

**FINAL**

**ENVIRONMENTAL ASSESSMENT**

**AND**

**REGULATORY IMPACT REVIEW**

**FOR A**

**FINAL RULE**

**TO IMPLEMENT QUOTA RECOMMENDATIONS FROM THE 2000 MEETING OF THE  
INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNAS**

**AND**

**TO RE-ESTABLISH PROHIBITIONS REGARDING POSSESSION OF FISH IN VIOLATION OF  
INTERNATIONAL REGULATIONS**

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United States Department of Commerce  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
Office of Sustainable Fisheries  
Highly Migratory Species Management Division  
1315 East-West Highway  
Silver Spring, Maryland 20910

**Final Rule to Implement Recommendations from the 2000 Meeting of the International Commission for the Conservation of Atlantic Tunas and to Reestablish Prohibitions Regarding Possession of Fish in Violation of International Regulations**

**Framework Adjustment to the Fishery Management Plan for Atlantic Tunas, Sharks, and Swordfish**

**Final Actions:** Establish a reserve quota for North Atlantic swordfish, implement trade restrictions for Atlantic bigeye tuna, prohibit possession of fish caught in violation of international regulations, clarify authorized fishing areas for U.S. Atlantic highly migratory species fishermen.

**Type of Statement:** Final Documents: Environmental Assessment and Regulatory Impact Review

**Lead Agency:** National Marine Fisheries Service, Office of Sustainable Fisheries

**For Further Information:** Tyson Kade

Highly Migratory Species Management Division  
1315 East-West Highway: F/SF1  
Silver Spring, MD 20910  
Phone: (301) 713-2347 Fax: (301) 713-1917

**Abstract:** The United States is obligated under the Atlantic Tunas Convention Act (ATCA) to implement conservation and management recommendations that have been adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). These regulations establish a reserve quota for North Atlantic swordfish starting with the 2001 fishing year, clarify allowable fishing areas for U.S. vessels fishing for highly migratory species (HMS) in the east Atlantic Ocean, maintain the status quo South Atlantic swordfish quota for 2001, implement Atlantic bigeye tuna trade restrictions, and re-establish prohibitions relating to possession of fish taken in violation of international regulations. These actions are necessary to ensure continued progress toward

the conservation goals of ICCAT for Atlantic HMS. Short-term economic impacts resulting from these actions are expected to be minimal. However, conservation benefits are likely to increase due to international cooperation and compliance with ICCAT recommendations.

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## **1.0 PURPOSE AND NEED FOR ACTION**

### **1.1 Need for Establishing a Reserve Quota Category for North Atlantic Swordfish**

North Atlantic swordfish are classified as overfished. In 1999, ICCAT adopted a recommendation to establish an international rebuilding program for North Atlantic swordfish and to reduce the total allowable catch (TAC) for all countries fishing on that stock. Although the stock is showing signs of stabilization and some improvement,

the Standing Committee on Research and Statistics (SCRS) has warned that the rebuilding program is very sensitive to any overharvests. At the 2000 meeting of ICCAT, it became apparent that Japan had seriously exceeded its North Atlantic swordfish quota for several years in a row, despite efforts to address this problem. Swordfish are a non-target species taken in Japan's bigeye tuna fishery. Japan has exceeded its landings quota for swordfish and has been discarding swordfish for some time. Because of concerns for the integrity of the 10-year swordfish rebuilding program, the United States agreed to assist Japan in addressing its swordfish overharvest. A measure was adopted that, among other things, will allow Japan access to 400 metric ton (mt) whole weight (ww) (300.8 mt dressed weight (dw)) of unused U.S. quota for 2001 only. While the 2001 fishing year has concluded, it still is necessary to comply with ICCAT recommendations regarding quota allocations. This one-time quota transfer will be applied to Japan's discards, in order to account for that mortality in the TAC. Therefore, NOAA Fisheries is establishing a reserve quota for North Atlantic swordfish.

## **1.2 Need for Reinstating Regulations Regarding Possession of Fish Taken in Violation of Existing International Regulations and Recommendations**

Regulatory text that existed prior to publication and implementation of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), which consolidated existing HMS regulations, prohibited persons and vessels subject to the jurisdiction of the United States from possessing fish taken in violation of ICCAT recommendations or from violating another country's fisheries regulations pertaining to species managed by ICCAT. These provisions reflected the intent of the Lacey Act. While those specific prohibitions were included in the initial, proposed consolidated HMS regulations (61 FR 57361, November 6, 1996), they were inadvertently excluded when the consolidated regulations were re-proposed to implement the new requirements of the HMS FMP (64 FR 3486, January 20, 1999). Given that the regulatory consolidation was not intended to make substantive changes to existing regulations, other than those specifically noted as necessary to achieve consistency or to implement new requirements of the HMS FMP, the exclusion of those prohibitions was a drafting error and requires correction. Therefore, NOAA Fisheries is re-establishing prohibitions regarding possession of fish taken in violation of ICCAT recommendations or in violation of another country's regulations.

## **1.3 Need for Clarifying Authorized Fishing Areas**

At the 2000 ICCAT meeting, the United States received notification from the European Community that a U.S. vessel has been landing Atlantic bluefin tuna caught in the Mediterranean Sea. This fishing activity is not consistent with the terms of the rebuilding program for west Atlantic bluefin tuna, which directs all parties to take measures to prohibit any transfer of fishing effort from the west Atlantic to the east Atlantic Ocean and vice versa. The Mediterranean Sea is considered part of the east Atlantic Ocean, and the United States does not have an allocation of east Atlantic bluefin tuna quota. Therefore, NOAA Fisheries is clarifying the authorized fishing areas for U.S. fishermen targeting HMS in the Convention Area, i.e., the Atlantic Ocean and adjacent seas, by prohibiting U.S. vessels from fishing for bluefin tuna in the Mediterranean Sea.

## **1.4 Need for Implementing Trade Restrictions for Atlantic Bigeye Tuna**

Atlantic bigeye tuna are classified as overfished. At its 2000 meeting, ICCAT recommended that trade restrictions be implemented to address the unreported and unregulated catches of tuna by large-scale longline vessels in the Convention Area. The Commission identified Contracting Parties and non-Contracting

parties/entities whose large-scale longline vessels have been fishing for bigeye tuna in a manner that diminishes the effectiveness of ICCAT measures. Those entities were notified and given the opportunity to rectify the situation. Belize, Cambodia, Equatorial Guinea, Honduras, and St. Vincent and the Grenadines were identified as such entities; they are fishing in the Atlantic Ocean and have bigeye tuna as their primary target. Designation of illegal, unreported, and unregulated (IUU) entities and implementation of these trade restrictions parallels the procedures established in the bluefin tuna and swordfish action plans that ensure the effectiveness of the conservation programs for these species (action plans are available at [www.iccat.es](http://www.iccat.es)). Therefore, NOAA Fisheries is banning the import of Atlantic bigeye tuna caught by vessels of Belize, Cambodia, Equatorial Guinea, Honduras, and St. Vincent and the Grenadines.

### **1.5 Other Recommendations Adopted by ICCAT in 2000**

Regarding South Atlantic swordfish, ICCAT adopted a status quo target TAC for 2001 of 14,620 mt ww. Parties agreed to establish unilateral catch limits for 2001, which were submitted to ICCAT in December 2000. The United States informed ICCAT of its intention to stay within its prior annual catch limit of 384 mt ww (289 mt dw). Current regulations specify an annual U.S. quota for the South Atlantic swordfish fishery in accordance with the recommendation adopted by ICCAT in November 2000. No changes to the current regulations are being implemented at this time.

A recommendation was adopted by ICCAT relative to South Atlantic albacore which establishes a TAC and specifies that countries having caught less than 100 mt of South Atlantic albacore per year during 1992-96 are subject to an annual catch limit of 100 mt. This provision applies to the United States, which reported no more than 1 mt in each of the specified reference years. No changes to the current regulations are being implemented at this time since the United States does not have a directed fishery for South Atlantic albacore, and annual landings are well below the 100 mt limit.

At the 2000 ICCAT meeting, a recommendation was adopted to establish a TAC level for North Atlantic albacore. The United States supported this recommendation as the first step toward the development of a rebuilding program for the stock. While effort controls are already in place for this fishery, this was the first catch limit to be set by ICCAT for the North Atlantic albacore stock. The United States was allocated a landings quota of 607 mt ww for the 2001 fishing year, which is a level consistent with average landings for the United States over the past ten years. This recommendation applies for one year only. Given the minor share of U.S. mortality in this fishery (< 2 percent), and given that the ICCAT recommendation provides for the adjustment of next year's catch level in the case of overharvest or underharvest, NOAA Fisheries is not implementing any new regulations for this fishery. The recommendation provides that overages/underage of this annual catch limit be deducted from, or added to, the catch limit established for the year 2002 and/or 2003. Since average recent harvests of North Atlantic albacore have not exceeded this level, no new regulations are being implemented at this time.

At its 2000 meeting, ICCAT also recommended that statistical document programs be developed by July 1, 2002, for bigeye tuna in order to track trade of these species. NOAA Fisheries is exploring options for this issue and will propose a statistical document program for these species in the future, after evaluating discussions at an international technical workshop on monitoring.

Finally in 2000, ICCAT recommended measures to address rebuilding of blue and white marlin stocks. NOAA

Fisheries is currently considering how to implement this recommendation and is addressing that issue in a separate rulemaking. On September 4, 2001, NOAA Fisheries received a petition to list the Atlantic white marlin as threatened or endangered throughout its range and to designate critical habitat under the Endangered Species Act (ESA). NOAA Fisheries staff presented information on the petition during 11 public scoping meetings and received comments regarding the status of the Atlantic white marlin and the applicability of listing this species. On September 3, 2002, the status review team concluded that the white marlin will not be designated as a threatened species, but will be placed on the ESA candidate species list.

## **1.6 Other Amendments to Existing Regulations**

NOAA Fisheries published a final rule on December 12, 2000 (65 FR 77527), to implement trade restrictions for Atlantic swordfish that were recommended by ICCAT in 1999. NOAA Fisheries inadvertently omitted the word "Atlantic" in the regulatory text which results in an interpretation of the regulations that is inconsistent with both the preamble to the final rule and the ICCAT recommendation. ICCAT intended that imports of only Atlantic swordfish (not Pacific or Indian) should be prohibited from Belize and Honduras. NOAA Fisheries also inadvertently applied an incorrect date to the dead discard allowance for 2002. The fishing year begins June 1, 2002. The regulations erroneously state that the North Atlantic swordfish dead discard allowance of 160 mt ww should apply to the fishing year beginning May 1, 2001. In this rule, NOAA Fisheries corrects the omission of "Atlantic" and also corrects the dates applied to dead discard allowances of swordfish. In addition, NOAA Fisheries inadvertently omitted a prohibition on swordfish imports. Prohibitions are a portion of Federal regulations that succinctly summarize the regulations and are utilized often by enforcement personnel. NOAA Fisheries corrects this omission in this rulemaking.

