

short-term reductions. The emergency rule implemented by NMFS satisfies the legal mandates of the Magnuson-Stevens Act and ESA for protecting sea turtles. Therefore, the specific actions requested in the petitions for rulemaking by the NGOs are denied.

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

Dated: May 26, 2009

Samuel D. Rauch III,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 090508897-9896-01]

RIN 0648-AX85

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna and Swordfish Management Measures and HMS Permit Requirements

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS issues this advance notice of proposed rulemaking (ANPR) to request public comment on potential adjustments to the regulations governing the U.S. Atlantic bluefin tuna (BFT), north Atlantic swordfish (SWO), and shark fisheries to enable more thorough utilization of the available U.S. quotas for BFT and SWO and to improve highly migratory species (HMS) permit structure. Potential action(s) taken may to increase opportunities for U.S. fisheries to fully harvest the U.S. quotas recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) while balancing continuing efforts to end BFT overfishing by 2010 and rebuild the stock by 2019; to continue efforts to revitalize the SWO fishery while minimizing bycatch to the extent practicable; and to clarify and simplify the current HMS permit structure. NMFS is also requesting public comment regarding the potential implementation of catch shares, limited access privilege programs (LAPPs), and individual bycatch caps (IBCs) in highly migratory species fisheries. This ANPR provides background information to

inform the public on several actions that NMFS is considering to accomplish these objectives.

DATES: Written comments regarding the potential BFT management measures discussed in Section II of the **SUPPLEMENTARY INFORMATION** section of this ANPR must be received no later than June 30, 2009.

Written comments regarding pelagic longline (PLL) incidental catch requirements, HMS permits, LAPPs, and IBCs as discussed in Sections III and IV of the **SUPPLEMENTARY INFORMATION** section of this ANPR must be received no later than August 31, 2009.

Public meetings to obtain additional comments on the items discussed in this ANPR will be held in June and July 2009. Please see the **SUPPLEMENTARY INFORMATION** section of this ANPR for specific dates, times, and locations.

ADDRESSES: You may submit comments, identified by "0648-AX85", by any one of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.
- Fax: 301-713-1917, Attn: Margo Schulze-Haugen.
- Mail: NMFS SF1, 1315 East-West Highway, Silver Spring, MD 20910.

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

Related documents, including the 2006 Consolidated HMS Fishery Management Plan (Consolidated HMS FMP) and the 2008 Stock Assessment and Fishery Evaluation (SAFE) Report are available upon request at the mailing address noted above or on the HMS Management Division's webpage at: <http://www.nmfs.noaa.gov/sfa/hms/>. In addition, the primary resource legislation that guides NMFS can be found at www.nmfs.noaa.gov/legislation.htm.

Public meetings to obtain additional comments on the items discussed in this ANPR will be held in North Carolina, New Jersey, Massachusetts, Florida, and Louisiana. Please see the **SUPPLEMENTARY INFORMATION** section of

this ANPR for specific dates, times, and locations.

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

SUPPLEMENTARY INFORMATION: The U.S. Atlantic tunas, SWO, and billfish fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA), and implemented through the Consolidated HMS FMP. Atlantic sharks are managed under the authority of the Magnuson-Stevens Act. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement recommendations by ICCAT. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA. The implementing regulations for Atlantic HMS are at 50 CFR part 635. Atlantic HMS fisheries are also subject to the requirements of the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), National Environmental Policy Act (NEPA), Administrative Procedures Act (APA), Coastal Zone Management Act (CZMA), and other domestic regulations.

I. Background

A. Need for Action

In recent years, a combination of factors has contributed to a decline in domestic landings of north Atlantic SWO and western Atlantic BFT, to the point where U.S. landings are now below their respective ICCAT-recommended quotas. NMFS has implemented several management measures in the U.S. PLL fishery to meet legal mandates to reduce the bycatch and bycatch mortality of sea turtles, marine mammals, undersized and spawning fish, Atlantic billfish, and some shark species. These include time and area closures, a requirement to use only large circle hooks with specific baits, a prohibition on the use of live bait in the Gulf of Mexico, incidental catch limits, and a reduction in large coastal shark quotas and retention limits. Some of these measures have also contributed to lower catches of north Atlantic SWO and western Atlantic BFT in the PLL fishery. In addition to regulatory factors, increased fuel prices, low ex-vessel prices, and less expensive imports of SWO may have contributed to reduced landings in the SWO fishery. Factors that may have played a role in the underharvest of the

domestic BFT fishery since 2004 include reduced availability of BFT for harvest, possibly due to recent changes in BFT regional availability and/or a reduced BFT population level.

The reduction of bycatch and bycatch mortality, and the continuing need to rebuild overfished stocks in Atlantic HMS fisheries, remain important management priorities for NMFS as mandated under the Magnuson-Stevens Act. However, because domestic landings of north Atlantic SWO and western Atlantic BFT have been below ICCAT-recommended U.S. quotas, there is an ongoing concern among many HMS constituents that a portion of the U.S. quota for these species could be reallocated to other countries during future ICCAT negotiations.

In 2007, NMFS addressed persistent underharvests of the domestic SWO quota by increasing SWO retention limits for incidental SWO permit holders, modifying recreational SWO retention limits for HMS Charter/Headboat and Angling category permit holders, and modifying HMS limited access vessel upgrading restrictions for PLL vessels (72 FR 31688; June 7, 2007). Since then, NMFS has continued to receive comments suggesting changes that could increase domestic BFT and SWO landings, as well as public input regarding HMS permitting issues. These suggestions were received by NMFS during HMS Advisory Panel (AP) meetings in 2008 and 2009, during the 2009 BFT quota specifications public hearings, and in recent constituent and congressional correspondence.

NMFS prepared this ANPR in response to suggestions that have been received from the public regarding the underharvest of domestic SWO and BFT quotas. Additionally, this ANPR outlines some management strategies that NMFS is considering to improve HMS management, particularly regarding permitting issues, and enforcement of HMS regulations. In light of the recent underharvest of domestic BFT and SWO fisheries, the current status of HMS stocks, continuing bycatch and bycatch mortality concerns, market factors that may affect fishery performance and Agency efforts to address HMS permitting issues, NMFS formally requests comments on the potential regulatory changes described in this ANPR. All comments received in response to this ANPR will be considered in any potential future rulemakings.

B. Stock Status

1. Western Atlantic BFT

The most recent stock assessment conducted by ICCAT's Standing Committee on Research and Statistics (SCRS) for western Atlantic BFT (2008) indicated that the 2007 spawning stock biomass was between 14 percent and 57 percent of the biomass required to support maximum sustainable yield (MSY) and that fishing mortality was between 1.27 and 2.18 of that that would produce MSY, depending upon the recruitment scenario assumed within the assessment. The western Atlantic BFT stock is considered to be overfished with overfishing occurring.

