the amount transferred does not cause the receiving vessel to exceed its currently authorized vessel allocation, including incidental catch limits.

(b) Persons may not transfer a shark or a sailfish at sea shoreward of the outer boundary of the EEZ, regardless of where the shark was harvested, and persons may not transfer at sea a shark or a sailfish taken shoreward of the outer boundary of the EEZ, regardless of where the transfer takes place.

**§ 635.30 Possession at sea and landing.**

(a) *Atlantic tunas*. Persons that own or operate a fishing vessel that possesses an Atlantic tuna in the Atlantic Ocean or that lands an Atlantic tuna in an Atlantic coastal port must maintain such Atlantic tuna through offloading either in round form or eviscerated with the head and fins removed, provided one pectoral fin and the tail remain attached.

(b) *Billfish*. Any person that possesses a blue marlin or a white marlin taken from its management unit or a sailfish taken shoreward of the outer boundary of the EEZ or lands a blue marlin or a white marlin in an Atlantic coastal port must maintain such billfish with its head, fins, and bill intact through offloading. Persons may eviscerate such billfish, but it must otherwise be maintained whole.

(c) *Shark*. (1) No person shall fin any shark, i.e., remove only the fins and return the remainder of the shark to the sea, shoreward of the outer boundary of the EEZ and on board a vessel for which a commercial vessel permit for shark has been issued. No person shall possess a shark fin on board a fishing vessel after the vessel's first point of landing. No person shall possess or offload wet shark fins in a quantity that exceeds 5 percent of the weight of the shark carcasses. The prohibition on finning applies to all species of sharks in the management unit. For a list of species in the management unit, refer to Tables 1 and 2 of Appendix A to this part.

(2) Persons that own or operate a vessel that has been issued a

commercial permit for shark may not fillet a shark at sea. Persons may eviscerate and remove the head and fins, but must retain the fins with the dressed carcasses. While on board and when offloaded, the wet shark fins may not exceed 5 percent of the weight of the shark carcasses.

(3) Persons that own or operate a vessel that has been issued a commercial permit that lands shark in an Atlantic coastal port must have all fins weighed in conjunction with the weighing of the carcasses at the vessel's first point of landing. Such weights must be recorded on the weighout slips specified in § 635.5(a)(2). Persons may not possess a shark fin on board a fishing vessel after the vessel's first point of landing. The wet fins may not exceed 5 percent of the weight of the carcasses.

(4) Persons aboard a vessel that does not have a commercial permit for shark must maintain a shark in or from the EEZ intact through landing—the head, tail, or fins may not be removed. The shark may be bled.

(d) *Swordfish*. Persons that own or operate a fishing vessel that possesses a swordfish in the Atlantic Ocean or lands a swordfish in an Atlantic coastal port must maintain such swordfish in round or dressed form through off-loading.

**§ 635.31 Restrictions on sale and purchase.**

(a) *Atlantic tunas*. (1) Persons that own or operate a vessel that possesses an Atlantic tuna may sell such Atlantic tuna only if that vessel has a valid HMS or Atlantic Tunas Charter/Headboat permit, or a General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic tunas issued under this part. Persons may not sell a BFT smaller than the large medium size class. However, a large medium or giant BFT taken by a person on a vessel with an HMS or Atlantic Tunas Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may not be sold (see § 635.23(c)). Persons may sell Atlantic tunas only to a dealer that has a valid permit for purchasing Atlantic tunas issued under this part.

(2) Dealers may purchase Atlantic tunas only from a vessel that has a valid commercial permit for Atlantic tunas issued under this part in the appropriate category.

(3) Dealers or seafood processors may not purchase or sell a BFT smaller than the large medium size class unless it is lawfully imported and is accompanied by a BSD, as specified in § 635.42(a).

(4) A BFT in the possession of a dealer or seafood processor is deemed to be from the Atlantic Ocean. However, a BFT will not be deemed to be from the Atlantic Ocean if—

(i) It was landed in a Pacific state and remains in the state of landing, or

(ii) It is accompanied by a BSD, as specified in § 635.42(a).

(b) *Billfish*. (1) Persons may not sell or purchase a billfish taken from its management unit.

(2) A billfish or a closely related species, namely, black marlin, *Makaira indica*, striped marlin, *Tetrapturus audax*, or shortbill spearfish, *Tetrapturus angustirostris*, or a part thereof, in the possession of a dealer or seafood processor is considered, for purposes of this part, to be a billfish from the Atlantic Ocean management unit. However, a billfish or a closely related species will not be considered to be from the Atlantic Ocean management unit if–

(i) It was landed in a Pacific state and remains in the state of landing, or

(ii) It is accompanied by a Billfish Certificate of Eligibility that documents that it was harvested from other than the Atlantic Ocean management unit.

(c) *Shark*. (1) Persons that own or operate a vessel that possesses a shark from the management unit may sell such shark only if the vessel has a valid commercial permit for shark issued under this part. Persons may possess and sell a shark only when the fishery for that species group has not been closed, as specified in § 635.28(b)(3).

(2) Persons that own or operate a vessel for which a valid commercial shark permit has been issued and on which a shark from the management unit is possessed, may sell such shark only to a dealer that has a valid permit for shark issued under this part.

(3) Persons that own or operate a vessel for which a valid commercial shark permit has been issued may not sell fins from a shark harvested from the management unit, or harvested in the Atlantic Ocean by a vessel for which a commercial permit for shark has been issued, that are disproportionate to the weight of shark carcasses landed (the wet fins may not exceed 5 percent of the weight of the carcasses).

(4) Only dealers that have a valid permit for shark may purchase a shark from the owner or operator of a fishing vessel. Dealers may purchase a shark only from an owner or operator of a vessel who has a valid commercial permit for shark issued under this part, except that dealers may purchase a shark from an owner or operator of a vessel that does not have a commercial permit for shark if that vessel fishes exclusively in state waters. Dealers may purchase a shark from an owner or operator of fishing vessel that has a permit issued under this part only when the fishery for that species group has not been closed, as specified in § 635.28(b)(3).