## **2.0 ALTERNATIVES INCLUDING THE PROPOSED ACTIONS**

### **2.1 Alternatives for North Atlantic Swordfish Management**

#### **Final Action: Establish a Reserve Quota Category for North Atlantic Swordfish**

NOAA Fisheries will use unharvested 2000 and 2001 North Atlantic swordfish quota to establish a reserve quota category. The reserve quota category will be established by this final rule and the allocation of at least 400 mt ww (300.8 mt dw) to this category will occur through publication of an in-season notice.

#### **Not Selected at this Time: No Action**

This alternative would maintain the status quo quota arrangement and would not establish a reserve quota category, from which the United States would transfer 400 mt ww (300.8 mt dw) of swordfish quota to Japan.

### **2.2 Alternatives for South Atlantic Swordfish Catch Limits**

#### **Final Action: No Action**

The United States will maintain its regulations which specify that the annual landings quota for the South Atlantic swordfish fishery is 384 mt ww (289 mt dw).

## **Not Selected at this Time: Apply Unused South Atlantic Swordfish Quota from 2000 to the 2001 Fishing year**

Under this alternative, unused South Atlantic landings quota from the 2000 fishing year would be added to the U.S. landings quota for 2001.

## **2.3 Alternatives for Reinstating Prohibitions Regarding Possession of Fish in Violation of International Regulations/Recommendations**

### **Final Action: Reinstating Previously Published Regulations**

NOAA Fisheries prohibits persons and vessels subject to the jurisdiction of the United States from possessing fish taken in violation of ICCAT recommendations or from violating another country's fisheries regulations pertaining to species managed by ICCAT.

### **Not Selected at this Time: No Action**

This alternative would prevent the prosecution of vessels that are currently fishing inconsistent with the fishery conservation and management regulations of other countries pertaining to species managed by ICCAT.

## **2.4 Alternatives for Authorized Fishing Areas**

### **Final Action: Clarify Authorized Fishing Areas for Atlantic HMS**

No person aboard a U.S. fishing vessel shall fish for bluefin tuna in the Mediterranean Sea or possess on board a bluefin tuna taken from the Mediterranean Sea.

### **Not Selected at this Time: No Action**

The no action alternative would not be consistent with the intentions that the United States expressed in response to concerns voiced by other members of ICCAT.

## **2.5 Alternatives for North Atlantic Albacore Catch Limits**

### **Final Action: No Action**

There is not currently a quota for U.S. fishermen landing North Atlantic albacore as our participation in this fishery is minimal. The United States does not catch albacore at levels approaching the TAC allocated by ICCAT.

### **Not Selected at this Time: Establish a Quota with In-Season Monitoring for North Atlantic Albacore**

Under this alternative, NOAA Fisheries would implement the one-time quota of 607 mt ww through regulations that provide for real-time monitoring of the North Atlantic albacore fishery and provide for the fisheries to be closed in the event that the quota was reached.

## **2.6 Alternatives for South Atlantic Albacore Catch Limits**

### **Final Action: No Action**

There is not currently a quota for U.S. fishermen landing South Atlantic albacore because our participation in the fishery is minimal. If landings were to increase, there is no mechanism to limit landings during the fishing year.

### **Not Selected at this Time: Establish a Quota with In-Season Monitoring for South Atlantic Albacore**

Under this alternative, NOAA Fisheries would amend the regulations to establish a 100 mt ww (75 mt dw) landings quota for South Atlantic albacore.

## **2.7 Alternatives for Restricting and Monitoring Trade of Atlantic Bigeye Tuna**

### **Final Action: Implement Trade Restrictions**

Consistent with a 2000 ICCAT recommendation, this alternative bans the imports of bigeye tuna from the following countries: Belize, Cambodia, Equatorial Guinea, Honduras, and St. Vincent and the Grenadines.

### **Not Selected at this Time: Implement a Certificate of Eligibility to Monitor Bigeye Tuna Trade Restrictions**

This alternative would require all bigeye tuna imports to be accompanied by a Certificate of Eligibility (COE) that indicates the flag of harvesting vessel, ocean of origin, and certification that the fish was not caught by a vessel included in the trade restrictions above.

### **Not Selected at this Time: No Action**

This alternative would not implement trade restrictions on the imports of Atlantic bigeye tuna and would not implement measures recommended by ICCAT in 2000.

## **2.8 Conclusion**

NOAA Fisheries is required to implement ICCAT recommendations under ATCA, if the United States accepts those recommendations. The final actions discussed above would satisfy the United States' obligation to implement the binding conservation and management measures that have been adopted by ICCAT. The final actions are also consistent with the goals of the HMS FMP, specifically, to prevent overfishing and rebuild overfished fisheries. The environmental and economic consequences of these preferred alternatives are described below in Sections 6.0 and 7.0, but in general, these impacts are likely to support environmental and economic management objectives of the agency. Alternatives that would not be consistent with U.S. obligations to ICCAT

and the goals of the HMS FMP were considered during this rulemaking process, but are not selected at this time.

### **3.0 ECONOMIC CONSIDERATIONS**

Before implementing management measures, NOAA Fisheries must consider the economic impacts in accordance with two pieces of legislation: the Regulatory Flexibility Act (RFA) and Executive Order 12866 (E.O. 12866). Both the RFA and E.O. 12866 require a description of the need for the action, the management objectives, and a description of the expected economic impacts. They also require an analysis of each alternative, the expected effects, and a description of the reasons why an action is being taken. The main difference between the RFA and E.O. 12866 is the focus of the analysis. While the RFA focuses on individual businesses, E.O. 12866 focuses on the entire fishery.

The analyses required for E.O. 12866 and under the RFA are included in Sections 6.0 and 7.0 of this document, and the economic impacts of the proposed measures are discussed throughout this document. Additional information about the RFA, E.O. 12866, and economic impacts can be found in Chapter 7 of the HMS FMP (NMFS, 1999).

#### **3.1 Small Business Regulatory Enforcement and Fairness Act**

The Small Business Regulatory Enforcement and Fairness Act of 1996 amended the RFA and made compliance with sections of the RFA subject to judicial review. The RFA requires agencies to assess impacts of their final regulations on small entities and to encourage Federal agencies to utilize innovative administrative procedures when dealing with small entities. If an action is believed to be significant, the RFA requires agencies to perform an Initial Regulatory Flexibility Analysis (IRFA) during the proposed rule stage and, after considering public comment, a Final Regulatory Flexibility Analysis (FRFA) during the final rule stage.

The focus of a regulatory flexibility analysis is small businesses and the effect of regulatory measures on their revenues and/or costs. The analyses should contain sufficient information to make a determination of whether the rule has a "significant economic impact on a substantial number of small entities" under the meaning of the RFA. The definition of a "small entity" includes small businesses, small organizations, and small governmental jurisdictions. The Small Business Administration (SBA) considers a small finfish fishing or other marine fishing business as a firm with annual receipts averaging over three years up to \$3.5 million annually (67 FR 3041, January 23, 2002). For fresh and seafood markets, a small business is one that has receipts averaging \$6.0 million annually (67 FR 3041, January 23, 2002). A small organization is defined as any non-profit enterprise that is independently owned and operated and is not dominant in its field. NOAA Fisheries believes that all participants in HMS fisheries, including processors, can be defined as small entities under SBA guidelines.

#### **3.2 Executive Order 12866**

In compliance with Executive Order 12866, the Department of Commerce and NOAA require the preparation of a Regulatory Impact Review (RIR) for all regulatory actions that either implement a new Fishery Management Plan or significantly amend an existing plan, or may be significant in that they reflect agency policy concerns and are of public interest. The RIR is part of the process of preparing and reviewing FMPs and regulatory actions

and is intended to provide a comprehensive review of the changes in net economic benefits to society associated with regulatory actions. Thus, the focus of the RIR is on the net economic benefit from the entire fishery, not the net economic benefit accruing to individual fishermen. The analysis also provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problems. The purpose of the analysis is to ensure that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost-effective way.

#### **4.0 SOCIAL CONSIDERATIONS**

Mandates to conduct social impact assessments come from both the National Environmental Policy Act (NEPA) and the Magnuson-Stevens Fishery Conservation and Management Act. NEPA requires federal agencies to consider the interactions of natural and human environments by using a "systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences...in planning and decision-making" [NEPA section 102(2)(a)]. Moreover, agencies need to address the aesthetic, historic, cultural, economic, social, or health effects which may be direct, indirect, or cumulative. Consideration of social impacts is a growing concern as fisheries experience increased participation and/or declines in stocks. With an increasing need for management action, the consequences of these actions need to be examined in order to mitigate the negative impacts experienced by the populations concerned.

Social impacts are generally the consequences to human populations that follow from some type of public or private action. They may include alterations to the ways people live, work or play, relate to one another, and organize to meet their needs. In addition, cultural impacts, which may involve changes in values and beliefs that affect people's way of identifying themselves within their occupation, communities, and society in general, are included under this interpretation. Social impact analyses help determine the consequences of policy action in advance by comparing the status quo with the projected impacts. Although public hearings and scoping meetings provide input from those concerned with a particular action, they do not constitute a full overview of the affected constituents. An assessment of the impacts of the rulemaking is presented in sections 6.0 and 7.0. For a description of possible social impacts associated with recent regulations, see the HMS Stock Assessment and Fishery Evaluation (SAFE) Report 2002, Chapter 6 (NMFS, 2002b).

#### **5.0 AFFECTED ENVIRONMENT**

Pelagic longline fishermen encounter many species of fish; some of those captured are marketable and thus are retained, others are discarded for economic or regulatory reasons. Species frequently encountered in the pelagic longline fishery are swordfish, tunas, and sharks, as well as billfish, dolphin, wahoo, king mackerel, and other finfish species. Sometimes pelagic longline fishermen inadvertently catch protected species, which include sea turtles, marine mammals, or sea birds. All of these species are federally managed, and NOAA Fisheries seeks to control the mortality that results from fishing effort.

##### **5.1 Status of the Target Finfish Stocks**

North Atlantic swordfish, Atlantic bigeye tuna, and North Atlantic albacore are considered overfished. South Atlantic swordfish are considered fully fished and overfishing may be occurring. South Atlantic albacore are not considered overfished and overfishing is not occurring. Rebuilding plans are in place for North Atlantic swordfish and Atlantic bigeye tuna and NOAA Fisheries is developing rebuilding programs for albacore. In 1999, assessments of the North Atlantic swordfish stock indicated that the decline in stock biomass had been slowed or arrested (SCRS, 1999). ICCAT noted positive signs from the fishery in terms of catch rates, and concluded that the observed high recruitment of age one fish in 1997 and 1998 should allow for increases in spawning stock biomass in the future, if these year classes are not heavily harvested. A new stock assessment for North Atlantic swordfish is scheduled for September 2002.