2. North Atlantic SWO

The SCRS stock assessment in 2006 indicated that the north Atlantic SWO biomass had improved ($B_{2006} = 0.99 B_{msy}$, $F_{2006} = 0.86 F_{msy}$). It is currently considered to be rebuilding with no overfishing occurring. The SCRS will be conducting a new stock assessment from September 7–11, 2009, and considering the 2006 results, NMFS expects the 2009 stock assessment to indicate that north Atlantic SWO is fully rebuilt.

3. Atlantic Sharks

The stock status of Atlantic sharks varies by species. Several species of sharks are considered to be overfished with overfishing occurring, including sandbar sharks, dusky sharks, and blacknose sharks. Conversely, some shark species are not overfished and overfishing is not occurring, including Gulf of Mexico blacktip sharks, Atlantic sharpnose sharks, and bonnethead sharks. The current status of the blacktip shark population in the South Atlantic region as well as several other shark species is unknown.

II. Underharvest of Atlantic BFT Quota

As noted in "DATES" section, the comment period on issues in this section is open through June 30, 2009.

A. General Category

To provide background information, this section describes some of the current HMS regulatory requirements for the General category.

The current default General category daily retention limit is one large medium or giant BFT (measuring 73 inches (185 cm) or greater). To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero to a maximum of three per vessel, based on the consideration of several criteria. Regardless of the length

of a trip, no more than a single day's retention limit of large medium or giant BFT may be possessed or retained aboard a vessel that has a General category Atlantic Tunas permit. When the General category is open, no person aboard such vessel may continue to fish, and the vessel must immediately proceed to port once the applicable limit for large medium or giant BFT has been attained. For the last several fishing seasons, NMFS has maintained a three-fish General category daily retention limit, with the exception of the January 2009 fishery, for which NMFS set a two-fish limit given the available January subquota.

The BFT General category season currently is open from January 1 through January 31, and from June 1 through December 31. The current time period quota allocations are as follows: 5.3% for January; 50% for June-August; 26.5% for September; 13% for October-November; and 5.2% for December. Through in-season authority, NMFS takes action to close the coastwide General category fishery when it determines that the subquota for a given time period is reached, or is projected to be reached. NMFS may also adjust each time period's quota based on overharvest or underharvest in the prior time period. NMFS may reopen the fishery at a later date if it determines that reasonable fishing opportunities are available, e.g., BFT have migrated into the area or weather is conducive for fishing.

From 2000 through 2007, the BFT fishery was managed on a June through May fishing year basis versus a calendar year basis (January through December), and in 2003, NMFS extended the General category season to include the month of January (68 FR 74504, December 24, 2003). However, since January 2004, NMFS has not needed to close the January fishery (i.e., the available General category quota has not been fully exhausted). In 2008, the BFT fishery returned to a calendar year fishery, such that the January sub-period is now the first period of the January through December fishing year.

Under current regulations, NMFS considers several criteria when applying underharvest of BFT from one fishing year to the next. These criteria include the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock, the effects of the adjustment on BFT rebuilding and overfishing, and the effects of the adjustment on accomplishing the objectives of the fishery management plan.

1. Potential Management Options and Issues

Daily Retention Limit. NMFS has received comments requesting that the maximum daily retention limit for the BFT General category be increased or eliminated. A related suggestion is for NMFS to allow the daily retention limit to apply for each day of a multi-day trip so that it is more economical for vessels to make trips to offshore BFT fishing grounds (e.g., the northern edge of Georges Bank) since they would not be limited to the maximum daily limit.

A change to, or the elimination of, the daily retention limit could potentially be implemented via a regulatory amendment. If NMFS were to change or eliminate the maximum daily retention limit, it would still maintain the authority to establish the daily retention limit using an in-season action by filing an adjustment with the Office of the Federal Register.

The potential advantages of eliminating the maximum limit (three BFT/vessel/day) include: (1) positive socio-economic impacts for General category and HMS Charter/Headboat category vessels due to the ability to retain and sell more commercial-sized BFT per day/trip; (2) related positive impacts for dealers; (3) greater incentive for vessels to take offshore, multi-day trips, which could increase fishing opportunities and revenues on for-hire trips by Charter/Headboats; (4) decreased discard mortality of commercial sized BFT (that previously would have been in excess of daily retention limit); and, (5) fuller use of the U.S. BFT quota through increased General (quota) category landings.

The potential disadvantages of eliminating the maximum limit include: (1) increased discard mortality of undersized BFT (by General category vessels) due to potential increased fishing effort; and, (2) increased bycatch of non-target species, including protected species, and/or other biological and ecological impacts.

Fishing Season. NMFS has received comments suggesting that the General category fishing season should be extended to increase fishing opportunities, particularly during the winter fishery that has developed off North and South Carolina in the last several years. Two different options have been suggested: extend the General category season year-round, from January 1–December 31; and, extend the General category season until the adjusted January subquota is filled. Either of these options could potentially be implemented through a regulatory amendment.

The potential advantages of extending the General category season include: (1) increased use of the U.S. BFT quota through increased General (quota) category landings; (2) positive socio-economic impacts for General category and HMS Charter/Headboat category vessels and dealers able to participate in the winter/spring fishery due to extended opportunities to make trips and land commercial-sized BFT; and, (3) positive socio-economic impacts for coastal communities in which winter/spring fishing opportunities exist.

The potential disadvantages of extending the General category season could include: (1) negative socio-economic impacts on General category vessels that traditionally have fished during June through December (e.g., in more northern waters) if allocations or fishing opportunities for those periods are reduced; (2) increased discard mortality of undersized BFT (by General category vessels) and BFT in excess of daily retention limit (by General category and HMS Charter/Headboat category vessels) during open seasons and during periods when the fishery has traditionally been closed; and, (3) increased bycatch of non-target species, including protected species.

2. Request for Comments

NMFS requests comments on the potential adjustment of regulations governing the BFT General category daily retention limits and fishing season. The preceding section provided background information regarding these topics. The public is encouraged to submit comments related to any aspect of these topics. NMFS is also specifically seeking comments to the following questions.

Daily Retention Limit. What, if any, maximum daily retention limit should be established? What bycatch concerns or other biological and ecological impacts might there be (i.e., due to a potential increase in fishing effort)? If Harpoon category participants switch into the General category due to the lack of maximum daily retention limit, would there be negative impacts on General category participants?

Fishing Season. Should the BFT General category fishery be extended until available quota for January is reached, to some other date beyond January 31, or year-round? If the fishery is extended beyond January 31, should the existing time period quota allocations change?

How should NMFS distribute General category underharvest to the time periods for the following year (e.g., by FMP allocation—50 percent for June–August; by applying all of any

underharvest available for the General category to the first time period and rolling the unused portion forward throughout the calendar year; or by another method)?