(5) Dealers may not purchase from an owner or operator of a fishing vessel shark fins that are disproportionate to the weight of shark carcasses landed (the wet fins may not exceed 5 percent of the weight of the carcasses).

(d) *Swordfish*. (1) Persons that own or operate a vessel on which a swordfish in or from the Atlantic Ocean is possessed may sell such swordfish only if the vessel has a valid commercial permit for swordfish issued under this part. Persons may sell such swordfish only to a dealer who has a valid permit for swordfish issued under this part.

(2) Dealers may purchase a swordfish harvested from the Atlantic Ocean only from an owner or operator of a fishing vessel that has a valid commercial permit for swordfish issued under this part.

**§ 635.32 Specifically authorized activities.**

(a) *General*. Consistent with the provisions of § 600.745 of this chapter, except as indicated in this section, NMFS may authorize for the conduct of scientific research or the acquisition of information and data, for the enhancement of safety at sea, for the purpose of collecting animals for public education or display, or for investigating the reduction of bycatch, economic discards or regulatory discards, activities otherwise prohibited by the regulations contained in this part. Activities subject to the provisions of this section include, but are not limited to, scientific research resulting in, or likely to result in, the take, harvest or incidental mortality of Atlantic HMS, exempted fishing and exempted educational activities, or programs under which regulated species retained in contravention to otherwise applicable regulations may be donated through approved food bank networks. Such activities must be authorized in writing and are subject to all conditions specified in any letter of acknowledgment, exempted fishing permit or scientific research permit issued in response to requests for authorization under this section. For the purposes of all regulated species covered under this part, NMFS has the sole authority to issue permits, authorizations, and acknowledgments. If a regulated species landed or retained under the authority of this section is subject to a quota, the fish shall be

counted against the quota category as specified in the written authorization.

(b) *Scientific research activities.* For the purposes of all species covered under this part regulated under the authority of ATCA, the provisions for research plans under § 600.745(a) and reports under § 600.745(c)(1) of this chapter are mandatory. In such cases of authorized scientific research activities, NMFS shall issue scientific research permits. For scientific research activities involving the capture of Atlantic sharks, research plans and reports are requested; letters of acknowledgment shall be issued by NMFS as indicated under § 600.745(a) of this chapter.

(c) *Exempted fishing permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, other than scientific research conducted from a scientific research vessel, NMFS may issue exempted fishing permits. Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purposes of obtaining public comment. In such cases, NMFS may file with the Office of the Federal Register for publication notification on an annual or, as necessary, more frequent basis to report on previously authorized exempted fishing activities and to solicit public comment on anticipated exempted fishing requests.

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid shark EFP is required to fish for, take, retain, or possess a shark in or from the Atlantic EEZ for the purposes of public display under the shark public display quota specified in § 635.27(b)(2). A valid shark EFP must be on board the harvesting vessel, must be available when the shark is landed, must be available when the shark is transported to the display facility, and must be presented for inspection upon request of an authorized officer. A shark EFP is valid for the specific time, area, gear, and species specified on it.

(3) To be eligible for a shark EFP, a person must provide all information concerning his or her identification, numbers by species of sharks to be collected, when and where they will be collected, vessel(s) and gear to be used, description of the facility where they will be displayed, and any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(4) Written reports on fishing activities and disposition of catch must be submitted to NMFS at an address designated by NMFS, for each fish collected within 5 days of the collection. An annual written summary report of all fishing activities and disposition of all fish collected under the permit must also be submitted to NMFS at an address designated by NMFS. NMFS will provide specific conditions and requirements, consistent with the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks in the EFP.

### § 635.33 Archival tags.

(a) *Implantation report.* Any person affixing or implanting an archival tag into a regulated species must obtain written authorization from NMFS pursuant to § 635.32. Persons so authorized to conduct archival tag implantation must provide a written report to NMFS at an address designated by NMFS, indicating the type and number of tags, the species and approximate size of the fish as well as any additional information requested in the authorization.

(b) *Landing.* Notwithstanding other provisions of this part, persons may catch, possess, retain, and land an Atlantic HMS in which an archival tag has been implanted or affixed, provided such persons comply with the requirements of paragraph (c) of this section.

(c) *Landing report.* Persons that retain an Atlantic HMS that has an archival tag must contact NMFS, prior to or at the time of landing; furnish all requested information regarding the location and method of capture; and, as instructed, remove the archival tag and return it to NMFS or make the fish available for inspection and recovery of the tag by a NMFS scientist, enforcement agent, or other person designated in writing by NMFS.

(d) *Quota monitoring.* If an Atlantic HMS landed under the authority of paragraph (b) of this section is subject to a quota, the fish will be counted against the applicable quota for the species consistent with the fishing gear and activity which resulted in the catch. In the event such fishing gear or activity is otherwise prohibited under applicable provisions of this part, the fish shall be counted against the reserve quota established for that species.

### § 635.34 Adjustment of management measures.

(a) NMFS may adjust the catch limits for BFT, as specified in § 635.23, and the quotas for BFT, shark, and swordfish, as specified in § 635.27.

(b) In accordance with the framework procedures in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Fishery Management Plan for Atlantic Billfishes, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: maximum sustainable yield or optimum yield levels based on the latest stock assessment or updates in the SAFE report; domestic quotas; recreational and commercial retention limits, including target catch requirements; size limits; fishing years or fishing seasons; species in the management unit and the specification of the species groups to which they belong; permitting and reporting requirements; Atlantic tunas Purse Seine category cap on bluefin tuna quota; time/area restrictions; allocations among user groups; gear prohibitions, modifications, or use restrictions; effort restrictions; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

## Subpart D—Restrictions on Imports

### § 635.40 Restrictions to enhance conservation.

(a) *Determinations.* Upon a determination by NMFS that species of fish subject to regulation or under investigation by ICCAT are ineligible for entry into the United States under 16 U.S.C. 971d (c)(4) or (c)(5), NMFS, with the concurrence of the Secretary of State, will file with the Office of the Federal Register for publication a finding to that effect. Effective upon the date of filing of such finding, all shipments of fish in any form of the species found to be ineligible will be denied entry unless, with respect to a particular shipment, it is established by satisfactory proof pursuant to paragraph (b) of this section that the particular shipment of fish is eligible for entry. Entry will not be denied and no such proof will be required for any such shipment that, on the date of filing was in transit to the United States on board a vessel operating as a common carrier.