Detailed descriptions of the life histories and population status of the species managed by the HMS Division are given in the HMS FMP, and are not repeated here. The status of Atlantic swordfish, Atlantic billfish, Atlantic tunas, large coastal and pelagic sharks, other finfish, marine mammals, and seabirds is summarized in chapter 5 of the Final Supplemental Environmental Impact Statement for the Final Rule to Reduce Sea Turtle Bycatch and Bycatch Mortality in HMS Fisheries (FSEIS) (NMFS, 2002a), and is not repeated here. Detailed information on catch and bycatch of HMS by fishery is also provided in the 2002 SAFE Report (NMFS, 2002b).

## **5.2 Status of Non-Target Finfish and Protected Species**

This rulemaking affects tuna and swordfish longline vessels predominantly. Wahoo, king mackerel, some species of sharks (some of which are overfished) and rays, and other finfish, are caught incidental to the swordfish and tuna longline operations in the Atlantic Ocean. The incidence of non-target finfish caught in the longline fishery and in other fisheries is discussed in the 2002 SAFE Report (NMFS, 2002b). Many of these species are marketed along with the target catch of swordfish and tunas, however, others are discarded for personal, economic, or regulatory reasons. Additional details on these non-target finfish can be found in the HMS FMP and the FSEIS (NMFS, 1999 and NMFS, 2002a). The most recent longline bycatch data are available from the 2001 U.S. National Report to ICCAT, the FSEIS (NMFS, 2002a), and the 2002 SAFE Report (NMFS, 2002b).

In accordance with the Marine Mammal Protection Act, NOAA Fisheries published draft stock assessment reports for Atlantic and Gulf of Mexico marine mammals. The status of endangered and threatened marine mammals and sea turtles taken by the pelagic longline fishery is provided in a Biological Opinion (BiOp) issued on June 14, 2001, regarding the interaction of the pelagic longline fishery with protected species. Sea turtles, marine mammals, and seabirds are protected by legislation (Magnuson-Stevens Act, Marine Mammal Protection Act, Migratory Bird Treaty Act) and many of the individual species are protected under the Endangered Species Act.

## **5.3 Fisheries for Atlantic Swordfish, Atlantic Bigeye Tuna, and Atlantic Albacore**

Additional information about the operation of U.S. HMS fisheries can be found in the 2002 SAFE Report (NMFS, 2002b).

### **5.3.1 International HMS Fisheries**

Swordfish are harvested throughout the Atlantic Ocean in tuna and swordfish longline fisheries. Within the North Atlantic, major harvesting nations include Japan, Spain, the United States, Canada, and Portugal. The U.S. quota is 29 percent of the total North Atlantic quota. Numerous other countries, both members and non-members of ICCAT, harvest lesser amounts of swordfish. In the South Atlantic, vessels fishing for swordfish are primarily from Brazil, Spain, Japan, and Uruguay. Vessels from the United States landed less than 2 percent of total South Atlantic landings in 1999. Japanese vessels catch swordfish incidental to tuna longline operations throughout the Atlantic Ocean. In November 1999, ICCAT adopted a rebuilding program that accounts for dead discards as a source of mortality and reduces the TAC to a level that has a 50 percent probability of rebuilding the stock within 10 years. The rebuilding trajectory assumes that all ICCAT nations maintain their landings at or below quotas, and that those countries which do not have a specific quota do not exceed the quota set aside for "others" on a collective basis. In the past, reported swordfish landings have exceeded the TAC by about 10 percent per year. In addition, there are countries and vessels that are fishing illegally, are unregulated, and are not reporting their harvests to ICCAT.

At the 1997 ICCAT meeting, the TAC of South Atlantic swordfish was established at 14,620 mt ww per year, for 1998, 1999 and 2000. This recommendation is still in effect and includes the United States as a minor harvesting nation that shares in 5.5 percent of the total South Atlantic quota. The United States received 384 mt ww (289 mt dw) of the annual allocation for the three years covered by the ICCAT recommendation, based on "recent levels." The U.S. swordfish quotas are applied to a fishing year, beginning June 1 and ending May 31 of each calendar year.

Bigeye tuna are fished in the Atlantic Ocean and by several nations, using three major gears to harvest this Atlantic-wide stock (longline, baitboat, and purse seine). Baitboat fisheries operate predominantly in the eastern Atlantic, purse seine vessels operate in the tropical Atlantic, and longline vessels are operated throughout by many countries, including the United States. The two major longline fisheries targeting bigeye tuna are operated by Japan and Taiwan. Japanese import statistics indicate that IUU catches of bigeye tuna have been increasing and were at about 25,000 MT in 1999 (SCRS, 2000).

The primary nations targeting albacore tuna in the North Atlantic include Spain, France, and Taiwan. The U.S. share of the North Atlantic albacore landings is typically 2 to 3 percent. The historical surface fisheries for North Atlantic albacore tuna include Spanish trolling in the Bay of Biscay as well as baitboats in the Bay of Biscay and near the Azores. Vessels from Taiwan target large albacore tuna with longline vessels in deeper waters of the central and western North Atlantic. Smaller albacore tuna are caught primarily by surface fishing gears such as driftnets and pelagic pair trawls. Major harvesters of South Atlantic albacore include Brazil, Taiwan, Spain, Japan, Namibia, and South Africa. In a typical year, U.S. vessels land less than 1 percent of the total South Atlantic landings. For additional information on this topic, see the 2002 SAFE Report (NMFS, 2002b).

### **5.3.2 U.S. Pelagic Longline Fishery**

Pelagic longline vessels accounted for almost all U.S. commercial swordfish landings and most of U.S. bigeye tuna landings in 2000 (NMFS, 2002b). The U.S. longline fishery is a multi-species fishery that depends on harvesting several primary marketable target species including a variety of tunas and sharks, in addition to swordfish. On average, over the past five years, pelagic longline vessels have accounted for approximately a third of North Atlantic albacore landings. The longline fishery is responsible for all U.S. landings of swordfish and albacore in the South Atlantic. U.S. pelagic longline fishermen are subject to quotas, time and area closures, and

target catch requirements. Bycatch in the Atlantic pelagic longline fisheries is commonly managed through the use of gear modifications, target catch requirements, and closed areas. Bycatch is particularly high in the U.S. Atlantic longline fishery due to regulatory discards. U.S. fishermen are required to throw back (alive or dead) undersized swordfish and tunas, bluefin tuna (if they do not meet target catch requirements), billfish, and sharks (if they are out of season). Additional information on management of U.S. HMS fisheries can be found in the HMS FMP (NMFS, 1999) and 2002 SAFE Report (NMFS, 2002b).

### **5.3.3 Other U.S. Fisheries for Atlantic Swordfish, Bigeye Tuna, and Albacore**

Minor U.S. commercial swordfish landings are made by otter trawl vessels fishing for squid, mackerel and butterfish (primary prey species sought by swordfish) and harpoon, rod and reel, and handline (hand gear). Minor commercial landings of bigeye and albacore tuna are made by rod and reel and handline. Albacore are also caught in coastal gillnet fisheries.

Recreational fishermen pursue each of these species, predominantly using rod and reel. Their landings are estimated using various dockside and phone surveys. For additional information regarding these fisheries or the monitoring scheme, refer to the 2002 SAFE Report (NMFS, 2002b).

## **6.0 ENVIRONMENTAL CONSEQUENCES OF ALTERNATIVES**

NOAA Fisheries is required to implement ICCAT recommendations under ATCA, if the United States accepts those recommendations. The final actions discussed below would satisfy the United States' obligation to implement the binding conservation and management measures that have been adopted by ICCAT. The final actions are also consistent with the goals of the HMS FMP, specifically, to prevent overfishing and rebuild overfished fisheries. The environmental and economic consequences of these preferred alternatives are described below in Sections 6.0 and 7.0, but in general, these impacts are likely to support environmental and economic management objectives of the agency.

### **6.1 Alternatives for North Atlantic Swordfish Management**

#### **Final Action: Establish a Reserve Quota Category for North Atlantic Swordfish**

NOAA Fisheries will use unharvested 2000 and 2001 North Atlantic swordfish quota to establish a reserve quota category. The reserve quota category will be established by this final rule and the allocation of at least 400 mt ww (300.8 mt dw) to this category will occur through publication of an in-season notice.

#### *Ecological Impacts*

The conservation benefits of establishing a reserve quota are considerable. Transferring 400 mt ww (300.8 mt dw) of swordfish quota to Japan will help to ensure that Japanese bycatch of swordfish does not jeopardize the 10-year rebuilding program. It will enable all countries fishing in the North Atlantic to remain within the TAC that was established by ICCAT based on the best available scientific information. The SCRS warned that the

rebuilding projections are sensitive to any level of overharvest. This regulation is designed to implement an international agreement that will keep the rebuilding program on track. At this time, the reserve will be available only to Japan. However, the reserve quota category that is established could also be utilized to collect any future quota underharvests and transfer it to a different U.S. quota category or to account for dead discard overages. It could provide a measure of insurance that the U.S. does not exceed its quota level as any overage that occurs could be compensated with quota from the reserve category.

There are differences between Japanese and American longline sets, but establishing a reserve quota category is not expected to increase the take of marine mammals, sea turtles, seabirds, or other non-target species in either fishery. The U.S. Atlantic pelagic longline fishery is considered a Category I fishery under the Marine Mammal Protection Act (MMPA) and vessels occasionally interact with marine mammals. In addition, the June 14, 2001, BiOp found that the U.S. pelagic longline fleet jeopardized the continued existence of loggerhead and leatherback sea turtles. A final rule promulgated on July 9, 2002, implemented the recommendations required by the BiOp. Although this fishery impacts these species, this final action is not expected to have a significant impact, because the transfer of unused quota to Japan is meant to cover their overharvests in the past, which will not effect the future take of protected species. Takes of seabirds have been minimal in this fishery, most likely due to the setting of longlines at night and/or fishing in areas where birds are largely absent.

### *Economic and Social Impacts*

Establishing a reserve quota for North Atlantic swordfish would have reduced the landings available to U.S. fishermen during the 2001 fishing year and could reduce the potential landings available in the 2002 fishing year. However, it is unlikely that the U.S. fishermen will be able to catch an additional 300.8 mt dw of swordfish, in addition to the unused 1999 quota (540.8 mt dw). The 1999 underharvest was addressed in an in-season action (66 FR 46401, September 5, 2001) and the quota was made available to the directed fishery for the 2001 fishing year. NOAA Fisheries is currently working on an in-season action that would transfer quota underages from the 2000 and 2001 fishing years to the 2002 fishing year. This rulemaking action would also serve to transfer the 400 mt ww (300.8 mt dw) to the reserve quota category. Based on the underages that have occurred the past few years, NOAA Fisheries anticipates that the U.S. pelagic longline fishery will have sufficient quota available to support the current level of effort. In fact, effort may decline during the 2002 fishing year, given that several time and area closures have recently been implemented for the U.S. pelagic longline fleet.