Given that the underharvest carried forward from one year to the next cannot exceed 50 percent of the initial U.S. quota (10 percent beginning in 2011 per ICCAT recommendations), NMFS may not be able to apply the exact amount of General category underharvest to the following year's General category quota. Additionally, in the last few years, NMFS has applied underharvest to the subsequent year to meet several management needs (particularly ensuring that the Longline category has sufficient quota to operate during the fishing year while also accounting for BFT discards) rather than distributing the allowable amount of underharvest according to the FMP percentages. Should NMFS revise over/underharvest adjustment criteria for the General category or all categories in the future?

The closed season (February through May) has, in effect, served as a time/area closure both for BFT and potential bycatch species. What bycatch concerns or other biological/ecological impacts might there be?

B. Harpoon Category—Daily Retention Limit

Under current HMS regulations, persons aboard a Harpoon category permitted vessel may retain, possess, or land an unlimited number of giant BFT (81 inches (206 cm) or greater), but may retain, possess, or land only two large medium BFT (73 to less than 81 inches) per vessel per day (i.e., there is an incidental limit of two large medium BFT while targeting giant BFT).

1. Potential Management Options and Issues

Daily Retention Limit. NMFS has received comments requesting to eliminate the incidental retention limit on large medium BFT, so that Harpoon category permitted vessels may keep an unlimited number of large medium and giant BFT. This regulation could potentially be changed through a regulatory amendment.

The potential advantages of eliminating the large medium incidental daily retention limit for the Harpoon category include: (1) positive socio-economic impacts for Harpoon category vessels due to the ability to retain and sell more commercial-sized BFT per day/trip; (2) related positive impacts for dealers; (3) decreased discard mortality of large medium BFT that previously would have been in excess of the

incidental daily retention limit; and, (4) increased use of the U.S. BFT quota through increased Harpoon category landings.

The potential disadvantages of eliminating the large medium incidental daily retention limit for the Harpoon category include increased potential discard mortality of BFT under 73 inches due to increased fishing effort on smaller commercial-sized BFT and the low likelihood of survival after a harpoon strike.

2. Request for Comments

NMFS requests comments on the potential adjustment of the daily retention limit for BFT Harpoon category permitted vessels. The public may submit comments related to any aspect of this topic. NMFS is also specifically seeking comments addressing the following questions.

Daily Retention Limit. Would the Harpoon category still be needed if the General category maximum daily retention limit is eliminated (i.e., would Harpoon category participants choose to obtain a General category permit instead of a Harpoon category permit if retention of BFT measuring 73 inches or greater is unlimited)? What other potential advantages and/or disadvantages could result from eliminating the incidental restriction on large medium BFT for the Harpoon category? Should NMFS consider this or other potential actions for the Harpoon category?

C. General and Harpoon Category—Commercial Minimum Size

Current HMS regulations specify that both General category and Harpoon category vessels may retain, possess, or land only large medium and giant BFT (73 inches or greater), under the retention limits described above. The current regulations do not specify a general “commercial minimum size” in inches but instead manage allowable commercial retention by specifying allowed size classes for retention by the various commercial permit categories. These allowed size classes are based on the best available information regarding the size associated with the age at first maturity for western Atlantic BFT (73 inches or greater), and on the type of authorized gear. For example, harpoon gear is more selective than rod and reel and can be used to target larger BFT. BFT stock assessments, conducted by ICCAT’s SCRS, assume 8 years as the age at 50 percent maturity (i.e., age at which 50 percent of all individuals are sexually mature).

1. Potential Management Options and Issues

Commercial Minimum Fish Size. NMFS has received comments requesting a decrease in the “commercial minimum size” for BFT. Most of the comments have suggested a 65-inch (165-cm) minimum size, although others have suggested a size between 65 and 73 inches (e.g., 66 inches (168 cm) or 68 inches (173 cm)). Commenters have also suggested that only one BFT smaller than 73-inches should be allowed per day, in addition to some amount of BFT greater than 73 inches (for example, one fish 65 to less than 73 inches plus unlimited (or maximum allowed under inseason daily retention limit) BFT greater than 73 inches per day). In combination with a requested decrease in commercial minimum fish size, some commenters suggested that NMFS should also reallocate quota within the applicable category in a “conservation neutral” way so as not to impact stock rebuilding. This would involve the conversion of a portion of the existing General and Harpoon category subquotas to an amount of quota that would be specifically for the retention of BFT that measure between the new “minimum size” and less than 73 inches. According to the current regulations, these BFT would fall within the current small medium BFT size class (i.e., 59 inches (149 cm) to less than 73 inches).

NMFS believes that reducing the BFT size that commercial vessels may retain would likely change future patterns of fishing mortality (e.g., fish caught at each age). This could potentially impact the projected stock recovery trajectory due to changes in assumptions used in stock status projections (i.e., regarding the reproductive potential of the stock). Increased landings of smaller BFT could reduce projected spawning stock biomass and slow the rate of stock rebuilding.

A reduction in the “commercial minimum size” would result in both recreational and commercial handgear vessels pursuing the same size class of fish (small medium BFT). As described below, NMFS has noted some recent changes in the pattern of BFT catches and landings that merit further consideration when making management decisions regarding this issue. Prior to 2007, recreational BFT fishing activity largely revolved around fishing opportunities for school BFT (27 to less than 47 inches (69 to less than 119 cm)) and resulted in substantial school BFT landings. Large Pelagic Survey size frequency data reveal a

trend in the last several years toward larger recreational-size fish, particularly within the large school (47 to less than 59 inches) and small medium size classes (59 to less than 73 inches). Availability and landings of the recreational size classes have been high, and the 2007 and 2008 Angling category quotas were estimated to have been exceeded. In reviewing the available data, NMFS notes that the availability of recreational size fish is now limited to a narrow size range (or cohort), approximately age 4 in 2007 and age 5 in 2008. Thus, last year, the majority of recreationally caught BFT last year were in the large school size range. However, in 2009, NMFS anticipates that these BFT will be approximately age 6 and will enter the small medium size class. NMFS manages the recreational BFT quota by size class, so as this cohort of fish grows in weight but remains under 73 inches, NMFS expects the large school/small medium subquota to be attained with fewer, but larger, fish landed. Potentially allowing increased commercial effort by General and Harpoon fishermen to harvest small medium BFT would put additional pressure on these age 6 fish. For these reasons, NMFS believes that modification of the size of BFT allowed for commercial retention likely would need to be made via an FMP amendment that would include a thorough environmental impact assessment.