(b) *Proof of admissibility.* (1) For the purposes of paragraph (a) of this section and section 6(c) of ATCA, a shipment of fish in any form of the species under regulation or under investigation by ICCAT offered for entry, directly or indirectly, from a country named in a finding filed with the Office of the Federal Register for publication under paragraph (a) of this section is eligible for entry if the shipment is accompanied by a completed ATCA COE attached to the invoice certifying that the fish in the shipment:

(i) Are not of the species specified in the finding;

(ii) Are of the species named in the finding, but were not taken in the regulatory area; or

(iii) Are of the species named in the finding, but are products of an American fishery and were lawfully taken in conformity with applicable conservation laws and regulations and landed in the country named in the finding solely for transshipment.

(2) If the fish are offered for entry under paragraph (b)(1)(i) or (b)(1)(ii) of this section, the ATCA COE must be executed by a duly authorized official of the country named in the finding and the ATCA COE must be validated by a consular officer or consular agent of the United States. Such validation must be attached to the ATCA COE.

(3) If the fish are offered for entry under paragraph (b)(1)(iii) of this section, the ATCA COE must be executed by a consular officer or consular agent of the United States and be accompanied by the declaration(s) required by 19 CFR 10.79. The ''Declaration of Master and Two Members of Crew on Entry of Products of American Fisheries'' required by 19 CFR 10.79 must contain a further statement as follows: ''We further declare that the said fish were caught by us in full compliance with part 635, title 50, Code of Federal Regulations, and such other conservation laws and regulations as were applicable at the time the fishing operation was in progress.''

(c) *Removal of import restrictions.* Upon a determination by NMFS that the conditions no longer exist that warranted the the finding under paragraph (a) of this section, NMFS will remove the import restriction by filing with the Office of the Federal Register for publication notification of removal effective on the date of filing. However, for 1 year from the date of filing every shipment of fish in any form that was subject to the finding under paragraph (a) of this section will continue to be denied entry, unless the shipment is accompanied by a certification executed by an authorized official of the country of export and authenticated by a consular officer or consular agent of the United States certifying that no portion of the shipment is composed of fish taken prior to or during the import restriction.

**§ 635.41 Species subject to documentation requirements.**

Imports into the United States and exports or re-exports from the United States of all BFT or BFT products, regardless of ocean area of catch, are subject to the documentation requirements of this subpart.

(a) Documentation is required for BFT identified by the following item numbers from the Harmonized Tariff Schedule:

(1) Fresh or chilled BFT, excluding fillets and other fish meat, No. 0302.39.00.20.

(2) Frozen BFT, excluding fillets, No. 0303.49.00.20.

(b) In addition, BFT products in other forms (e.g., chunks, fillets, canned) listed under any other item numbers from the Harmonized Tariff Schedule are subject to the documentation requirements of this subpart, except that fish parts other than meat (e.g., heads, eyes, roe, guts, tails) may be allowed entry without said statistical documentation.

(c) Southern bluefin tuna (*Thunnus maccoyii*) may be allowed entry without the statistical documentation required under this section.

**§ 635.42 Documentation requirements.**

(a) *BFT imports.* (1) Imports of all BFT products into the United States must be accompanied at the time of entry (filing of Customs Form 7501 or electronic equivalent) by an original completed approved BSD with the information and exporter's certification specified in § 635.43(a). Customs Form 7501 can be obtained by contacting U.S. Customs at http://www.customs.treas.gov/order.htm. Such information must be validated as specified in § 635.44(a) by a responsible government official of the country whose flag vessel caught the tuna (regardless of where the fish are first landed).

(2) BFT imported into the United States from a country requiring a BSD tag on all such tuna available for sale must be accompanied by the appropriate BSD tag issued by that country, and said BSD tag must remain on any tuna until it reaches its final import destination. If the final import destination is the United States, the BSD tag must remain on the tuna until it is cut into portions. If the tuna portions are subsequently packaged for domestic commercial use or re-export, the BSD tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(3) A dealer who sells BFT that was previously imported into the United States for domestic commercial use must provide on the original BSD that accompanied the import shipment the correct information and importer's certification specified in § 635.43(a)(13) and must note on the top of the BSD the entry number assigned at the time of filing the entry summary. The original of the completed BSD must be postmarked and mailed, or faxed, by said dealer to NMFS at an address designated by NMFS within 24 hours of the time the tuna was imported into the United States.

(b) *BFT exports.* (1) A dealer who exports BFT that was harvested by U.S. vessels and first landed in the United States must complete an original numbered BSD issued to that dealer by NMFS. Such an individually numbered document is not transferable and may be used only once by the dealer to which it was issued to report on a specific export shipment. A dealer must provide on the BSD the correct information and exporter certification specified in § 635.43(a). The BSD must be validated as specified in § 635.44(b). A list of such officials may be obtained by contacting NMFS. A dealer requesting U.S. Government validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export shipment.

(2) A dealer who re-exports BFT that was previously imported into the United States through filing an entry summary (Customs Form 7501 or electronic equivalent) must provide on the original BSD that accompanied the import shipment the correct information and intermediate importer's certification specified in § 635.43(a)(13) and must note on the top of the BSD the entry number assigned at the time of filing the entry summary. This requirement does not apply to BFT destined from one foreign country to another which transits the United States and for which an entry summary (Customs Form 7501 or electronic equivalent) is not filed and for which a Shipper's Export Declaration for in-transit merchandise (Customs Form 7513 or electronic equivalent) is filed. Customs Form 7513 can be obtained by contacting U.S. Customs at http://www.customs.treas.gov/order.htm.

(3) A dealer must submit the original of the completed BSD to accompany the shipment of BFT to its export or re-export destination. A copy of the BSD completed as specified under paragraph (b)(1) or (b)(2) of this section must be postmarked and mailed by said dealer to NMFS, at an address designated by NMFS, within 24 hours of the time the tuna was exported or re-exported from the United States.

(c) *Recordkeeping.* A dealer must retain at his or her principal place of business a copy of each BSD required to be submitted to NMFS pursuant to this section for a period of 2 years from the date on which it was submitted to NMFS.

**§ 635.43 Contents of documentation.**

(a) A BSD, to be deemed complete, must state:

(1) The document number assigned by the country issuing the document.

(2) The name of the country issuing the document, which must be the country whose flag vessel harvested the BFT, regardless of where the tuna is first landed.

(3) The name of the vessel that caught the fish and the vessel's registration number, if applicable.

(4) The name of the owner of the trap that caught the fish, if applicable.

(5) The point of export, which is the city, state or province, and country from which the BFT is first exported.

(6) The product type (fresh or frozen) and product form (round, gilled and gutted, dressed, fillet, or other).

(7) The method of fishing used to harvest the fish (e.g., purse seine, trap, rod and reel).

(8) The ocean area from which the fish was harvested (i.e., western Atlantic, eastern Atlantic, Mediterranean, or Pacific).

(9) The weight of each fish (in kilograms for the same product form previously specified).

(10) The identifying BSD tag number, if landed by vessels from countries with tagging programs.

(11) The name and license number of, and be signed and dated in the exporter's certification block by, the exporter.

(12) If applicable, the name and title of, and be signed and dated in the validation block by, a responsible government official of the country whose flag vessel caught the tuna (regardless of where the tuna are first landed) or by an official of an institution accredited by said government, with official government or accredited institution seal affixed, thus validating the information on the BSD.

(13) As applicable, the name(s) and address(es), including the name of the city and state or province of import, and the name(s) of the intermediate country(ies) or the name of the country of final destination, and license number(s) of, and be signed and dated in the importer's certification block by each intermediate and the final importer.

(b) An approved BSD may be obtained from NMFS to accompany exports of BFT from the United States. A BFT dealer in a country that does not provide an approved BSD to exporters may obtain an approved BSD from NMFS to accompany exports to the United States.

(c) A dealer who exports bluefin tuna to the United States may use the approved BSD obtainable from NMFS or a document developed by the country of export, if that country submits a copy to the ICCAT Executive Secretariat and NMFS concurs with the ICCAT Secretariat's determination that the document meets the information requirements of the ICCAT recommendation. In such case, NMFS will provide a list of countries for which BSDs are approved, with examples of approved documents, to the appropriate official of the U.S. Customs Service. Effective upon the date indicated in such notice to the U.S. Customs Service, shipments of BFT or BFT products offered for importation from said country(ies) may be accompanied by either that country's approved BSD or by the BSD provided to the foreign country exporter by NMFS.

**§ 635.44 Validation requirements.**

(a) *Imports.* The approved BSD accompanying any import of BFT, regardless of whether the issuing country is a member of ICCAT, must be validated by a government official from the issuing country, unless NMFS waives this requirement for that country following a recommendation to do so by the ICCAT Secretariat. NMFS will furnish a list of countries for which government validation requirements are waived to the appropriate official of the U.S. Customs Service. Such list will indicate the circumstances of exemption for each issuing country and the non-government institutions, if any, accredited to validate BSDs for that country.

(b) *Exports.* The approved BSD accompanying any export of BFT from the United States must be validated by a U.S. Government official, except pursuant to a waiver, if any, specified on the form and accompanying instructions, or in a letter to the permitted dealer from NMFS. Any waiver of government validation will be consistent with ICCAT recommendations concerning validation of BSDs. If authorized, such waiver of government validation may include:

(1) Exemptions from government validation for fish with individual BSD tags affixed pursuant to § 300.26 of this title or § 635.5(b)(2)(ii); or

(2) Validation by non-government officials authorized to do so by NMFS under paragraph (c) of this section.

(c) *Authorization for non-government validation.* An institution or association seeking authorization to validate BSDs accompanying exports from the United States must apply in writing to the Director for such authorization. The application must indicate the procedures to be used for verification of information to be validated, list the names, addresses, and telephone/fax numbers of individuals to perform validation, and provide an example of the stamp or seal to be applied to the BSD. NMFS, upon finding the institution or association capable of verifying the information required on the BSD, will issue, within 30 days, a letter specifying the duration of effectiveness and conditions of authority to validate BSDs accompanying exports from the United States. The effectiveness of such authorization will be delayed as necessary for NMFS to notify the ICCAT Secretariat of non-government institutions and associations authorized to validate BSDs.

**§ 635.45 Import restrictions for Belize, Honduras, and Panama.**

All shipments of BFT or BFT products in any form harvested by a vessel of Belize, Honduras, or Panama will be denied entry into the United States.

**§ 635.46 Import restrictions on swordfish.**

(a) *General.* To facilitate enforcement of domestic regulations, a swordfish, or part thereof, less than the minimum size specified at § 635.20(e) may not be imported, or attempted to be imported, into the United States unless it is accompanied by the swordfish certificate of eligibility as specified in paragraph (b) of this section attesting either that the swordfish was harvested from an ocean area other than the Atlantic Ocean or that the fish part was derived from a swordfish, harvested from the Atlantic Ocean, that weighed at least 33 lb (15 kg) dw at harvest.

(b) *Swordfish COE.* (1) A shipment of swordfish in any form offered for import into the United States, directly or indirectly, from any country is admissible only if accompanied by a swordfish COE. A swordfish COE is required for swordfish identified by any item number from the Harmonized Tariff Schedule including but not limited to the following:

(i) Fresh or chilled swordfish steaks, No. 0302.69.20.41.

(ii) Fresh or chilled swordfish, excluding steaks, No. 0302.69.20.49.

(iii) Frozen swordfish steaks, No. 0302.79.20.41.

(iv) Frozen swordfish, excluding fillets, steaks and other fish meat, No. 0302.79.20.49.

(v) Frozen swordfish, fillets, No. 0304.20.60.92.

(2) The swordfish COE required under this section must indicate, in English, the flag state of the harvesting vessel, the ocean area of harvest and, if the shipment contains swordfish or parts thereof less than the minimum size specified at § 635.20(e), the reason such swordfish is eligible for entry, as

specified in paragraph (a) of this section. The swordfish COE shall be attached to the invoice accompanying the swordfish shipment from the point of original export up to and including the point of first transaction in the United States.

(3) The swordfish COE required under this section must include, in English, the date, the name, the title of the governmental official or other authorized person, and the name of the authorizing government agency of the country exporting the swordfish to the United States. The swordfish COE must be signed and dated by that governmental official or authorized person with an official government seal affixed, thus validating the information on the COE. (4) A swordfish COE may refer to swordfish taken from only one ocean area of harvest (i.e., Atlantic, Pacific, Indian) and by vessels under the jurisdiction of only one nation. If a shipment contains swordfish taken from more than one ocean area, or swordfish harvested by several vessels from different flag states, a separate swordfish COE must accompany the shipment for each ocean area of harvest and for each flag nation of the harvesting vessels.

(5) A model swordfish COE can be obtained by contacting the Division Chief. An equivalent form may be used provided it contains all the information required under this section.

(6) The importer must write the Customs Form 7501 entry number on each swordfish COE and attach to the dealer report form all swordfish COEs from shipments that are recorded on the bi-weekly dealer report form.

### § 635.47 Ports of entry.

NMFS shall monitor the importation of BFT and swordfish into the United States. If NMFS determines that the diversity of handling practices at certain ports at which BFT or swordfish is being imported into the United States allows for circumvention of the BSD or swordfish COE requirement, NMFS may designate, after consultation with the U.S. Customs Service, those ports at which Pacific or Atlantic bluefin tuna or swordfish from any source may be imported into the United States. NMFS shall announce through filing with the Office of the Federal Register for publication the names of ports so designated and the effective dates of entry restrictions.

## Subpart E–International Port Inspection

### § 635.50 Basis and purpose.

The regulations in this subpart implement the ICCAT port inspection scheme. The text of the ICCAT port inspection scheme may be obtained from NMFS.

### § 635.51 Authorized officer.

For the purposes of this subpart, an authorized officer is a person appointed by an ICCAT contracting party to serve as an authorized inspector for ICCAT, and who possesses identification issued by the authorized officer's national government.

### § 635.52 Vessels subject to inspection.

(a) All U.S. fishing vessels or vessels carrying fish species subject to regulation pursuant to a recommendation of ICCAT, and their catch, gear, and relevant documents, including fishing logbooks and cargo manifests, are subject to inspection under this subpart to verify compliance with ICCAT measures by an authorized officer when landing or transshipping tuna or when making a port call at a port of any ICCAT contracting party.

(b) A vessel, or a vessel carrying fish species subject to regulation pursuant to a recommendation of ICCAT, that is registered by any of the ICCAT contracting parties, and the vessel's catch, gear, and relevant documents, including fishing logbooks and cargo manifests, are subject to inspection under this subpart to verify compliance with ICCAT measures when landing or transshipping regulated species or when making a port call in the United States.

(c) The master of a vessel, or a vessel carrying fish species subject to regulation pursuant to a recommendation of ICCAT, must cooperate with an authorized officer during the conduct of an inspection in national and foreign ports. Inspections will be carried out so that the vessel suffers minimum interference and inconvenience, and so that degradation of the quality of catch is avoided.

### § 635.53 Reports.

(a) Apparent violations shall be reported by the authorized officer on a standardized ICCAT form or form produced by the national government which collects the same quality of information. The authorized officer must sign the form in the presence of the master of the vessel, who is entitled to add or have added to the report any observations, and to add his own signature. The authorized officer should note in the vessel's log that the inspection has been made.

(b) Copies of the report form must be sent to the flag state of the vessel and to the ICCAT Secretariat within 10 days. Flag states will consider and act on reports of apparent violations by foreign inspectors on a similar basis as the reports of their national inspectors in accordance with their national legislation. The vessel's flag state will notify ICCAT of actions taken to address the violation.

## Subpart F–Enforcement

### § 635.69 Vessel monitoring systems.

(a) *Applicability*. To facilitate enforcement of time-area and fishery closures, an owner or operator of a commercial vessel permitted to fish for Atlantic HMS under § 635.4 and that fishes with a pelagic longline is required to install a NMFS-approved vessel monitoring system (VMS) unit on board the vessel and operate the VMS unit whenever the vessel leaves port with pelagic longline gear on board.

(b) *Hardware specifications*. The VMS hardware must be approved by NMFS and must be able to perform all NMFS required functions. NMFS will file with the Office of the Federal Register for publication notification listing the specifications for approved VMS units. As necessary, NMFS will make additions and/or amendments to the VMS hardware type approval list to account for changes in specifications or new products offered by manufacturers. NMFS will file with the Office of the Federal Register for publication notification listing such additions and/or amendments.

(c) *Communications specifications*. The communications service provider must be approved by NMFS and must be able to provide all NMFS required functions. NMFS will file with the Office of the Federal Register for publication notification listing the specifications for approved VMS communications service providers. As necessary, NMFS will make additions and/or amendments to the VMS communications service providers type approval list to account for changes in specifications or new services offered by communications providers. NMFS will file with the Office of the Federal Register for publication notification listing such additions and/or amendments.

(d) *Installation and service activation*. When installing and activating the NMFS-approved VMS unit, a vessel owner or operator must follow procedures indicated on an installation and activation checklist obtained from NMFS. Re-installation shall require the same checklist. Upon completion of installation, the vessel owner must sign a statement certifying compliance with the installation procedures of the checklist and submit such certification to NMFS as indicated on the checklist.

Vessels fishing prior to submission of the certification will be in violation of the VMS requirement.

(e) *Operation*. Owners or operators of vessels permitted, or required to be permitted, to fish for HMS that have pelagic longline gear on board, must activate the VMS to submit automatic position reports beginning 2 hours prior to leaving port and not ending until the vessel returns to port. While at sea, the unit must operate without interruption and no person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS, or attempt any of the same. Vessels fishing outside the geographic area of operation of the installed VMS will be in violation of the VMS requirement.

(f) *Interruption*. When the vessel operator is aware that transmission of automatic position reports has been interrupted, or when notified by NMFS that automatic position reports are not being received, the vessel operator must contact NMFS and follow the instructions given. Such instructions may include but are not limited to manually communicating to a location designated by NMFS the vessel's position or returning to port until the VMS is operable.

(g) *Repair and replacement*. After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must replace or repair the VMS unit prior to the vessel's next trip. Repair or reinstallation of a VMS unit or installation of a replacement, including change of communications service provider shall be in accordance with the checklist provided by NMFS and require the same certification.

**§ 635.70 Penalties.**

(a) *General*. See § 600.735 of this chapter.

(b) *Civil procedures for Atlantic tuna*. Because of the perishable nature of Atlantic tuna when it is not chilled or frozen, an authorized officer may cause to be sold, for not less than its reasonable market value, unchilled or unfrozen Atlantic tuna that may be seized and forfeited under ATCA and this part.

**§ 635.71 Prohibitions.**

In addition to the prohibitions specified in § 600.725 of this chapter, it is unlawful for any person subject to the jurisdiction of the United States to violate any provision of this part, ATCA, the Magnuson-Stevens Act, or any other rules promulgated under ATCA or the Magnuson-Stevens Act.

(a) *General*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Falsify information required on an application for a permit submitted under § 635.4 or § 635.16.

(2) Fish for, catch, possess, retain, or land an Atlantic HMS without the appropriate valid vessel permit, LAP, or EFP on board the vessel, as specified in §§ 635.4 and 635.32.

(3) Purchase, receive, or transfer for commercial purposes any Atlantic HMS landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer for commercial purposes any Atlantic HMS without the appropriate valid dealer permit issued under § 635.4, except that this does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(4) Sell, offer for sale, or transfer an Atlantic tuna, shark, or swordfish other than to a dealer that has a valid dealer permit issued under § 635.4, except that this does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(5) Fail to possess and make available for inspection a vessel permit on board the permitted vessel or upon transfer of HMS to a dealer or a dealer permit at the dealer's place of business, or to alter any such permit as specified in § 635.4(a).

(6) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in § 635.5.

(7) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 635.5(f).

(8) Fail to make available for inspection an Atlantic HMS or its area of custody, as specified in § 635.5(g).

(9) Fail to report the catching of any Atlantic HMS to which a conventional tag has been affixed under a tag and release program.

(10) Falsify or fail to display and maintain vessel and gear identification, as specified in § 635.6.

(11) Fail to comply with the requirements for at-sea observer coverage, as specified in § 635.7 and § 600.746.

(12) For any person to assault, resist, oppose, impede, intimidate, interfere with, obstruct, delay, or prevent, by any means, any authorized officer in the conduct of any search, inspection, seizure or lawful investigation made in connection with enforcement of this part.

(13) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by this part.

(14) Fail to install, activate, repair or replace a vessel monitoring system prior to leaving port with pelagic longline gear on board the vessel as specified in § 635.69.

(15) Tamper with, or fail to operate and maintain a vessel monitoring system as specified in § 635.69.

(16) Fail to contact NMFS or follow NMFS instructions when automatic position reporting has been interrupted as specified in § 635.69.

(17) Fish for Atlantic tunas or swordfish with a gillnet for or possess Atlantic tunas or swordfish on board a vessel with a gillnet on board, as specified in § 635.21 (b), (d)(1), and (d)(4)(ii).

(18) Fail to retrieve fishing gear and move after an interaction with a marine mammal or sea turtle, as specified in § 635.21(c)(4).

(19) Fail to release an Atlantic HMS in the manner specified in § 635.21(a).

(20) Fail to report the retention of an Atlantic HMS that has an archival tag, as specified in § 635.33.

(21) Fail to maintain an Atlantic HMS in the form specified in § 635.30.

(22) Fish for, catch, retain, or possess an Atlantic HMS that is less than its minimum size limit specified in § 635.20.

(23) Fail to comply with the restrictions on use of a pelagic longline or shark gillnet as specified in § 635.21 (c) and (d)(3)(ii) and (iii).

(24) Import any BFT or swordfish in a manner inconsistent with any ports of entry designated by NMFS as authorized by § 635.47.

(25) Dispose of fish or parts thereof or other matter in any manner after any communication or signal from an authorized officer, or after the approach of an authorized officer.

(26) Violate the terms and conditions or any provision of an exempted fishing permit or scientific research permit issued under the authority of § 635.32.

(27) Operate a charterboat or headboat without a valid U.S. Coast Guard merchant marine or uninspected passenger vessel license on board the vessel when fishing for or possessing Atlantic HMS as specified at § 635.4(c)(2).

(28) Violate any provision of this part, the Magnuson-Stevens Act, ATCA, or any regulations or permits issued under the Magnuson-Stevens Act or ATCA.

(29) Fail to comply with the restrictions on importing HMS as specified at §§ 635.40, 635.41 and 635.46.

(b) *Atlantic tunas*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Engage in fishing with a vessel that has a permit for Atlantic tuna under § 635.4, unless the vessel travels to and from the area where it will be fishing under its own power and the person operating that vessel brings any BFT under control (secured to the catching vessel or on board) with no assistance from another vessel, except as shown by the operator that the safety of the vessel or its crew was jeopardized or other circumstances existed that were beyond the control of the operator.

(2) Import or export bluefin tuna without a dealer permit, as specified in § 635.4(a)(4) and (g)(1).

(3) Fish for, catch, retain, or possess a BFT less than the large medium size class by a vessel other than one that has on board an Angling category Atlantic tunas permit, an HMS or Atlantic Tunas Charter/Headboat permit, or a Purse Seine category Atlantic tunas permit as authorized under § 635.23 (b), (c), and (e)(2).

(4) Fail to inspect a vessel's permit, fail to affix a dealer tag to a large medium or giant BFT, or fail to use such tag as specified in § 635.5(b)(2).

(5) Fail to report a large medium or giant BFT that is not sold, as specified in § 635.5(a)(3) and § 635.5(c).

(6) As an angler, fail to report a BFT, as specified in § 635.5(a)(3).

(7) Fish for, catch, retain, or possess a BFT with gear not authorized for the category permit issued to the vessel or to have on board such gear when in possession of a BFT, as specified in § 635.21(d)(1).

(8) Fail to request an inspection of a purse seine vessel, as specified in § 635.21(d)(1)(vi)(B).

(9) Fish for or catch BFT in a directed fishery with purse seine nets without an allocation made under § 635.27(a)(4).

(10) Fish for or catch any Atlantic tunas in a directed fishery with purse seine nets from August 15 through December 31 if there is no remaining BFT allocation made under § 635.27 (a)(4).

(11) Exceed the recreational catch limit for yellowfin tuna, as specified in § 635.22(d).

(12) Exceed a catch limit for BFT specified for the appropriate permit category, as specified in § 635.23.

(13) As a vessel with a General category Atlantic tuna permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT on a commercial fishing day, as specified in § 635.23(a)(3).

(14) As a vessel with an Angling category Atlantic tunas permit or an HMS or Atlantic Tunas Charter/Headboat permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT or fail to report such catch, as specified in § 635.23(b)(1)(iii) and (c)(1) through (c)(3).

(15) As a vessel with an Angling category Atlantic tunas permit or an HMS or Atlantic Tunas Charter/Headboat permit, sell, offer for sale, or attempt to sell a large medium or giant BFT after fishing under the circumstances specified in § 635.23(b)(1)(iii) and (c)(1) through (3).

(16) Retain a BFT caught under the catch and release program specified in § 635.26.

(17) As a vessel with a Purse Seine category Atlantic tuna permit, catch, possess, retain, or land BFT in excess of its allocation of the Purse Seine category quota, or fish for BFT under that allocation prior to August 15, as specified in § 635.27(a)(4).

(18) As a vessel with a Purse Seine category Atlantic tunas permit, land BFT smaller than the large medium size class except as specified under § 635.23(e)(2).

(19) Fish for, retain, possess, or land a BFT when the fishery is closed, as specified in § 635.28(a), except as may be authorized for catch and release under § 635.26.

(20) Approach to within 100 yd (91.5 m) of the cork line of a purse seine net used by a vessel fishing for Atlantic tuna, or for a purse seine vessel to approach to within 100 yd (91.5 m) of a vessel actively fishing for Atlantic tuna, except that two vessels that have Purse Seine category Atlantic tuna permits may approach closer to each other.

(21) Transfer at sea an Atlantic tuna, except as may be authorized for the transfer of BFT between purse seine vessels, as specified in § 635.29(a).

(22) As the owner or operator of a purse seine vessel, fail to comply with the requirements for weighing, measuring, and information collection specified in § 635.30(a)(2).

(23) Fish for, catch, possess, or retain a BFT from the Gulf of Mexico except as specified under § 635.23(f)(1), or if taken incidental to recreational fishing for other species and retained in accordance with § 635.23(b) and (c).

(24) Fail to comply with the restrictions on sale and purchase of an Atlantic tuna, as specified in §§ 635.5(b), 635.23, and 635.31(a).

(25) Fail to comply with the documentation requirements for imported or exported BFT or BFT products, as specified in § 635.42.

(26) Import a BFT or BFT product into the United States from Belize, Panama, or Honduras other than as authorized in § 635.45.

(27) For any person to refuse to provide information requested by NMFS personnel or anyone collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of Atlantic tunas.

(c) *Billfish*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Retain a billfish on board a vessel with a pelagic longline on board or harvested by gear other than rod and reel, as specified in § 635.21(d)(2).

(2) Transfer a billfish at sea, as specified in § 635.29(a).

(3) Fail to maintain a billfish in the form specified in § 635.30(b).

(4) Sell or purchase a billfish, as specified in § 635.31(b).

(5) Retain on board a vessel a longbill spearfish, or a blue marlin, white marlin or sailfish that is less than the minimum size specified in § 635.20(d).

(d) *Shark*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Exceed a recreational retention limit for shark, as specified in § 635.22(c).

(2) Exceed a commercial retention limit for shark, as specified in § 635.24(a).

(3) Retain, possess, or land a shark of a species group when the fishery for that species group is closed, as specified in § 635.28(b)(1) and (b)(2).

(4) Sell or purchase a shark of a species group when the fishery for that species group is closed, as specified in § 635.28(b)(3).

(5) Transfer a shark at sea, as specified in § 635.29(b).

(6) Remove the fins from a shark listed in Tables 1 and 2 in Appendix A to this part, and discard the remainder, or otherwise fail to maintain a shark in its proper form, as specified in § 635.30(c)(1) through (c)(4).

(7) Have on board a fishing vessel, sell, or purchase shark fins that are disproportionate to the weight of shark carcasses, as specified in § 635.30(c)(2) and (c)(3).

(8) Fail to have shark fins and carcasses weighed and recorded, as specified in § 635.30(c)(3).

(9) Fail to comply with the restrictions on sale and purchase of a shark, as specified in § 635.31(c).

(10) Retain, possess, sell, or purchase a prohibited shark.

(11) Falsify information submitted under § 635.16(d)(2) or (d)(4) in support

of an application for an ILAP or an appeal of NMFS's denial of an ILAP for shark.

(12) Fish for Atlantic sharks with unauthorized gear or possess Atlantic sharks on board a vessel with unauthorized gear on board as specified in § 635.21(d)(3).

(13) Fish for Atlantic sharks with a gillnet or possess Atlantic sharks on board a vessel with a gillnet on board, except as specified in § 635.21(d)(3).

(e) *Swordfish*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Purchase, barter for, or trade for a swordfish from the north or south Atlantic swordfish stock or import a swordfish harvested from any ocean area without a dealer permit, as specified in § 635.4(g)(3).

(2) Fail to comply with the restrictions on use of a pelagic longline specified in § 635.21(b) and (c).

(3) When the directed fishery for swordfish is closed, exceed the limits specified in § 635.28(c)(1)(i) and (c)(1)(ii).

(4) When the incidental catch fishery for swordfish is closed, possess, land, sell, or purchase a swordfish, as specified in § 635.28(c)(2).

(5) Transfer at sea a swordfish, as specified in § 635.29(a).

(6) Fail to maintain a swordfish in the form specified in § 635.30(d).

(7) Fail to comply with the restrictions on sale and purchase of a swordfish, as specified in § 635.31(d).

(8) Fish for North Atlantic swordfish from, or possess or land North Atlantic swordfish on board a vessel, using or having on board gear other than pelagic longline, harpoon, rod and reel, or handline.

(9) Fish for swordfish from the South Atlantic swordfish stock using any gear other than pelagic longline.

(10) Fail to comply with the documentation requirements for the importation of a swordfish, or part thereof, that is less than the minimum size, as specified in § 635.46.

(11) Falsify information submitted under § 635.16(d)(2) or (d)(4) in support of an application for an ILAP or an appeal of NMFS's denial of an initial limited access permit for swordfish.

(12) Falsify information submitted under § 635.46(b) in support of entry of imported swordfish.

(13) Exceed the incidental catch retention limits specified at § 635.24(b).

**Appendix A to Part 635—Species Tables**

**Table 1 of Appendix A to Part 635–Oceanic Sharks**

A. Large coastal sharks:

1. Ridgeback sharks:
Sandbar, *Carcharhinus plumbeus*
Silky, *Carcharhinus falciformis*
Tiger, *Galeocerdo cuvieri*

2. Non-ridgeback sharks:
Blacktip, *Carcharhinus limbatus*
Bull, *Carcharhinus leucas*
Great hammerhead, *Sphyrna mokarran*
Lemon, *Negaprion brevirostris*
Nurse, *Ginglymostoma cirratum*
Scalloped hammerhead, *Sphyrna lewini*
Smooth hammerhead, *Sphyrna zygaena*
Spinner, *Carcharhinus brevipinna*

B. Small coastal sharks:

Atlantic sharpnose, *Rhizoprionodon terraenovae*
Blacknose, *Carcharhinus acronotus*
Bonnethead, *Sphyrna tiburo*
Finetooth, *Carcharhinus isodon*

C. Pelagic sharks:

Blue, *Prionace glauca*
Oceanic whitetip, *Carcharhinus longimanus*
Porbeagle, *Lamna nasus*
Shortfin mako, *Isurus oxyrinchus*
Thresher, *Alopias vulpinus*.

D. Prohibited sharks:

Atlantic angel, *Squatina dumerili*
Basking, *Cetorhinus maximus*
Bigeye sand tiger, *Odontaspis noronhai*
Bigeye sixgill, *Hexanchus vitulus*
Bigeye thresher, *Alopias superciliosus*
Bignose, *Carcharhinus altimus*
Caribbean reef, *Carcharhinus perezi*
Caribbean sharpnose, *Rhizoprionodon porosus*
Dusky, *Carcharhinus obscurus*
Galapagos, *Carcharhinus galapagensis*
Longfin mako, *Isurus paucus*
Narrowtooth, *Carcharhinus brachyurus*
Night, *Carcharhinus signatus*
Sand tiger, *Odontaspis taurus*
Sevengill, *Heptranchias perlo*
Sixgill, *Hexanchus griseus*
Smalltail, *Carcharhinus porosus*
Whale, *Rhincodon typus*
White, *Carcharodon carcharias*

**Table 2 of Appendix A to Part 635–Deepwater/Other Shark Species**

Blotched catshark, *Scyliorhinus meadi*
Broadgill catshark, *Apristurus riveri*
Chain dogfish, *Scyliorhinus retifer*
Deepwater catshark, *Apristurus profundorum*
Dwarf catshark, *Scyliorhinus torrei*
Iceland catshark, *Apristurus laurussoni*
Marbled catshark, *Galeus arae*
Smallfin catshark, *Apristurus parvipinnis*
Bigtooth cookiecutter, *Isistius plutodus*
Blainville's dogfish, *Squalus blainvillei*
Bramble shark, *Echinorhinus brucus*
Broadband dogfish, *Etmopterus gracilispinnis*
Caribbean lanternshark, *Etmopterus hillianus*
Cookiecutter shark, *Isistius brasiliensis*
Cuban dogfish, *Squalus cubensis*
Flatnose gulper shark, *Deania profundorum*
Fringefin lanternshark, *Etmopterus schultzi*
Great lanternshark, *Etmopterus princeps*
Green lanternshark, *Etmopterus virens*
Greenland shark, *Somniosus microcephalus*
Gulper shark, *Centrophorus granulosus*
Japanese gulper shark, *Centrophorus acuus*
Kitefin shark, *Dalatias licha*
Lined lanternshark, *Etmopterus bullisi*
Little gulper shark, *Centrophorus uyato*
Portuguese shark, *Cetroscymnus coelolepis*
Pygmy shark, *Squaliolus laticaudus*
Roughskin spiny dogfish, *Squalus asper*
Smallmouth velvet dogfish, *Scymnodon obscurus*
Smooth lanternshark, *Etmopterus pusillus*
American sawshark, *Pristiophorus schroederi*
Florida smoothhound, *Mustelus norrisi*
Smooth dogfish, *Mustelus canis*

## PART 644—ATLANTIC BILLFISHES [REMOVED]

17. Under the authority of 16 U.S.C. 971 *et seq*. and 16 U.S.C. 1801 *et seq*., part 644 is removed effective July 1 ,1999, except that § 644.21(a) is removed and reserved effective May 24, 1999.

## PART 678—ATLANTIC SHARKS [REMOVED]

18. Under the authority of 16 U.S.C. 1801 *et seq*., part 678 is removed effective July 1, 1999.

[FR Doc. 99–13090 Filed 5–24–99; 3:29 pm]

BILLING CODE 3510–22–F