The gross ex-vessel revenue from 300.8 mt dw would be \$2.3 million (\$3.51 per pound for 661,410 lbs [300.8 mt dw \* 2204.6 lbs/mt dw ]). However, NOAA Fisheries and the pelagic longline industry representatives agree that the current U.S. pelagic longline fleet operating in the Atlantic Ocean is not likely to be able to harvest the 400 mt ww (300.8 mt dw) that would be allocated to the reserve quota category, in addition to the underharvest from the 2000 and 2001 fishing years. Therefore, the set-aside of 400 mt ww (300.8 mt dw) from the U.S. landings quota is not expected to have significant economic impacts on U.S. fishermen. Instead, using U.S. quota to support conservation efforts could result in a long-term economic gain, albeit one that is unquantifiable. Social benefits may increase over the long-term if the establishment of a reserve quota allows the North Atlantic Swordfish stock to rebuild over the next decade. In the long-term, the economic impacts of the quota transfer will not be significant, since the availability of future U.S. quota will not be affected. Also, NOAA Fisheries does not expect the creation of a reserve quota category to negatively impact the incidental and recreation swordfish catches.

## *Conclusion*

This action is selected because of the need to preserve the international agreement to reduce swordfish mortality. Creating a reserve quota category and transferring 400 mt ww (300.8 mt dw) to Japan will have a negligible impact on U.S. fisheries while it increases the potential for the North Atlantic swordfish stock to rebuild.

### **Not Selected at this Time: No Action**

This alternative would maintain the status quo quota arrangement and would not establish a reserve quota category, from which the United States would transfer of 400 mt ww (300.8 mt dw) of swordfish quota to Japan.

#### *Ecological Impacts*

The no action alternative would not significantly change the impact of the U.S. swordfish fisheries on target, non-target, and protected species. However, it could contribute to a harmful impact on the North Atlantic swordfish stock if the ICCAT rebuilding plan is not maintained by all the participating nations. Transferring quota to Japan would allow their fishery to remain in compliance with the ICCAT plan.

#### *Economic and Social Impacts*

Short-term economic impacts would probably not be significant, since U.S. vessels have not harvested the full amount of landings quota for the past several years. However, in the mid-term or long-term, the no action alternative could have negative economic and social impacts, because the North Atlantic swordfish population might not continue its recovery. If the fishery does not attain and maintain the maximum sustainable yield, the fishery would experience negative economic impacts and related impacts to fishermen, communities, and others who rely upon the fishery.

*Conclusion* This alternative would not be expected to improve the condition of North Atlantic swordfish or any other non-target or protected species. Conversely, it could have a negative effect if participating countries do not make an effort to comply with the ICCAT rebuilding plan.

## **6.2 Alternatives for South Atlantic Swordfish Catch Limits**

### **Final Action: No Action/Status Quo**

The United States will maintain its regulations which specify that the annual landings quota for the South Atlantic

swordfish fishery is 384 mt ww (289 mt dw).

### *Ecological Impacts*

The United States expressed some concern with the international agreement on South Atlantic swordfish quotas, since the lack of country-specific allocations could allow for overfishing to occur. However, the stock is not currently considered overfished. In addition, this problem could not be avoided by a unilateral reduction in U.S. landings, given that the United States is responsible for only a small share of the mortality on this stock. The environmental impacts resulting from the status quo for the South Atlantic swordfish fishery are not expected to be significant. Landings in 1999, 2000, and 2001 were below the U.S. annual landings quota. NOAA Fisheries anticipates no adverse effects on sea turtles, marine mammals, or seabirds, because the quota is to remain the same and this final action does not cause any changes to fishing practices.

### *Economic and Social Impacts*

No adverse economic impacts are expected from establishing the status quo South Atlantic swordfish quota, as U.S. fishermen landed only 51 mt ww of South Atlantic swordfish during the 1999 fishing year. While landings were somewhat higher in 2001 (71.2 mt ww), due to displacement of effort resulting from time and area closures for pelagic longline vessels in the North Atlantic, only a limited number of vessels are expected to shift their effort toward the South Atlantic. The 384 mt ww quota is not unduly restrictive for the U.S. fishery at this time. Establishing a higher quota, however, may have long-term economic impacts if the TAC from the stock is not sustainable.

### *Conclusion*

This alternative is selected because it complies with the recommendation made by ICCAT.

### **Not Selected at this Time: Apply Unused South Atlantic Swordfish Quota from 2000 to the 2001 Fishing year**

Under this alternative, unused South Atlantic landings quota from the 2000 fishing year would be added to the U.S. landings quota for 2001.

### *Ecological Impacts*

The alternative to roll-over unused South Atlantic swordfish quota from 2000 into 2001 would have a negative environmental impact, since it would authorize an increase in U.S. landings even though the United States has already expressed concern that overfishing may occur in this fishery. The United States remains concerned that, without a well-defined allocation for each country, overfishing may cause the target TAC to be exceeded.

### *Economic and Social Impacts*

While there would be no short-term, negative economic impacts to the fleet in rolling-over unused South Atlantic quota from 2000 to 2001, this action could shape the nature of the fishery by encouraging a future shift in effort from the North Atlantic to the South Atlantic, and promoting overfishing of the stock, contrary to the goals of the

Magnuson-Stevens Act.

### *Conclusion*

The applicable ICCAT recommendations do not specifically authorize a carryover of any underharvest of the U.S. South Atlantic swordfish quota. The United States has taken the position that it would not be appropriate for any countries in the "others" category to roll over unused catch in this fishery. The ICCAT recommendation adopted in 2000 calls for countries to hold catches of South Atlantic swordfish to recent levels and does not specify country-specific quotas. The United States does not believe this to be an oversight. Adopting regulations to apply underage rules in this case would not be consistent with the U.S. position relative to compliance with ICCAT's recommendation.

## **6.3 Alternatives for Reinstating Prohibition Regarding Possession of Fish in Violation of International Regulations/Recommendations**

### **Final Action: Reinstating Previously Published Regulations**

NOAA Fisheries prohibits persons and vessels subject to the jurisdiction of the United States from possessing fish taken in violation of ICCAT recommendations or from violating another country's fisheries regulations pertaining to species managed by ICCAT.

### *Ecological Impacts*

The prohibition on possession of fish taken in violation of an ICCAT recommendation or an international regulation will have positive ecological benefits to species, if it discourages fishermen from operating illegally and contrary to conservation measures. NOAA Fisheries does not expect this action to impact marine mammals, sea turtles, or seabirds.

### *Economic and Social Impacts*

The economic and social impacts of this action are expected to be minimal as this regulation was in effect previously and was removed inadvertently. In the case of the re-establishment of the prohibition on possession of fish taken in violation of ICCAT recommendations, if fishermen are not made aware of or do not understand ICCAT recommendations, they may inadvertently violate such recommendations. However, ICCAT recommendations are available on the ICCAT website, and NOAA Fisheries tries to clarify those recommendations that may be confusing.

### *Conclusion*

This alternative is implemented to promulgate the regulations that were inadvertently left out of the consolidated regulations when the final HMS FMP was published in 1999.

### **Not Selected at this Time: No Action**

This alternative would prevent the prosecution of vessels that are currently fishing inconsistent with the fishery

conservation and management regulations of other countries pertaining to species managed by ICCAT.

### *Ecological Impacts*

The ICCAT rebuilding plans and management of quota usage could be undermined if the status quo is adopted. Fishermen would not have to abide by ICCAT recommendations or regulations, which could lead to harmful impacts to target, non-target, protected, and seabird species.

### *Economic and Social Impacts*

There would be minimal economic and social impacts from this alternative, because fishermen could fish in a manner contrary to ICCAT regulations without being prosecuted for enforcement violations. However, there could be harmful future impacts if rebuilding efforts for particular species are hampered.

### *Conclusion*

This alternative is not selected because it is necessary to ensure that U.S. fishermen and vessels comply with ICCAT requirements.

## **6.4 Alternatives for Authorized Fishing Areas**

### **Final Action: Clarify Authorized Fishing Areas for Atlantic HMS**

No person aboard a U.S. fishing vessel shall fish for bluefin tuna in the Mediterranean Sea or possess on board a bluefin tuna taken from the Mediterranean Sea.

For clarification purposes, this alternative was modified from the draft environmental assessment. To discourage unauthorized fishing, while trying to minimize dead discards, the proposed prohibition on the retention of bluefin tuna from the east Atlantic Ocean has been modified to prohibit the retention of bluefin tuna from the Mediterranean Sea. This modification is consistent with ICCAT agreements to prevent transfer of fishing effort for bluefin tuna from the west Atlantic to the east Atlantic, and vice versa, and is consistent with HMS FMP objectives to reduce dead discards of bluefin tuna.

### *Ecological Impacts*

ICCAT currently manages bluefin tuna based on a two-stock hypothesis, with the two management units separated at 45 W above 10 N and at 25 W below the equator, with an eastward shift in the boundary between those parallels. The 20-year rebuilding program for west Atlantic bluefin tuna, adopted by ICCAT in November 1998, specifies that there shall be no transfer of fishing effort from the west Atlantic to the east Atlantic or vice versa. Under this action, NOAA Fisheries clarifies U.S. regulations to ensure that U.S. vessels comply with this prohibition on the transfer of fishing effort.

This action is expected to have positive environmental impacts for Atlantic bluefin tuna, because it prohibits the transfer of any fishing effort from one stock to the other. Also, it prohibits fishing for bluefin tuna in the Mediterranean Sea that is contrary to ICCAT agreements. Currently, enforcement officers cannot enforce the

prohibition on landing bluefin tuna from these areas because the vessels only provide position reports. Vessel monitoring systems (VMS), if required in the pelagic longline fishery in the future, would provide NOAA Fisheries with information regarding which vessels are fishing in the Mediterranean Sea. This alternative is not expected to impact marine mammals, sea turtles, or seabirds.

### *Economic and Social Impacts*

The regulations to clarify authorized fishing areas for U.S. vessels targeting HMS are not expected to have significant economic effects. Only one vessel was documented in 1999 fishing in the Mediterranean Sea for bluefin tuna, and the value of that vessel's catch cannot be disclosed for confidentiality reasons. The vessel has returned to the United States, therefore there are not expected to be any short-term impacts. This final action may have social and possibly, economic impacts, if other fishermen have been violating international recommendations.

### *Conclusion*

Authorized fishing areas are not included in the existing U.S. regulations, although they exist implicitly in ICCAT recommendations. This action is selected because it incorporates the areas into the U.S. regulations.

### **Not Selected at this Time: No Action**

The no action alternative would not clarify authorized fishing areas and would not be consistent with the intentions that have been expressed by the United States in response to concerns voiced by other members of ICCAT.