The potential advantages of reducing the “commercial minimum size” for retention by General and Harpoon category vessels (and HMS Charter/Headboat category vessels when fishing commercially) include: (1) increased use of the U.S. BFT quota through increased General and Harpoon (quota) category landings; (2) positive socio-economic impacts for General category, Harpoon category, and HMS Charter/Headboat category vessels due to the ability to retain and sell more commercial-sized BFT per day/trip; (3) related positive impacts for dealers; and, (4) decreased discard mortality of small medium BFT above a new “commercial minimum size” (that previously would have been caught incidentally to directed fishing for BFT 73 inches or greater).

The potential disadvantages of reducing the “commercial minimum size” for retention by General and Harpoon category vessels (and HMS Charter/Headboat category vessels when fishing commercially) include: (1) negative socio-economic impacts for recreational BFT fishermen due to increased competition and gear conflicts with the commercial handgear categories; (2) negative biological and

ecological impacts on BFT due to increased fishing effort and landings of small medium BFT (with potential impacts on the spawning stock and stock rebuilding); (3) increased discard mortality of BFT under the new "commercial minimum size" due to increased effort on smaller commercial-sized BFT and the low likelihood of survival after a harpoon strike if harpoon gear is used; and, (4) implications for data collection regarding BFT caught and landed by both commercial and recreational vessels (e.g., BFT measuring 65 to 73 inches, landings of which previously would have been recreational only).

2. Request for Comments

NMFS requests comments related to any aspect of this topic, and is specifically seeking comments that address the following questions.

Commercial Minimum Fish Size. Would user conflicts result from the recreational and commercial handgear fisheries pursuing the same size BFT? For the sustainability of the fishery, what should NMFS do to protect certain BFT year classes? Should NMFS implement slot limits (i.e., establish both a minimum and a maximum size limit)? Should NMFS make a change to the commercial minimum size, but revert to the 73 inch minimum size when a certain percentage of the General and Harpoon category is reached (e.g., 75 percent) by in-season action? How should NMFS manage the Angling, General, and Harpoon categories as the availability and distribution of size classes changes and particularly as the current cohort reaches maturity? How would a potential change in commercial minimum size alter market demand for imported BFT?

D. Charter/Headboat Category

Under current regulations, persons aboard a vessel issued an HMS Charter/Headboat category permit may retain and land BFT under the daily limits and quotas applicable to the Angling category or the General category, except when fishing in the Gulf of Mexico (in which case only the annual limit of one recreational "trophy" large medium or giant BFT may be retained, possessed, and landed). Specifically regarding retention limits, the size category of the first BFT retained determines the fishing category applicable to the vessel that day. For instance, if the first BFT retained is a large school BFT, the vessel may fish only under the Angling category daily retention limit that day and may not retain a commercial-sized BFT on that same day. Gear currently

authorized for use on Charter/Headboat category vessels includes rod and reel, bandit gear, handline, and green-stick gear, as well speargun when recreationally fishing for non-bluefin Atlantic tunas. The current FMP quota allocations are as follows: 19.7 percent for the Angling category; 47.1 percent for the General category; 3.9 percent for the Harpoon category; 18.6 percent for the Purse Seine category; 8.1 percent for the Longline category; 0.1 percent for the Trap category; and 2.5 percent for the Reserve.

1. Potential Management Options and Issues

Counting of Landings and Quota Allocations. NMFS received two suggestions regarding landings and quota allocation in the HMS Charter/Headboat category. These include: (1) allow persons aboard HMS Charter/Headboat category vessels to fill both the commercial and recreational daily retention limit on the same day (i.e., fish commercially and recreationally on the same day); and, (2) reallocate BFT subquotas to create a separate BFT Charter/Headboat category quota.

The suggested change to the daily retention limit could be implemented via a regulatory amendment, but changes to FMP quota allocations of BFT would require an FMP amendment.

The potential advantages of allowing commercial and recreational BFT fishing on the same day include: (1) increased use of the U.S. BFT quota through increased landings, particularly of commercial BFT counted against the underharvested General category quota; (2) positive socio-economic impacts for HMS Charter/Headboat category vessels due to the ability to retain and sell commercial-sized BFT on the same day as making a trip with paying passengers for recreational-sized BFT; (3) related positive impacts for dealers; and, (4) decreased discard mortality of BFT if fish were retained that previously would have exceeded the daily retention limit.

The potential disadvantages of allowing commercial and recreational BFT fishing on the same day include: (1) the removal of clear distinction between commercially and recreationally caught BFT; (2) increased difficulty of monitoring recreational BFT catch and landings through the Large Pelagics Survey; (3) increased difficulty enforcing the daily retention limits and reporting requirements; and (4) increased discard mortality of undersized BFT (in excess of recreational daily retention limit) due to potential increased effort on commercial-sized fish, particularly if

implemented in conjunction with raising or eliminating the commercial retention limit.

The potential advantages of creating a separate Charter/Headboat quota would include positive socio-economic impacts for HMS Charter/Headboat vessels associated with a dedicated quota for that permit category. Conversely, potential disadvantages would include negative socio-economic impacts for vessels in other existing quota categories, due to reallocation.

Authorized Gears. NMFS received a suggestion to allow the use of harpoon gear on HMS Charter/Headboat category vessels. This potential change to the allowable gear regulations could be implemented using a regulatory amendment.

NMFS proposed to authorize harpoon gear for the harvest of Atlantic tunas, including BFT, in the HMS Charter/Headboat category on May 6, 2008 (73 FR 24922), but did not finalize the change in the final rule (73 FR 54721, September 23, 2008). At that time, NMFS decided to maintain the status quo regarding authorized harpoon use, (i.e., by the General and Harpoon categories only), after noting a relative lack of support for this issue, and because of concerns about bycatch, enforcement, safety at sea, and BFT stock status.

The potential advantages of authorizing harpoon gear use on Charter/Headboat category vessels would include increased opportunities to retain and land commercial sized BFT, thus making increased use of the U.S. BFT quota through increased General category landings.

The potential disadvantages of authorizing harpoon gear include: (1) increased discard mortality from inadvertent harpoon strikes on undersized BFT; and, (2) difficulty with enforcement if harpoons are authorized on non-for-hire trips only.

2. Request for Comments

NMFS requests comments related to any aspect of this topic, and is specifically seeking comments that address the following questions.

Counting of Landings and Quota Allocations. Should HMS Charter/Headboat category vessels be allowed to fish commercially and recreationally on the same day? How should NMFS monitor HMS Charter/Headboat effort, landings, and bycatch? Should these vessels be required to maintain and submit logbooks?

Authorized Gears. Should harpoon gear be authorized for use on HMS Charter/Headboat category vessels? If so, should harpoon gear be authorized on

both for-hire and non-for-hire trips or only on non-for-hire trips?

