2007, p. 22). The petitioners also claim that the continued operation of the weir and hatchery production of Chinook and coho salmon (*O. kisutch*) could limit the recovery of summer/early-run kokanee through competition and predation impacts (Trout Unlimited *et al.* 2007, p. 22). Our files also contain information regarding competition associated with the introductions of nonnative sockeye salmon, which are believed to have increased competition with native juvenile kokanee for food resources (Conner *et al.* 2000, p. 30). Summer/early-run and fall/middle-run kokanee may be especially vulnerable to redd superimposition (the excavation of a new nest on top of an existing nest) by sockeye salmon (Berge and Higgins 2003, p. 38). Information in our files indicates that summer/early-run kokanee were destroyed during past hatchery weir operations, which likely contributed to this run's decline. Thousands of summer/early-run kokanee were reportedly killed at the weir during the 1960s and 1970s because of concerns over potential disease transmission (Connor *et al.* 2000, pp. 27–28). The Issaquah Creek weir is still in operation, although the removal of kokanee is no longer practiced. There is insufficient information in our files to determine if future weir operations will threaten summer/early-run kokanee, or whether continued Chinook and coho salmon production threaten kokanee through predation, although predation has been identified by others as a potential concern (Pfeifer 1995, p. 17). Information in our files suggests that competition for spawning sites with Chinook and coho salmon may be a threat to summer/early-run and fall/middle-run kokanee (Berge and Higgins 2003, p. 38), but not to winter/late-run kokanee because of differences in habitat use (Berge and Higgins 2003, pp. 38–39).

The petitioners assert that climate change is one of the potentially largest future impacts to kokanee, and that although the impact of different climate scenarios on salmonids is an active area of scientific research, the impact on kokanee has not been thoroughly examined. They claim that increases in regional temperatures could result in thermal barriers for kokanee in stream and lake habitats; act as a fatal stressor to individuals; and alter chemical processes, food web dynamics, lake stratification, nutrient cycling, and hydrologic patterns. The petition states that while the effects of climate change are harder to pinpoint, they are real, imminent and must be proactively addressed to ensure that kokanee survive into the future (Trout Unlimited *et al.* 2007, p. 26). Information in our files indicates that since 1950, the average annual air temperatures at the majority of meteorological stations in the northwestern region have increased by approximately 0.25 degrees Celsius (C) per decade, and climate models predict an additional increase of 1.5 to 3.2 degrees C by the middle of the 21st century (Battin *et al.* 2007, p. 6720). The increases in air temperature for the Puget Sound region during the 20th century are evident, and further significant increases are predicted by the middle of the 21st century (Snover *et al.* 2005, p. 13; Battin *et al.* 2007, p. 6720). Snover *et al.* (2005, pp. 6–7) described a range of projected habitat changes for waters in the Puget Sound region similar to those identified by the petitioners. Nelitz *et al.* (2007, p. 18) state that in the Pacific Region of Canada (British Columbia and Yukon Territory), watersheds where thermal regimes are currently near the upper tolerance limits for salmon migration and spawning will likely be the most vulnerable to future changes and resultant adverse effects on salmon.

Summary of Factor E

The petition presents information indicating that competition with other salmonids may pose a threat to some of the Lake Sammamish kokanee runs, and potential climate change impacts could threaten the population. Based on that information and on information available in our files, we conclude that substantial information exists to indicate that other natural or manmade factors may present a threat to Lake Sammamish kokanee.

Finding

We have reviewed the petition and the literature cited in the petition, and evaluated the information to determine whether the sources cited support the claims made in the petition. We also reviewed reliable information that was readily available in our files to evaluate the petition.

Berge and Higgens (2003, p. 3) state that the distribution of native kokanee in the greater Lake Washington watershed appears to be limited to the Lake Sammamish population. Populations that spawned in Lake Washington tributaries (other than the Sammamish River system) appear to be functionally extinct (Berge and Higgins 2003, pp. 3, 26). The Lake Sammamish population diversity and abundance has also declined significantly, with apparently only one of the three run-timings remaining extant (Connor *et al.* 2000, p. 15; Berge and Higgins 2003, p. 21, 33; Jackson 2006, p. 1).

If, as the petitioners suggest, Lake Sammamish kokanee constitute a distinct vertebrate population segment, we find that the petition presents substantial information to indicate that listing Lake Sammamish kokanee under the Act may be warranted due to: (1) The present destruction, modification, or curtailment of the population's habitat or range (Factor A); (2) the inadequacy of existing regulatory mechanisms (Factor D); and (3) other natural or manmade factors affecting its continued existence (Factor E).

In summary, we conclude that the petition has presented substantial information that listing may be warranted for Lake Sammamish kokanee. As such, we are initiating a status review to determine whether listing Lake Sammamish kokanee under the Act is warranted.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Western Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this document are staff of the Western Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 28, 2008.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E8–9832 Filed 5–5–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 635

[Docket No. 070801432–7435–01]

RIN 0648–AV92

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

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments; notice of public hearings.

SUMMARY: NMFS proposes to authorize green-stick gear for the harvest of Atlantic tunas, including bluefin tuna (BFT); authorize harpoon gear for the harvest of Atlantic tunas, including BFT, in the Highly Migratory Species (HMS) Charter/Headboat (CHB) category; and require a sea turtle control device in Atlantic HMS pelagic longline (PLL) and bottom longline (BLL) fisheries. Public comments have been received requesting authorization of these gears for harvest of Atlantic tunas. The purpose of this proposed rule is to provide additional opportunities for fishermen to harvest Atlantic tunas within quotas, size limits, or other established limitations and to distinguish green-stick fishing gear from current definitions of other authorized gear types. The purpose of the proposed rule to require sea turtle control devices in the PLL and BLL fisheries is to achieve and maintain low post-release mortality of sea turtles thus maintaining consistency with the 2004 Biological Opinion (BiOp) for the Atlantic PLL fishery and to increase safety at sea for fishermen when handling sea turtles caught or entangled in longline fishing gear.

DATES: Written comments on the proposed rule must be received by June 16, 2008. Hearings will be held in May and June 2008. See the preamble of this notice for specific dates, times, and locations.

ADDRESSES: Comments may be submitted by any one of the following methods (please identify comments by ''0648–AV92''):

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Fax: 727–824–5398, Attn: Randy Blankinship
- Mail: Randy Blankinship, Highly Migratory Species Management Division, National Marine Fisheries Service, 263 13th Avenue South, Saint Petersburg, FL 33701

Instructions: All comments received are part of the public record and will generally be posted to Portal *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

The hearings will be held in Saint Peterburg, FL; Manteo, NC; Manahawkin, NJ; Gloucester, MA; Belle Chasse, LA; and Orlando, FL. See the preamble of this notice for specific dates, times, and locations.

Supporting documents including the Environmental Assessment, Initial Regulatory Flexibility Analysis, and Regulatory Impact Review associated with this proposed rule are available from NMFS upon request.

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

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement recommendations by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). The implementing regulations for Atlantic HMS are at 50 CFR part 635.

Background

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

This proposed rule would: (1) authorize green-stick gear for the harvest of Atlantic tunas by Atlantic Tunas General category permitted vessels; (2) authorize green-stick gear for the harvest of Atlantic tunas by HMS Charter/Headboat (CHB) permitted vessels; (3) authorize green-stick gear for harvest of Atlantic tunas by Atlantic Tunas Longline category permitted vessels (but continuing to restrict BFT retention to incidental retention only); (4) authorize harpoon use for Atlantic tunas fishing by HMS CHB permitted vessels; and (5) require possession and use of a sea turtle control device as an addition to the already existing requirements for sea turtle bycatch mitigation gear. This action is published in accordance with the framework procedures set forth in the Consolidated HMS FMP and is supported by the analytical documents prepared for the Consolidated HMS FMP.

Green-stick and harpoon gears are used primarily to catch yellowfin tuna (YFT) and BFT, respectively. The most recent YFT stock assessment, conducted in 2003, indicated that the range of biomass estimates (B) spanned the estimate of biomass at maximum sustainable yield (B_{MSY}), and the range of fishing mortality (F) estimates spanned the estimate of fishing mortality at MSY (F_{MSY}). This means that the stock may be approaching an overfished condition. YFT is the principal species of tropical tuna landed by U.S. fisheries in the western North Atlantic. Total estimated landings, including recreational landings, were 5,568 metric tons (mt) and 7,075 mt in 2005 and 2006, respectively, as reported by the United States to ICCAT in 2007.

The latest western Atlantic BFT stock assessment conducted in 2006 indicated that estimated spawning stock biomass (SSB) levels were well below the estimated SSB_{MSY} and estimates of F were above F_{MSY}. Thus, for western Atlantic BFT, the stock is overfished and overfishing is occurring. The ICCAT Standing Committee on Research and Statistics (SCRS) considered this and other information when making recommendations to ICCAT for setting total allowable catch (TAC) limits that would allow for stock rebuilding. Among ICCAT member states, the United States receives 57.48 percent of the adjusted western Atlantic BFT TAC which is determined after allocations have been made for member states with minor harvests and for bycatch/incidental catch by the United States, Canada, and Mexico. For 2007, the total U.S. TAC is 1,190.12 mt. From 1982 to 2004, the level of U.S. BFT landings were generally reflective of the annual U.S. quota. That is, regulatory mechanisms capped landing levels near annual quotas. Since 2004, total BFT landings have been considerably less than the adjusted fishing year quota with 2005, 2006, and 2007 landings representing 33, 15, and 40 percent of

the adjusted quotas for those fishing years, respectively. Commercial fisheries are focused on ''large medium'' BFT [73 inches (185 cm) to less than 81 inches (206 cm)] and ''giant'' BFT [81 inches (206 cm) or greater]. Commercial categories are monitored by a census of landing cards (submitted for each fish landed), whereas recreational catch and landings are monitored by NMFS via the Large Pelagic Survey, the NMFS Automated Landings Reporting System, and cooperative state harvest tagging programs in North Carolina and Maryland. The majority of BFT landings are by handgear fisheries in the commercial Atlantic Tunas General category and recreational HMS Angling and HMS CHB categories. Atlantic Tunas General category fisheries are focused in New England during the summer and fall and the South Atlantic during the winter. Atlantic Tunas General category fishing year quotas, adjusted as necessary for underharvest, have not been met since 2004, when landings amounted to 96 percent of the quota. Atlantic Tunas General category landings, as a percentage of adjusted General category quota, were 33 percent (234 mt out of 707.3 mt) for 2005, 14 percent for 2006 (165 mt out of 1,163.3 mt), and 19 percent for 2007 (121 mt out of 643.6 mt).

BFT movements throughout the Atlantic are the subject of much research and affect the availability of harvest for regional fisheries. Over the last few years, the availability of large medium and giant BFT in the New England area has declined, which has reduced the ability of Atlantic Tunas General category fishermen to harvest the June through September subquotas and the ability of purse seine and harpoon fishermen to harvest their respective quotas, which are traditionally taken in the New England region. The reason for the decline in availability of medium and giant BFT is unknown, but two possible explanations are: 1) that the distribution of BFT in the Atlantic has changed in recent years with more fish present in North Atlantic waters off Canada; and/or 2) BFT abundance has decreased in the Western Atlantic.

NMFS intends with this proposed rule to allow harvest of Atlantic tunas with gears that are generally efficient in harvesting target species and, at the same time, are low in bycatch and bycatch mortality. Allowing gears with these characteristics may have benefits to target and non-target species over gear with higher bycatch and bycatch mortality levels. As described above, since 2004, U.S. BFT landings have been well within the U.S. quota allocation. Authorization of green-stick and harpoon gears in this proposed rule is not expected to result in a great increase in BFT landings; however, if an increase were to occur, repeated quota under-harvests in recent years indicate that room exists within the U.S. BFT quota allocation to allow for some additional landings. Additionally, the 2006 ICCAT Recommendation regarding western Atlantic BFT included a provision for a Contracting Party to transfer up to 15% of its TAC to other Contracting Parties. Also, there is continued interest among ICCAT contracting parties for unharvested western Atlantic BFT quota, and this has the potential to result in requests for transfer of TAC and/or reallocation of the Western Atlantic TAC at ICCAT to other member nations in the future. To the extent that the U.S. fishery is able to fill the U.S. BFT quota, the United States would increase the likelihood of maintaining its allocation.

The 2004 BiOp for the PLL fishery found that the long-term continued operation of the Atlantic PLL fishery as proposed was likely to jeopardize the continued existence of leatherback sea turtles, a species listed as endangered under the Endangered Species Act (ESA). Reasonable and prudent alternatives (RPAs) under section 7 of the ESA (50 CFR 402.02) were developed and implemented to avoid jeopardy by, among other things, reducing post-release mortality of leatherback turtles. The RPAs included several measures to accomplish these goals, one of which was to require the use of gear removal measures to maximize post-release survival. On July 6, 2004, NMFS published the final rule (69 FR 40736) implementing sea turtle bycatch and bycatch mortality mitigation measures for the PLL fishery. This final rule provided for additional rulemaking and non-regulatory actions, as necessary, to implement any other management measures required under the 2004 BiOp.

Fishing Gear Authorization - Green-Stick Gear

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

In order to address these public comments, NMFS considered an alternative in the Draft Consolidated HMS FMP to authorize green-stick gear for harvest of BAYS tunas. Sparse data on green-stick gear use that was available for the Draft Consolidated HMS FMP indicated that YFT dominated green-stick gear landings with BFT and BET making up a small portion of the catch. During public comment on the Draft Consolidated HMS FMP, comment was received expressing interest in using the gear to target other species, including BFT.

NMFS had, and continues to have, concern about the health of BFT stocks as they are severely overfished with overfishing occurring. Because of NMFS' concern at that time about the potential for increased effort that might occur, and the potential for such an increase in effort and interest in targeting BFT to negatively affect BFT stocks, NMFS did not authorize green-stick gear as a separate gear at that time in the Final Consolidated HMS FMP.

Instead, in the Consolidated HMS FMP, NMFS clarified that green-stick gear could continue to be used in a limited way as long as the green-stick gear use met the definition of ''longline'' (three or more hooks are attached by leaders or gangions to a mainline) or ''handgear'' (two hooks or fewer). Subsequently, HMS Advisory Panel (AP) and public comments on green-stick gear use continued to indicate that green-stick gear possession and its use as allowed under these definitions in the Atlantic Tunas General, HMS CHB, and Atlantic Tunas Longline categories does not well suit the fishing methods and locations preferred by fishermen wanting to use the gear. In these three categories, green-stick gear has historically been fished with up to 10 hooks or gangions. Under the current definitions, green-stick gear with three or more hooks or gangions attached to a mainline would be considered a longline; however, longline is not an authorized gear for Atlantic Tunas

General or HMS CHB category permitted vessels. Also under current regulations regarding Atlantic Tunas Longline permitted vessels, green-stick gear with three or more hooks attached to a mainline, which meets the definition of longline, may not be possessed in PLL or BLL closed areas.

Following publication of the Consolidated HMS FMP, NMFS continued to look for additional data to characterize more completely the green-stick gear fishery and collected anecdotal information from the public about the green-stick gear fishery. Additional data on green-stick gear fishing not included in the Draft Consolidated HMS FMP was obtained from NMFS Coastal Logbooks. These data also showed that YFT dominated the green-stick gear catch and that BET and BFT were the second and third largest green-stick gear catch by weight from 1999–2007. The Coastal Logbooks also showed that green-stick gear has a low bycatch rate and that the gear has been used over a long period of time. These data confirmed other anecdotal information received from fishermen about the dominant species caught and bycatch rate of the green-stick gear fishery. They also indicated that fishing pressure on BFT stocks has occurred with green-stick gear since at least 1999 and these landings have been recorded and included in the overall U.S. BFT catch data reported to ICCAT, even if it has been difficult to specifically identify these landings by gear. While there is a possibility that effort in the BFT fishery may increase if green-stick gear is authorized for harvest, the information above indicates that green-stick gear effort has developed to its current level over a period of several years. Due to the capital investments involved in rigging a vessel to use green-stick gear that are described below along with the harvest monitoring and size and retention limit capabilities available to NMFS to limit harvest of BFT as needed, NMFS believes that it is unlikely that effort in the green-stick fishery for BFT will increase greatly or that effort increases will significantly impact BFT stocks.

During this period, NMFS continued to receive comment on the gear definitions as they applied to rod and reel gear. Fishermen said that it has been common practice in many fisheries for many years to use more than two hooks on rod and reel gear. As mentioned previously, rod and reel is commonly described by NMFS as having no more than two hooks to avoid confusion with the longline definition which states that a longline ''...consists of a mainline or groundline with three or more leaders (gangions) and hooks, whether retrieved by hand or mechanical means (50 CFR 635.2).'' To address confusion and comments from the public requesting the continued ability to use more than two hooks on rod and reel, NMFS notes that the absence of a mainline on rod and reel gear excludes it from the longline definition and thus, it may be used with more than two hooks.

In this action, NMFS proposes the authorization of green-stick gear in the Atlantic tunas fishery (to include BFT) after considering 1)the additional data on the green-stick gear fishery which confirmed that YFT dominate the catch; 2) that BET and BFT have been landed with this gear over the period 1999–2007; 3) that large increases in effort or landings of BFT in the green-stick gear fishery are unlikely; and 4) that bycatch rates in the green-stick fishery are low. When developing this proposed rule, NMFS assessed the available information on past and present use of green-stick gear in Atlantic tuna fisheries as a baseline for analyzing the anticipated effects of green-stick gear. The proposed rule would define green-stick gear as an ''an actively trolled mainline attached to a vessel and elevated or suspended above the surface of the water with no more than 10 hooks or gangions attached to the mainline. The suspended line, attached gangions and/or hooks, and catch may be retrieved collectively by hand or mechanical means. Green-stick does not constitute a pelagic longline or a bottom longline as defined in this section or as described at § 635.21(c) or § 635.21(d), respectively.'' Green-stick gear is also distinguished from PLL and BLL gear in that green-stick gear is actively trolled and does not have floats capable of supporting the mainline, as with PLL, nor weights and/or anchors capable of maintaining contact between the mainline and the ocean bottom, as with BLL. With such distinction between gears, this proposed rule would allow green-stick gear to be used by Atlantic Tunas Longline category permitted vessels at times and in areas including, but not limited to, times and areas closed to longline fishing if the requirements for removal of any one of the elements of a pelagic longline are met. The proposed rule would not change the target catch requirements currently in place for Atlantic Tunas Longline vessels, thus ensuring that BFT would remain an incidental catch in the longline fishery regardless of whether green-stick gear is used.

Collection of data on fishing activity with green-stick gear is important to adequately assess gear performance, efficiency, and bycatch levels. Two existing programs that may be used to collect information on the green-stick gear fishery are vessel logbooks and dealer reports. Currently, NMFS has the authority to require logbook reporting by HMS CHB and Atlantic tunas vessels for which a permit has been issued. However, only Atlantic Tunas Longline category permit holders currently are selected for reporting and thus required to report via logbooks. The logbook program provides self-reported catch, effort, and discard information. Although not currently proposed, if NMFS were to require HMS CHB and Atlantic Tunas General category vessels to report via logbooks, a large increase in the capacity of the logbook program would be required to handle the increased number of logbook reports. Dealer reports made through the trip ticket program in the southeastern United States and various dealer reporting programs in the northeastern United States could provide landings information and, for some states, effort information. This information is gathered by dealers or their staff based on interviews of the vessel captain or crew. To facilitate green-stick gear specific data collection, coordination of data collection effort for this gear among states and regions and designation of a specific gear code would likely be necessary. NMFS seeks public comment on the pros and cons of these data collection programs regarding the quality and applicability of the information collected as well as social and economic impacts.

Under existing regulations, Atlantic Tunas Longline category permitted vessels are currently allowed to possess onboard and/or use only 18/0 or larger circle hooks with an offset not to exceed 10° and/or 16/0 or larger non-offset circle hooks in all areas except the Northeast Distant area, where other requirements apply (50 CFR 635.21(c)(5)(iii)(C)). The existing regulation was developed to reduce post-release hooking mortality (PRM) of sea turtles with the added benefit of reducing PRM of Atlantic billfish, other bycatch species, and regulatory discards. As green-stick fishing gear is actively trolled and the baits are fished at or above the surface of the water, circle hooks used with green-stick gear are not as effective in hooking fish because the line and hook cannot be slowly and steadily pulled through the mouth to lodge in the fish's jaw. Instead fish are hooked when the fish actively strikes the bait. As a result of this active strike, J-hooks are less likely to be ingested. Ingestion of hooks by fish has been related to the practice of dropping

baits back to the fish thereby allowing the fish more time to swallow a bait. Dropping baits back to a fish is not practiced with green-stick gear because the action of the bait that lures a fish to strike is caused by tension on the mainline, the flex of the fiberglass pole, and the forward movement of the vessel while actively trolling. The fish strike occurs when the baits are actively trolled at or above the surface of the water. Also, the size of the mainline and haul-back gear, which is often power operated, does not facilitate effective and timely drop-back of the bait as is possible with a rod and reel. Because J-hooks are more effective than circle hooks when fished with green-stick gear, and J-hooks are not expected to result in high PRM rates, this proposed rule would allow Atlantic Tunas Longline permitted vessels to possess no more than 20 J-hooks if green-stick gear is onboard. Onboard Atlantic Tunas Longline permitted vessels, J-hooks would only be allowed for use with green-stick gear, and would be limited to 10 hooks for each green-stick gear.

In the Gulf of Mexico, PLL vessels are prohibited from using live bait in order to reduce the incidental catch of Atlantic billfish. NMFS is concerned that the 20 J-hook allowance, as described above, may decrease NMFS ability to enforce the live bait prohibition because many fishing rigs that are used to catch live bait are rigged with J-hooks. The possession of such J-hooks is currently prohibited. NMFS seeks comment on the possibility of establishing a minimum hook size for J-hooks allowed with green-stick gear onboard Atlantic Tunas Longline Permitted vessels. Such a requirement could be applied to the entire Atlantic, Gulf of Mexico, and Caribbean Sea or to the Gulf of Mexico only.

PLL vessels are restricted in the Northeast Distant Restricted Fishing Area (NED) to possessing onboard and/or using only whole Atlantic mackerel and/or squid bait for the purpose of reducing sea turtle interactions as stipulated by the 2004 BiOp. For similar reasons, PLL vessels outside the NED are restricted to possessing onboard and/or using only whole finfish and/or squid bait. Green-stick gear is usually fished with artificial baits most of which are shaped like squid and made of rubber or plastic. The baits are preferred because they last longer on the hook when trolled in comparison to natural, dead squid which often fall apart relatively quickly when trolled. Some PLL vessels are rigged with and use both green-stick gear and longline gear on the same trip. NMFS seeks comment on allowing PLL vessels to possess and/or use artificial baits if green-stick gear is onboard.

A portion of green-stick landings has been reported via the NMFS Southeast Region's Coastal Logbook from 1999–2007 (i.e., by Atlantic Tunas General or Atlantic Tunas Longline category fishermen who also hold a NMFS Southeast Region fishing permit that requires logbook reporting). The limited amount of available data from these 98 fishing trips indicates that green-stick gear landings were dominated by YFT (82.9 percent), followed by BET (9.8 percent), BFT (2.3 percent), and little tunny (2.0 percent) by weight. All of the landings were reported from the area off the mid-Atlantic states.

Some commercial green-stick gear catches were reported in the PLL Logbook Program from 1999–2002 prior to the green-stick gear data field being eliminated from the logbook form in 2003. Of the 54 green-stick gear sets reported, 53 were from the Mid-Atlantic Bight Statistical Area and one set was reported from the Northeast Coastal Statistical Area. Landings from this dataset were dominated by YFT (81.9 percent), followed by dolphin fish (6.9 percent) and other BAYS tunas (6.5 percent) by number. Several other species were reported as well, including four BFT.

There is a potential for increased landings of YFT, BET, BFT, and other HMS under this proposed rule, but NMFS cannot accurately quantify anticipated landings for this gear due to the limited amount of effort and landings information available. These potential increases are not anticipated to be large however, because this gear type has been and continues to be used in Atlantic HMS fisheries. Some green-stick gear logbook information is included in species-specific stock assessments as the effort and landings are grouped with other fishing activity conducted with similar fishing techniques, such as trolling. This somewhat mitigates the lack of information specific to green-stick gear as stock assessment estimates of fishing mortality historically included and continue to include some green-stick gear fishing activity. Additionally, for BFT, all landings are required to be reported (commercial landings by dealers and via logbooks if a vessel is selected, and recreational landings via the NMFS Automated Landings Reporting System, on-line, or, in North Carolina or Maryland, to a reporting station); therefore, landings with green-stick gear have been and continue to be counted against the U.S. BFT quota.

As of November 30, 2007, there were 3,616 Atlantic Tunas General, 3,901 HMS CHB, and 218 Atlantic Tunas Longline Category permitted vessels that, under this proposed rule, would be authorized to use green-stick gear. Because no mechanism exists to identify whether an individual HMS-permitted vessel uses green-stick gear, an accurate count of these vessels cannot be obtained; however, a small portion of these vessels likely use green-stick gear and would continue to do so. While NMFS does not anticipate greatly increased landings from these vessels, this action could result in an increase in the overall effort deployed by these categories of permit holders. This could occur if additional fishermen become aware of green-stick gear efficiency in catching Atlantic tunas and of the higher quality of fish product that can be delivered to the dock, resulting in higher ex-vessel prices. Green-stick gear could also be deployed at times and in ways that enable more hooks to be fished during a trip, such as while a vessel is in transit between fishing locations and during times that other authorized gears may be deployed. Thus, NMFS anticipates that if increased landings occur, the largest increases likely would be for YFT, BET, and BFT as these are the three most frequently caught tunas reported in Coastal and PLL logbooks. NMFS anticipates that any such increase in effort would result in minimal increases in bycatch or bycatch mortality of target and non-target species.

Under this proposed rule, bycatch mortality of released fish, including billfish, is anticipated to be low given that baits on green-stick gear are trolled at high speed and deployed at or slightly above the surface of the water. Fish are hooked as they strike the baits which most frequently results in hooking locations in the jaw or other mouth area and does not often result in deep-hooking. Ingestion of hooks due to dropping the baits back to a fish is not anticipated as dropping the baits back is not practiced with green-stick gear as described above. Adverse ecological impacts are anticipated to be minimal because green-stick gear is an actively trolled and tended gear. Thus, fish may be retrieved quickly resulting in minimal physiological stress and an improved release condition in comparison to longline gear. Also, these same benefits for improved release condition result from the power haul-back capability of green-stick gear, thus in this way, may have benefits over rod and reel for Atlantic tunas. Based on available information, interactions with sharks while using green-stick gear are rare.

Interactions with protected resources are not anticipated to increase as green-stick gear is a surface gear that is actively trolled with baits deployed at or slightly above the surface of the water. Green-stick gear does not typically pose a risk of interaction with protected resources because sea turtles do not feed while swimming at a speed fast enough to keep up with green-stick gear baits while they are trolled, and marine mammals are not known to typically interact with baits trolled at or above the water's surface. The gear is tended as it is fished and therefore can be monitored and or maneuvered to avoid any interactions should they become imminent. There is no record of protected species interactions in the existing data.

The proposed rule is expected to have positive social and economic impacts as green-stick gear is popular with Atlantic Tunas General category permit holders in areas of the Atlantic where it has been used since at least the mid–1990s. Positive economic impacts are expected as authorization of green-stick gear for harvest of Atlantic tunas would allow permit holders some additional opportunities for harvest. Negative public comments were not expressed during a series of public information meetings about green-stick authorization held during the summer of 2007 in Foxboro, MA; Silver Spring, MD; Morehead City, NC; and Saint Petersburg, FL; and at the South Atlantic Fishery Management Council (SAFMC) in Key West, FL. Green-stick gear authorization was also discussed at several HMS Advisory Panel (AP) meetings in recent years. A number of AP members expressed support for green-stick gear authorization for Atlantic tunas including BFT. A commonly expressed reason for support at the public information meetings, the SAFMC meeting, and the HMS AP meetings was the low bycatch rate of green-stick gear and the potential for low post-release morality rates of fish released from green-stick gear in comparison with other fishing gears such as longline (which is not tended) or rod and reel (due to long average fight times).

Fishing Gear Authorization - Harpoon

HMS CHB vessels may currently fish under the Atlantic Tunas General category regulations and may fill the daily retention limit for either the Atlantic Tunas General or the HMS Angling category. The size category of the first BFT retained determines the fishing category applicable to the vessel that day. For example, if an HMS CHB catches and retains a school, large school, or small medium BFT [measuring 27 inches (69 cm) to less than 73 inches (185 cm) curved fork length], the vessel may not retain a commercial-sized BFT [measuring 73 inches (185 cm) or greater] for sale. HMS CHB permitted vessels are allowed one trophy BFT per year, which cannot be sold. HMS CHB vessel operators may sell commercial-sized BFT only when fishing under the Atlantic Tunas General category regulations. Other than for the Harpoon category, dart harpoon use currently is authorized only as a secondary gear (i.e., as cockpit gear) to assist in subduing, or bringing onboard a vessel, Atlantic HMS that have been first caught or captured using authorized primary gears.

This proposed rule would authorize harpoon gear for the commercial harvest of Atlantic tunas, including BFT, for HMS CHB permitted vessels. While fishing under the rules that apply when filling the Atlantic Tunas General category BFT retention limit, HMS CHB vessels would be able to use harpoon gear to fish for and retain BFT greater than 73 inches (185 cm) curved fork length. NMFS received information indicating that authorization of harpoon gear in the HMS CHB category would allow HMS CHB operators increased flexibility and efficiency in harvesting BFT, particularly given the high costs of BFT fishing.

This action would not change the number or size of BFT allowed to be retained on an HMS CHB vessel, but would provide HMS CHB fishermen the opportunity to use harpoon gear in filling the Atlantic Tunas General category daily retention limit. The Atlantic Tunas General category quota and overall U.S. TAC are designed to allow for BFT rebuilding, and the Atlantic Tunas General category retention limit is specified to allow fishing opportunities over the duration of the Atlantic Tunas General category season and in all areas, without exceeding the Atlantic Tunas General category quota.

NMFS does not anticipate that harpoon gear would be used in the pursuit of tunas other than BFT. Available Northeast and Southeast Region Vessel Trip Report data indicate that, for Atlantic tunas fishing, harpoon gear is only used to target BFT. Since 1996, there have been five trips in which harpoon gear was used to land a BAYS tuna and all were trips that targeted swordfish. In these trips, YFT was the tuna species landed. NMFS also anticipates the authorization of harpoon use by HMS CHB vessels will not result in an expanded geographic area of harpoon use for BFT, which has historically been off New England, and primarily on the fishing grounds off Massachusetts, New Hampshire, and Maine, because of availability of commercial-sized fish, fishing ground conditions, and the costs of outfitting a vessel (described below), among others.

There were 3,901 HMS CHB permitted vessels as of November 30, 2007. Focusing on the area where NMFS anticipates that harpoon gear would be used on HMS CHBs to capture a BFT, this action could apply to the 91 HMS CHB permitted vessels in Maine, 53 in New Hampshire, 644 in Massachusetts, and 159 in Rhode Island.

Impacts of handgear used to fish for Atlantic tunas under the Atlantic Tunas General category and Harpoon categories are described in full in the Consolidated HMS FMP. Harpoon gear is selective gear that is used to capture only one large pelagic fish (primarily BFT but also swordfish) at a time. Bycatch and bycatch mortality of commercial handgear is considered to be low, particularly for harpoons, which are thrown individually at a fish, determined by the fisherman to be greater than the minimum commercial size. There is no information or evidence of interactions between harpoon users targeting Atlantic tunas and threatened or endangered sea turtles, marine mammals, or other protected resources. The harpoon fishery is a Category III fishery under the Marine Mammal Protection Act, i.e., one with remote likelihood of serious injury or mortality to marine mammals.

The proposed rule is expected to have positive social and economic impacts, specifically for those vessels that have success in harpooning BFT that may be available at the water's surface. Landings data and information from fishermen indicate that there are times when the feeding behavior of commercial sized BFT makes hooking a fish difficult. NMFS has received comment over the last few years that the abundance and feeding behavior of dogfish is making trolling and chumming for BFT even more difficult. To the extent that a fisherman could harpoon BFT when the fish are present at the water surface, this action could increase the likelihood of fully utilizing the Atlantic Tunas General category daily retention limit. However, NMFS anticipates that the ability to harpoon a BFT will not necessarily lead to a substantial increase in BFT being caught with harpoon gear on HMS CHBs. Use of harpoon gear typically involves installation of a pulpit to the bow of the vessel (with approximate costs ranging from $10,500 - $14,500) and requires a certain degree of skill. There may be

slightly negative social and economic impacts for existing HMS CHB vessel owners due to the potential influx of vessels from the Atlantic Tunas General and Harpoon categories to the HMS CHB category. NMFS does not anticipate the number of permit holders that will seek to change permit categories will be high, due to the other costs and benefits associated with each permit category (such as the requirement for a U.S. Coast Guard Captain's license for HMS CHB vessels).

This action would be consistent with the final rule to implement the 1999 Atlantic Tunas, Swordfish, and Sharks FMP (64 FR 29090, May 28, 1999), which expanded the list of gear types authorized for HMS CHB permitted vessels to include bandit gear (which was already authorized for use by Atlantic Tunas General category permitted vessels) as part of an effort to achieve consistency in HMS regulations. This action would provide consistency in the regulations regarding authorized handgear used historically for commercial harvest of BFT, and would increase opportunities for commercial handgear fishermen to attain the BFT Atlantic Tunas General category quota.

NMFS proposes to authorize harpoon gear for HMS vessels only on non-for-hire trips (such as trips with only captain and crew aboard the vessel). NMFS proposes to restrict harpoon gear use to these trips because of concerns regarding, among other things, safety at sea considerations and bycatch issues. Therefore, if the authorization is restricted to non-for-hire trips, there should be no incentive to harpoon a recreational sized fish (27 to less than 73 inches), because such activity would be illegal, and paid charter passengers, seeking recreational fishing opportunities would not be present. Additionally, under this subalternative, there would be less risk of bycatch and of discard mortality. Vessels on non-for-hire trips, on which the intent is to harvest BFT greater than 73 inches, are not as likely to expend fishing effort in areas of mixed size BFT as are vessels on for-hire trips. As the current regulations state that the size category of the first BFT retained determines the fishing category applicable to the vessel that day, an HMS CHB vessel that catches and retains a school, large school, or small medium BFT (measuring 27 to less than 73 inches curved fork length) may not also retain a commercial-sized BFT (measuring 73 inches or greater) for sale. HMS CHB vessel operators may sell commercial-sized BFT only when fishing under the Atlantic Tunas General category regulations. If harpoons are authorized for HMS CHB vessels on for-hire trips, it is NMFS' understanding that, due to safety and liability concerns, only vessel captain and crew would be involved in harpoon fishing (i.e., paying passengers would not be offered the opportunity to use the gear). Harpoon gear is not authorized for recreational fishing (i.e., under the Angling category permit or applicable fishing regulations). Therefore, if the authorization is restricted to non-for-hire trips only, there should be no incentive to harpoon a recreational sized fish (27 to less than 73 inches), as such activity would be illegal and as paid charter passengers, who would seek recreational fishing opportunities, would not be present. Both subalternatives are expected to result in positive economic impacts as described above, by allowing HMS CHB operators additional opportunities to fully utilize the Atlantic Tunas General category retention limit.

NMFS specifically requests public comment on whether potential authorization of harpoon gear should be for all HMS CHB trips, i.e, both for-hire trips (those taken with paying passengers aboard, more than three persons onboard for uninspected vessels, or more persons aboard than the number of crew specified on the vessel's Certificate of Inspection for U.S. Coast Guard Inspected vessels) and non-for-hire trips (such as trips with captain and crew only) or only for non-for-hire trips.

Sea Turtle Control Devices

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

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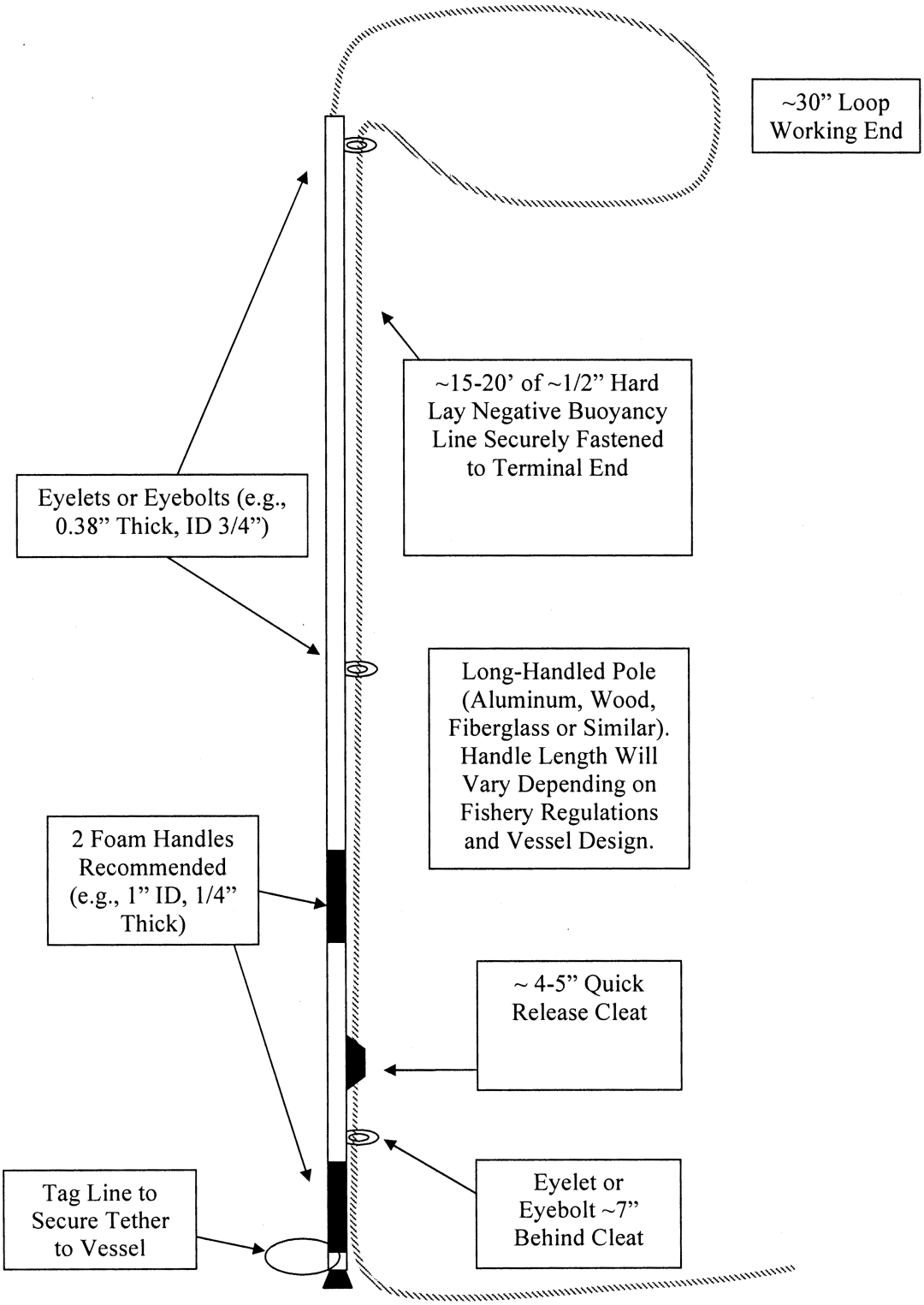
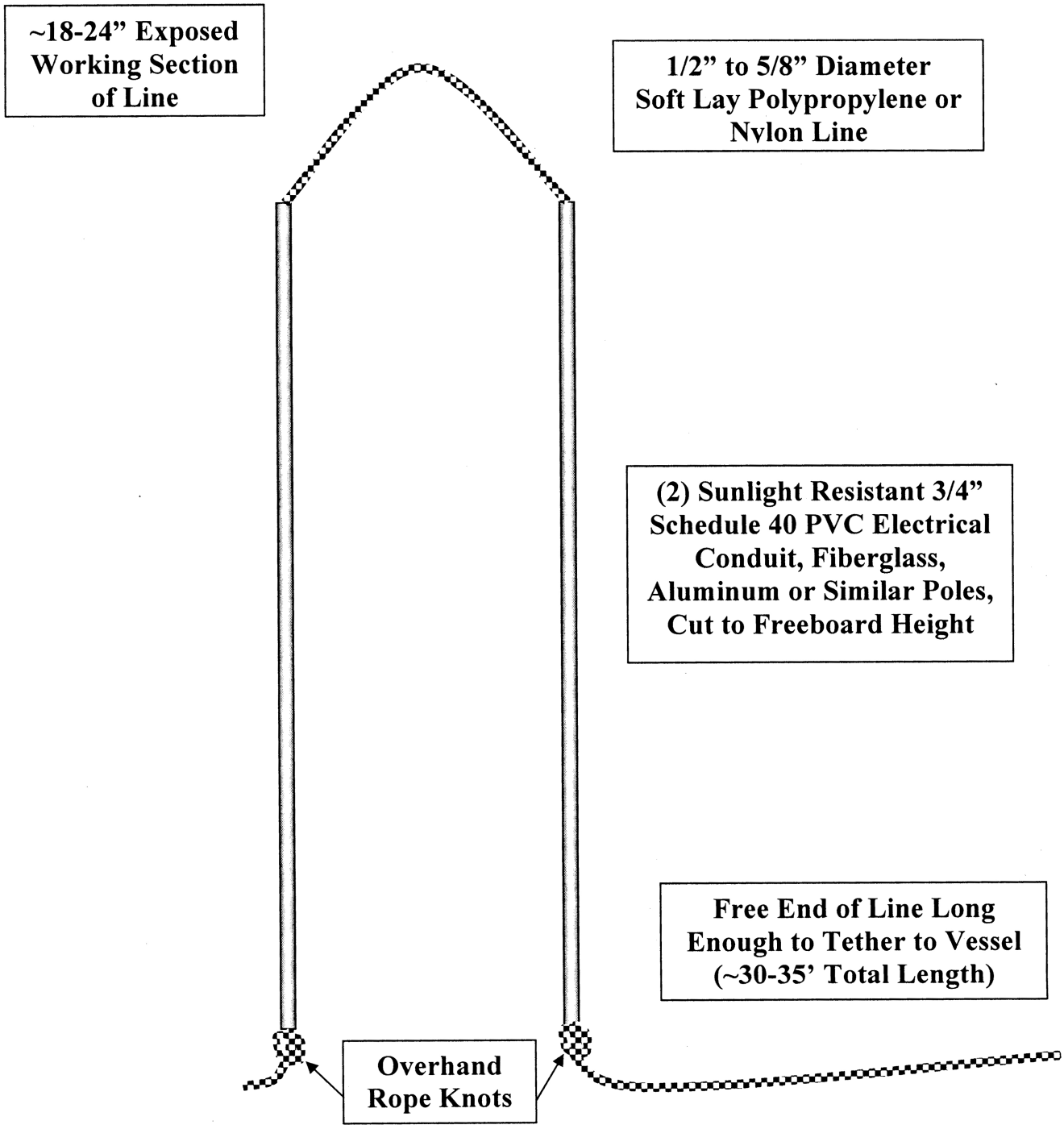
TURTLE TETHER



T&G Ninja Sticks



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The function of a turtle control device is to control the front flippers of the sea turtle so that the animal can be controlled at the side of the vessel while the gear is removed. Restraint is most effective when a pair of turtle control devices is used (two sets of turtle tethers, two sets of T&G ninja sticks, or one of each style). NMFS only proposes to require one turtle control device be possessed and used onboard; however, it strongly recommends that two devices be possessed and used if vessel and crew size allow.

The proposed rule would have positive, but unquantifiable ecological benefits because an improved ability to remove fishing hooks and line from sea turtles likely improves post-release survival of the sea turtles. The proposed rule may have a safety-at-sea benefit from the use of sea turtle control devices as fishermen using the gear can more easily control large sea turtles while fishing hooks and lines are being removed. Social and economic impacts of the proposed alternative are expected to be minimal. Sea turtle bycatch mitigation gear is currently required on Atlantic PLL and BLL vessels. The turtle tether is currently recommended, but not required as part of that gear. Information on the cost of turtle control devices and the economic impact of this proposed rule may be found in the Classification section below. Design specifications for the turtle tether and T&G ninja sticks are found in Figures 1 and 2. Any turtle control device meeting the design standards could be constructed or purchased and used, as long as the design is first certified according to the process established by the NMFS Pascagoula Laboratory. When new items are certified, a notice in the **Federal Register** will be published as provided for at § 635.21(c)(5)(iv).

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and ATCA. NMFS has preliminarily determined that this action is consistent with the Magnuson-Stevens Act, including the national standards, and other applicable law, subject to further consideration after public comment.

An EA has been prepared that describes the impact on the human environment that could result from implementation of the preferred alternatives to authorize green-stick fishing gear for the harvest of Atlantic tunas, including BFT; authorize harpoon gear for the harvest of Atlantic tunas, including BFT, in the HMS Charter/Headboat (CHB) category; and require sea turtle control devices in Atlantic HMS pelagic longline (PLL) and bottom longline (BLL) fisheries. Based on the EA, Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) under the Regulatory Flexibility Act, and a review of the National Environmental Policy Act (NEPA) criteria for significance evaluated above (NAO 216–6 Section 6.02), no significant effect on the quality of the human environment is anticipated from this action.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. In compliance with Section 603 of the Regulatory Flexibility Act, an Initial Regulatory Flexibility Analysis was prepared for this rule. The IRFA analyzes the anticipated economic impacts of the preferred actions and any significant alternatives to the proposed rule that could minimize economic impacts on small entities. A summary of the IRFA is below. The full IRFA and analysis of economic and ecological impacts are available from NMFS (see **ADDRESSES**).

In compliance with section 603(b)(1) and (2) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking is, consistent with the Magnuson-Stevens Act and ATCA, to authorize fishing gear in Atlantic tuna fisheries to increase fishery operational flexibility while still achieving the objectives of the Consolidated HMS FMP and to allow fishermen additional opportunities to fulfill U.S. quota allocations. The purpose of the proposed rule to require a sea turtle control device in the PLL and BLL fisheries is to achieve and maintain low post-release mortality of sea turtles, thus maintaining consistency with the 2004 Biological Opinion for the pelagic longline fishery and to increase safety at sea for fishermen when handling sea turtles caught or entangled in longline fishing gear. Section 603(b)(3) requires Agencies to provide an estimate of the number of small entities to which the rule would apply. The proposed rule to authorize green-stick fishing gear for the harvest of Atlantic tunas, including BFT; authorize harpoon gear for the harvest of Atlantic tunas, including BFT, in the HMS CHB category; and require sea turtle control devices in Atlantic HMS PLL and BLL fisheries could directly affect 3,616 Atlantic Tunas General, 3,901 HMS CHB, and 218 Atlantic Tunas Longline category permit holders (permit numbers as of November 30, 2007). All of these permit holders are considered small business entities according to the Small Business Administration's standard for defining a small entity.

None of the proposed actions considered for this proposed rule would result in any new reporting or record keeping requirements (5 U.S.C. 603(c)(1)-(4)). New compliance requirements would occur under the proposed action to require the possession and use of a sea turtle control device onboard PLL and BLL vessels; however, the economic impacts are not expected to be significant. This proposed rule does not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5).

One of the requirements of an IRFA, under Section 603 of the Regulatory Flexibility Act, is to describe any alternatives to the proposed rule that accomplish the stated objectives and that minimize any significant economic impacts (5 U.S.C. 603(c)). Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c)(1)-(4)) lists four categories for alternatives that must be considered. These categories are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage for small entities.

In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, ATCA, and the Endangered Species Act (ESA), NMFS cannot establish differing compliance requirements for small entities or exempt small entities from compliance requirements. Thus, there are no alternatives that fall under the first and fourth categories described above. NMFS developed the alternative to require a sea turtle control device so that options exist for fishermen to construct the device at minimal cost thus simplifying compliance for all entities including small entities (category 3 above). Similarly, the design standards (category 4 above) used to allow construction of a sea turtle control device at minimal cost satisfies the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act and ESA.

NMFS considered eight different alternatives to authorize fishing gear in Atlantic tuna fisheries to increase fishery operational flexibility in the fishery while still achieving the objectives of the Consolidated HMS FMP, to allow fishermen additional opportunities to fulfill U.S. quota allocations, and to require a sea turtle control device in the PLL and BLL

fisheries to achieve and maintain low post-release mortality of sea turtles. As previously described, and as expanded upon below, NMFS has provided justification for the selection of the preferred alternatives to achieve the desired objectives.

Alternative A1 is a no action, or the status quo alternative. This alternative would maintain existing regulations for harvesting Atlantic tunas, thereby allowing green-stick gear use only as allowed under the current definitions and regulations for longline or handgear based on the gear configuration. This alternative would continue to consider green-stick gear as being within the longline definition if 3 or more hooks are attached, and as handgear if 2 or fewer hooks are attached. The allowable use of the gear in this way impedes operational and economic efficiency in the Atlantic Tunas General category or HMS CHB category because rigging of green-sticks with up to 10 hooks is effective and fishermen have used green-sticks rigged in this way historically for Atlantic tunas. Under alternative A1, the social and economic impacts are expected to be minimal, although unquantified social and economic impacts may occur to Atlantic Tunas General category and HMS CHB permitted vessel holders with the status quo because they would not be allowed to use green-stick gear with 3 hooks or more unless they purchased an Atlantic Tunas Longline permit. This alternative is not preferred because other alternatives increase fishery operational and economic flexibility in the fishery while still achieving the objectives of the Consolidated HMS FMP and to allow fishermen additional opportunities to fulfill U.S. quota allocations.

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

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

Green-stick gear ranges in cost from $1,300-$3,300 for the fiberglass pole. Completely outfitting a vessel with hydraulic spool and other tackle to use the gear would cost between $4,000-$6,000 depending on the size of the rig. Anecdotal information indicates that some fishermen may run mainlines from outriggers, a flying bridge, or a tuna tower, which would not be as costly. Outfitting costs are discretionary for fishermen as the gear is not required to participate in the fishery. This gear would be authorized for use from properly permitted vessels only. The current cost of a Federal vessel permit is $28.00 per year.

Alternative A3, a preferred alternative, would define green-stick gear as in Alternative A2 above and authorize its use in the commercial Atlantic tuna fishery for BAYS and BFT by HMS CHB category vessels. This alternative would also authorize green-stick gear for recreational harvest of Atlantic tunas when an HMS CHB permitted vessel is on a for-hire trip. Under current regulations, HMS CHB permitted vessels may sell Atlantic tunas whether or not they are for-hire, thus Atlantic tunas caught under a recreational retention limit on an HMS CHB vessel may be sold. Because of this HMS CHB permit provision and NMFS' intention to authorize green-stick for commercial harvest of Atlantic tunas, NMFS prefers Alternative A3. Vessels fishing under the HMS CHB category would continue to be subject to all current HMS regulations for that category. Alternative A3 is expected to have positive social and economic impacts similar to those described under Alternative A2 above, but with the added economic benefits associated with authorizing the use of green-stick gear for recreational harvest of Atlantic tunas even when an HMS CHB permitted vessel is on a for-hire trip.

Alternative A4, a preferred alternative, would define green-stick gear as in Alternative A2 and authorize its use in the directed commercial Atlantic BAYS tuna fishery and allow for the incidental retention of BFT by Atlantic Tunas Longline category vessels. Green-stick gear can currently be used with more than two hooks by Atlantic Tunas Longline permitted vessels under current target catch and gear (i.e., circle hook) requirements. Alternative A4 would distinguish green-stick gear from longline gear thus allowing green-stick gear to be fished in PLL and BLL closed areas if existing regulations for removal of PLL and BLL gear are met. These regulations state that a vessel is considered to have PLL gear onboard when it has onboard a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks. Likewise, a vessel is considered to have BLL gear onboard when it has onboard a power-operated longline hauler, a mainline, weights and/or anchors capable of maintaining contact between the mainline and the ocean bottom, and leader (gangions) with hooks. For closed areas respective to both PLL and BLL gear, removal of any one of these elements constitutes removal of the PLL or BLL gear. Atlantic Tunas Longline permitted vessels would continue to be subject to current HMS PLL or BLL regulations, whichever is applicable, including the closed areas and circle hook requirements, except that up to 20 J-hooks would be allowed onboard if green-stick gear is also onboard. The J-hooks would only be allowed for use with green-stick gear. This provision to allow up to 20 J-hooks is intended to facilitate the high speed trolling methods used when fishing with green-stick gear. Current requirements to use only circle hooks on PLL gear would remain unchanged.

Alternative A4 is expected to have positive social and economic impacts particularly for longline fishermen. Public and HMS AP member support has been expressed for this alternative as described above. Authorization of green-stick for harvest of Atlantic tunas would allow Atlantic Tunas Longline category permit holders additional

opportunities for harvest. Economic benefits may be realized in similar fashion to Alternatives A2 and A3 above through increased need for fish processing and the sale of additional fishing gear and supplies. The economic benefits for fishing communities as a whole may be minimal, however, as green-stick gear has been and continues to be used in U.S. Atlantic tuna fisheries. Vessel outfitting costs are similar to those described in A2 above.

Alternative B1 would maintain the status quo regarding harpoon use in the Atlantic tuna fisheries. The authorized gears for Atlantic tunas fishing by HMS CHB permitted vessels would remain the same. Harpoon use is currently authorized only for vessels permitted in the Atlantic Tunas General and Harpoon categories. Harpoon gear is selective gear that is used to capture only one large pelagic fish (primarily BFT, but also swordfish) at a time. Bycatch and bycatch mortality of commercial handgear is considered to be low, particularly for harpoons, which are thrown individually at a fish, determined by the fisherman to be greater than the minimum commercial size. There is no information or evidence of interactions between harpoon users targeting Atlantic tunas and threatened or endangered sea turtles, marine mammals, or other protected resources. There were 3,901 HMS CHB permitted vessels as of November 30, 2007. Focusing on the area where NMFS anticipates that harpoon gear would be used on HMS CHBs to capture a BFT, there were 91 HMS CHB permitted vessels in Maine, 53 in New Hampshire, 644 in Massachusetts, and 159 in Rhode Island. Under Alternative B1, NMFS anticipates neutral impacts on permitted HMS vessels, which could continue to fish under the Atlantic Tunas General and Angling category regulations using existing authorized gear. Total Atlantic Tunas General category revenues, which included sale of commercial-sized BFT by HMS CHBs, for the 2006 fishing year were approximately $2.6 million. Atlantic Tunas General category revenues for 2005 and 2004 were approximately $3.8 million and $5.4 million, respectively (in nominal dollars). Atlantic Tunas General category fishing year quotas, adjusted as necessary for underharvest, have not been met since 2004, when landings amounted to 96 percent of the quota. Atlantic Tunas General category landings, as a percentage of adjusted General category quota, were 33 percent (234 mt out of 707.3 mt) for 2005, 14 percent for 2006 (165 mt out of 1,163.3 mt), and 19 percent for 2007 (121 mt out of 643.6 mt).

Alternative B2 would authorize harpoon gear for the commercial harvest of Atlantic tunas, including BFT, for HMS CHB permitted vessels. While fishing under the rules that apply when filling the Atlantic Tunas General category BFT retention limit, HMS CHB vessels would be able to use harpoon gear to fish for and retain BFT greater than 73 inches curved fork length. HMS CHBs may currently fish under the Atlantic Tunas General category regulations and may fill the daily retention limit for either the Atlantic Tunas General or the HMS Angling category. Available vessel trip report data indicate that, for Atlantic tunas fishing, harpoon gear is only used to target BFT. This alternative would not change the number or size of BFT allowed to be retained on an HMS CHB vessel, but would provide HMS CHB fishermen the opportunity to use harpoon gear in filling the Atlantic Tunas General category daily retention limit. Sub-alternative B2a would allow harpoon gear use on all types of CHB trips.

Sub-alternative B2b is the preferred alternative and would limit harpoon use to non-for-hire trips. It is NMFS' understanding that, due to safety and liability concerns, only vessel captain and crew would be involved in harpoon fishing, (i.e., no other passengers would be offered the opportunity to use the gear). Under this preferred alternative, there would be no incentive to harpoon a recreational sized fish (27 inches (69 cm)to less than 73 inches (185 cm)) to fill the Angling category retention limit (to satisfy expectations of individuals chartering the vessel). With effort focused on commercial-sized BFT, bycatch of undersized fish and associated fish mortality is expected to be minimal, particularly as the size of BFT targeted by for-hire CHB vessels fall within the school and large school BFT size classes, i.e., 27–59 inches (69–150 cm).

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

Alternative B2, the preferred alternative, would have positive social and economic impacts, specifically for those vessels that have success harpooning BFT that may be available at the water's surface. To the extent that a fisherman could harpoon BFT when the fish are present at the water surface, Alternative B2 could increase the potential of filling the Atlantic Tunas General category daily retention limit and of gaining more ex-vessel revenue per trip. NMFS anticipates that the number of BFT that would be caught with harpoon gear by HMS CHBs is low. Alternative B2 may have slightly negative social and economic impacts for existing HMS CHB operators due to the potential for Atlantic Tunas General or Harpoon category permit holders to change to the HMS CHB category, potentially increasing competition in the HMS CHB sector and potentially resulting in lower profits for existing permit holders.

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

Under Alternative C1, there would be no social and economic impacts. Sea turtle bycatch mitigation gear is currently required in the PLL and BLL fisheries and sea turtle control devices are recommended, but not required. Any safety-at-sea benefit from improved control of large sea turtles not boated would not be fully realized with Alternative C1.

Alternative C2, a preferred alternative, would require possession and use of a sea turtle control device as an addition to the already existing requirements for sea turtle bycatch mitigation gear. Social and economic impacts of Alternative C2 may be positive in that a safety-at-sea benefit from the use of sea turtle control

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

Public Hearings

The hearing dates and locations are:

1. May 27, 2008, 6 - 8 p.m., National Marine Fisheries Service Southeast Regional Office, 263 13th Avenue South, Saint Petersburg, FL 33701
2. May 29, 2008, 7 - 9 p.m., Roanoke Island Festival Park, 1 Festival Park, Manteo, NC 27954
3. June 2, 2008, 6 - 8 p.m., Ocean County Library, Stafford Branch, 129 N. Main Street, Manahawkin, NJ 08050
4. June 4, 2008, 3:30 - 5:30 p.m., National Marine Fisheries Service Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930
5. June 4, 2008, 6 - 8 p.m., Plaquemines Parish Government Community Center, Belle Chasse Auditorium, 8398 Hwy. 23, Belle Chasse, LA 70037
6. June 12, 2008, 7 - 9 p.m., Renaissance Orlando Hotel Airport, 5445 Forbes Place, Orlando, FL 32812

The hearing locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Randy Blankinship at 727–824–5399, at least 7 days prior to the meeting.

List of Subjects

50 CFR Part 600

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

50 CFR Part 635

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

Dated: April 30, 2008.

Samuel D. Rauch III

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

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

Chapter VI

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

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

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

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

§ 600.725 General prohibitions.

* * * * *

(v) * * *

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

* * * * *

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

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

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

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

§ 635.2 Definitions.

* * * * *

Green-stick means an actively trolled mainline attached to a vessel and elevated or suspended above the surface of the water with no more than 10 hooks or gangions attached to the mainline. The suspended line, attached gangions and/or hooks, and catch may be retrieved collectively by hand or mechanical means. Green-stick does not constitute a pelagic longline or a bottom longline as defined in this section or as described at § 635.21(c) or § 635.21(d), respectively.

* * * * *

5. In § 635.21:

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

b. Paragraphs (c)(5)(i)(M), (c)(5)(iii)(C)(*3*), and (g) are added.

The revisions and additions read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(c) * * *

(2) * * *

(v) * * *

(A) The vessel is limited to possessing onboard and/or using only 18/0 or larger circle hooks with an offset not to exceed 100. The outer diameter of the circle hook at its widest point must be no smaller than 2.16 inches (55 mm) when measured with the eye on the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis), and the distance between the circle hook point and the shank (i.e., the gap) must be no larger than 1.13 inches (28.8 mm). The allowable offset is measured from the barbed end of the hook and is relative to the parallel plane of the eyed-end, or shank, of the hook

when laid on its side. The only allowable offset circle hooks are those that are offset by the hook manufacturer. If green-stick gear, as defined at § 635.2, is onboard, a vessel may posses up to 20 J-hooks. J-hooks may be used only with green-stick gear, and no more than 10 hooks may be used at one time with each green-stick gear; and,

(B) The vessel is limited, at all times, to possessing onboard and/or using only whole Atlantic mackerel and/or squid bait, except that artificial bait may be possessed and used only with green-stick gear, as defined at § 635.2, if green-stick gear is onboard; and,

* * * * *

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

* * * * *

(G) *Non-boated turtles.* If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear, specified in paragraph (c)(2)(v)(D) of this section, must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in paragraph (c)(2)(v)(C) of this section. Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. A front flipper or flippers of the turtle must be secured, if possible, with an approved turtle control device from the list specified in paragraph (c)(2)(v)(D) of this section. All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using an approved line cutter from the list specified in paragraph (c)(2)(v)(D) of this section. If the hook can be removed, it must be removed using a long-handled dehooker from the list specified in paragraph (c)(2)(v)(D) of this section. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (c)(2)(v)(C) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

* * * * *

(5) * * *

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

* * * * *

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

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

(*2*) *T&G ninja sticks and extended reach handles.* Approximately 30–35 feet of 1/2–inch to 5/8–inch soft lay polypropylene or nylon line or similar is fed through 2 PVC conduit, fiberglass, of similar sturdy poles and knotted using an overhand (recommended) knot at the end of both poles or otherwise secured. There should be approximately 18–24 inches of exposed rope between the poles to be used as a working surface to capture and secure the flipper. Knot the line at the ends of both poles to prevent line slippage if they are not otherwise secured. The remaining line is used to tether the apparatus to the boat unless an additional tag line is used. Two lengths of sunlight resistant 3/4–inch schedule 40 PVC electrical conduit, fiberglass, aluminum, or similar material should be used to construct the apparatus with a minimum length equal to, or greater than, 150 percent of the freeboard, or a minimum of 6 feet (1.83 m), whichever is greater.

(ii) * * *

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

* * * * *

(C) * * *

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

possible must be removed prior to release, using a line cutter as required by paragraph (c)(5)(i) of this section. If the hook can be removed, it must be removed using a long-handled dehooker as required by paragraph (c)(5)(i) of this section. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (a)(3) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title for additional information.

* * * * *

(iii) * * *

(C) * * *

(*3*) If green-stick gear, as defined at § 635.2, is onboard, a vessel may possess up to 20 J-hooks. J-hooks may be used only with green-stick gear, and no more than 10 hooks may be used at one time with each green-stick gear. If green-stick gear is onboard, artificial bait may be possessed, but used only with green-stick gear.

* * * * *

(e) * * *

(1) * * *

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

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

* * * * *

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

* * * * *

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

6. In § 635.71, paragraph (a)(23) is revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

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

* * * * *

[FR Doc. E8–9888 Filed 5–5–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 080428607–8609–01]

RIN 0648–AW69

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Allocation of Trips to Closed Area II Yellowtail Flounder Special Access Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to allocate zero trips in the Closed Area (CA) II Yellowtail Flounder Special Access Program (SAP) during the 2008 fishing year (FY) (i.e., May 1, 2008, through April 30, 2009). This action is based on a determination that the available catch of Georges Bank (GB) yellowtail flounder is insufficient to support a minimum level of fishing activity within the CA II Yellowtail Flounder SAP for FY 2008. The intent of this action is to help achieve optimum yield (OY) in the fishery by maximizing the utility of available GB yellowtail flounder TAC throughout FY 2008.

DATES: Comments must be received on or before 5 p.m., local time, May 21, 2008.

ADDRESSES: You may submit comments, identified by 0648–AW69, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Fax: 978–281–9341, attn: Douglas Potts, Fishery Management Specialist.
- Mail: Written comments (paper, disk, or CD-ROM) should be sent to Patricia A. Kurkul, Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on CA II YT SAP, 0648–AW69.''

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

SUPPLEMENTARY INFORMATION: The final rule implementing Framework Adjustment (FW) 40B (70 FR 31323; June 1, 2005), authorized the Administrator, Northeast Region, NMFS (Regional Administrator) to determine the allocation of the total number of trips into the CA II Yellowtail Flounder SAP based upon several criteria, including: GB yellowtail flounder total allowable catch (TAC) level, as established through the U.S./Canada Resource Sharing Understanding; and the amount of GB yellowtail flounder caught outside of the SAP. A formula was developed in FW 40B to assist the Regional Administrator in determining the appropriate number of trips for this SAP on a yearly basis. The formula is intended to allow the SAP to be adjusted for changing stock conditions to help achieve OY for GB yellowtail flounder.

FW 40B authorizes the allocation of zero trips to this SAP if the available GB yellowtail flounder catch (GB yellowtail flounder TAC projected catch of GB yellowtail flounder outside the SAP) is not sufficient to support 150 trips with a 15,000–lb (6,804–kg) trip limit (i.e., if the available GB yellowtail catch is less than 1,021 mt), as required. The U.S./Canada GB yellowtail flounder TAC for 2008, as recommended by the Transboundary Management Guidance Committee and the Council, is 1,950 mt (73 FR 16571; March 28, 2008). During FY 2007, vessels fishing outside of the SAP landed over 901 mt, 100 percent of the U.S./Canada GB yellowtail flounder TAC. However, this number does not reflect the potential catch outside of this SAP as the FY 2007 TAC of GB yellowtail flounder was caught by January 24, 2008, and possession was prohibited in the U.S./Canada Management Area for the remainder of the fishing year. The total catch of GB yellowtail flounder outside of this SAP in FY 2006 was 1,851 mt, 89 percent of the U.S./Canada GB yellowtail flounder TAC for that year. Using an average of these two years as a more realistic approximation of potential catch of GB