### *Ecological Impacts*

Without regulations that clarify allowable fishing areas for U.S. fishermen targeting HMS, there is a risk that U.S. vessels may transfer fishing effort to the east Atlantic. If this occurs, it could jeopardize the management structure of the two bluefin tuna stocks. Also, it could encourage nations fishing in the east Atlantic to transfer effort to the west Atlantic. If this occurred, the conservation efforts undertaken in the west Atlantic to rebuild the bluefin tuna stock could be jeopardized. This alternative would not be expected to impact other fish species, marine mammals, sea turtles, or seabirds.

### *Economic and Social Impacts*

NOAA Fisheries does not expect that there would be any economic or social impacts from the implementation of this alternative.

### *Conclusion*

This alternative is not selected due to the potential degradation of the recent conservation measures in place for bluefin tuna.

## **6.5 Alternatives for North Atlantic Albacore Catch Limits**

## Final Action: No Action/Status Quo

There is not currently a quota for U.S. fishermen landing North Atlantic albacore as our participation in this fishery is minimal. The United States does not catch albacore at levels approaching the TAC allocated by ICCAT.

### *Ecological Impacts*

No environmental impacts are expected from maintaining the North Atlantic albacore fishery at the status quo level. If the U.S. fishery exceeds the amount it is allowed by ICCAT, that overage will be subtracted from the next year's allocation. This process ensures that a sustainable amount of fish is harvested each year and minimizes the impact to the environment. Implementing this alternative is not expected to impact other fish species, marine mammals, sea turtles, or seabirds.

**Table 6.1 Landings of North Atlantic Albacore by U.S. Vessels (mt ww)**

Year	Commercial Landings	Recreational Landings	U.S. Total Landings
1997	241.3 mt	269.5 mt	510.8 mt
1998	227.9 mt	601.1 mt	829 mt
1999	225.5 mt	90.1 mt	315.6 mt
2000	155.7 mt	250.8 mt	406.5 mt
Average	212.6 mt	302.9 mt	515.5 mt

### *Economic and Social Impacts*

This action is not expected to have any economic effects, because it is the status quo and no changes in the fishery are expected.

### *Conclusion*

NOAA Fisheries is implementing this action to maintain the status quo due to the low level of U.S. participation in this fishery.

## **Not Selected at this Time: Establish a Quota with In-Season Monitoring for North Atlantic Albacore**

Under this alternative, NOAA Fisheries would implement the one-time quota of 607 mt ww through regulations that provide for real-time monitoring of the North Atlantic albacore fishery and provide for the fisheries to be closed in the event that the quota was reached.

### *Ecological Impacts*

Since 1997, U.S. landings of North Atlantic albacore have been less than 607 mt on average (see Table 6.1).

While the commercial landings are fairly consistent from year to year, the level of recreational landings is more variable. Albacore is usually encountered incidentally in the U.S. longline and rod and reel fisheries; it is not often the primary target species. This alternative would not be expected to impact other fish species, marine mammals, sea turtles, or seabirds.

### *Economic and Social Impacts*

This alternative would involve significant administrative burden, since this fishery has never been managed based on a quota in the past. Implementing this one-year quota through new regulations and in-season monitoring would be an expensive endeavor for the agency. Given the relatively minor level of U.S. landings and the administrative burden that would be involved in managing the fishery on a real-time basis, this alternative is not selected at this time.

### *Conclusion*

This alternative is not selected because the low level of U.S. participation does not warrant establishing a monitoring and reporting management system at this time.

## **6.6 Alternatives for South Atlantic Albacore Catch Limits**

### **Final Action: No Action/Status Quo**

This action maintains the status quo. There is not currently a quota for U.S. fishermen landing South Atlantic albacore because our participation in the fishery is minimal. If landings were to increase, there is no mechanism to limit landings during the fishing year.

### *Ecological Impacts*

No environmental impacts are expected from maintaining the South Atlantic albacore fishery at the status quo level, given the minimal level of U.S. involvement in this fishery. After the 2000 stock assessment, the SCRS concluded that the recent level of South Atlantic albacore landings can probably be maintained into the near future without causing a substantial decline in spawning stock biomass. The management recommendation adopted by ICCAT in November 2000 established a TAC of 29,200 mt, which is considered replacement yield for the fishery. Furthermore, the recommendation specifies that parties not fishing actively for South Atlantic albacore (i.e., having caught on average less than 100 mt ww (75 mt dw) per year during the years 1992-96) be subject to an annual catch limit of 100 mt ww (75 mt dw). This provision applies to the United States, based on U.S. catch history. However, since less than 2 mt of South Atlantic albacore were landed by U.S. vessels during 1999, and it is unlikely that U.S. landings will exceed 100 mt ww in the near future, NOAA Fisheries is not implementing a quota of 100 mt ww (75 mt dw) at this time. This action is not expected to impact other fish species, marine mammals, sea turtles, or seabirds.

### *Economic and Social Impacts*

Given the minimal participation by U.S. fishermen in this fishery, this action, maintaining the status quo, is not expected to have any economic or social impacts.

### *Conclusion*

NOAA Fisheries is implementing this alternative to maintain the status quo due to the low level of U.S. participation in this fishery and the fact that U.S. landings are unlikely to exceed 100 mt ww.

### **Not Selected at this Time: Establish a Quota with In-Season Monitoring for South Atlantic Albacore**

Under this alternative, NOAA Fisheries would amend the regulations to establish a 100 mt ww (75 mt dw) landings quota for South Atlantic albacore.

### *Ecological Impacts*

Based on the low level of effort targeting South Atlantic albacore, this alternative would not be expected to impact the target species, other fish species, marine mammals, sea turtles, or seabirds.

### *Economic and Social Impacts*

Establishing a quota with in-season monitoring for South Atlantic albacore would not be expected to provide any economic benefits or costs. Given the minimal level of U.S. involvement in this fishery (less than 2 mt landed in 1999), this alternative would not be expected to have any negative economic impacts on the fishery. However, selecting this alternative would increase the administrative burden to NOAA Fisheries.

### *Conclusion*

The alternative is not selected because it is unnecessary given the recent level of South Atlantic albacore landings in the U.S. fishery.

## **6.7 Alternatives for Restricting and Monitoring Trade of Atlantic Bigeye Tuna**

### **Final Action: Implement Trade Restrictions**

Consistent with a 2000 ICCAT recommendation, this alternative bans the imports of bigeye tuna from the following countries: Belize, Cambodia, Equatorial Guinea, Honduras, and St. Vincent and the Grenadines.

### *Ecological Impacts*

Implementing trade restrictions on Atlantic bigeye tuna will likely benefit the stock as it will discourage IUU fishing and aid SCRS in evaluating management measures in light of the need for rebuilding this stock. This action could also have positive impacts on other HMS and protected species if it reduces the level of IUU fishing. Longline vessels frequently catch other species: sea turtles, seabirds, marine mammals, billfish, bluefin tuna, and sharks. Large-scale illegal fishing is likely to have a negative impact on many species; this impact, however, is not quantifiable at this time. ICCAT has received correspondence from St. Vincent indicating a willingness to get involved in ICCAT and comply with ICCAT measures, which would have a positive impact on target and non-target species.

### *Economic and Social Impacts*

There are not likely to be any economic impacts on U.S. fishermen or importers due to the implementation of this action. No bigeye tuna are currently being imported into the United States from the identified countries so no direct impacts from the trade restrictions are anticipated.

### *Conclusion*

In 2000, ICCAT recommended that an import prohibition against Honduras be established, effective January 1, 2002, unless ICCAT decides at its 2001 meeting that this measure would be unnecessary based on documentary evidence. ICCAT did not come to consensus regarding not implementing the import prohibition against Honduras in 2001. Accordingly, this action implements the import prohibition of Atlantic bigeye tuna from Honduras. This measure also implements regulations including a rebuttable presumption that any imported bigeye tuna was harvested by a vessel of the exporting nation. In this instance, the exporter, if exporting bigeye tuna from a country listed above, would need to prove to U.S. Customs that the fish was harvested by a vessel flying the flag of another nation.

### **Not Selected at this Time: Implement a Certificate of Eligibility to Monitor Bigeye Tuna Trade Restrictions**

This alternative would require all bigeye tuna imports to be accompanied by a Certificate of Eligibility (COE) that indicates the flag of harvesting vessel, ocean of origin, and certification that the fish was not caught by a vessel included in the trade restrictions above.

### *Ecological Impacts*

Without specific monitoring of trade by the United States (flag of harvesting vessel and ocean of origin data), it would be difficult for ICCAT to undertake a comprehensive analysis of the bigeye tuna consumed. In 2001, ICCAT recommended the formation of a bigeye tuna statistical document program. Currently, NOAA Fisheries is working to establish a bigeye tuna trade monitoring program consistent with ICCAT recommendations regarding statistical documentation schemes. The program will be implemented by NOAA Fisheries in a future rulemaking. This alternative would not be expected to impact other fish species, marine mammals, sea turtles, or seabirds.

### *Economic and Social Impacts*

Importers would be responsible for mailing these COE forms to NOAA Fisheries on a bi-weekly basis. Data would be cross-checked with Customs data that NOAA Fisheries currently receives on a monthly basis. Shipments of Atlantic bigeye tuna from these countries would not be approved for entry by U.S. Customs. These impacts would not be expected to have significant economic or social impacts on U.S. importers because no Atlantic bigeye are currently imported into the United States from these countries.

### *Conclusion*

This alternative is not selected because NOAA Fisheries is working on a more comprehensive monitoring scheme, consistent with the 2001 ICCAT recommendation. Until that scheme becomes effective, NOAA Fisheries intends to monitor trade of bigeye tuna through a rebuttable presumption that any bigeye that enters this country is assumed to be harvested by the exporting country, unless proven otherwise. NOAA Fisheries will use data submitted on a monthly basis by the U.S. Customs Service to check the origins of imports of bigeye tuna.

### **Not Selected at this Time: No Action**

This alternative would not implement trade restrictions on the imports of Atlantic bigeye tuna and would not implement measures recommended by ICCAT in 2000.

#### *Ecological Impacts*

Not implementing such trade restrictions would likely have negative impacts on Atlantic bigeye tuna because large-scale tuna fishing could continue to occur unregulated and without reporting their catch. It is necessary to control these IUU vessels in order to support rebuilding of this overfished stock. Taking no action could allow for more illegal fishing which could increase bycatch of non-target species such as marine mammals, sea turtles, and seabirds.

#### *Economic and Social Impacts*

If the United States does not implement trade restrictions, there could be an economic impact on U.S. fishermen in the long term if bigeye tuna continue to be overfished. Stock size could reach dangerously low levels which may cause ICCAT to recommend restrictive measures with potentially negative impacts on U.S. fishermen.

#### *Conclusion*

It would not be possible for the United States to comply with the ICCAT recommendation under this alternative. The United States does not currently collect information to indicate the flag of the harvesting vessel for imported bigeye tuna. Further, the United States would not be able to prohibit imports of bigeye tuna under this alternative.

### **6.8 Other Amendments to Existing Regulations**

NOAA Fisheries inadvertently applied an incorrect date to the dead discard allowance for 2002. The fishing year starts June 1, 2002. The regulations incorrectly state that the North Atlantic swordfish dead discard allowance of 160 mt ww should apply to the fishing year beginning May 1, 2001. Correcting the date to apply the swordfish dead discard allowance to June 1, 2002, clarifies and reflects the intent of the relevant ICCAT recommendation. This change would not have an economic impact since it neither changes the fishing year nor the intent of the dead discard allowance that ICCAT recommended.

NOAA Fisheries published a final rule in December 12, 2000 (65 FR 77527), to implement trade restrictions for Atlantic swordfish that were recommended by ICCAT in 1999. NOAA Fisheries inadvertently omitted the word "Atlantic" in the regulatory text which results in an interpretation of the regulations that is inconsistent with both the preamble to the final rule and the ICCAT recommendation. ICCAT intended that imports of only Atlantic swordfish (not Pacific or Indian) should be prohibited from Belize and Honduras. The correction lessens the

impact on affected importers since it reduces the scope of the restrictions to include only *Atlantic* swordfish, instead of applying to swordfish from all ocean areas.

In addition, NOAA Fisheries inadvertently omitted a prohibition on swordfish imports. Prohibitions are a portion of Federal regulations that succinctly summarize the regulations and are utilized often by enforcement personnel. Including a prohibition does not change the nature of the regulatory requirements but adds support to prosecution of cases related to such regulatory measures. Therefore, this amendment would not have any economic impact on small entities.

## **6.9 Cumulative Impacts**

The HMS FMP (NMFS, 1999) adopted final actions to establish the foundation for developing ten-year rebuilding programs for North Atlantic swordfish and bigeye tuna. It concluded that the cumulative long-term impact of these and other management measures would be to establish sustainable fisheries for Atlantic tunas, swordfish, and sharks. As discussed in Section 1 of the EA, ICCAT has adopted recommendations to establish a ten-year rebuilding program for bigeye tuna. NOAA Fisheries currently is exploring options for implementing the statistical document program.

In addition, in July 2002, NOAA Fisheries published a final rule to implement the June 14, 2001, BiOp to address the need to reduce sea turtle bycatch and bycatch mortality in HMS fisheries. Some measures in the final rule are expected to have positive impacts on sea turtle populations. Other measures, such as the closure of the northeast distant statistical reporting area, are expected to have long-term, negative, social and economic impacts.

Taking the above into consideration, the final actions in this EA are not expected to have any significant, adverse, cumulative impacts on the human environment. Creating a reserve quota category, reinstating prohibitions on possession of fish in violation of international recommendations and regulations, clarifying authorized fishing areas, and implementing trade restrictions, all of which are consistent with ICCAT recommendations, will have positive, cumulative impacts on the environment with minimal to no adverse economic and social impacts. Maintaining status quo catch limits for South Atlantic swordfish and South and North Atlantic albacore are expected to have no adverse ecological, economic, and social impacts, and consequently, no adverse, cumulative impacts.

## **7.0 REGULATORY IMPACT REVIEW AND ECONOMIC ANALYSES**

An RIR provides analyses of the expected economic benefits and costs of each alternative to the nation and to the fishery as a whole. This section assesses the impacts of the alternatives presented in this document. Certain elements required in an RIR are also required as part of an environmental assessment. Thus, this section should only be considered a portion of the RIR. The rest of the RIR can be found in other sections of this document. Section 1.0 of this document describes the need for action and the objectives of the regulations. The alternatives considered are described in section 6.0.

Based on the information described below, NOAA Fisheries certified under RFA that the regulations described in this document will not have a significant impact to a substantial number of small entities. Accordingly, NOAA Fisheries did not complete an Initial or Final Regulatory Flexibility Analysis. No comments were received during

the public comment period on the proposed rule and the draft Environmental Assessment and Regulatory Impact Review that would alter the basis of the RFA certification.

## 7.1 Evaluation of Economic Impacts

### *North Atlantic Swordfish Quota Reserve*

This section primarily addresses the economic impacts of establishing a reserve quota category for North Atlantic Swordfish. The costs/benefits of the other alternatives cannot be easily quantified although they are discussed qualitatively in Table 7.1. This analysis concentrates on the commercial fishery because at this time the recreational fishery does not contribute significantly to total swordfish landings (the recreational sector landed 15.6 mt ww of swordfish in 2000 compared with the 2,978.1 mt ww landed by the commercial sector). NOAA Fisheries has been working on a strategy to enhance the monitoring of recreational handgear-caught swordfish. A proposed rule was published (December 26, 2001; 66 FR 66386) that includes the mandatory reporting of recreationally-landed swordfish via a toll-free call-in system. The final rule is expected to publish in the near future to promulgate these measures.

The commercial fishery is composed of fishermen who hold a swordfish directed, incidental, or handgear permit and the related industries including processors, bait houses, and equipment suppliers, all of which NOAA Fisheries considers to be small entities. In October 2001, there were approximately 208 fishermen with a directed swordfish limited access permit, 112 fishermen with an incidental swordfish limited access permit, and 100 fishermen with a handgear limited access permit for swordfish. As the commercial handgear fishery (troll, handline, and harpoon) only landed 9.5 mt ww of swordfish in 2000, NOAA Fisheries feels that they will not be effected by the reserve quota category formation. Because the pelagic longline fishery contributes most of the effort and catches most of the swordfish quota, the analyses in this section focus on that fishery.

**Table 7.1 The number of vessels that reported fishing with pelagic longline gear in the pelagic logbook.** Source: Cramer, 2001.

<b>Year</b>	<b>Number of active vessels</b>	<b>Year</b>	<b>Number of active vessels</b>
1990	416	1996	367
1991	333	1997	350
1992	337	1998	286
1993	434	1999	224
1994	501	2000	199
1995	489	-	-

The number of active pelagic longline vessels has been decreasing since 1994, as shown in Table 7.1 which lists the number of active vessels from 1990 to 2000. The gross revenues of pelagic longline vessels vary greatly depending on the location and species targeted. Using the weight of fish landed per trip as reported in 2000

weigh-out slips and the average 2000 ex-vessel price for the fleet (Table 7.2), NOAA Fisheries calculated the average gross revenues per trip and per vessel for pelagic longline vessels. This information indicates that overall, the average pelagic longline vessel has annual gross revenues of \$168,114 (range of less than \$1,000 to almost \$800,000) and that combined the 171 vessels reporting HMS landings in both the pelagic logbook and the weigh-out slips in 2000 had total annual gross revenues of almost \$29 million. Most of these gross revenues were derived from swordfish and yellowfin tuna landings (Table 7.3).

**Table 7.2 Average ex-vessel prices per lb dw for Atlantic HMS in 2000.** Source: Dealer weigh-out slips from the Southeast Fisheries Science Center and Northeast Fisheries Science Center, and bluefin tuna dealer reports from the Northeast Regional Office.

Species	Average ex-vessel price all regions
Bigeye tuna	\$3.18
Bluefin tuna	\$9.66
Yellowfin tuna	\$2.46
Other tunas	\$0.75
Swordfish	\$3.51

**Table 7.3 The species composition of landings in the pelagic longline fleet in 2000.** Source: Logbook and weigh-out data maintained by the Southeast Fisheries Science Center.

Species	% by number	% by weight	% by revenues
Swordfish	37.34	43.71	51.93
Yellowfin tuna	42.68	41.21	34.31
Bigeye tuna	7.32	7.43	8.00
Bluefin tuna	0.14	0.95	3.09
Other tunas	5.69	2.35	0.60
Pelagic sharks	1.82	2.13	1.16
Large coastal sharks	5.00	2.22	0.91

The final action promulgated by NOAA Fisheries establishes a reserve quota category that will be initially filled with 400 mt ww (300.8 mt dw) of swordfish quota that is available due to underharvests in the pelagic longline fishery in recent years. On September 5, 2001, NOAA Fisheries published a Federal Register notice (66 FR

46401) that transferred unused quota from the 1999 to the 2001 fishing year (249 mt dw to the 2001 directed fishery quota and 300.8 mt dw to the 2001 incidental catch quota). NOAA Fisheries is analyzing the data from the 2000 and 2001 fishing years to determine how much quota remains from the underharvests in those years. Based on the amounts of the recent quota underages, the impacts of recent management actions, and the level of effort in the fishery, NOAA Fisheries feels that it is unlikely that the pelagic longline fleet would catch the existing quota amount (including quota roll-overs).

The average ex-vessel swordfish price reported in 2000 on dealer weighout slips was \$3.51 per pound dw (NMFS, 2002a). Therefore, the 400 mt ww (300.8 mt dw) of quota to be transferred to Japan would be worth approximately \$2.33 million if it was caught in the U.S. fishery. Depending on the fishing year and on ex-vessel prices, it could be worth more or less in the future. It should be stressed that quota is not worth anything to fishermen until the swordfish are landed and sold. As previously mentioned, it is unlikely given the current level of effort that the amount to be transferred to Japan will be caught now or in the near future. Thus, the current economic impact of establishing a reserve quota category is negligible. In the future, by using quota to influence other countries (as in the case of Japan) to support conservation efforts, U.S. fishermen could effect a large long-term economic gain, albeit one that is unquantifiable. In theory, fishermen may see increased landings revenues in the future if the North Atlantic swordfish stock continues to rebuild.

#### *South Atlantic Swordfish, North Atlantic Albacore, and South Atlantic Albacore Quota*

NOAA Fisheries is maintaining the quota levels for these fisheries at the status quo level. In the case of South Atlantic swordfish, the quota of 384 mt ww (289 mt dw) has not been harvested in recent years. Thus, there will be no economic impacts from maintaining the quota at its current level. Regarding North and South Atlantic albacore, NOAA Fisheries is taking no action. Currently, there are no quota levels in effect for these fisheries due to its small size in relation to international landings. The U.S. landings of North Atlantic albacore have averaged 515.5 mt ww from 1997 to 2000. ICCAT recommends that nations not fishing actively for South Atlantic albacore limit their annual catch to 100 mt ww (75 mt dw). As the U.S. landed less than 2 mt in 1999, NOAA Fisheries does not expect there to be any economic impact from maintaining the 100 mt ww recommended by ICCAT.

#### *Clarifying Authorized Fishing Areas, Reinstating Previous Regulations, and Implementing Trade Restrictions*

NOAA Fisheries does not expect these measures to have significant impacts. Clarifying authorized fishing areas and reinstating previous regulations serve to adjust fishing prohibitions. These will not impact those vessels fishing legally and it will allow NOAA Fisheries to better enforce current regulations. Banning the imports of bigeye tuna from selected countries will likely not have economic impacts as the U.S. does not currently import that species from the identified countries.

## **7.2 Regulatory Impact Review**

### **7.2.1 Description of the management objectives**

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

### 7.2.2 Description of the fishery

Please see section 5 for a description of the fisheries that could be affected by this rulemaking.

### 7.2.3 Statement of the problem

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

### 7.2.4 Description of each alternative

Please see section 2 for a summary of each alternative and section 6 for a complete description of each alternative and its expected ecological, social, and economic impacts.

### 7.2.5 Economic analysis of expected effects of each alternative relative to the baseline

NOAA Fisheries does not believe that the national net benefits and costs would change significantly in the long run as a result of implementation of the preferred alternatives. For the 2002 fishing year, the present value of gross and net revenues for the swordfish fishery at the ex-vessel level could be reduced, depending on the extent to which fishermen can catch the quota. In the long-term, the final actions should help rebuild the overfished stocks of swordfish by reducing dead discards of Japanese-caught swordfish and increase the benefit the nation receives from harvesting this species. Table 7.4 indicates possible changes as a result of each alternative.

**Table 7.4 Summary of benefits and costs for each alternative.**

<b>Management Measure</b>	<b>Net Economic Benefits</b>	<b>Net Economic Costs</b>
<i>North Atlantic Swordfish Management</i>		
Establish a Conservation Reserve Quota for North Atlantic Swordfish <b>FINAL ACTION</b>	<i>Long-term:</i> If reserve quota transfer encourages Japanese fleet to conserve swordfish, it would increase stock size and increase revenues to U.S. fishermen and related businesses in the long-term. <i>Short-term:</i> Reserve category could ensure that U.S. fishermen do not exceed quota level or dead discard allowance.	Potential decrease in revenues to U.S. fishermen and related businesses if season closes prematurely due to quota transfer. This is unlikely due to the current level of underharvests in the fishery.
No Action	None.	Minimal.
<i>South Atlantic Swordfish Catch Limits</i>		
No Action <b>FINAL ACTION</b>	None, current level of landings by U.S. vessels is well below the allowable level.	None.
Apply Unused	Would increase the quota available to U.S.	Could encourage overfishing, by

South Atlantic Swordfish Quota from 2000 to the 2001 Fishing Year	vessels for one year. If effort increased, could result in increased revenue.	allowing carryover for parties that have not been allocated a specific quota share. Fish stocks might decrease over time causing reduction in revenue to entire industry and fishing communities.
<i>Reinstating Prohibition Regarding Possession of Fish in Violation of International Regulations/Recommendations</i>		
Reinstating Previously Published Regulations <b>FINAL ACTION</b>	Long-term benefits to all ICCAT species protected by ICCAT recommendations.	No change.
No Action	None.	Could encourage overfishing on ICCAT managed species which could decrease long-term revenues.
<i>Authorized Fishing Areas</i>		
Clarify Authorized Fishing Areas <b>FINAL ACTION</b>	Prevents illegal fishing which could jeopardize the recovery of bluefin tuna.	None.
No Action	None.	None.
<i>North Atlantic Albacore Catch Limits</i>		
No Action <b>FINAL ACTION</b>	None, current level of landings by U.S. vessels is below the allowable level.	None.
Establish a Quota with In-Season Monitoring for North Atlantic albacore	Would ensure that the United States does not exceed its North Atlantic albacore quota.	None.
<i>South Atlantic Albacore Catch Limits</i>		
No Action <b>FINAL ACTION</b>	None, current level of landings by U.S. vessels is well below the allowable level.	None.
Establish a Quota with In-	None, current level of landings by U.S. vessels is well below the allowable level.	

Season Monitoring for South Atlantic albacore		None.
<i>Restricting and Monitoring Trade of Atlantic Bigeye Tuna</i>		
Implement Trade Restrictions <b>FINAL ACTION</b>	Reduces potential for IUU fishing and supports conservation of overfished Atlantic bigeye tuna stock.	Minimal, potential future costs to importers who would like to develop trade relations with importers from prohibited countries.
Implement a Certificate of Eligibility to Monitor Trade Restrictions	Increases enforcement of trade restrictions; allows U.S. to contribute to international database on bigeye tuna trade which may increase conservation.	Potential costs if shipments are held back waiting for documentation.
No Action	Less burden on importers/exporters of bigeye tuna.	Continued IUU fishing on bigeye tuna with long-term conservation costs.

### 7.2.6 Summary

Under E.O. 12866 an action is considered significant if the regulations result in a rule that may:

1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

The final actions described in this document and in the final rule do not meet the above criteria. Therefore, under E.O. 12866, the final rule is not a significant regulatory action.

### 8.0 FINDING OF NO SIGNIFICANT IMPACT

NOAA Fisheries published a proposed rule (66 FR 57409) on November 15, 2001, under the authority of the

HMS FMP. NOAA Fisheries solicited comments on the subject issues and has considered those comments. No comments were submitted to NOAA Fisheries regarding the draft Environmental Assessment, Regulatory Impact Review, or the determination that an Initial Regulatory Flexibility Analysis was not needed. Copies of the final rule are available from NOAA Fisheries at the following address:

Tyson Kade  
National Marine Fisheries Service, F/SF1  
1315 East-West Highway  
Silver Spring, MD 20910

The final rule establishes the following actions:

- Establishes North Atlantic swordfish quota reserve,
- Maintains status quo South Atlantic swordfish quota,
- Reinstates previous regulations concerning the possession of fish in violation of international regulations or recommendations,
- Clarifies authorized fishing areas,
- Maintains status quo North Atlantic albacore quota,
- Maintains status quo South Atlantic albacore quota, and
- Establishes trade restrictions.

The EA considers information contained in the 2002 SAFE Report, the 2002 FSEIS, and in ICCAT recommendations. Based on the following summary of effects, I have determined that implementation of the approved final regulatory measures will not have significant effect on the human environment.

#### Summary of Effects - Rationale

- Establishes North Atlantic swordfish quota reserve

This final action establishes a reserve quota for immediate use to transfer 400 mt ww (300.8 mt dw) of unused U.S. catch quota to the Japanese, consistent with a 2000 ICCAT recommendation. Taking no action would have resulted in Japanese swordfish mortality exceeding those levels recommended in the international swordfish rebuilding plan.

There are no expected negative impacts to the biological or physical environment from the final action. Benefits will be derived from negotiating with the Japanese to allow for their catch under U.S. unused quota. This also allows the United States to retain control over unused quota. This measure does not have any economic impact on U.S. fishermen because they would not likely catch this quota if it was allocated to the directed fishery, rather than to the reserve category.

- Maintains status quo South Atlantic swordfish quota

This action is consistent with a 2000 ICCAT recommendation. Increasing the quota could have negative impacts on the sustainable management of the stock. There are no expected negative impacts to the biological or physical environment from the final action. Benefits will be derived from continued involvement in the fishery and the continued ability to negotiate measures at ICCAT that would protect the stock. There are no expected negative

economic and social impacts because there is no change to the current fishing practices.

- Reinstates previous regulations concerning the possession of fish in violation of international regulations or recommendations,

This action will prevent the possession of fish taken in violation of an ICCAT recommendation or an international regulation. If illegal fishing is reduced, the measure will have ecological benefits, and NOAA Fisheries expects the economic and social costs to be minimal.

- Clarifies authorized fishing areas

At the 2000 ICCAT meeting, the U.S. received notice from the European Community that a U.S. vessel had landed bluefin tuna caught in the Mediterranean Sea. As this fishing activity is not consistent with the terms of the rebuilding program for west Atlantic bluefin tuna, NOAA Fisheries is acting to prohibit it in the future. There are no expected negative impacts to the biological or physical environment and no negative economic and social impacts from this final action. Benefits will be derived from compliance with ICCAT recommendations.

- Maintains status quo North Atlantic albacore quota

While the U.S. does not currently have a North Atlantic albacore quota, ICCAT recommends that the U.S. adhere to a 607 mt ww catch limit. From 1997 to 2000, the average U.S. catch was 515.5 mt ww. As NOAA Fisheries considers it unlikely that the U.S. catch will exceed the ICCAT catch limit, there is no need to establish a quota monitoring system. This measure is not expected to have economic costs or benefits.

- Maintains status quo South Atlantic albacore quota

Currently, there is no U.S. quota for South Atlantic albacore. ICCAT recommends that nations not actively fishing for South Atlantic albacore (including the U.S.) be limited to catch limits of 100 mt ww. In 1999, U.S. fishermen landed 2 mt ww of South Atlantic albacore. Based on U.S. catch history, NOAA Fisheries does not expect to exceed the 100 mt limit required by ICCAT and is not acting to implement a catch limit and quota monitoring system at this time. This measure is not expected to have economic costs or benefits.

- Establishes trade restrictions

This action is consistent with a 2000 ICCAT recommendation. By prohibiting the import of bigeye tuna from those countries, ICCAT hopes to reduce instances of IUU fishing. If this measure is successful, it will improve the conservation of bigeye tuna in the Atlantic Ocean. NOAA Fisheries does not expect this measure to have significant economic costs or benefits.

## **Conclusion**

National Oceanic and Atmospheric Administration Order 216-6 (revised May 20, 1999) provides nine criteria for determining significance of the impacts of an action. These criteria, including considerations under 40 CFR § 1508.27, are discussed below:

*(1) Can the action be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action:*

Implementation of the final rule will not jeopardize the sustainability of any target species. Developing a reserve quota category for North Atlantic swordfish to transfer 400 mt ww (300.8 mt dw) to Japan and potentially guard against overharvests or an excess of dead discards will assist the efforts to manage the species. Likewise, the other alternatives are not expected to adversely impact sustainability. In most cases, they maintain the status quo or clarify international and domestic requirements.

*(2) Can the action be reasonably expected to allow substantial damage to the ocean and coastal habitats and/or EFH as defined under the Magnuson-Stevens Act and identified in FMPs?*

Pelagic longline fishing occurs offshore in areas of open ocean where there is no danger of damaging ocean and coastal habitats or EFH. The fishery targets swordfish and tuna and primarily catches blue sharks as bycatch. This regulatory action will not result in an increase in interactions with target and non-target species.

*(3) Can the action be reasonably expected to have a substantial adverse impact on public health or safety?*

Like all offshore fisheries, pelagic longlining can be dangerous. Fishermen have pointed out that due to decreasing profit margins, they may have to fish with less crew or less experienced crew or may not have the time or money to complete necessary maintenance tasks. NOAA Fisheries cannot influence the market to improve profits to fishermen, but rather encourages fishermen to be responsible in fishing and maintenance activities. Safety factors were considered in selecting the final actions, and NOAA Fisheries has concluded that they are not likely to affect safety at sea.

*(4) Can the action be reasonably expected to have an adverse impact on endangered or threatened species, marine mammals, or critical habitat of these species?*

No irreversible or irretrievable commitments of resources are expected from this final action as the measures implemented by this final rule are not expected to harm or increase fishery interactions with endangered species or their habitat.

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

The final rule is not expected to result in cumulative adverse effects that could have a substantial effect on target or non-target species. As stated in Section 6.0, the catch level of target and non-target species will not be significantly impacted by this action.

*(6) Can the action be reasonably expected to jeopardize the sustainability of any non-target species?*

The action is not expected to jeopardize the sustainability of any non-target species. The impacts on protected and non-target species are discussed in Section 6.0. NOAA Fisheries currently monitors the fisheries related impacts on protected and non-target species and can adjust the management of the fishery to maintain the sustainability of non-target species.

*(7) Can the action be expected to have a substantial impact on biodiversity and ecosystem function*

*within the affected area (e.g., benthic productivity, predatory-prey relationships, etc.)?*

The action is not expected to have a substantial impact on biodiversity and ecosystem function within the affected area due to the scope of the measures and the degree of oversight in the action area. In many cases, the rule maintains the status quo management measures which have been decided by ICCAT. Section 6.0 discusses the impacts of all the measures and examines their expected impacts.

*(8) Are significant social or economical impacts interrelated with significant natural or physical environmental effects?*

NOAA Fisheries has conducted a Regulatory Impact Review and determined that the economic impacts of these actions would be minimal. While the value of the swordfish quota to be transferred to Japan could be as high as \$2.3 million, it is unlikely that the U.S. pelagic longline fishery would be able to harvest all the currently available quota. As this would have to happen to make the Japanese transfer that valuable, the real economic impact of the quota transfer is very minor. From an environmental perspective, NOAA Fisheries expects that there would be a positive, cumulative impact in the long-term from the establishment of the reserve quota category. As the impacts from the other final actions (establishing a reserve quota category; maintaining the status quo South Atlantic swordfish, North Atlantic albacore, and South Atlantic albacore quotas; clarifying fishing areas and regulations; and implementing trade restrictions) are expected to be minor or none at all, the overall cumulative effects of this final rule are not significant.

*(9) To what degree are the effects on the quality of the human environment expected to be highly controversial?*

NOAA Fisheries does not believe that the final rule will have controversial effects on the human environment. When these alternatives were published as a proposed rule, public comments were solicited. Based on the answers received, there were no strong objections to these measures. The action with the greatest potential impact, establishing a reserve quota category, was supported by the longline industry as beneficial for swordfish conservation. The rest of the actions involve maintaining the status quo or clarifying existing regulations, so no controversial effects are expected.

For the reasons stated above, implementation of these final regulations will not significantly affect the quality of the human environment, with specific reference to the criteria contained in Section 6.02 of NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act. Accordingly, the preparation of an Environmental Impact Statement on the final action is not necessary.

Approved: Rebecca Lent October 22, 2002  
Assistant Administrator for Fisheries Date

## **9.0 LIST OF AGENCIES AND PERSONS CONSULTED IN FORMULATING THE FINAL RULE**

Discussions pertinent to formulation of the final action involved input from a variety of scientific and constituent interest groups including the U.S. delegation to ICCAT (including commercial and recreational fishermen, and environmental advocates), ICCAT's SCRS, ICCAT (27 member states), and staff from the International Fisheries Division of NOAA Fisheries and the NOAA's General Counsel for Fisheries.

## 10.0 LIST OF PREPARERS

This document was prepared by a team of individuals previously and currently employed by the Office of Sustainable Fisheries of the National Marine Fisheries Service including Karyl Brewster-Geisz, Rachel Husted, Tyson Kade, Christopher Rogers, Margo Schulze-Haugen, and Jill Stevenson.

## 11.0 REFERENCES

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NMFS. 2002b. Stock Assessment and Fishery Evaluation for Atlantic Highly Migratory Species. March 2002.

SCRS. 1999. Detailed Report for the Swordfish Stock Assessment Session of the Standing Committee on Research and Statistics, October 9, 1999.

SCRS. 2000. Report of the Standing Committee on Research and Statistics, 12<sup>th</sup> Special Meeting of the Commission, October 16-20, 1999.

## APPENDIX A COMMENTS AND RESPONSES

NOAA Fisheries held three public hearings in November and December 2001 in Fort Lauderdale, FL; Fairhaven, MA; and Barnegat Light, NJ. Comments were received from fishery participants and other members of the public regarding the proposed regulations. In addition, two written comments were submitted to NOAA Fisheries during the 45-day comment period. The comments are summarized here together with responses.

### Reserve Quota

Comment 1: One commenter supports the 400 mt quota transfer as a one-time transfer from the Incidental category to a reserve quota as a short-term solution for the United States to retain its unharvested quota under U.S. authority. Several commenters opposed the establishment of a reserve for under-harvested quota. One commenter was disappointed that the quota to fill the new reserve would be unused directed fishery quota instead of incidental quota which was agreed to by industry at the 2000 ICCAT meeting.

Response: NOAA Fisheries will carry over unused directed and incidental quota as is currently authorized in the regulations, except if a reserve quota is needed for a specific reason. Recently, NOAA Fisheries carried over unused 1999 directed and incidental quota and allocated it to the incidental quota for the 2001 fishing year. Because the directed fishery is not harvesting its allocated quota, it will not affect fishery participants to fill the

reserve quota with unused directed quota from the past.

Comment 2: We should not transfer quota free of charge for use by other ICCAT countries. We should sell them quota, as is currently being done elsewhere.

Response: As part of its allocation criteria, ICCAT prohibits participating countries from trading or selling their quota allocation. Goodwill transfers such as this one may result in increased research and cooperation with respect to all ICCAT-managed species. Further, the environmental benefits are substantial because they facilitate maintaining compliance with the ICCAT rebuilding plan.

Comment 3: The regulations need to clarify if establishing a reserve quota category is intended to represent a one-time quota transfer or if the reserve category would be replenished in the future by unused quota from other categories (e.g. unused incidental quota).

Response: The reserve category is established permanently and could, but not necessarily, be replenished in the future. This rule does not place a standard amount of quota into that category annually.

Comment 4: Underharvests in the incidental catch quota category should be transferred to the directed fishery quota.

Response: NOAA Fisheries will consider the need for underharvests of the incidental catch quota to be allocated to the directed fishery following each fishing year. Because the directed fishery is currently not catching its quota allocation, transferring unused quota to that category may only serve to increase the amount of quota left unharvested. By transferring unharvested quota to the reserve quota category, NOAA Fisheries could apply the unused quota to the incidental catch or directed catch categories as necessary or for other purposes consistent with ICCAT recommendations and objectives of the HMS FMP.

#### South Atlantic Swordfish

Comment 5: NOAA Fisheries should interpret ICCAT's recommendations in a manner similar to the way other countries implement those recommendations. If underharvests are being carried over by other countries, NOAA Fisheries should also utilize such a process to benefit U.S. fishermen.

Response: ICCAT authorizes quota to be carried over for North Atlantic swordfish, but fails to mention any authorization with respect to carryover of South Atlantic swordfish. NOAA Fisheries does not believe this to be an oversight and therefore interprets the recommendation as stated: no carry over of unused South Atlantic swordfish quota

Comment 6: NOAA Fisheries should clarify that U.S. fishermen may land their catch in foreign ports and that these landings will be counted against the U.S. quota.

Response: As required by ATCA, U.S. fishermen on U.S. vessels that offload in foreign ports will have their

landings count against the U.S. quota. NMFS adds that fishermen, regardless of port of offloading must complete all logbooks within 48 hours of completing that day's activities and, for a 1-day trip, before offloading. The owner or operator of the vessel must submit the logbooks to NMFS within 7 days of offloading, 50 CFR § 635.5(a)(1). Further, NMFS reminds fishermen that all swordfish, sharks, and tunas must be sold to a U.S.-permitted dealer, 50 CFR § 635.31(d)(1), who is also required to report purchases from U.S. vessels on a regular basis, 50 CFR § 635.5(b)(1).

#### Authorized Fishing Areas

Comment 7: NOAA Fisheries should clarify that vessels fishing under charter/contract for another nation's quota must adhere to the contract nation's regulations.

Response: U.S.-flagged vessels must comply with all U.S. regulations wherever they fish. Vessels under contract may apply for an exempted fishing permit if they provide NOAA Fisheries with information regarding specific regulations from which they would like to be exempt. NOAA Fisheries will consider submitted information and issue exempted fishing permits on a case-by-case basis. NOAA Fisheries cannot exempt U.S. vessels from regulations which may be inconsistent with U.S. fishery management goals.

Comment 8: One commenter strongly opposes the measure to authorize fishing areas at this time. There is concern that this action is not recommended by ICCAT.

Response: This regulation serves to clarify the existing regulations concerning U.S. vessels targeting eastern stock bluefin tuna. In the proposed rule, NOAA Fisheries proposed to prohibit retention of bluefin tuna caught in the east Atlantic Ocean because the United States has not been allocated quota for bluefin tuna in that area. However, the United States has been allocated quota for North Atlantic swordfish and bluefin tuna are caught incidentally to swordfish fishing. A retention prohibition for bluefin tuna from the east Atlantic Ocean would likely result in increased dead discards of bluefin tuna caught by U.S. vessels fishing for North Atlantic swordfish, inconsistent with HMS FMP objectives. Accordingly, NOAA Fisheries has modified the final rule to clarify allowable fishing areas for highly migratory species (HMS) fisheries by prohibiting bluefin tuna fishing in the Mediterranean Sea by U.S. vessels, consistent with the ICCAT agreement to prevent transfer of fishing effort for bluefin tuna from the west Atlantic to the east Atlantic. NOAA Fisheries will count all bluefin tuna caught incidentally to swordfish fishing in the east Atlantic against the west Atlantic U.S. bluefin tuna quota to ensure that those catches are monitored and appropriately accounted for. Furthermore, bycatch in the east Atlantic bluefin tuna fishery may be discussed at ICCAT in 2002.

Comment 9: NOAA Fisheries should alter the method by which landings and discards of bluefin tuna are submitted to ICCAT. These data should accurately report landings of east Atlantic bluefin tuna to ICCAT which would reflect historical participation in the fishery. This would allow for the United States to enter into quota negotiations.

Response: NOAA Fisheries intends to evaluate the catch locations of bluefin tuna landings in order to revisit the procedure by which these data are submitted to ICCAT.

Comment 10: NOAA Fisheries needs to report U.S. historic catches of eastern bluefin, bigeye, yellowfin and albacore tunas and sharks to ICCAT. Reporting forms need to be revised to specify eastern versus western bluefin tuna and to include more space for recording latitude and longitude.

Response: NOAA Fisheries will examine the reporting forms and suggest alternatives as deemed necessary.

#### Trade Restrictions/Trade Documentation Programs

Comment 11: NOAA Fisheries should extend the documentation program to include yellowfin tuna and should unilaterally prohibit the importation of HMS that is non-compliant with ICCAT recommendations.

Response: NOAA Fisheries would propose extending statistical documentation requirements to bigeye tuna, yellowfin tuna, and swordfish if ICCAT recommends such a program. In 2001, ICCAT issued its recommendation concerning the ICCAT bigeye tuna statistical document program.

#### Other Issues

Comment 12: No action should be taken to implement the temporary U.S. share allocated by ICCAT for North Atlantic albacore.

Response: NOAA Fisheries agrees and is not changing the regulations regarding this topic.

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