E. All Categories—Landing Form

Under current HMS regulations, persons that own or operate a fishing vessel that possesses or lands an Atlantic tuna (bigeye, albacore, yellowfin, and skipjack tunas) must maintain such tuna through offloading either in round form or eviscerated with the head and fins removed, provided one pectoral fin and the tail remain attached. For a whole or round tuna (head on), the sole criterion for determining the size and/or size class of a whole or round (head on) Atlantic tunas is a curved fork length measurement (CFL). The CFL measurement is determined by the length of a fish measured from the tip of the upper jaw to the fork of the tail along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel. When the head of an Atlantic tuna is removed, a pectoral fin curved fork length (PFCFL) is the legal means of measuring the fish. The PFCFL is determined by the length of a fish with the head removed from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel. Both of these measurements require the tail to be naturally attached to attain a proper measurement.

The PFCFL is converted to CFL using a conversion factor of 1.35. The resulting CFL is the sole criterion for determining the size class of a BFT with the head removed. Applying the conversion factor from PFCFL to CFL for a BFT with the head removed currently means that no person shall retain or possess a BFT, with the head removed, measuring less than 20 inches (51 cm) PFCFL. For yellowfin and bigeye tuna, both of which have a minimum size of 27 inches CFL, the regulations state that no person shall remove the head of the fish if the remaining portion would be less than 27 inches from the fork of the tail to the forward edge of the cut.

1. Potential Management Options and Issues

Atlantic Tunas Landing Form. NMFS has been requested to allow the tail of Atlantic tunas to be removed at sea, provided that the remaining carcass length exceeds the minimum CFL measurement that is applicable to the species and permit category of the vessel. Although this request stems primarily from a desire to make storage of Atlantic tunas more efficient on PLL vessels, the issue is applicable to all

vessels fishing for and retaining Atlantic tunas. The regulations regarding Atlantic tunas landing form could be changed via a regulatory amendment.

The potential advantages of allowing the removal of Atlantic tuna tails include: (1) allowing for more efficient storage of harvested Atlantic tunas; (2) increased options for preserving the quality of harvested Atlantic tunas; and, (3) harmonization of Atlantic tunas minimum size limits, carcass condition regulations, and preferred fishery practices.

The potential disadvantages of allowing the removal of Atlantic tuna tails include: (1) may indirectly change the allowable minimum size of an Atlantic tuna; (2) may complicate analyses and require the generation of a conversion factor for comparison to historical fish length data; (3) may necessitate changes to reporting forms and reporting requirements; and (4) would likely necessitate changes to current terms and definitions in the regulations.

2. Request for Comments

NMFS requests comments related to any aspect of this topic, and is specifically seeking comments that address the following questions.

Atlantic Tunas Landing Form. Should this potential change in landing form be considered for all regulated Atlantic tuna species? Should this potential change be considered for all permit categories? Should NMFS standardize where the tail is cut for analytical purposes? How would this potential change affect current fishing practices? Are there other means of allowing more efficient storage of Atlantic tunas without removing the tail?

III. North Atlantic SWO, Atlantic Shark, and Atlantic BFT Fishery Issues

As noted in the "DATES" section, the comment period on issues in this section is open through August 31, 2009.

This section of the ANPR addresses issues which may overlap several HMS fishery sectors.

A. Modification of PLL BFT Incidental Catch Requirements

Under current HMS regulations, persons aboard a vessel permitted in the Atlantic Tunas Longline category may retain, possess, land, and sell large medium and giant BFT taken incidentally when fishing for other species, as follows: One large medium or giant BFT per vessel per trip may be landed, provided that at least 2,000 lb (907 kg) of species other than BFT are legally caught, retained, and offloaded

from the same trip and are recorded on the dealer weighout slip as sold; two large medium or giant BFT may be landed incidentally to at least 6,000 lb (2,727 kg) of species other than BFT; and three large medium or giant BFT may be landed incidentally to at least 30,000 lb (13,620 kg) of species other than BFT.

1. Potential Management Options and Issues

Commenters have suggested that NMFS should increase the incidental BFT retention limits for the PLL fishery in order to reduce regulatory discards of commercial-sized BFT and thus, increase profitability of PLL trips, which may result in increased SWO fishing effort and potentially increase landings of SWO.. Specifically, NMFS has received the suggestion to allow two large medium or giant BFT for 3,000 lb (1,361 kg) of target catch; 3 BFT for 6,000 lb (2,722 kg); 4 BFT for 9,000 lb (4,082 kg); and 5 BFT for 12,000 lb (5,443 kg).

Modifications to BFT incidental catch limits would need to be thoroughly analyzed and could potentially be made via a regulatory amendment assuming Longline landings remain consistent with the baseline allocation. If modifications were to result in Longline landings inconsistent with the baseline allocation, an FMP amendment may be required.

The potential advantages of increasing the PLL incidental retention limit include: (1) decreased regulatory discards of BFT caught incidentally while targeting other species; and, (2) increased profitability of PLL trips, which may result in increased SWO fishing effort, contributing to the revitalization of the SWO fishery and the increased utilization of the U.S. SWO quota.

Potential disadvantages associated with increasing the PLL incidental retention limit include: 1) Pursuant to the 2006 ICCAT BFT Recommendation, the United States must count BFT dead discards along with landings against the U.S. BFT quota. As a result, the Longline category BFT quota has been fully utilized. It is possible that increasing the incidental retention limits could result in increased PLL effort, which may necessitate NMFS closing the PLL fishery prior to the end of the fishing year. Such a closure would be disruptive to PLL fishing activities for target species and have negative economic impacts. 2) Second, there is a possibility of increased bycatch of undersized BFT and non-target species, including protected species, due to increased PLL fishing

effort, particularly on trips targeting other HMS which have high bycatch rates. 3) Changes in fishing behavior (fishing location and effort) could occur, including the potential targeting of BFT which is in contravention to the Longline category's incidental nature and of ICCAT prohibitions on directed fishing for BFT on their spawning grounds.

2. Request for Comments

NMFS requests comments related to any aspect of this topic, and is specifically seeking comments that address the following questions. What factors should NMFS consider in any potential PLL incidental retention limit analyses to prevent potential targeting of BFT? Should NMFS consider adjustments in the PLL incidental retention limits in the Atlantic Ocean only and not include the Gulf of Mexico because it is the spawning ground or should NMFS consider adjustments in all areas where BFT are bycatch in the PLL fishery? Should NMFS consider revisions to the Longline category's incidental nature and/or baseline allocation?

B. Establishment of a HMS General Commercial Handgear Permit

NMFS, with input from the HMS AP, evaluated the HMS permit structure over the past couple of years to determine if changes could be made that would add flexibility for fishermen and fishery managers, address existing HMS management needs, and simplify the permit structure for the public and for NMFS. Current HMS limited access permits include: SWO Directed, Incidental, and Handgear permits; Shark Directed and Incidental permits; and, the Atlantic Tunas Longline category permit. In general, the current HMS permit structure is complicated and sometimes burdensome on the public, especially with regard to obtaining and transferring limited access permits. For example, in order to retain tunas and SWO caught with PLL gear, a vessel must be issued an Atlantic Tunas Longline category permit, a shark limited access permit, and a SWO limited access permit (except Handgear).

Limited access permits were implemented in 1999 to rationalize harvesting capacity with available quotas, and to reduce latent effort in SWO and shark fisheries. A consequence of having limited access and not issuing new permits is that some of these permits are now valued at tens of thousands of dollars. Limitations on vessel size and horsepower upgrades

have further affected their value and use.

The primary commercial gear currently used to catch SWO and tunas is PLL. Bottom longline (BLL) gear is primarily used to catch sharks. These gears generally catch larger numbers of target and non-target species than does handgear. The potential to issue new or lapsed/expired limited access permits to use PLL gear to harvest SWO has been restricted by bycatch concerns (including protected resources), gear conflict issues, and the poor condition of several Atlantic shark stocks, several of which are also caught on PLL gear. Given these restrictions on increasing effort of fishermen using longline gears, a potential option is the expansion of the Atlantic Tunas General category permit to allow for the retention of SWO and possibly the retention of sharks.

Currently, the Atlantic Tunas General category permit is an open access permit which authorizes the commercial harvest of Atlantic tunas with handgear. Potentially expanding the permit to allow for the retention of SWO and sharks would add flexibility for fishery managers and fishermen by allowing for the harvest of these species according to size and retention limits that are commensurate with the health of fish stocks. Potentially allowing for the commercial harvest of north Atlantic SWO with handgear by Atlantic Tunas General category permit holders could benefit fishermen, and address HMS management needs by providing additional opportunities to harvest SWO and achieve the domestic north Atlantic SWO quota by using a gear with generally low bycatch. The following sections describe some of the options and issues associated with potentially expanding the species allowed to be retained by Atlantic Tunas General category permit holders to include Atlantic SWO and sharks, thus converting the permit to an Atlantic HMS General commercial handgear permit, and establish size and retention limits for those species under the permit commensurate with the health of fish stocks.

1. Potential Management Options and Issues

Expand the Species Allowed to be Retained by Atlantic Tunas General Category Permit Holders and Convert the Permit to an Atlantic HMS General Commercial Handgear Permit. This potential modification would expand the species allowed to be retained by Atlantic Tunas General category permit holders to include Atlantic SWO and sharks, thus converting the permit to an Atlantic HMS General commercial

handgear permit, and establish size and retention limits for those species under the permit commensurate with the health of fish stocks. As of May 2008, there were 4,031 Atlantic Tunas General category permit holders. Since these permits were purchased to commercially harvest Atlantic tunas, it is unknown how many would be used to commercially harvest SWO or sharks; however, NMFS does not anticipate that all Atlantic Tunas General category permits would be used in this manner. The options described below discuss various other aspects that would need to be considered in potentially expanding the species allowed and changing the permit name.

Open Access or Limited Access. The existing Atlantic Tunas General category permit is an open access permit. A potentially expanded Atlantic HMS General Commercial Handgear permit could either remain under the existing open access regulations (as per the Atlantic Tunas General category permit) or become a limited access permit. North Atlantic SWO are almost fully rebuilt, overfishing is not occurring, and the U.S. SWO quota is underharvested; therefore, an open access HMS General Commercial Handgear permit may be a possibility. The limited access permit system for SWO was established in 1999 (when SWO were overfished with overfishing occurring) and, if proposed and adopted, an HMS General Commercial Handgear permit—potentially with low retention limits (see below)—would be the first time open access is allowed commercially in the domestic SWO fishery since the stock has improved. Implementing either an open access or a limited access HMS General Commercial Handgear permit would have important implications on permit availability, fishing effort, commercial landings, ex-vessel prices, and the value of existing permits, among others.

The implications of a potential open access HMS General Commercial Handgear permit for sharks is not the same as for SWO. Several shark populations are overfished with overfishing occurring, thus if shark harvest with the HMS General Commercial Handgear permit were allowed, retention limits and other harvest restrictions may be necessary to facilitate continued rebuilding of overfished shark populations.

Authorized Species. Many shark species are overfished, subject to overfishing, or have an unknown stock status. Recent and proposed actions by NMFS have addressed or may address overfishing in shark fisheries. Sharks are caught incidentally by hook and line

gear used by Atlantic Tunas General category permitted vessels, but sharks are currently not authorized to be retained by these permit holders unless they also hold a directed or incidental shark limited access permit. The authorization of shark harvest under this potential modification could allow for retention of some sharks to account for incidental catch; however, allowing shark harvest could also result in targeting of sharks.

Retention Limits. If the harvest of sharks were authorized, a possible option to prevent targeted fishing would be to establish a retention limit equivalent to or less than recreational retention limits. Depending on the status of specific shark species and the ability of permit holders to correctly identify species and release species with minimal injury, retention limits could be modified over time to allow retention of incidental catches of sharks commensurate with stock status. This option may provide desired flexibility for fishery managers while continuing to allow rebuilding of shark stocks and increasing the knowledge of shark incidental catches in this fishery. If the harvest of SWO were authorized for a potential HMS General Commercial Handgear permit, it could potentially impact current limited access permit holders by increasing the volume of SWO on the market and decreasing the demand (and therefore price) of the current permits. This potential modification to the Atlantic Tunas General Category permit could also impact recreational anglers by increasing the overall amount of commercial fishing effort in some areas. However, a relatively low SWO retention limit could mitigate these impacts by tempering the amount of swordfish that enters the market and the commercial benefit of the permit. Also a relatively low SWO retention limit could mitigate concerns about impacts to the values of SWO limited access permits.

Tournament Participation. Currently, Atlantic Tunas General category permit holders may participate in Atlantic HMS registered tournaments and, when fishing in an HMS tournament, may land Atlantic billfish. Under a potential Atlantic HMS General Commercial Handgear permit, participation in HMS tournaments and landing of billfish in those tournaments could be modified. The provision that allows Atlantic Tunas General category permit holders to participate in a registered HMS tournament and land billfish could be maintained or that provision could be eliminated. If it were eliminated, existing Atlantic Tunas General category

permit holders would potentially lose the ability to participate in registered HMS tournaments. It is possible that some current HMS Angling category permit holders may want to change permit types and purchase the expanded HMS General Commercial Handgear permit. If permit holders of the expanded HMS General Commercial Handgear permit could not participate in tournaments, historical HMS Angling category permit holders that obtain the expanded HMS General Commercial Handgear permit could potentially lose the ability to participate in tournaments and land billfish if this provision were eliminated.

Bycatch and Bycatch Mortality. FMPs and regulations promulgated under the Magnuson-Stevens Act must be consistent with National Standard 9 which states that conservation and management measures shall, to the extent practicable, minimize bycatch and to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. NMFS has implemented numerous management measures to reduce the bycatch of undersized SWO, non-target species, and protected species in the PLL fishery, and prohibited some sharks, non-target species, and protected species in the BLL fishery. For instance, in accordance with National Standard 9 of the Magnuson-Stevens Act, time/area closures were implemented in the PLL fishery in 1999, 2001, and 2002. Management measures to reduce interactions of HMS fishing gears with protected resources are prescribed by the Biological Opinions (BiOps) for HMS fisheries, PLL fishery, and shark fisheries in 2001, 2004, and 2008 respectively, under the authority of the Endangered Species Act. The 2001 BiOp on HMS fisheries concluded that continued operation of handgear fisheries in the Atlantic may adversely affect, but are not likely to jeopardize the continued existence of protected species. Under the authority of the MMPA, the Pelagic Longline Take Reduction Team (PLTRT) was formed and the final rule implementing the Pelagic Longline Take Reduction Plan (PLTRP) published on May 19, 2009 (74 FR 23349). Any potential expansion of fishing effort in HMS fisheries, including handgear fisheries, must consider the continuing need to minimize bycatch and bycatch mortality.

HMS Reporting Requirements. Commercially landed HMS may only be sold to HMS permitted dealers, and HMS permitted dealers are required to report their purchases to NMFS. Reporting mechanisms are also in place

via state trip ticket programs in the South Atlantic and Gulf of Mexico, dealer reporting to the NMFS Northeast Regional Office, and through cooperation with the Commonwealths of Puerto Rico and the U.S. Virgin Islands. NMFS has the authority to require logbook reporting of Atlantic tunas, shark, or SWO permitted vessels and the authority to require Atlantic HMS, tunas, shark, or SWO permitted vessels to carry observers; however, these mechanisms are currently not exercised in all categories. This is due, in part, to the difficulty in handling large numbers of logbook reports and the cost of observer programs. NMFS is interested in improving data collection capabilities in the HMS General category fishery, especially if additional species are authorized under an Atlantic HMS General Commercial Handgear Permit.

2. Request for Comments Regarding a HMS General Commercial Handgear Permit

NMFS requests comments on the potential adjustment of regulations governing Atlantic HMS fishing permits that would amend the species allowed to be retained by the Atlantic Tunas General category permit to include SWO and sharks, and establish size and retention limits for the permit. The preceding section provided information on some options and issues regarding the potential expansion of the HMS General Commercial Handgear permit. The public is encouraged to submit comments related to any aspect of this topic. NMFS is also specifically seeking comments to the following questions.

What are the benefits of an open versus limited access HMS General Commercial Handgear permit? If SWO are authorized to be harvested with a HMS General Commercial Handgear permit, what retention limit should apply? If sharks are authorized to be harvested with a HMS General Commercial Handgear permit, what retention limit should apply? Under a potential Atlantic HMS General Commercial Handgear permit, should participation in HMS tournaments and landing of billfish in those tournaments be allowed? How can impacts to the value of existing SWO or shark limited access permits be minimized? Would low retention limits for SWO and shark aid in minimizing potential impacts to limited access permit values? Are there additional bycatch concerns regarding commercial handgear fishing for HMS? What methods might be utilized to collect data in commercial HMS handgear fisheries? If fish are caught by a HMS General Commercial Handgear

permitted vessel, but not sold, what mechanism might be most appropriate for reporting the landing?

C. Squid Trawl Vessel Exemption from Multi-Permit Requirement to Retain SWO

Current HMS regulations specify that three limited access permits (SWO Directed or Incidental, Shark Directed or Incidental, and Atlantic Tunas Longline) are required to commercially harvest and sell SWO, unless the vessel has been issued a limited access SWO Handgear permit. This regulation was originally intended to address PLL vessels, which are likely to have a bycatch of any of these species when targeting SWO or tunas. However, the regulation applies to any vessel which commercially captures and sells SWO. Therefore, squid trawl vessels must be issued all three permits, including an Atlantic Tunas Longline category permit, to sell their incidentally caught SWO. NMFS has received comments requesting reconsideration of the three permit requirement for squid trawl vessels. Commenters have indicated that this requirement is burdensome, confusing, and unnecessary since squid trawl vessels do not fish with PLL gear.

1. Potential Management Options and Issues

Eligibility. To consider an exemption from the three permit requirement for squid trawl vessels to retain SWO, NMFS would need to determine which vessels are eligible for the exemption. This could potentially be accomplished by exempting any vessel which is issued an *Illex* squid and/or *Loligo* squid moratorium permit, by exempting only squid trawl vessels which are currently issued the three required HMS permits, or by creating a new HMS incidental catch permit for some or all squid trawl moratorium vessels. Expanding the exemption to include all squid trawl moratorium vessels and/or creating new incidental catch permit for some or all squid trawl vessel would likely require more extensive analysis and, possibly, an FMP amendment.

Authorized Gear. SWO is oftentimes an unavoidable bycatch species in the midwater trawl (squid trawl) fishery and NMFS has established retention limits for the incidental catch of SWO by squid trawl vessels. The existing regulations at 50 CFR 635.24(b)(2) state that a vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawls on board and when squid constitutes not less than 75 percent by weight of the total fish on board or offloaded from the vessel. Gears with

which HMS are allowed to be harvested have been authorized in the regulations for that purpose. Midwater trawl is currently not an authorized gear for any HMS, however it may be advantageous to authorize midwater trawl in order to maintain consistency in the regulations. Authorizing midwater trawl gear for SWO may create the perception that targeting SWO with midwater trawl gear is allowable. NMFS is requesting information from the public regarding whether midwater trawl gear should be authorized in SWO and other HMS fisheries.

Species Retention. NMFS has established retention limits for the incidental catch of SWO by squid trawl vessels. However, some squid trawl vessels have also reported landing tunas or other HMS. NMFS is requesting information from the public regarding the degree to which tunas or other HMS are an unavoidable bycatch in the squid trawl fishery.

2. Request for Comments Regarding a Squid Trawl Exemption from Multi-Permit Requirement to Retain SWO

NMFS requests comments on a potential exemption for squid trawl vessels from the multi-permit requirement to retain SWO. The preceding section provided information on options and issues. The public is encouraged to submit comments related to any aspect of this topic. NMFS is also specifically seeking comments to the following questions.

Should a potential exemption apply only to squid trawl vessels currently issued the three required HMS permits to retain SWO? Should a potential exemption apply to all squid trawl vessels currently issued *Illex* and/or *Loligo* moratorium permits? Should midwater trawl gear be authorized for SWO or other HMS fisheries? Should a potential exemption apply to other HMS species, or only to SWO? How should a potential exemption be implemented (no permit(s) required, a trawl permit only, retention limits)?

IV. Catch Share Programs

As noted in the "DATES" section, the comment period on issues in this section is open through August 31, 2009.

Catch share programs generally refer to a variety of fishery management regimes which may allocate fishing privileges to permit holders, groups of permit holders, fishing communities, or other entities. In this ANPR, NMFS is considering the feasibility and applicability of two types of catch share programs in HMS fisheries, namely Limited Access Privilege Programs

(LAPPs) and Individual Bycatch Caps (IBCs), both of which are briefly described below.

A. LAPPs

1. Potential Management Options and Issues

Applicability. LAPPs are authorized by Magnuson-Stevens Act and are a type of catch share program. In a LAPP, privileges to harvest part of a total allowable catch (TAC) or quota are distributed to fishery participants through permits. By ensuring each LAPP participant an opportunity to harvest a specific amount of TAC or quota, LAPPs have the potential to: eliminate the incentive to over-invest in fishing capacity; provide increased operational flexibility; increase harvest timing flexibility; increase fishing efficiency; and increase the overall profitability of fishing fleets. Even in a fishery that is not achieving its quota, such as BFT and SWO, LAPPs provide an opportunity for fishery participants to "lock-in" a share of the quota which may prove valuable if the fishery becomes quota-limited in the future. LAPPs represent a significant change from the way that most HMS fisheries are managed because fishing quotas would be assigned to individual participants or groups of participants. The biological, social, or economic impacts associated with such a change in the management of quotas and quota shares could vary greatly, depending on the specifics of the LAPP provisions implemented. All such impacts would be analyzed in a separate rulemaking with appropriate supporting documentation should such programs be further considered.

2. Request for Comments Regarding LAPPs

The preceding section provided information on the options and issues regarding LAPPs in HMS fisheries. The public is encouraged to submit comments related to any aspect of this topic. NMFS is also specifically seeking comments to the following questions.

For HMS fisheries, what aspects of LAPPs have the most potential to increase operational flexibility, harvest timing flexibility, and fishing efficiency? Would LAPPs in HMS fisheries result in increased profitability for fishermen? What social or biological, social, or economic impacts might be associated with implementation of LAPPs in HMS fisheries? What criteria should NMFS consider when evaluating LAPPs for HMS fisheries?

B. IBCs

1. Potential Management Options and Issues

Applicability. IBCs refer to a part of a total allowable amount of interaction with bycatch species (which may include both non-target and protected species) that may be encountered during fishing activity. The total allowable amount of interaction with bycatch species may be established through mechanisms such as stock assessments that establish a TAC for overfished species, incidental take statements issued under the ESA, or other mechanisms. Examples of bycatch species may be an overfished species for which overfishing is occurring or a listed species. By distributing the allowable amount of interaction with bycatch species to vessels, either individually or grouped, or on a regional basis, the ability to individually or regionally manage interactions may be achieved. The advantages of this management approach may include: increased individual responsibility for interactions in a fishery; increased ability for individuals that avoid interactions to continue to fish; and more regionally applicable consequences of interactions if bycatch caps are applied on a regional basis. IBCs represent a significant change from the way that bycatch issues in most HMS fisheries are managed because allowable limits of bycatch would be assigned to individual participants, groups of participants, or regions. The biological, social or economic impacts associated with such a change in the management of bycatch in HMS fisheries could vary greatly, depending on the specifics of the provisions implemented. All such impacts would be analyzed in a separate rulemaking with appropriate supporting documentation should such provisions be further considered.

2. Request for Comments Regarding IBCs

The preceding section provided information on the options and issues regarding IBCs in HMS fisheries. The public is encouraged to submit comments related to any aspect of this topic. NMFS is also specifically seeking comments to the following questions.

How might an IBC system in HMS fisheries affect the status of bycatch species? What aspects of an IBC system in HMS fisheries might be advantageous to fishery participants? What aspects of an IBC system would not be advantageous to fishery participants? What efficient and effective ways of monitoring IBCs are there? What social,

biological, or economic impacts might be associated with implementation of IBCs in HMS fisheries? What should NMFS consider when evaluating IBCs for HMS fisheries?

V. Submission of Public Comments

NMFS reminds the public that there are two deadlines for the submission of written comments. The comment period for items discussed in Section II of this ANPR closes on June 30, 2009. The comment period for items discussed in Sections III and IV of this ANPR closes on August 31, 2009. Please see the ADDRESSES section of this ANPR for additional information regarding the submission of written comments.

All written comments received by the due dates will be considered in drafting proposed changes to the HMS regulations. In developing any proposed regulations, NMFS must consider and analyze ecological, social, and economic impacts. Therefore, NMFS encourages comments that would contribute to the required analyses, and respond to the questions presented in this ANPR.

Public Meetings

NMFS will hold five public meetings to receive comments from fishery participants and other members of the public regarding this ANPR. These meetings will be physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Sarah McLaughlin at 978-281-9260 or Randy Blankinship at 727-824-5399, at least 7 days prior to the meeting. For individuals unable to attend a meeting, NMFS also solicits written comments on the ANPR (see **DATES** and **ADDRESSES**).

The meeting dates, times, and locations follow. All meetings will be held from 5:00 p.m. to 9:00 p.m. All meetings will begin with an opportunity for individuals to view information on the issues raised in this ANPR and ask questions at 5:00 p.m. followed by a presentation and opportunity for public comment beginning at 6:00 p.m.

1. June 23, 2009, Holiday Inn, 151 Route 72 East, Manahawkin, NJ 08050

2. June 25, 2009, Roanoke Island Festival Park, 1 Festival Park, Manteo, NC 27954

3. June 29, Radisson Hotel Plymouth Harbor, 180 Water Street, Plymouth MA 02360

4. July 21, Belle Chasse Auditorium, 8398 Hwy. 23, Belle Chasse, LA 70037

5. July 28, Broward County Main Library, 100 S. Andrews Ave., Fort Lauderdale, FL 33301

Classification

This action is not significant pursuant to Executive Order 12866.

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

Dated: May 26, 2009.

Samuel D. Rauch, III,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648-XL60

Fisheries of the Exclusive Economic Zone Off Alaska; Loan Program for Crab Quota Share; Amendment 33

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

ACTION: Notice of availability of a proposed amendment to a fishery management plan; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 33 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). If approved, Amendment 33 would allow NMFS to reduce the amount of fees collected under the Crab Rationalization Program to the amount needed to finance the Federal loan program for quota share purchase. The amendment would allow NMFS to reserve only the amount of fees necessary to support the loan program, including no fees if none are needed. This action is necessary to ensure that fishery participants do not pay fees for loan program financing in excess of the fees needed to support the loan program. This FMP amendment would not result in modifications to Federal regulations.

DATES: Comments on Amendment 33 must be received on or before July 31, 2009.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-XL60", by any one of the following methods: