

*Final Environmental Assessment,
Regulatory Impact Review, and
Final Regulatory Flexibility Analysis
for the Regulatory Amendment to
Set Atlantic Bluefin Tuna General Category Effort Controls and Clarify
Related Regulations*

Atlantic Highly Migratory Species Management Division
Office of Sustainable Fisheries
National Marine Fisheries Service

June 2024

Action: Codify and set a schedule of restricted-fishing days (RFDs); establish a General category default retention limit for large medium or giant bluefin tuna (BFT) on open days; and make clarifications to the BFT dealer regulations and the definition of a bluefin statistical document (BSD) tag.

Type of Statement: Final Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis

Lead Agency: National Marine Fisheries Service (NMFS): Office of Sustainable Fisheries

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Abstract: This action would modify the regulatory process of scheduling restricted-fishing days (RFDs). As part of this modification, this action may codify and set the schedule of RFDs for the 2024 fishing year and subsequent fishing years. This action also would establish a General category default daily retention limit for large medium or giant bluefin tuna (BFT) on open days. Finally, this action would clarify the BFT dealer regulations and the definition of a BSD tag to address dealer and dealer agent activities on RFDs. This action is being taken pursuant to the rulemaking authority under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 *et seq.*, and consistent with the Atlantic Tunas Convention Act, *id.* §§ 971 *et seq.*

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1.0 INTRODUCTION

1.1 Regulatory Authorities

The National Marine Fisheries Service (NMFS), on behalf of the Secretary of Commerce, is responsible for managing highly migratory species (HMS)¹, including the federal Atlantic shark, tuna, billfish, and swordfish fisheries, under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 et seq.) and consistent with the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 et seq.). Under the Magnuson-Stevens Act and consistent with its 10 National Standards, NMFS must manage fisheries to maintain optimum yield on a continuing basis, while preventing overfishing. Over the years, NMFS has implemented several fishery management plans (FMPs), FMP amendments, and numerous regulations relating to HMS fisheries under the authority of the Magnuson-Stevens Act. Currently, HMS fisheries are managed under the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP), its amendments, and implementing regulations at 50 CFR part 635.

In addition to the Magnuson-Stevens Act and ATCA, any management measures must also be consistent with other applicable laws including, but not limited to, the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Coastal Zone Management Act (CZMA). This document is prepared, in part, to comply with NMFS' responsibilities under NEPA, as implemented by the regulations published by the Council on Environmental Quality (CEQ), 50 CFR parts 1501-1508², and NOAA Administrative Order 216-6A (NAO 216-6A): *Compliance with the National Environmental Policy Act, Executive Orders 12114, Environmental Effects Abroad of Major Federal Actions; 11988 and 13690, Floodplain Management; and 11990, Protection of Wetlands*, issued on April 22, 2016 and the Companion Manual for NAO 216-6A, issued on January 13, 2017.

NMFS consideration of whether/how to promulgate a rule to set Atlantic bluefin tuna (BFT) General category effort controls and clarify related regulations is considered a major federal action. NMFS determined that an Environmental Assessment (EA) was the appropriate level of NEPA analysis for this action.

¹ The Magnuson-Stevens Act, Section 3, defines the term “highly migratory species” as tuna species, marlin (*Tetrapturus* spp. and *Makaira* spp.), oceanic sharks, sailfishes (*Istiophorus* spp.), and swordfish (*Xiphias gladius*) (16 U.S.C. § 1802(21)). Further, the Magnuson-Stevens Act, Section 3, defines the term “tunas species” as a subset of HMS, namely albacore tuna (*Thunnus alalunga*), bigeye tuna (*Thunnus obesus*), bluefin tuna (*Thunnus thynnus*), skipjack tuna (*Katsuwonus pelamis*), and yellowfin tuna (*Thunnus albacares*) (16 U.S.C. § 1802(44)). The authority to issue regulations for Atlantic HMS under the Magnuson-Stevens Act has been delegated from the Secretary to the Assistant Administrator for NMFS.

² This EA is being prepared using the 2020 CEQ NEPA Regulations as modified by the Phase I 2022 revisions. The effective date of the 2022 revisions was May 20, 2022 and reviews begun after this date are required to apply the 2020 regulations as modified by the Phase I revisions unless there is a clear and fundamental conflict with an applicable statute (85 FR 43372) (§§ 1506.13, 1507.3(a)). This EA began on November 24, 2023 and accordingly proceeds under the 2020 regulations.

In accordance with both the Magnuson-Stevens Act and NEPA, NMFS considered various the alternatives in this Environmental Assessment (EA) and associated final rule and analyzed the potential environmental, economic, and social impacts of these alternatives. The alternatives would modify the process of scheduling restricted-fishing days (RFDs); codify RFDs for the 2024 fishing year and future fishing years; establish a schedule of RFDs for 2024; and reestablish a General category default retention limit for Atlantic BFT on open days.

1.2 Brief Management History

This section provides a brief overview of BFT management relative to the General category effort controls. More detail regarding the management history of BFT can be found in Section 1.1 of the 2022 BFT and northern albacore tuna quota rule Final Environmental Assessment (EA) (EA for the 2022 Atlantic BFT and northern albacore quotas) and the Final Environmental Impact Statement (FEIS) for Amendment 13 to the 2006 Consolidated HMS FMP (Amendment 13) (NMFS 2022) available at <https://www.fisheries.noaa.gov/action/amendment-13-2006-consolidated-hms-fishery-management-plan-bluefin-management-measures>.

BFT General Category Quota Management

The annual U.S. BFT quota is established by binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), and implemented domestically through rulemaking consistent with the Magnuson-Stevens Act and ATCA. The quota is allocated currently among six quota categories (General, Angling, Harpoon, Longline, Trap, and Reserve), and there are a suite of management measures established to ensure that catch is kept to the required level.

In November 2021, ICCAT adopted a recommendation regarding western Atlantic BFT management, based on the 2021 stock assessment conducted by the Standing Committee on Research and Statistics (SCRS). Recommendation 21-07 established the annual U.S. BFT quota at 1,341.14 metric tons (mt) (including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). In 2022, NMFS finalized an action which, among other things, implemented the ICCAT-recommended quota and modified the baseline annual U.S. quota and subquotas for BFT. In 2022, NMFS also finalized Amendment 13 to the 2006 Consolidated HMS FMP which, among other things, modified BFT quota allocations per category by reallocating quota from the discontinued Purse Seine category quota. Under Amendment 13, the baseline quota for the General category increased to 710.7 mt. The General category quota is divided among time-period subquotas. Each of five time periods is allocated a percentage of the annual General category quota as follows: January through March: 5.3 percent (37.7 mt), June through August: 50 percent (355.4 mt), September: 26.5 percent (188.3 mt), October through November: 13 percent (92.4 mt), and December: 5.2 percent (37 mt).

BFT General Category RFDs

NMFS originally established regulatory authority to set so called “no-fishing” days for BFT in the General category fishery in a 1995 final rule (60 FR 38505, July 27, 1995). In that 1995 rule,

NMFS described no-fishing days as an effort control that could be used to extend the General category fishing season, prevent overharvest of quota in any period, and improve distribution of fishing opportunities without increasing BFT mortality. The regulation provided that scheduled no-fishing days would be published in the Federal Register for a comment period of 30 days, and waiver of such days would be filed with the Federal Register a minimum of 5 days in advance of the scheduled no-fishing days if NMFS determined that the effort control would impede landing of the monthly quotas. In 1996, NMFS began using the term “restricted fishing day” or “RFD” rather than “no fishing day” (61 FR 30183, June 14, 1996). From 1995 through 2007, NMFS set RFDs on an annual basis. NMFS stopped scheduling RFDs in 2008, as General category landings over that timeframe were lower compared to the late 1990s and the General category fishery did not need to be closed.

Due to increased BFT landings rates in the General category in 2019 and 2020 and numerous requests from members of the Atlantic HMS Advisory Panel, General category participants, and Atlantic tunas dealers, NMFS proposed to schedule RFDs on all Tuesdays, Fridays, and Saturdays from July 20 through November 30, 2021 (86 FR 25992, May 12, 2021). Due to administrative timing issues related to publication in the Federal Register, NMFS established RFDs on all Tuesdays, Fridays, and Saturdays from September 3 through November 30, 2021 (86 FR 43421, August 9, 2021). Because the use of RFDs in 2021 succeeded in extending fishing opportunities through a greater portion of the relevant subquota periods and the fishing year overall consistent with management objectives for the fishery, NMFS finalized an RFD schedule for the 2022 fishing year of all Tuesdays, Fridays, and Saturdays from July 1 through November 30, 2022 (87 FR 33056, June 1, 2022). In 2023, NMFS proposed the same weekly schedule for the July through November timeframe, along with extending RFDs to the winter fishery (i.e., the December and January through March time periods). Based on public comment and a review of average daily catch rates in previous fishing years, NMFS determined that finalizing an RFD schedule for the December 2023 or January through March 2024 time periods was unwarranted at that time. Thus, NMFS finalized an RFD schedule of all Tuesdays, Fridays, and Saturdays from July 1 to November 30, 2023 (88 FR 33839, May 25, 2023).

BFT General Category Retention Limits

Similar to RFDs, daily retention limits are meant to extend the General category fishing season, prevent overharvest of quota in any period, and improve distribution of fishing opportunities without increasing BFT mortality. For example, NMFS might increase retention limits when landings rates are slow and then reduce retention limits at other times when landings rates are high. NMFS established a default daily retention limit of large medium and giant BFT of one fish per vessel in 1995 (60 FR 38505, July 27, 1995). To provide for maximum utilization of the quota, NMFS had the flexibility to increase or decrease the large medium and giant BFT daily retention limit over a range of zero (on RFDs) to a maximum of three per vessel via an inseason action. In 2011, NMFS adjusted the upper limit of this range to five fish per vessel to increase opportunities to harvest the General category quota while maintaining the default retention limit of one fish per vessel (76 FR 74003, December 30, 2011). The default retention limit was maintained through 2018, when NMFS published a final rule that made editorial corrections amending the regulations for HMS (83 FR 33148, July 17, 2018). In that action, NMFS

inadvertently removed regulatory text specifically stating the default retention limit on non-RFDs. To correct this technical error, with this action NMFS again considers establishing default General category retention limits on non-RFDs.

1.3 Action, Purpose, and Need

Action: NMFS is considering modifying the process of scheduling RFDs by codifying in the HMS regulations a schedule of RFDs for the 2024 fishing year and subsequent fishing years (i.e., setting a default RFD schedule for the 2024 fishing year and subsequent fishing years); setting an additional non-codified RFD for the 2024 fishing year; and reestablishing in the HMS regulations a General category default retention limit for large medium or giant BFT on open days (i.e., non-RFDs). Lastly, this action would clarify existing HMS dealer regulations and the definition of a bluefin statistical document (BSD) tag.

Purpose: As effort controls, both RFDs and daily retention limits are meant to extend General category fishing opportunities through a greater portion of the General category time period subquotas, prevent overharvest of quota in any period, and improve distribution of fishing opportunities without increasing BFT mortality. Lastly, this action would clarify existing HMS dealer regulations and the definition of a BSD tag to improve the understanding of vessel and dealer restrictions and requirements for participants in the General category BFT fishery.

Need: This action is needed to simplify and clarify the regulatory process regarding RFDs. RFDs increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the General category time period subquotas. Additionally, this action would reestablish a General category retention limit on open days for better understanding by General category quota participants and clarify the existing HMS dealer regulations to improve the understanding of vessel and dealer restrictions and requirements for participants in the General category BFT fishery to ensure better compliance by dealers and dealers' agents when operating on an RFD. The effects of clarifications related to the dealer regulations are primarily administrative and no environmental or economic effects are anticipated; thus no analysis for these modifications is included in this document.

1.4 Scope and Organization of this Document Related to NEPA

In considering the management measures outlined in this document, NMFS must comply with a number of federal statutes, including NEPA. Under NEPA, the purpose of an EA is to provide sufficient evidence and analysis for determining whether to prepare an Environmental Impact Statement (EIS) or a finding of no significant impact (FONSI) and to aid in the agency's compliance with NEPA when no EIS is necessary.

In developing this document, NMFS adhered to the procedural requirements of NEPA, the 2020 CEQ regulations for implementing NEPA as modified by the Phase I 2022 revisions. (40 CFR parts 1500-1508), NAO 216-6A, and the accompanying Companion Manual to:

- Fully integrate NEPA into the agency planning and decision making process;
- Fully consider the impacts of NOAA's proposed actions on the quality of the human environment;

- Involve interested and affected agencies, governments, organizations, and individuals early in the agency planning and decision making process when significant impacts are or may be expected to affect the quality of the human environment from implementation of proposed major federal actions; and
- Conduct and document environmental reviews and related decisions appropriately and efficiently.

The following definitions were generally used to characterize the nature of the various impacts evaluated in this EA. Chapter 4 describes more specifically how these definitions were used for each alternative.

- *Effects or impacts*: CEQ regulations implementing NEPA define effects or impacts as the “changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives” (40 CFR 1508.1(g)).
- *Short-term or long-term impacts*. These characteristics are determined on a case-by-case basis and do not refer to any rigid time period. In general, short-term impacts are those that would occur only with respect to a particular activity or for a finite period. Long-term impacts are those that are more likely to be persistent and chronic.
- *Minor, moderate, or major impacts*. These relative terms are used to characterize the magnitude of an impact. Minor impacts are generally those that might be perceptible but, in their context, are not amenable to measurement because of their relatively minor character. Moderate impacts are those that are more perceptible and, typically, more amenable to quantification or measurement. Major impacts are those that, in their context and due to their intensity (severity), have the potential to be significant and, thus, warrant heightened attention and examination for potential means for mitigation to fulfill the requirements of NEPA.
- *Neutral, Adverse, or beneficial impacts*. A neutral impact is one having neither positive nor negative outcomes on the man-made or natural environment. An adverse impact is one having unfavorable, or undesirable outcomes on the man-made or natural environment. A beneficial impact is one having positive outcomes on the man-made or natural environment. A single act might result in adverse impacts on one environmental resource and beneficial impacts on another resource.

This EA assesses the potential and cumulative ecological, economic, and social impacts of a modifying the process of scheduling RFDs by codifying in the HMS regulations a schedule of RFDs for the 2024 fishing year and subsequent fishing years; setting an additional non-codified RFD only for the 2024 fishing year; and reestablishing in the HMS regulations a General category default retention limit for large medium or giant BFT on open days (i.e., non-RFDs). This document comprehensively analyzes the alternatives considered for all these requirements. The chapters that follow describe the management measures and potential alternatives (Chapter 2), the affected environment as it currently exists (Chapter 3), the probable consequences on the

human environment that may result from the implementation of the management measures and their alternatives, including the potential impacts on the fisheries (Chapter 4), and any cumulative impacts from this action (Section 4.4). Chapter 5 discusses mitigation and unavoidable impacts.

The scope of this analysis is limited to the decision for which we are responsible (i.e., modifying the process of scheduling RFDs by codifying in the HMS regulations a schedule of RFDs for the 2024 fishing year and subsequent fishing years; setting an additional non-codified RFD for the 2024 fishing year; and reestablishing in the HMS regulations a General category default retention limit for large medium or giant BFT on open days (i.e., non-RFDs)). This EA is intended to provide focused information on the primary issues and impacts of environmental concern, and the mitigation and monitoring measures to minimize those effects. For these reasons, this EA does not provide a detailed evaluation of the effects to the elements of the human environment listed in Table 1 below.

Table 1: Elements of the human environment not evaluated in this EA.

Biological	Physical	Socioeconomic/Cultural
<ul style="list-style-type: none"> • Benthic Communities • Coral Reef Systems • Fisheries Resources • Humans • Invertebrates • Invasive Species 	<ul style="list-style-type: none"> • Air Quality • Farmland Geography • Geology/Sediments • Land Use • Oceanography • State Marine Protected Areas • Federal Marine Protected Areas • National Marine Sanctuaries • National Wildlife Refuge • Park Lands • Water Quality • Wetlands • Wild and Scenic Rivers 	<ul style="list-style-type: none"> • Indigenous Cultural Resources • Low-Income Populations • Military Activities • Minority Populations • Other Marine Uses: Military activities, shipping marine transport, and Boating • Recreational Fishing • Public Health and Safety

1.5 Scope and Organization of this Document Related to Other Applicable Laws and Executive Orders

In addition to NEPA, the action must comply with other applicable statutes and executive orders including the Magnuson-Stevens Act, Executive Order 12866 (E.O. 12866, Regulatory Planning and Review), and the Regulatory Flexibility Act (RFA). This document comprehensively analyzes the alternatives considered for all the requirements under these additional laws and executive orders. In addition to the purpose and need outlined in this chapter and the various alternatives outlined in Chapter 2, Chapter 4 provides a summary of all the economic analyses

and associated data; Chapter 6 addresses the requirements under E.O. 12866 also known as the Regulatory Impact Review; Chapter 7 provides the Final Regulatory Flexibility Analysis (FRFA) required under the RFA; and Chapter 8 provides additional consistency information that is required under various statutes. Furthermore, Chapters 9 and 10 provide information regarding the review process and the comments received. While some of the chapters were written to comply with the specific requirements under these various statutes and requirements, it is the document as a whole that meets these requirements and not any individual chapter.

1.6 Public Involvement

Although agency procedures do not require publication of the draft EA prior to finalizing an EA, NMFS relies substantially on the public process to develop and evaluate environmental information relevant to an analysis under NEPA. For this action, NMFS published a notice of the proposed rulemaking along with the draft EA in the Federal Register for review and public comment on February 23, 2024 (89 FR 13667). There, NMFS solicited relevant environmental information and provided the public an opportunity to submit comments on the proposed rule and draft EA during a 30 day comment period.

The Federal Register notice (FRN) of the proposed rule included a detailed description of the proposed action, action alternatives, the potential effects of each alternative, proposed mitigation and monitoring measures, and NMFS' preliminary findings. The FRN of the proposed rule, the draft EA, and the corresponding public comment period are instrumental in providing the public with information regarding relevant environmental issues and offering the public a meaningful opportunity to provide comments for our consideration in both the Magnuson-Stevens Act and NEPA processes.

During the 30-day public comment period for the proposed rule, NMFS received 34 public comments. Comments received in response to the publication of the proposed rule and draft EA were considered and used to inform the analysis in this Final EA. A more detailed summary of the comments, and NMFS' responses to those comments, is included in chapter 10 of this Final EA.

2.0 SUMMARY OF THE ALTERNATIVES

NEPA requires that any federal agency proposing a major federal action consider all reasonable alternatives, in addition to the proposed action. The evaluation of alternatives in an EA assists NMFS in ensuring that any unnecessary impacts can be avoided through an assessment of alternative ways to achieve the underlying purpose of the project that may result in less environmental harm.

To warrant detailed evaluation, an alternative must be reasonable³ and meet the purpose and need of the action (see Section 1.3). The following screening criteria were used to determine whether an alternative is reasonable. Each of the alternatives described in this chapter meet each of these screening criteria. There were no other alternatives which were considered, and thus none which were found not to be reasonable.

Screening Criteria– To be considered “reasonable” for purposes of this EA, an alternative must meet the following criteria:

- An alternative must be consistent with the 10 National Standards set forth in the Magnuson-Stevens Act.
- An alternative must be administratively feasible. The costs associated with implementing an alternative cannot be prohibitively exorbitant or require unattainable infrastructure.
- An alternative cannot violate other laws (e.g., ESA, MMPA, etc.).
- An alternative must be consistent with the 2006 Consolidated HMS FMP and its amendments.

This chapter includes a full range of reasonable alternatives designed to meet the purpose and need for action described in Chapter 1. These alternatives are listed below. The environmental, economic, and social impacts of these alternatives are discussed in later chapters. There are no alternatives for the clarification of dealer regulations as the effects of these changes are primarily administrative and no environmental or economic effects are anticipated.

2.1 General category RFDs Alternatives

Alternative A: Keep the Current Regulations for General Category RFDs – Status Quo

Under Alternative A, NMFS would maintain the status quo and as needed, would continue the recent practice of conducting an annual rulemaking to set the schedule of RFDs for upcoming

³ Section 102 of NEPA (42 U.S.C. § 4332) directs agencies to consider “a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal.” 40 CFR § 1508.1(z) defines reasonable alternatives as “a reasonable range of alternatives that are technically and economically feasible, and meet the purpose and need for the proposed action.” In determining the scope of alternatives to be considered, the emphasis is on what is “reasonable” rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.” (46 FR 18026, March 23, 1981).

fishing year. Through this process, NMFS would conduct an annual rulemaking, which includes a proposed rule with a public comment period, prior to finalizing an RFD schedule, which would be published in the Federal Register via a final action. Atlantic Tunas General category permitted vessels would continue to be prohibited from fishing for, possessing, retaining, landing, and selling BFT on an RFD. HMS Charter/Headboat permitted vessels with a commercial sale endorsement would continue to be subject to the commercial restrictions and would not be authorized to fish commercially for BFT under the General category restrictions and retention limits, but such vessels would be authorized to fish for, possess, retain, or land BFT when fishing recreationally under the applicable HMS Angling category rules.

Alternative B: Modify the Process for Setting a Schedule of General Category RFDs – Preferred Alternative

Under Alternative B, which NMFS is considering as four sub-alternatives (B1 is the preferred sub-alternative), NMFS would modify the process for setting an RFD schedule. Under this alternative, NMFS would no longer conduct an annual rulemaking to set an RFD schedule. Instead, NMFS would codify the General category time periods and days in which RFDs would be applied as a default. NMFS could, if needed and as appropriate, conduct rulemaking to change the codified RFD schedule (e.g. remove an RFD or add an RFD). NMFS clarifies that this rulemaking could be for a change to the schedule on either a temporary (i.e., effective for only one fishing year) or permanent basis. NMFS may waive these scheduled RFDs for the specific time periods and days on which they apply by adjusting the daily BFT retention limit from zero up to five after considering the criteria at § 635.27(a)(7). The criteria include, among other things, review of dealer reports, daily landing trends, and the availability of BFT on fishing grounds. NMFS would announce any such waiver by filing a retention limit adjustment with the Office of the Federal Register for publication. NMFS also may waive previously designated RFDs effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct only tag-and-release fishing for BFT under § 635.26(a). Under these sub-alternatives, NMFS would set a default RFD schedule for specific General category time periods and days for the 2024 fishing year and subsequent years. Because these RFDs would become the default, these RFDs would go into effect without the need to conduct an annual rulemaking. If the default RFDs were not needed, NMFS could, after considering the criteria at 50 CFR § 635.27(a)(7), waive these scheduled RFDs for the specific time periods and days on which they apply by adjusting the daily BFT retention limit from zero up to five.

As part of this alternative, NMFS is considering four sub-alternatives specific to the RFD schedule for 2024 and subsequent years, as described below.

Sub-Alternative B1: Set an RFD schedule of three days per week (Tuesday, Friday, Saturday) from July 1 to November 30 – Preferred Sub-Alternative

Under Sub-Alternative B1, the preferred alternative, NMFS would codify a three-day-per-week RFD schedule for every Tuesday, Friday, and Saturday from July 1 through November 30.

Sub-Alternative B2: Set an RFD schedule of three days per week (Thursday, Friday, Saturday) from July 1 to November 30

Under Sub-Alternative B2, NMFS would codify a three-day-per-week RFD schedule for every Thursday, Friday, and Saturday from July 1 through November 30.

Sub-Alternative B3: Set an RFD schedule of three days per week (Friday, Saturday, Sunday) from July 1 to November 30

Under Sub-Alternative B3, NMFS would codify a three day per week RFD schedule for every Friday, Saturday, and Sunday from July 1 through November 30.

Sub-Alternative B4: Set an RFD schedule of four days or more per week from July 1 to November 30

Under Sub-Alternative B4, NMFS would codify a four-day (or more)-per-week RFD schedule from July 1 through November 30.

Alternative C: Eliminate RFDs

Under Alternative C, NMFS would remove RFDs from the existing HMS regulations and no longer set General category RFDs.

2.2 General category default daily retention limits

NMFS is considering three alternatives for the General category default daily retention limit. Retention limits in the General category are designated as the number of large medium or giant BFT (73 inches curved fork length (CFL)) that may be retained on board a vessel operating under the General category quota. Under the current regulations, the daily retention limit would apply to General category permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. Similarly, the current regulations state that 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 an Atlantic Tunas General category permit. On days other than RFDs, when the General category is open, no person aboard such a vessel may continue to fish, and the vessel must immediately proceed to port, once the applicable limit for large medium or giant BFT is retained. NMFS is maintaining the regulations pertaining to the daily retention limit applying to a single day regardless of the length of a trip and the need for a vessel to immediately return to port once the vessel has landed the daily retention limit as is; this EA does not consider any changes to those regulations.

Alternative D1: Status Quo: No default retention limit

Under Alternative D1, NMFS would maintain the current regulations at 50 CFR § 635.23(a)(3) which do not establish a default retention limit on open days (i.e., non-RFDs) when the General category is open. Under this alternative, NMFS may set the General category default daily retention limit for large medium and giant BFT between a range of zero (on RFDs) to five fish per vessel for each time period in an action published in the Federal Register.

Alternative D2: Establish a default retention limit of one fish per day/trip

Under Alternative D2, NMFS would establish a General category default daily retention limit of one large medium or giant BFT per vessel on open days when the General category is open unless adjusted with an inseason action, if warranted.

Alternative D3: Establish two default retention limits -- three fish per day/trip for the month of June and one fish per day/trip for all other times – *Preferred Alternative*

Under preferred Alternative D3, NMFS would establish a General category daily retention limit of three large medium or giant BFT per vessel on open days in June and one large medium or giant BFT on open days during all other months when the fishery is open (i.e., January through March and July through December; the General category BFT fishery is not open during the months of April and May). Both default daily retention limits could be adjusted with an inseason action, if warranted.

3.0 AFFECTED ENVIRONMENT

This chapter describes the affected environment (i.e., the fishery, the gears used, the communities involved, etc.), and provides a view of the current condition of the fishery, which serves as a baseline against which to compare potential impacts of the different alternatives. This chapter also provides a summary of information concerning the biological status of BFT; the marine ecosystem; the social and economic condition of the fishing interests, fishing communities, and fish processing industries; and the best available scientific information concerning the past, present, and possible future conditions of the BFT stocks, ecosystem, and fisheries. More information can be found in the 2022 BFT and northern albacore quota rule and its EA, Amendment 13 to the 2006 Consolidated HMS FMP, and the 2022 HMS Stock Assessment and Fisheries Evaluation (SAFE) Report.

3.1 Summary of Atlantic Highly Migratory Species BFT Management

As described in Chapter 1, the authority to manage HMS fisheries was delegated to NMFS by the Secretary of Commerce. The HMS Management Division of the Office of Sustainable Fisheries within NMFS develops regulations for HMS fisheries. HMS fisheries require management at the international, national, and state levels because of the highly migratory nature of the species involved. For BFT, generally NMFS manages U.S. HMS fisheries in federal waters (domestic) and the high seas (international). For tunas, with the exception of Connecticut and Mississippi, NMFS regulations apply in state waters all the way to the shore. In all cases, Federally-permitted HMS fishermen are required to follow federal regulations in all waters, including state waters, unless the state has more restrictive regulations, in which case the state regulations prevail. For more information on the complete HMS management history as it relates to BFT, please refer to the 2006 Consolidated HMS FMP (NMFS 2006) and Amendments 7 and 13 to the 2006 Consolidated HMS FMP. For the implementing regulations, see 50 CFR part 635. See also the 2022 BFT and northern albacore quota rule (87 FR 33049, June 1, 2022) and its EA and the 2022 SAFE Report.

3.1.1 Summary of BFT Stock Status

Domestically, the overfished status for BFT is unknown and the stock is not subject to overfishing. The domestic stock status determination criteria, thresholds used to determine the stock status, and information on the stock status for HMS are presented in Chapter 2 of the 2022 HMS SAFE Report.

3.1.2 Biology and Life History of BFT

A thorough discussion of BFT life history is available in Amendment 10 to the 2006 Consolidated HMS FMP (82 FR 42329, September 7, 2017) (Amendment 10), which addressed essential fish habitat (EFH) for Atlantic HMS. NMFS recently initiated an HMS EFH 5-year review to gather all new information and determine whether modifications to existing EFH descriptions and designations are warranted. The HMS EFH Draft 5-Year Review was completed on May 4, 2023 (88 FR 28531). If EFH modifications are warranted, a follow up action may be initiated to implement the recommended updates to HMS EFH. The information

below summarizes migration and distribution information that is considered relevant to this action.

BFT are highly migratory and in the western Atlantic generally range from 45° N. lat. to the equator, but have also supported short-term fisheries off Brazil and in the North Sea (Fromentin 2010). The prevailing assumptions have been that mature western BFT follow an annual cycle of foraging off the eastern U.S. and Canadian coasts from June through March. BFT spawn from mid-April through June, mainly in the Gulf of Mexico, which contains the recognized spawning grounds for the western stock of Atlantic BFT. Protecting these fish during spawning can help the long-term sustainability of the BFT population. Although individuals may spawn more than once a year, it has generally been assumed that there is a single annual spawning period.

3.1.3 Habitat

The Magnuson-Stevens Act requires NMFS to identify and describe EFH for each life stage of managed species (16 U.S.C. 1855(b)(1)) and to evaluate the potential adverse effects of fishing activities on EFH, including the cumulative effects of multiple fisheries activities (50 CFR § 600.815). NMFS originally described and identified EFH and related EFH regulatory elements for all HMS in the management unit in 1999, some of which were updated in 2003 via Amendment 1 to the 1999 FMP. EFH boundaries published in the 1999 FMP and Amendment 1 to the 1999 FMP were updated in Amendment 10 to the 2006 Consolidated HMS FMP (82 FR 42329, September 7, 2017). The EFH Mapper, an interactive tool for viewing important habitats where fish species spawn, grow, or live is available online at <https://www.fisheries.noaa.gov/resource/map/essential-fish-habitat-mapper>. NMFS recently initiated an HMS EFH 5-year review to gather all new information and determine whether modifications to existing EFH descriptions and designations are warranted. The HMS EFH Final 5-Year Review was released on April 18, 2024 (89 FR 89 FR 27715). As a result of this review and the recommended updates to HMS EFH, we expect to begin working on Amendment 17.

The 2006 Consolidated HMS FMP contains a summary of habitats comprising EFH of Atlantic HMS target species and BFT that was updated in Amendment 10 to the 2006 Consolidated HMS FMP (2017).

3.2 Description of the Fishery

3.2.1 Atlantic Tunas Permits, Retention Limits, and Economic Aspects

There are over 30,000 permitted vessels that may participate in the Atlantic tunas fisheries, although not all permitted vessels are active. A complete description of participation rates in the BFT fisheries is provided in Chapters 3 and 5 of Amendment 13 to the 2006 Consolidated HMS FMP and Chapter 4 of 2022 HMS SAFE Report and is not repeated here. Participants within the General category are restricted to the use of rod and reel, harpoon, handline, bandit gear, and green-stick (which is used primarily to harvest yellowfin tuna). Charter/Headboat category permitted vessels are authorized to use similar gear types, except for harpoon gear, which is prohibited. See Section 3.3 of the Amendment 13 FEIS for thorough descriptions of the BFT fisheries by quota category and gear type.

Specific information regarding BFT landings in the General category can be found in the 2022 SAFE Report. The General category base quotas from 2018 through 2022 are provided in Table 3.1. The number and total weight of BFT that were landed and unsold by fishermen fishing under the General category quota for 2018 through 2022 and daily catch rates per time period are provided in Tables 3.2 and 3.3. The General category fishery is focused on large medium (73 inches to less than 81 inches) and giant (81 inches or greater) BFT. The General category is monitored through mandatory 24 hour reporting requirements.

Table 3.1 General Category Time Period Base Quotas (mt), 2018-2022

Year	Time period					
	January through March	June through August	September	October through November	December	Overall Base Quota
2018	29.5	277.9	147.3	72.2	28.9	555.7
2019	29.5	277.9	147.3	72.2	28.9	555.7
2020	29.5	277.9	147.3	72.2	28.9	555.7
2021	29.5	277.9	147.3	72.2	28.9	555.7
2022	31.2	293.9	155.8	76.4	30.6	587.9

Table 3.2 Number (Count) and Weight (mt) of BFT Landed but Unsold by General Category Participants, 2018-2022

Year	Count	Weight (mt)
2018	14	2.5
2019	25	4.9
2020	178	31.9
2021	20	4.0
2022	54	10.6
Annual Average	58.2	10.8

Data Source: eBFT

Table 3.3 General Category Average Daily Landings Rates (mt) by Time Period, 2018-2022

Average Daily Landing Rates by time period (mt)	2018	2019	2020	2021	2022
January – March	1	1.9	2.3	1.5	2.2
June – August	3.6	4	3.5	4.9	5.7
September	10.4	17.4	9	8.6	25.1
October – November	9.6	13.7	11.7	6.1	13.9
December	0.5	0.7	2.4	2.8	5.5

Data Source: eBFT

3.2.2 Fishery Participants

In order to understand the scope of potential impact of this action on permit holders, NMFS analyzed the number of vessels and dealer permits issued. As of October 30, 2022, there were 2,630 General category and 4,175 HMS Charter/Headboat permits with 1,873 commercial sale endorsements. For more information regarding the distribution of these permits across states and territories please see the 2022 HMS SAFE Report.

3.2.3 Economic Environment

From 2018 through 2022, the ex-vessel average price per pound of BFT fisheries has ranged from a low in 2020 of \$5.75 to a high of \$8.15 in 2018 as shown in Table 3.4. Total annual revenue for BFT for the General category is shown in Table 3.5. The average ex-vessel price for the General category by time period is shown in Table 3.6. For more information on the overall economic status of HMS fisheries, please see Chapter 8 of the 2022 HMS SAFE Report.

Table 3.4 Average Ex-Vessel Price per Pound (U.S. Dollars) and Total BFT Ex-Vessel Annual Revenue, 2018-2022

Values	2018	2019	2020	2021	2022
Ex-vessel*	\$8.15	\$6.48	\$5.75	\$7.31	\$6.68
Weight**	1,571,080	1,741,392	1,720,397	1,726,043	1,879,449
Annual Total Revenue for BFT	\$12,726,335.34	\$11,240,240.07	\$9,501,444.16	\$12,396,968.94	\$12,211,933.83

Note: Given the inflation that has recently occurred, all prices are adjusted to real 2022 dollars using the GDP Deflator. Source: 2023 HMS SAFE Report. *Dollars per pound dressed weight. **Pounds dressed weight.

Table 3.5 Average Ex-Vessel Price per Pound (U.S. Dollars) and General Category BFT Ex-Vessel Annual Revenue, 2018-2022

Values	2018	2019	2020	2021	2022
Ex-vessel*	\$8.31	\$6.66	\$5.76	\$7.36	\$6.58
Weight**	1,369,855	1,408,360	1,491,696	1,501,435	1,539,464
General Category Annual Total Revenue	\$11,335,648.73	\$9,381,732.09	\$8,255,986.56	\$10,862,040.62	\$9,828,549.34

Note: Given the inflation that has recently occurred, all prices are adjusted to real 2022 dollars using the GDP Deflator. Source: eBFT *Dollars per pound dressed weight. **Pounds dressed weight.

Table 3.6 Average Ex-Vessel Price per Pound (U.S. Dollars) of BFT by Time Period Adjusted to Real Dollars, 2018-2022

	Time Period
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Year	January through March	June through August	September	October through November	December
2018	\$8.80	\$8.13	\$7.67	\$8.83	\$11.14
2019	\$7.03	\$6.48	\$7.32	\$6.34	\$14.04
2020	\$7.00	\$5.62	\$5.92	\$6.33	\$6.50
2021	\$6.94	\$7.60	\$6.59	\$7.85	\$9.06
2022	\$8.84	\$7.37	\$6.08	\$6.09	\$7.19
2018 through 2022 average	\$7.72	\$7.04	\$6.71	\$7.09	\$9.59

Note: Given the inflation that has recently occurred, all prices are adjusted to real 2022 dollars using the GDP Deflator. Source: eBFT.

3.3 Endangered Species Act and Marine Mammal Protection Act

Endangered Species Act (ESA)

The ESA is the primary federal legislation governing interactions between fisheries and species listed as threatened or endangered and effects on ESA-listed critical habitat. Through a consultation process, the ESA requires federal agencies to evaluate actions they authorize, fund, or carry out that may affect a listed species. In the case of marine fisheries, NMFS Office of Sustainable Fisheries consults with the Office of Protected Resources to determine what impacts fishery management actions could have on threatened or endangered marine species and what actions can be taken to reduce or eliminate negative impacts. Under the ESA Section 7 consultation process, if a federal agency determines its action is likely to adversely affect a species or destroy or adversely modify critical habitat, the agency engages in formal consultation with NMFS. At the conclusion of formal consultation, NMFS issues a Biological Opinion (BiOp) that analyzes the effects of the action. If NMFS concludes the action will jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat, NMFS specifies Reasonable and Prudent Alternatives to the action. If NMFS concludes the action will not jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat, NMFS specifies Reasonable and Prudent Measures (RPMs) and Terms and Conditions to mitigate the effects of the action and authorizes any allowable “incidental take” of the species.

On May 15, 2020, NMFS issued a BiOp concluding ESA section 7 consultation on the Operation of the HMS Fisheries (Excluding Pelagic Longline) under the Consolidated Atlantic HMS Fishery Management Plan. The BiOp concluded that these fisheries (including handgear and bottom longline fisheries) are not likely to jeopardize the continued existence of listed species, including sea turtles, sawfish, Atlantic sturgeon, scalloped hammerhead shark (Caribbean and Central Atlantic DPS), oceanic whitetip shark, and giant manta ray, nor adversely affect the critical habitat of listed species. NMFS is implementing the RPMs and Terms and Conditions of this BiOp. This action is not anticipated to affect the above-referenced ESA-listed species in any way not previously analyzed for existing regulations.

Marine Mammal Protection Act (MMPA)

The MMPA established a national policy to prevent marine mammal species and population stocks from declining beyond the point where they ceased to be significant functioning elements of the ecosystems of which they are a part. The MMPA prohibits, with certain exceptions, the "take" of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the United States. Under MMPA requirements, NMFS produces an annual List of Fisheries that classifies domestic commercial fisheries, by gear type, relative to their rates of incidental mortality or serious injury of marine mammals. The List of Fisheries includes three classifications:

- Category I fisheries are those with frequent serious injury or mortality to marine mammals;
- Category II fisheries are those with occasional serious injury or mortality; and
- Category III fisheries are those with remote likelihood of serious injury or mortality to marine mammals.

Fishermen participating in Category I or II fisheries are required to be registered under MMPA and, if selected, to accommodate an observer aboard their vessels. Vessel owners or operators or fishermen in Category I, II, or III fisheries must report all incidental mortalities and injuries of marine mammals during the course of commercial fishing operations to NMFS. There are currently no regulations requiring recreational fishermen to report takes, nor are they authorized to have incidental takes (i.e., they are illegal). NMFS does require reporting and authorizes takes by charter/headboat fishermen (considered "commercial" by MMPA). No takes in HMS fisheries have been reported to NMFS to date.

This action would apply to the Gulf of Maine and Mid-Atlantic tuna, shark, and swordfish hook-and-line/harpoon fishery; Southeast Mid-Atlantic and Gulf of Mexico shark BLL fisheries; Mid-Atlantic, southeastern Atlantic, and Gulf of Mexico pelagic hook-and-line fisheries; and commercial passenger fishing vessel (charter/headboat) fisheries. All of these fisheries fall under Category III of the MMPA Classifications of Commercial Atlantic HMS Fisheries. With strict control on operations through existing MMPA List of Fisheries requirements, these types of fishing gear are not likely to result in mortality or serious injury of marine mammals.

Please refer to Sections 3.8 and 3.9.9 of the 2006 Consolidated HMS FMP and Chapter 6 of the 2022 HMS SAFE Report for additional information on the protected species and marine mammals in the area of HMS fisheries.

3.4 References

- Block B.A., Teo S.L.H., Walli A., Boustany A., Stokesbury M.J.W., Farwell C.J., Weng K.C., Dewar H., and T.D. Williams. 2005. Electronic tagging and population structure of Atlantic bluefin tuna. *Nature*. 434: 1121-1127.
- Cornic, M., Smith, B.L., Kitchens, L.L., Alvarado Bremer, J.R., Rooker, J.R., Abundance and habitat associations of tuna larvae in the surface water of the Gulf of Mexico. *Hydrobiologia*. DOI 10.1007/s10750-017-3330-0

- Fromentin, J. and J. Powers. 2005. Atlantic bluefin tuna: population dynamics, ecology, fisheries and management. *Fish and Fisheries* 6(4):281-306. DOI: 10.1111/j.1467-2979.2005.00197.x
- Goldstein, J., Heppell, S., Cooper, A. et al. Reproductive status and body condition of Atlantic bluefin tuna in the Gulf of Maine, 2000–2002. *Mar Biol* 151, 2063–2075 (2007). <https://doi.org/10.1007/s00227-007-0638-8>
- Lutcavage ME, Galuardi B, Lam TC. 2012. Predicting potential Atlantic spawning grounds of Western Atlantic bluefin tuna based on electronic tagging results 2002-2011. ICCAT SCRS/2012/157. 7 p.
- Mather FJ, Mason JM, Jones AC. 1995. Historical document: life history and fisheries of Atlantic bluefin tuna. Miami: NOAA Technical Memorandum 370 NOAA
- NMFS. 2006. Final Consolidated Atlantic Highly Migratory Species Fishery Management Plan. National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Office of Sustainable Fisheries, Highly Migratory Species Management Division, 1315 East West Highway, Silver Spring, MD. Public Document. 1600 pp.
- NMFS. 2017. Final Amendment 10 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan. USDOC, NOAA, NMFS, Highly Migratory Species Management Division, 1315 East West Highway, Silver Spring, MD.
- NMFS. 2022. Final Amendment 13 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan. USDOC, NOAA, NMFS, Highly Migratory Species Management Division, 1315 East West Highway, Silver Spring, MD
- Richards, W. J., M. F. McGowan, T. Leming, J. T. Lamkin & S. Kelley, 1993. Larval fish assemblages at the loop current boundary in the Gulf of Mexico. *Bulletin of Marine Sciences* 53: 475–537.

4.0 ENVIRONMENTAL CONSEQUENCES OF ALTERNATIVES

As described earlier, NMFS has developed and considered various alternatives that meet the purpose and need of this action. This chapter details the environmental effects of the various alternatives considered.

4.1 Impacts of General category RFDs Alternatives

As described in Chapter 2, NMFS is analyzing three alternatives for setting General category RFDs: maintaining the status quo, modifying the process for setting RFDs, and eliminating RFDs. Additionally, NMFS is analyzing four sub-alternative RFD schedules, which would be codified in the HMS regulations for the 2024 and subsequent fishing years.

4.1.1 Ecological Evaluation

Alternative A (Status Quo)

Under Alternative A, NMFS would maintain the status quo and as needed, would continue the recent practice of conducting an annual rulemaking to set the schedule of RFDs for upcoming fishing year. Atlantic Tunas General category permitted vessels would continue to be prohibited from fishing for, possessing, retaining, landing, and selling BFT on an RFD. HMS Charter/Headboat permitted vessels with a commercial sale endorsement would continue to be subject to the commercial restrictions and would not be authorized to fish commercially for BFT under the General category restrictions and retention limits, but such vessels would be authorized to fish for, possess, retain, or land BFT when fishing recreationally under the applicable HMS Angling category rules.

From 2018 through 2022, consistent with the overall quota increase, the General category quota also increased. Each time period has its own quota with the December and January through March time periods having the lowest quotas, respectively. The June through August time period has the highest subquota amount, followed by the September and October through November time periods, respectively (Table 3.1). Although the time periods from June through November have the highest subquotas, they also have the highest daily landings rates (Table 3.3). This high rate of daily landings means that the General category time period subquotas are often met and exceeded quickly, resulting in closures early in these time periods.

As stated above, RFDs are designed as an effort control to extend the General category fishing season, prevent overharvest of quota in any period, and improve distribution of fishing opportunities without increasing BFT mortality. RFDs do not impact the quota. As such, continuing the status quo alternative with an annual rulemaking to establish RFDs should have neutral environmental impacts.

Alternative B (Preferred Alternative)

Under Alternative B, which NMFS is considering as four sub-alternatives (Sub-Alternative B1 is the preferred sub-alternative), NMFS would modify the process for setting an RFD schedule. Under this alternative, NMFS would no longer need to conduct an annual rulemaking to set an

RFD schedule. Instead, NMFS would codify the General category time periods and days in which RFDs would be applied as a default. NMFS could, if needed and as appropriate, conduct rulemaking to change the codified RFD schedule (e.g. remove an RFD or add an RFD). NMFS clarifies that this rulemaking could be for a change to the schedule on either a temporary or permanent basis. NMFS may waive these scheduled RFDs for the specific time periods and days on which they apply by adjusting the daily BFT retention limit from zero up to five after considering the criteria at § 635.27(a)(7). NMFS also may waive previously designated RFDs effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct only tag-and-release fishing for BFT under § 635.26(a)..

Codifying a schedule of RFDs or conducting rulemaking to add or remove RFDs as needed would likely have no ecological impacts as this modification of regulations is primarily administrative in nature. Modifying the days at which BFT are landed would likely not cause ecological impacts to the stock, as RFDs do not impact the quota; instead they simply extend the General category fishing season, prevent an overharvest of quota in any time period, and improve distribution of fishing opportunities without increasing BFT mortality.

For 2024, based on public comments received on the proposed rule and draft EA and consistent with the ability to add or remove RFDs through rulemaking as described in this Alternative, in addition to codifying RFDs for certain days (see Sub-Alternative B1 below), NMFS is also preferring to add Sunday as an additional RFD from July through November. In other words, for the 2024 fishing year, NMFS would set an RFD schedule of four days (i.e., Sunday, Tuesday, Friday, and Saturday). The additional Sunday RFD would not be codified into the regulations at this time in order to provide NMFS the opportunity to collect data and determine if it would be appropriate to include Sunday as an RFD in future years. The expected ecological impacts of this four-day RFD schedule are described under Sub-Alternative B4 (codify a four-day RFD schedule) below.

Sub-Alternative B1 (*Preferred Sub-Alternative*)

Under Sub-Alternative B1, the preferred sub-alternative, NMFS would codify a three-day RFD schedule for every Tuesday, Friday, and Saturday from July 1 through November 30. As stated above, RFDs do not impact the quota, instead they simply extend the General category fishing season, reduce the possibility of an overharvest of quota in any time period, and improve distribution of fishing opportunities without increasing BFT mortality. As such, this RFD schedule would have neutral environmental impacts.

As described above, based on public comments on the proposed rule and Draft EA, NMFS is also preferring in this rulemaking to add Sunday as an additional RFD for only the 2024 fishing year. Additional information regarding ecological impacts of a four or more RFD schedule can be found under Sub-Alternative B4.

Sub-Alternative B2

Under Sub-Alternative B2, NMFS would codify a three-day RFD schedule for every Thursday, Friday, and Saturday from July 1 through November 30. The ecological impacts of this sub-alternative would be similar to those described under Sub-Alternative B1, above.

Sub-Alternative B3

Under Sub-Alternative B3, NMFS would codify an RFD schedule for every Friday, Saturday, and Sunday from July 1 through November 30. The ecological impacts of this sub-alternative would be similar to those described under Sub-Alternative B1, above.

Sub-Alternative B4

Under Sub-Alternative B4, NMFS would codify a four-day (or more)-per-week RFD schedule from July 1 through November 30. The ecological impacts of this sub-alternative would be similar to those described under all the other sub-alternatives above.

Based on public comments to the proposed rule and Draft EA, NMFS is preferring in this rule to add Sunday as an additional non-codified RFD for the 2024 fishing year. While NMFS is not codifying a Sunday RFD at this time, because this addition would result in a four-day RFD schedule, this addition (and any temporary additions in future rules) would likely have the same impacts as this sub-alternative. As described above, NMFS expects the ecological impacts for a Sunday, Tuesday, Friday, and Saturday four-day-per-week RFD schedule to be neutral. RFDs do not impact the quota, instead they simply extend the General category fishing season, reduce the possibility of an overharvest of quota in any time period, and improve distribution of fishing opportunities without increasing BFT mortality.

Alternative C

Under Alternative C, NMFS would remove RFDs from the existing HMS regulations and no longer set RFDs for the General category. Atlantic Tunas General category permit holders and HMS Charter/Headboat permitted vessels (including those with a commercial sale endorsement) would be allowed to fish commercially for BFT on any day as long as the General category time period is open. If landings rates remain high, without RFDs, it is likely the General category quota and subquotas would be reached even faster necessitating closures. To the extent NMFS collects data during the fishing season that is used in stock assessments, this alternative could limit how much data could be collected. Thus, Alternative C could have neutral to minor adverse ecological impacts.

4.1.2 Social and Economic Impacts

Alternative A (*Status Quo*)

Under Alternative A, NMFS would maintain the status quo and as needed, would continue the recent practice of conducting an annual rulemaking to establish the schedule of RFDs for upcoming fishing year. In many cases, General category participants and HMS tournament operators begin to prepare and modify trips/tournaments dates for the upcoming fishing year in anticipation of the proposed RFD schedule. Conducting a full rulemaking to set RFDs typically results in the final RFD schedule publishing in late May/early June providing only a month's notice of impending RFDs. However, under this alternative, administrative timing issues could occur related to final publication of an RFD schedule (similar to the 2021 RFD rulemaking), resulting in a later start of RFDs. Once the final RFDs are announced, General category participants and tournament operators have the list of days that would be opened and closed

during the commercial BFT fishing year to plan travel to fishing grounds or engage in other fishing endeavors. Overall, this process for setting RFDs, which NMFS has used for the past few years, has been shown to have neutral social impacts.

The average annual revenue for BFT landed in the General category is approximately \$9.9 million based on the average ex-vessel price from 2018 through 2022 and adjusted for inflation using the GDP Deflator. Ex-vessel prices per pound varied by time period, with the ex-vessel price per pound being lowest for the September time period and peaking for the December time period (see Table 3.6); this is likely because these are times in which daily landings rates are both the highest and lowest during the fishing year. Overall, RFDs do not modify the General category quota and are designed to extend fishing opportunities through a greater proportion of the time periods in which they apply by spreading fishing effort out over time. To the extent that the ex-vessel revenue for a BFT sold by a General or HMS Charter/Headboat permitted vessel (with a commercial endorsement) may be higher when a lower volume of domestically caught BFT is on the market at one time, the use of RFDs may result in some short-term increase in BFT prices, and the value of BFT for the applicable General category time periods could increase. These increases in price are unlikely to impact the overall average annual revenue. Under this alternative, General category participants would continue to have the same opportunity to land the annual General category quota and subquotas as they have in the past few years. As such, expects this status quo alternative would have neutral economic impacts as it does not expect this alternative to have new economic impacts on small entities participating in the fishery beyond those currently occurring.

Alternative B (*Preferred Alternative*)

Under Alternative B, which NMFS is considering as four sub-alternatives (Sub-Alternative B1 is the preferred sub-alternative), NMFS would modify the process for setting an RFD schedule. Under this alternative, NMFS would no longer need to conduct an annual rulemaking to set an RFD schedule. Instead, NMFS would codify the General category time periods and days in which RFDs would be applied as a default. Because no annual rulemaking would be needed, fishermen and dealers would have additional time (i.e., more than the one month allowed under Alternative A, the status quo alternative) to plan travel to fishing grounds or engage in other fishing endeavors.

In recent years, NMFS has noticed that the number of BFT landed and unsold by General category participants have increased in association with high rates of landings. Codifying RFDs so that they are the default would provide General category quota participants and dealers advanced time (i.e., more than a month) to plan and coordinate activities for the expected time periods with high BFT landings rates, potentially decreasing the amount of BFT that are landed and unsold. If the default RFDs were not needed, NMFS could, after considering the criteria at 50 CFR § 635.27(a)(7), waive these scheduled RFDs for the specific time periods and days on which they apply by adjusting the daily BFT retention limit from zero up to five. NMFS may also waive previously designated RFDs effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT under 50 CFR § 635.26(a). Also, if needed and appropriate, NMFS could conduct rulemaking before the relevant time period, similar to the current process described

under Alternative A, to add or remove RFDs. These changes, either waivers or additions and subtractions through rulemaking, would not provide fishermen and dealers as much time to plan as the default RFDs. However, as described under the Alternative A and based on recent experience, NMFS expects these types of changes to have neutral social impacts.

RFDs in general can extend quota throughout the time periods and, therefore, provide additional fishing opportunities while also distributing the influx of BFT products into the market across the entire time period, which could result in an increase in ex-vessel prices. From an administrative perspective, this alternative could mean that NMFS would publish fewer Federal Register actions setting RFD schedules on an annual basis and inseason retention limit adjustments for the General category, which may result in administrative cost savings such as through reduced drafting and review time for RFD-related actions and additional time being spend on other Agency needs. Under this alternative, General category participants would continue to have the same opportunity to land the annual General category quota and subquotas as they have in the past few years. As such, NMFS expects this alternative would likely have neutral economic impacts.

As such the four sub-alternatives NMFS is considering below are specific to the RFD schedule for 2024 and subsequent fishing years and discuss the related social and economic impacts.

For 2024, based on public comments received on the proposed rule and draft EA and consistent with the ability to add or remove RFDs through rulemaking as described in this Alternative, in addition to codifying RFDs for certain days (see Sub-Alternative B1 below), NMFS is also preferring to add Sunday as an additional non-codified RFD from July through November. In other words, for the 2024 fishing year, we are setting an RFD schedule of four days (i.e., Sunday, Tuesday, Friday, and Saturday). The additional Sunday RFD would not be codified into the regulations at this time in order to provide NMFS the opportunity to collect data and determine if it would be appropriate to include Sunday as an RFD in future years. The expected social and economic impacts of this four-day RFD schedule are described under Sub-Alternative B4 (codify a four-day RFD schedule) below.

Sub-Alternative B1 (*Preferred Sub-Alternative*)

Under Sub-Alternative B1, the preferred sub-alternative, NMFS would codify a three-day-per-week RFD schedule for every Tuesday, Friday, and Saturday from July 1 through November 30. NMFS believes that an RFD schedule for every Tuesday, Friday, and Saturday would have neutral to minor beneficial social impacts by avoiding oversupplying the market with BFT (i.e., BFT landed but unsold), extending of the various General category time periods in which RFDs are applicable, and providing predictability to General category participants and tournament operators.

In recent years, NMFS has set RFDs on these three days from July 1 through November 30, to correspond with the time periods when catch rates have been historically high in the General category often resulting in premature closures of the relevant time periods. With no additions or removals, the preferred RFD schedule would allow for fishing on 2 consecutive 2-day periods each week (Sunday-Monday; Wednesday-Thursday). This schedule would allow for the efficient

utilization of the BFT resource by providing dealers the time to move BFT product through the market. Ideally, this schedule should provide fishermen and dealers the opportunity to plan for RFDs and therefore reduce the amount of General category BFT landed but unsold.

This preferred sub-alternative should also provide for the opportunity for the time periods to last as long as possible. Which would likely increase General category participation by commercial fishermen and provide access to fishing grounds while BFT are available. Furthermore, because the default schedule would allow for at least one day of fishing on a weekend (i.e., on Sunday), which is when some tournaments operate, this specific RFD schedule, assuming no additional modifications, could allow General category quota participants the opportunity to fish for BFT in at least one day of fishing tournaments. NMFS believes HMS tournament operators could, if they so desire, adjust their tournaments to ensure participation by General category participants. NMFS notes that on an RFD, General category permit holders may still participate in non-BFT fishing during the tournament and may land sharks (if they also hold a shark endorsement), swordfish, billfish, and/or bigeye, albacore, yellowfin, and skipjack tunas recreationally as otherwise allowed. Lastly, as described above, having a default schedule could provide predictability for General category participants, BFT dealers, and BFT tournament operators. NMFS has used this specific RFD schedule since 2022 and believes it has provided participants with additional opportunities. Additionally, on an RFD, Charter/Headboat-permitted vessels may participate recreationally in HMS fishing tournaments, including for BFT, under the applicable Angling category restrictions and size class limits.

As stated above, the average annual revenue for the General category totaled approximately \$9.9 million. The ex-vessel prices per pound varied by time period, with the September time period having the lowest price and prices peaking for the December time period. NMFS believes this sub-alternative would likely have neutral to minor beneficial economic impacts as codifying this RFD schedule could extend the time periods, providing additional fishing opportunities while also reducing the influx of BFT products into the market which could result in short-term increase in ex-vessel prices and revenues for General category participants; however, this increase in BFT prices are unlikely to impact the overall average annual revenue.

Sub-Alternative B2

Under Sub-Alternative B2, NMFS would codify a three-day-per-week RFD schedule for every Thursday, Friday, and Saturday from July 1 through November 30.

The impacts under this sub-alternative would be similar to the impacts under Sub-Alternative B1. The main difference is that under Sub-Alternative B2, assuming no additions or removals to the default RFDs, NMFS would allow for four consecutive open days of fishing with three consecutive RFDs. Given the high rate of catches, four consecutive open days could have a higher chance to result in the time periods closing prematurely as General category participants could schedule longer fishing trips or plan for more fishing days at once. Dealers may also have a harder time planning for large amounts of product arriving for four days in a row. As with Sub-Alternative B1, this default schedule would allow for at least one day of fishing on a weekend (i.e., on Sunday), which is when many tournaments operate, this specific RFD schedule,

assuming no modifications, could allow General category quota participants the opportunity to fish for BFT in at least one day of fishing tournaments. NMFS believes HMS tournament operators could, if they so desire, adjust their tournaments to ensure participation by General category participants. Overall, NMFS believes that this sub-alternative would have neutral to minor adverse social impacts as it may not allow adequate time for fish products to move through the market and could continue the recent trend of BFT being landed by General category participants but not sold.

As stated above, the average annual revenue for the General category totaled approximately \$9.9 million. Overall, NMFS believes this sub-alternative would likely have neutral to minor adverse economic impacts as four consecutive landings days may increase the influx of BFT products into the market resulting in a short-term decrease in ex-vessel prices and revenues for General category participants; however, this decrease in BFT prices are unlikely to impact the overall average annual revenue.

Sub-Alternative B3

Under Sub-Alternative B3, NMFS would codify a three-day-per-week RFD schedule for every Friday, Saturday, and Sunday from July 1 through November 30. Similar to Sub-Alternative B2, under Sub-Alternative B3, assuming no additional modifications, this schedule would allow for four consecutive open days of fishing with three consecutive RFDs. The main difference between this sub-alternative and Sub-Alternative B3 is that this sub-alternative would restrict the entire weekend. Setting RFDs for the entire weekend could have additional negative social and economic impacts for General category participants who commercially fish for BFT only on the weekends. NMFS acknowledges that there are General category permit holders who are known to work in other sectors or fields on weekdays and commercially fish for BFT only on weekends. At this time, because current reporting requirements only track when a BFT is landed and not how often vessels fish, NMFS does not have estimates on how many General category permit holders follow this approach. However, under this sub-alternative, as with the other sub-alternatives, all permit holders would have the opportunity to commercially fish for BFT on non-RFDs. As such, overall, this sub-alternative should have similar social impacts as Sub-Alternative B2. Lastly, while this schedule may result in decreased participation of General category participants in registered HMS BFT tournaments, similar to the most recent RFD schedule, NMFS believes HMS tournament operators would adjust their tournaments to ensure participation by General category participants.

NMFS believes that an RFD schedule for every Friday, Saturday, and Sunday would not allow adequate time for fish products to move through the market as fishermen would have four consecutive days of fishing and could continue the recent trend of BFT being landed by General category participants but not sold and limit fishing opportunities for weekend only General category participants. Furthermore, as with Sub-Alternative B2, this default schedule would have neutral to minor adverse social impacts as it would restrict fishing opportunities for the weekend potentially impacting General category participants that could only fish Friday through Sunday. However, restricting weekend commercial fishing from July through November might lengthen and provide more fishing opportunities later in the General category season within the relevant

time periods resulting in positive social impacts. Furthermore, all General category participants could still fish commercially three days out of the week. Although we cannot estimate this shift in behavior, we believe that General category participants would adjust their fishing schedules, similar to fishermen behavior during past years' RFD schedules.

As stated above, the average annual revenue for the General category totaled approximately \$9.9 million. NMFS believes this sub-alternative would likely have neutral to minor adverse economic impacts as four consecutive landings days could increase the influx of BFT products into the market resulting in a short-term decrease in ex-vessel prices and revenues for General category participants; however, this decrease in BFT prices are unlikely to impact the overall average annual revenue.

Sub-Alternative B4

Under Sub-Alternative B4, NMFS would codify a four-day (or more)-per-week RFD schedule from July 1 through November 30. As stated above, in recent years NMFS has set RFDs from July 1 through November 30, to correspond with the time periods when catch rates have been historically high in the General category often resulting in premature closures of the relevant time periods. Under Sub-Alternative B4, NMFS would allow for no more than three possible open days of fishing with four or more RFDs weekly. This could have minor beneficial to adverse social impacts. A schedule of four or more RFDs per week would limit commercial fishing participants to three or fewer fishable days per week depending on the weather, resulting in decreased fishing opportunities per week and could result in derby-like fishing conditions by focusing all effort on the remaining three or fewer days available to land the General category quota and subquotas. On the other hand, a 4 non-consecutive-day RFD schedule could reduce the influx of BFT products into the market which could result in short-term increases in ex-vessel prices and revenues for some General category participants who are able to participate on all open days. Additionally, it is likely that fishing effort will shift to another open day during the week. Lastly, HMS tournament operators could also have minor adverse to adverse social impacts if fishing tournament participation decreases because General category permit holders no longer participate (despite the fact that such permit holders may still participate in non-BFT fishing during the tournament). If that happens, fishing tournaments may decide to modify their potential start dates to correspond with the RFD schedule.

As stated above, the average annual total revenue for the General category totaled approximately \$9.9 million. Based on public comment and further reviewing of catch data, NMFS now believes that this sub-alternative could have minor beneficial to adverse economic impacts on small entities participating in the General category fishery as 4 or more RFDs could, rather than extending fishing opportunities, actually limit opportunities for General category participants to land the BFT quota and subquotas possibly resulting in underharvest and derby-like conditions. NMFS believes that a greater derby-like effect is expected with a greater number of RFDs per week. This derby-like effect, if large enough, could lead to an influx of BFT products into the market, which depending on the schedule, could result in a decrease in ex-vessel prices and revenues for General category participants, which may negatively impact overall average revenue. For instance, based on public comment, NMFS now believes that a 4 non-consecutive-

day RFD schedule could reduce the influx of BFT products into the market which could result in short-term increases in ex-vessel prices and revenues and thus minor beneficial impacts for some General category participants who are able to participate on all open days. Overall, for the fleet, such a schedule would result in 3 days per week for commercial BFT fishing opportunities. Under this scenario, NMFS would anticipate that some General category participants may be unable to take advantage of the limited open days; however, NMFS would anticipate the General category quota being fully utilized as effort would likely shift to the 3 open days. This would likely have neutral to minor beneficial economic impacts because all participants will have the same opportunities to fish commercially on open days. However, an RFD schedule of 5 or more days per week would result in 2 or fewer days per week for commercial BFT fishing opportunities. Under this scenario, NMFS would anticipate greater numbers of General category participants being unable to take advantage of more limited open days. If fishing effort is reduced enough, this may lead to an underharvest of the General category quota and subquotas and underutilization of the available fishery resource. In this scenario, NMFS would anticipate more adverse economic impacts.

As noted above, based on public comment on the proposed rule and draft EA, at this time, NMFS is preferring to set a four-day RFD schedule by adding Sunday as an additional RFD for the 2024 fishing year. The Sunday RFD would not be codified into the regulations at this time. Thus, for the 2024 fishing year, we are preferring an RFD schedule of four days (i.e., Sunday, Tuesday, Friday, and Saturday). Under this schedule, NMFS would restrict commercial fishing opportunities for the entire weekend every week from July 1 through November 30, 2024. Under this schedule, when the time period is open, all General category participants could fish on Monday, Wednesday, and Thursday. This could have neutral to adverse social impacts for General category participants who could only commercially fish on the weekends. However, these individuals would have the opportunity to fish commercially for other tunas (e.g., bigeye, albacore, yellowfin, skipjack) and non-HMS managed species on the weekends. Note that, historically, Sunday is a high landings day within the General category with or without RFDs. By adding Sunday as an RFD, we believe more fishing opportunities will be possible later into each applicable time period and BFT products would have more time to enter through the market which indirectly could positively affect the price of BFT. Although the four non-consecutive RFD schedule for the 2024 fishing year may affect part-time commercial fishermen who only fish on the weekends, all General category and HMS Charter/Headboat permit holders fishing commercial are provided equitable opportunities to commercially fish, as NMFS does not manage the General category fishery by the time of involvement of the participants/permit holders on a part time or full time basis. As stated above, NMFS anticipates that commercial fishermen would adjust to this RFD schedule similar to past schedules. Thus, we believe that a Sunday, Tuesday, Friday, and Saturday RFD schedule from July 1 through November 30 would result in neutral to minor beneficial social impacts overall for General category participants.

At this time, we are implementing the four-day schedule only for the 2024 fishing year. While we are not codifying a Sunday RFD at this time, because this addition would result in a four-day RFD schedule, this addition (and any temporary additions in future rules) would likely have the same impacts as this sub-alternative. The addition of Sunday as an RFD is on a temporary basis for the 2024 fishing year and allows NMFS the opportunity to collect the data and assess the

impacts of a four-day schedule as strongly suggested by a majority of commenters both through written and oral comments. Additionally, this four-day schedule will assist NMFS in assessing whether we would want to consider establishing a four-day schedule in the future. As stated throughout this EA, if NMFS determines that RFDs were not needed, NMFS could, after considering the criteria at 50 CFR § 635.27(a)(7) waive these scheduled RFDs for the specific time periods and days on which they apply by adjusting the daily BFT retention limit from zero up to five. NMFS also may waive previously designated RFDs effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct only tag-and-release fishing for BFT under 50 CFR § 635.26(a).

As stated above, the average annual total revenue for the General category totaled approximately \$9.9 million. At this time, NMFS believes that a schedule of Sunday, Tuesday, Friday, and Saturday RFDs in 2024 may have neutral to adverse economic impacts on individual fishermen who can only commercially fish for BFT on the weekends. However, these individuals would have the opportunity to fish commercially for other tunas (e.g., bigeye, albacore, yellowfin, skipjack) and non-HMS managed species on the weekends. Overall for the fleet, such a schedule would likely have neutral to minor beneficial economic impacts because all participants will have the same opportunities to fish commercially on open days and there is no change to the overall BFT General category quota and subquotas which NMFS anticipates would be fully landed with a possible increase in ex-vessel price due to landings being spread out over time.

Alternative C

Under Alternative C, NMFS would remove RFDs from the existing HMS regulations and no longer set RFDs for the General category. As stated earlier in this document, the goal of RFDs are to extend General category fishing opportunities through a greater portion of the General category time periods. Without RFDs, high catch rates early in each time period would prompt NMFS to prematurely close the General category because the quota has been reached, even though fish may still be available on fishing grounds. This premature closure would mean commercial fishermen operating under the General category quota could not fish for, possess, retain, or sell commercial sized BFT. As stated above, the average annual total revenue for the General category totaled approximately \$9.9 million. This alternative would likely have neutral to minor adverse social and economic impacts.

4.2 Impacts of Alternatives for General category default daily retention limits

4.2.1 Ecological Evaluation

Alternative D1 (*Status Quo*)

Under Alternative D1, the status-quo alternative, NMFS would maintain the current regulations at 50 CFR § 635.23(a)(3), which do not establish a General category default daily retention limit on open days (i.e., non-RFDs) when the General category is open. Under this alternative, NMFS may set the General category default daily retention limit for large medium or giant BFT between the range of zero to five fish per vessel for any time period in an action published in the Federal Register. The daily retention limit would apply to General category permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing

commercially for BFT. As described above, the highest daily landings in the General category occur from June through November. In recent years, NMFS has established a default daily retention limit of three large medium or giant BFT in from June 1 through early July, when catch rates within the General category are historically low. NMFS subsequently decreased the retention limit to one large medium or giant BFT for the remainder of the fishing year when catches historically are higher. The use of retention limits have allowed additional opportunities for General category participants to harvest the General category quota and subquotas while minimizing daily landings.

Similar to RFDs, retention limits are designed as an effort control to extend the General category fishing season, prevent overharvest of quota in any period, and improve distribution of fishing opportunities without increasing BFT mortality. Retention limits do not impact the quota. As such, maintaining current regulations that authorize NMFS to set retention limits but do not establish default retention limits should have neutral ecological impacts.

Alternative D2

Under Alternative D2, NMFS would establish a General category default daily retention limit of one large medium or giant BFT per vessel on open days when the General category is open, or unless adjusted with an inseason action, if warranted. The ecological impacts of this sub-alternative would be similar to those described under Alternative D1, above.

Alternative D3 (*Preferred Alternative*)

Under Alternative D3, the preferred alternative, NMFS would establish a General category daily retention limit of three large medium or giant BFT per vessel on open days in June and one large medium or giant BFT on open days during all other months when the fishery is open (i.e., January through March and July through December; the General category BFT fishery is not open during the months of April and May). As stated above, in recent years, NMFS has increased the daily retention limit to three BFT in June when landing rates are low then decreased the daily retention limit to one BFT when landing rates increased. The ecological impacts of this alternative would be similar to those described under Alternatives D1 and D2, above.

4.2.2 Social and Economic Impacts

Alternative D1 (Status Quo)

Under Alternative D1, the status-quo alternative, NMFS would maintain the current regulations 50 CFR § 635.23(a)(3), which do not establish a default retention limit on open days (i.e., non-RFDs) when the General category is open. Under this alternative, NMFS may set the General category default daily retention limit for large medium or giant BFT between a range of zero (on RFDs) to five BFT per vessel for each time period in an action published in the Federal Register. NMFS would continue to monitor the landings closely and be prepared to conduct possible inseason adjustments to increase or decrease the retention limit depending on the criteria found at 50 CFR § 635.27(a)(7).

In recent years, NMFS has established a default daily retention limit of three large medium or giant BFT in from June 1 through early July, when catch rates within the General category are historically low. NMFS subsequently decreased the retention limit to one large medium or giant BFT for the remainder of the fishing year when catches historically are higher. The use of retention limits have allowed additional opportunities for General category participants to harvest the General category quota and subquotas while minimizing daily landings. However, under this alternative, the industry would not know what the retention limit is until NMFS publishes the action establishing the retention limit. Thus, to some extent, this alternative limits the ability of the industry to plan. This alternative would likely have neutral social impacts as NMFS would monitor catch rates for the fishing year and set a daily retention limit for each relevant time period to provide the best opportunity to harvest the quota.

Overall, the use of retention limits would likely have neutral to minor beneficial economic impacts as they could extend the time periods, providing additional fishing opportunities while also reducing the influx of BFT products into the market which could result in a short-term increase in ex-vessel prices for General category participants. This short-term increase in BFT prices are unlikely to impact the overall average annual revenue. NMFS expects this status quo alternative to have neutral economic impacts as NMFS does not expect it to have new economic impacts on fishery participants beyond those currently occurring.

Alternative D2

Under Alternative D2, NMFS would establish a General category default daily retention limit of one large medium or giant BFT per vessel on open days when the General category is open unless adjusted with an inseason action, if warranted.

In recent years, when the daily retention limit was set at three fish, the vast majority of successful General category trips (i.e., General or Charter/Headboat trips on which at least one BFT is landed under General category quota) landed only one or two BFT. For example, in 2021, 91 percent of the trips landed one BFT; 7 percent landed two; and only 2 percent landed three. In 2022, 94 percent of the trips landed one BFT; four percent landed two; and only one percent landed three. From 2021 through 2022, a three-fish daily retention limit for certain segments of the June through August time period resulted in 10 to 16 percent of total landings. Meanwhile, over different segments of the same period, a one-fish daily retention limit for the June through August time period resulted in 74 to 84 percent of total landings. This alternative would likely have negative social impacts on the limited number of individual General category participants that could land and retain two or more BFT per trip during this period as they would be limited to only one BFT. However, overall this alternative would likely have neutral to minor beneficial social impacts for General category participants as a whole because it would provide them an opportunity to harvest the quota without exceeding it and would also allow General category participants to plan fishing activities around the retention limit. NMFS would continue to monitor the landings closely and be prepared to conduct possible inseason adjustments to increase or decrease the retention limit depending on the criteria found at 50 CFR § 635.27(a)(7).

Retention limits would likely have neutral to minor beneficial economic impacts as they could extend the time periods, providing additional fishing opportunities while also reducing the influx of BFT products into the market which could result in a short-term increase in ex-vessel prices for General category participants. This short-term increase in BFT prices is unlikely to impact the overall average annual revenue. However, since the current practice in recent years is to set a daily retention limit of three large medium or giant BFT per vessel on open days when the General category is open, starting June 1 through June 30, this default of one BFT could potentially constrain the revenue of the limited number of vessels that might have been able to land two or three BFT on open days starting June 1 through June 30. Although this alternative may have a short-term minor adverse impact on a limited number of individuals and their revenues (likely resulting in a short-term decrease in ex-vessel prices), NMFS expects that the overall average annual revenue would unlikely be impacted.

Alternative D3 (*Preferred Alternative*)

Under Alternative D3, the preferred alternative, NMFS would establish a General category daily retention limit of three large medium or giant BFT per vessel on open days in June and one large medium or giant BFT on open days during all other months when the fishery is open (i.e., January through March and July through December; the General category BFT fishery is not open during the months of April and May) unless adjusted with an inseason action, if warranted.

As stated above, in recent years, NMFS has increased the daily retention limit to three BFT in June when landing rates are low then decreased the daily retention limit to one BFT when landing rates increased. The impacts under this alternative would be similar to the impacts under Alternative D2. The main difference is that Alternative D3 would allow for a three-fish retention limit during the month of June when landing rates are low, providing some benefit to those General category participants that would be adversely affected by the one-fish limit under Alternative D2. This alternative would likely have neutral to minor beneficial social impacts for General category participants as it would provide them an opportunity to harvest the quota without exceeding it. NMFS would continue to monitor the landings closely and be prepared to conduct possible inseason adjustments to increase or decrease the retention limit depending on the criteria found at 50 CFR § 635.27(a)(7).

As noted previously, retention limits would likely have neutral to minor beneficial economic impacts as they could extend the time periods, providing additional fishing opportunities while also reducing the influx of BFT products into the market which could result in a short-term increase in ex-vessel prices for General category participants. Implementation of these default retention limits would align with current management practices and provide additional fishing opportunities in all respective time periods. Codifying the current retention limits management practices would potentially reduce some uncertainty regarding future retention limits for General category participants and dealers and thus lead to some positive economic impacts associated with their improved business planning. NMFS expects that the overall average annual revenue would be unlikely to be impacted.

4.2.3 Summary

NMFS prefers to select Alternative B, specifically the RFD schedule of Sub-Alternative B1, which would modify the process for setting an RFD schedule and codify a three-day-per-week schedule of RFDs for every Tuesday, Friday, and Saturday from July 1 through November 30 for 2024 and subsequent years. Additionally, based on public comments, NMFS is also preferring to add Sunday as an additional non-codified RFD for the 2024 fishing year. This change occurred as a logical outgrowth of public comments and refined analyses of recent catch rates. Based on this change we are setting a four-day-per-week RFD schedule of every Sunday, Tuesday, Friday, and Saturday from July 1 through November 30, 2024.

NMFS may waive these scheduled RFDs for the specific time periods and days on which they apply by adjusting the daily BFT retention limit from zero up to five, after considering the criteria at 50 CFR § 635.27(a)(7). NMFS also may waive previously designated RFDs effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct only tag-and-release fishing for BFT under 50 CFR § 635.26(a). If the scheduled RFDs are established, NMFS may also remove or establish additional RFDs, either temporary ones (i.e., effective only for one fishing year) or permanent ones, as appropriate, through further rulemaking.

NMFS also prefers Alternative D3, which would establish a retention limit of three large medium or giant BFT (i.e., one fish measuring 73 inches or greater) per vessel on open days when the General category is open, for June 1 through June 30 unless adjusted with an inseason action, if warranted. For all other months in time periods where the fishery is open (i.e., January through March and July through December; note that the General category BFT fishery is not open during the months of April and May), the default retention limit of one large medium or giant BFT would go into effect on open days when the General category is open.

These preferred alternatives would help General category quota participants, tournament operators, and dealers with fishery-related planning (e.g., fishermen travel to fishing grounds or desire to engage in other fishing endeavors) by providing an advance schedule of open and closed days and the applicable retention limits when the fishery is open. The preferred alternatives are expected to provide equitable opportunities to all General category permit holders across all time periods. Overall, these preferred alternatives meet the goals and objectives of this action and are expected to have neutral to minor beneficial ecological, social, and economic impacts. Furthermore, the preferred alternatives may provide ancillary administrative cost savings if the Agency spends less time drafting and reviewing RFD-related actions or inseason retention limit adjustments and more time on other Agency needs.

NMFS does not prefer the status-quo alternative (Alternative A) that would maintain the recent practice of NMFS conducting annual rulemaking to set a schedule of RFDs for upcoming fishing years. Under this alternative, administrative timing issues could occur related to final publication of an RFD schedule (similar to the 2021 RFD rulemaking), resulting in a later start of RFDs. Furthermore, Alternative A would not provide the same benefit to General category participants, tournament operators, and dealers to fully plan for RFDs. At this time, NMFS also does not prefer Sub-Alternatives B2, B3, or B4, although NMFS is implementing a four-day RFD

schedule for 2024. Although NMFS recognizes that these sub-alternatives could pace landings more effectively than the preferred sub-alternative, implementing any of these sub-alternatives may not allow adequate time for fish products to move through the market and could continue the recent trend of BFT being landed by General category participants but not sold. With regard to Alternative C, NMFS does not prefer this alternative as it would not meet the objectives of this rulemaking. Lastly, NMFS does not prefer Alternatives D1 and D2 because General category participants may be limited by either not knowing the retention limit until publication of an action or by having a one-fish retention limit which may minor adversely impact those fishermen who might be able to land and retain more than one BFT during the month of June when NMFS typically increases the retention limit.

4.3 Comparison of NEPA Alternatives

Table 4.1 provides a qualitative comparison of the impacts associated with the various alternatives considered in this rulemaking. This table summarizes the impacts that were discussed in detail in Sections 4.1–4.4 and Sections 8.4–8.6.

Table 4.1 Comparison of Alternatives Considered

Alternative	Ecological	Social	Economic
Alternative A (<i>Status Quo</i>)	Neutral	Neutral	Neutral
Alternative B (Preferred Alternative)	Neutral	Neutral	Neutral
Sub-Alternative B1 (Preferred Sub- Alternative)	Neutral	Neutral to Minor Beneficial	Neutral to Minor Beneficial
Sub-Alternative B2	Neutral	Neutral to Minor Adverse	Neutral to Minor Adverse
Sub-Alternative B3	Neutral	Neutral to Minor Adverse	Neutral to Minor Adverse
Sub-Alternative B4	Neutral	Minor Beneficial to Adverse	Minor Beneficial to Adverse
Alternative C	Neutral	Neutral to Minor Adverse	Neutral to Minor Adverse
Alternative D1 (<i>Status Quo</i>)	Neutral	Neutral	Neutral

Alternative D2	Neutral	Neutral to Minor Beneficial	Neutral to Minor Beneficial
Alternative D3 (Preferred Alternative)	Neutral	Neutral to Minor Beneficial	Neutral to Minor Beneficial

4.4 Cumulative Impacts

A cumulative impact is an impact on the environment that results from the incremental impact of the final action when added to other past, present, and reasonably foreseeable future actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Cumulative impacts may also include the effects of natural processes and events, depending on the specific resource in question. Cumulative impacts include the total of all impacts to a particular resource that have occurred, are occurring, and would likely occur as a result of any action or influence, including the direct and reasonably foreseeable indirect impacts of a federal activity. The goal of this section is to describe the cumulative ecological, economic, and social impacts of past, present, and reasonably foreseeable future actions on BFT fishermen and the environment with regard to the management measures presented in this document.

Overall, the preferred alternatives and all other alternatives considered in this EA would have neutral cumulative ecological impacts for BFT stocks. Both RFDs and daily retention limits are designed as effort controls to extend the General category fishing season, prevent overharvest of quota in any period, and improve distribution of fishing opportunities without increasing BFT mortality. RFDs and daily retention limits do not impact the BFT quota. Nothing in this action changes those quotas or fishing mortality levels.

In recent years, NMFS has implemented effort controls such as RFDs and daily retention limits, and BFT General category commercial landings have increased in shorter periods of time, even with recent increases in the General category BFT quota. The annual revenue for the General category averaged approximately \$9.9 million from 2018 through 2022. The preferred alternatives (Alternative B, Sub-Alternative B1, and Alternative D3) would likely have neutral to minor beneficial economic impacts. Although the preferred RFD schedule may result in three less fishable days per week from July 1 through November 30, the purpose of RFDs and retention limits are to extend the General category time periods, providing additional fishing opportunities while also distributing the influx of BFT products into the market across the entire time period, which could result in a short-term increase in ex-vessel prices. Based on public comment on the proposed rule and draft EA, at this time, NMFS is preferring to add Sunday as an additional non-codified RFD for the 2024 fishing year resulting in an RFD schedule of four days. This schedule may result in four less fishable days per week and likely result in neutral to minor beneficial economic impacts for the overall fleet. Having fewer fishing days per week might allow for dealers to plan to move BFT product through the market and therefore reduce the amount of General category BFT landed but unsold. NMFS also believes that such a schedule could reduce the influx of BFT products into the market which could result in short-term increase in ex-vessel prices and revenues for General category participants. Ultimately, NMFS

believes that this four day schedule (Sunday, Tuesday, Friday, and Saturday) would provide all participants the same opportunities to fish commercially on open days and since there is no change to the overall BFT General category quota and subquotas, NMFS anticipates the General category quota would be fully landed. Historically, daily landings rates are highest during the summer and fall months (i.e., June through November) which have prompted closures of the General category fishery weeks after opening. Given recent increases in daily catch rates over time, NMFS believes that without RFDs the General category fishery would close in a matter of days after opening. The preferred alternatives would likely have no impact on the overall fishing effort or fishing rates, bycatch, or bycatch rates in the long term beyond what was previously analyzed in the 2018 quota rule EA (Environmental Assessment for the 2018 final rule to implement the ICCAT-recommended Atlantic BFT and northern albacore quotas); the 2021 supplemental EA (Supplemental Environmental Assessment for the 2021 annual BFT quota adjustment); the 2022 quota rule EA (Environmental Assessment for the 2022 Atlantic BFT and northern albacore quotas); and Amendment 13 to the 2006 Consolidated HMS FMP. No impacts to protected species and marine mammals and EFH would be expected as a result of these alternatives.

The status quo alternatives (A and D1) are both expected to have neutral social and economic impacts as these measures continue to implement current management measures to assist with pacing General category landings to extend fishing opportunities for General category participants and allow for adequate time for fish products to move through the market which could result in an increase in ex-vessel price. Sub-Alternatives B2 through B3 are expected to have neutral to minor adverse social and economic impacts as these schedules would not allow adequate time for fish products to move through the market and could continue the recent trend of BFT being landed by General category participants but not sold. Sub-Alternative B4 is expected to have minor beneficial to adverse social and economic impacts depending on the schedule, could result in a decrease in ex-vessel prices and revenues for General category participants, which may negatively impact overall average revenue. However, having fewer fishing days per week might allow for dealers to plan to move BFT product through the market and therefore reduce the amount of General category BFT landed but unsold and actually increase revenues. Alternative C is expected to have neutral to minor adverse social and economic impacts as this alternative would remove RFDs for the regulations. Although NMFS would still be able to manage the BFT fishery via retention limits, the removal of RFDs could result in any day being fishable if the General category is open and weather conditions are reasonable. Given high catches rates this would likely mean the General category would be open for a matter of days before a closure is needed thus limiting the opportunities of individuals to participate in the fishery. Alternative D2 is expected to have neutral to minor beneficial social and economic impacts as these measures continue to implement current management measures to assist with pacing landings to extend fishing opportunities for General category participants.

4.5 References

Coastal Zone Management Act, 16 U.S.C. § 1451 et seq.

- MRAG, Americas, Inc., and M. Jepson. 2008. Updated Profiles for HMS Dependent Fishing Communities: Social Impact Assessment Services for HMS Fishing Communities. Solicitation Number: DG133F06RQ0381, 84 pp.
- NMFS. 2011. Stock Assessment and Fishery Evaluation (SAFE) Report for Atlantic Highly Migratory Species, 2011. Silver Spring MD: U.S. Department of Commerce, National Marine Fisheries Service. 294 pp.
- NMFS. 2012. Stock Assessment and Fishery Evaluation (SAFE) Report for Atlantic Highly Migratory Species, 2012. Silver Spring MD: U.S. Department of Commerce, National Marine Fisheries Service. 203 pp.
- NMFS. 2015. Stock Assessment and Fishery Evaluation (SAFE) Report for Atlantic Highly Migratory Species, 2015. Silver Spring MD: U.S. Department of Commerce, National Marine Fisheries Service. 170 pp.
- NMFS. 2018. Stock Assessment and Fishery Evaluation (SAFE) Report for Atlantic Highly Migratory Species, 2017. Silver Spring MD: U.S. Department of Commerce, National Marine Fisheries Service. 250 pp.

5.0 MITIGATION AND UNAVOIDABLE ADVERSE IMPACTS

Mitigation is an important mechanism that federal agencies can use to minimize, prevent, or eliminate damage to the human and natural environment associated with their actions. As described in the CEQ regulations, agencies can use mitigation to reduce environmental impact in several ways. Mitigation may include one or more of the following: avoiding the impact by not taking a certain action or parts of an action; minimizing impacts by limiting the degree or magnitude of the action and its implementation; rectifying the impact by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and compensating for the impact by replacing or providing substitute resources or environments. The mitigation measures discussed in an EA must cover the range of impacts of the proposal and must be considered even for impacts that by themselves would not be considered "significant." If a proposed action is considered as a whole to have significant effects, all of its specific effects on the environment must be considered, and mitigation measures must be developed where it is feasible to do so. NMFS may consider mitigation, provided that the mitigation efforts do not circumvent the goals and objectives of the rulemaking or the mandate to rebuild fisheries under the Magnuson-Stevens Act.

Under Alternative B, the preferred alternative, which NMFS is considering as four sub-alternatives (Sub-Alternative B1 is the preferred sub-alternative), NMFS would modify the process for setting an RFD schedule. Under this alternative, NMFS would no longer need to conduct an annual rulemaking to set an RFD schedule. Instead, NMFS would codify the General category time periods and days in which RFDs would be applied as a default. NMFS could, if needed and as appropriate, conduct rulemaking to change the codified RFD schedule (e.g. remove an RFD or add an RFD). NMFS clarifies that this rulemaking could be for a change to the schedule on either a temporary (e.g., effective only for one fishing year) or permanent basis. NMFS may waive these scheduled RFDs for the specific time periods and days on which they apply by adjusting the daily BFT retention limit from zero up to five, after considering the criteria at 50 CFR § 635.27(a)(7). NMFS also may waive previously designated RFDs effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct only tag-and-release fishing for BFT under 50 CFR § 635.26(a). If needed and appropriate, NMFS could conduct rulemaking, similar to the current process to add or remove RFDs. Modifying the existing regulations is primarily administrative in nature and would likely have no adverse environmental impacts. Furthermore, this action would likely result in no adverse environmental impacts as RFDs are designed to have neutral impacts since they only impact the distribution of landings and not the magnitude of landings. Under this alternative, NMFS expects that General category participants would continue to have the same opportunity to land the annual General category quota and subquotas as they have in the past few years. As such, NMFS expects this alternative would likely have neutral economic impacts.

Preferred Sub-Alternative B1 would codify an RFD schedule of every Tuesday, Friday, and Saturday from July 1 through November 30. As described in Alternative B, this preferred sub-

alternative would likely result in no adverse environmental impacts as RFDs are designed to have neutral impacts since they only impact the distribution of landings and not the magnitude of landings. This action would likely result in neutral to minor beneficial social and economic impacts as this RFD schedule would allow for 2 consecutive 2-day periods each week (Sunday-Monday; Wednesday-Thursday) for BFT product to move through the market and increase General category participation by commercial fishermen while providing access to fishing grounds while BFT are available. Lastly, the use of this schedule would provide predictability for General category participants and BFT tournament operators.

Based on public comment and consistent with Alternative B, NMFS is also preferring, for 2024 only, to add Sunday as an additional RFD for the 2024 fishing year. The Sunday RFD would not be codified into the regulations at this time. With this temporary addition, for the 2024 fishing year, we are preferring an RFD schedule of four days (i.e., Sunday, Tuesday, Friday, and Saturday). Under this schedule, NMFS would restrict commercial fishing opportunities for the entire weekend from July 1 through November 30, 2024. Similar to the overall Alternative B, this schedule for 2024 with an additional RFD on Sundays would likely result in no adverse environmental impacts as RFDs are designed to have neutral impacts since they only impact the distribution of landings and not the magnitude of landings. Restricting an entire weekend could have neutral to adverse impacts for General category participants who could only commercially fish on the weekends. However, these individuals would have the opportunity to fish commercially for other tunas (e.g., bigeye, albacore, yellowfin, skipjack) and non-HMS managed species on the weekends. Note that, historically, Sunday is a high landings day within the General category with or without RFDs. By adding Sunday as an RFD, we believe more fishing opportunities will be possible later into each applicable time period and BFT products would have more time to enter through the market which indirectly could positively affect the price of BFT. Although the four non-consecutive RFD schedule for the 2024 fishing year may affect part-time commercial fishermen who only fish on the weekends, all General category and HMS Charter/Headboat permit holders fishing commercial are provided equitable opportunities to commercially fish, as NMFS does not manage the General category fishery by the time of involvement of the participants/permit holders on a part time or full time basis. As stated above, NMFS anticipates that commercial fishermen would adjust to this RFD schedule similar to past schedules. Thus, we believe that a Sunday, Tuesday, Friday, and Saturday RFD schedule from July 1 through November 30 would result in neutral to minor beneficial social impacts overall for General category participants.

At this time, we are implementing the four-day schedule only for the 2024 fishing year. While we are not codifying a Sunday RFD at this time, because this addition would result in a four-day RFD schedule, this addition (and any temporary additions in future rules) would likely have the same impacts as this sub-alternative. The addition of Sunday as an RFD is on a temporary basis for the 2024 fishing year and allows NMFS the opportunity to collect the data and assess the impacts of a four-day schedule as strongly suggested by a majority of commenters both through written and oral comments. Additionally, this four-day schedule will assist NMFS in assessing whether we would want to consider establishing a four-day schedule in the future. As stated throughout this EA, if NMFS determines that RFDs were not needed, NMFS could, after considering the criteria at 50 CFR § 635.27(a)(7) waive these scheduled RFDs for the specific

time periods and days on which they apply by adjusting the daily BFT retention limit from zero up to five. NMFS also may waive previously designated RFDs effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct only tag-and-release fishing for BFT under 50 CFR § 635.26(a).

At this time, NMFS believes that a schedule of Sunday, Tuesday, Friday, and Saturday RFDs in 2024 may have neutral to adverse economic impacts on individual fishermen who can only commercially fish for BFT on the weekends. However, these individuals would have the opportunity to fish commercially for other tunas (e.g., bigeye, albacore, yellowfin, skipjack) and non-HMS managed species on the weekends. Overall for the fleet, such a schedule would likely have neutral to minor beneficial economic impacts because all participants will have the same opportunities to fish commercially on open days and there is no change to the overall BFT General category quota and subquotas which NMFS anticipates would be fully landed with a possible increase in ex-vessel price due to landings being spread out over time..

Preferred Alternative D3 would establish a General category daily retention limit of three large medium or giant BFT per vessel on open days from June 1 through June 30 and a one large medium or giant BFT on open days during all other months when the fishery is open (i.e., January through March and July through December; the General category BFT fishery is not open during the months of April and May) unless adjusted with an inseason action, if warranted. This action would likely result in no adverse environmental impacts because as similar to RFDs, retention limits are effort controls used to extend fishing opportunities and only impact the distribution of landings, and not the magnitude of landings. This alternative would likely result in minor beneficial social and economic impacts by providing the best opportunity to harvest the quota. Furthermore, in recent years, NMFS has conducted inseason actions to increase the retention to three BFT for the month of June when landings historically have been low and decrease the retention limit to one fish in early July when catch rates increase. This alternative would codify these retention limits and remove the additional administrative burden in conducting multiple inseason actions to increase and decrease retention limits over a short period. However, NMFS would still have the ability to increase or decrease retention limits as needed. These preferred alternatives as a whole would likely have neutral ecological impacts and minor beneficial social and economic effects. As such, the actions in this EA are not anticipated to have unavoidable adverse impacts on the environment which would require mitigation.

The status quo alternatives considered for this action (A and D1) are both expected to have neutral social and economic impacts as these measures continue to implement current management measures to assist with pacing landings to extend fishing opportunities for General category participants and allow for adequate time for fish products to move through the market which could result in an increase in ex-vessel price. Sub-Alternatives B2 through B3 are expected to have neutral to minor adverse social and economic impacts as these schedules would not allow adequate time for fish products to move through the market and could continue the recent trend of BFT being landed by General category participants but not sold. Sub-Alternative B4 is expected to have minor beneficial to adverse social and economic impacts depending on the schedule, could result in a decrease in ex-vessel prices and revenues for General category participants, which may negatively impact overall average revenue. However, having fewer fishing days per week might allow for dealers to plan to move BFT product through the market

and therefore reduce the amount of General category BFT landed but unsold. Alternative C is expected to have neutral to minor adverse social and economic impacts as this alternative would remove RFDs from the regulations but General category participants would still have the ability to land the General category quota and subquotas. Although NMFS would still be able to manage the BFT fishery via retention limits, the removal of RFDs any day could be fishable if the General category is open. Given high catches rates this would likely mean the General category would be open for a matter of days before a closure is needed thus limiting the opportunities of individuals to participate in the fishery. Alternative D2 is expected to have neutral to minor beneficial social and economic impacts as these measures continue to implement current management measures to assist with pacing landings to extend fishing opportunities for General category participants. As such, these other alternatives, including the status quo alternatives, as a whole are likely not to have unavoidable adverse impacts on the environment which would require mitigation.

5.1 Unavoidable Adverse Impacts

In general, there are no unavoidable adverse ecological impacts expected as a result of the preferred alternatives or any of the alternatives considered. NMFS does not expect a change in current fishing practices or an increase in fishing effort due to any of the preferred measures or non-preferred measures. The action would not modify fishing behavior or gear type, nor would it expand fishing effort because commercial fishermen operate under the BFT quota established by ICCAT. Thus, the measures would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or substantially alter current fishing practices or bycatch mortality rates.

5.2 Irreversible and Irretrievable Commitment of Resources

No irreversible or irretrievable commitments of resources are expected as a result of the preferred alternatives.

6.0 REGULATORY IMPACT REVIEW

NMFS conducts a Regulatory Impact Review for all regulatory actions that are of public interest in order to comply with E.O. 12866. The Regulatory Impact Review provides, for each alternative, an analysis of the economic benefits and costs to the applicable fishery(ies) and the nation as a whole. The information contained in Chapter 6, taken together with the data and analyses incorporated by reference, comprise the complete Regulatory Impact Review for this final action.

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

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

Pursuant to E.O. 12866, as amended by E.O. 13258, E.O. 13422, and E.O. 14094, a regulation is considered a “significant regulatory action” if it is likely to:

- Have an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs for changes in gross domestic product); 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, territorial, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive Order, as specifically authorized in a timely manner by the Administrator of the Office of Information and Regulatory Affairs in each case.

6.1 Description of Management Objectives

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

6.2 Description of Fishery

Please see Chapter 3 for a description of the fisheries that could be affected by these management actions.

6.3 Statement of Problem

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

6.4 Description of Each Alternative

Please see Chapter 2 for a summary of each alternative suite and Chapter 4 for a complete description of each alternative and its expected ecological, social, and economic impacts. Chapters 3 and 6 provide additional information related to the economic impacts of the alternative suites.

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

Table 6.1 summarizes the net economic benefits and costs of each of the alternatives analyzed in this EA. Additional details and more complete analyses are provided in Chapter 4.

6.6 Conclusion

As noted above, under E.O. 12866, a regulation is a “significant regulatory action” if it is likely to: (1) have an annual effect on the economy of \$200 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and 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 this Executive Order, as specifically authorized in a timely manner by the Administrator of the Office of Information and Regulatory Affairs in each case. Pursuant to the procedures established to implement section 6 of E.O. 12866, the Office of Management and Budget has determined that this action is not significant. A summary of the expected net economic benefits and costs of each alternative, which are based on supporting text in Chapter 4, can be found in Table 6.1.

Table 6.1 Net Economic Benefits and Costs of Alternatives

Alternatives	Economic Benefits	Economic Costs
Alternative A: Status Quo for setting RFDs.	None.	There are some administrative costs associated with NMFS having to do annual rulemaking to establish an RFD schedule each year and potentially publish additional waivers.
Alternative B: Modify the process for setting RFDs. (<i>Preferred Alternative</i>)	This alternative would have neutral economic benefits. Although NMFS would not have to do an annual rulemaking to establish an RFD schedule each year. NMFS may potentially have to publish waivers.	There are some administrative costs associated, if NMFS determined that changes were needed to the established RFD schedule as NMFS would have to conduct an annual rulemaking. Furthermore, NMFS may have to potentially publish waivers.
Sub-Alternative B1: Set an RFD schedule of three days per week (Tuesday, Friday, Saturday) from July 1 to November 30. (<i>Preferred Sub-Alternative</i>)	This sub-alternative would have neutral to minor beneficial economic benefits since fishermen could continue to catch and retain BFT at a similar level and rate as the status quo.	None.
Sub-Alternative B2: Set an RFD schedule of three days per week (Thursday, Friday, Saturday) from July 1 to November 30.	This sub-alternative would allow the General category fishery to continue to catch and retain BFT at a similar level and rate as the status quo. The General category fishery would continue to generate revenue on sales of BFT.	This sub-alternative may not allow adequate time for fish products to move through the market and could result in a decrease of ex-vessel prices resulting from a mismatch between supply and demand of this perishable fresh product.
Sub-Alternative B3: Set an RFD schedule of three days per week	The General category fishery would continue to generate revenue on sales of BFT	This alternative may impact the rates of catches as it could limit fishing opportunities for General category participants that only fish on the weekends. This sub-

<p>(Friday, Saturday, Sunday) from July 1 to November 30.</p>		<p>alternative may not allow adequate time for fish products to move through the market and could result in a decrease of ex-vessel prices resulting from a mismatch between supply and demand of this perishable fresh product.</p>
<p>Sub-Alternative B4: Set an RFD schedule of four days or more per week from July 1 to November 30.</p>	<p>The General category fishery would continue to generate revenue on sales of BFT. This sub-alternative may allow adequate time for fish products to move through the market and could result in an increase of ex-vessel prices as dealers would have potentially four or more days per week to move product.</p>	<p>This sub-alternative may have neutral to adverse economic costs since fishermen may not catch and retain BFT at a similar level. This sub-alternative may impact the rates of catches as it could limit fishing opportunities for General category participants to three or fewer fishable days per week. Additionally, commercial fishermen could spend more time, effort, and fuel in an effort to land the General category quota and subquotas with limited fishable days.</p>
<p>Alternative C: Eliminate RFDs</p>	<p>The General category fishery would continue to generate revenue on sales of BFT. This alternative may impact the rates of catches as any open day would be fishable.</p>	<p>Under this alternative, the General category subquotas may be landed within a week of the fishery opening, thus limiting the participants that are active in the fishery. Additionally, this alternative may not allow adequate time for fish products to move through the market and could result in a decrease of ex-vessel prices.</p>
<p>Alternative D1: Status Quo, no General category default daily retention limit for large medium and giant BFT.</p>	<p>This alternative would have neutral economic benefits since fishermen could continue to catch and retain BFT at a similar level and rate as the status quo.</p>	<p>There are some administrative costs associated with the agency having to establish a daily retention limit each year and season for large medium and giant BFT versus being able to have a default daily retention limit.</p>
<p>Alternative D2: Establish a General category default daily retention limit of one</p>	<p>This alternative would have neutral economic benefits since fishermen could continue to catch and retain BFT at a similar level and rate as the status quo.</p>	<p>Establishing a default daily retention limit of one large medium or giant BFT on open days, for June 1 through December 31 would be more restrictive of current management implementation of retention limits and therefore potentially constrain the revenue of vessels that</p>

<p>large medium or giant BFT on open days.</p>		<p>might have been able to land two or three BFT on open days for June 1 through June 30.</p>
<p>Alternative D3: Establish two default retention limits. Three large medium or giant BFT on open days for June 1 through June 30. For all other months (January through March and July through December) establish a default daily retention limit of one large medium or giant BFT on open days. <i>(Preferred Alternative)</i></p>	<p>This alternative would have neutral to minor beneficial economic benefits since fishermen could continue to catch and retain BFT at a similar level and rate as the status quo. Implementation of these default retention limits would align with current management practices and provide additional fishing opportunities in all respective time periods. Codifying the current retention limits management practices would potentially reduce some uncertainty regarding future retention limits for General category participants and dealers, and thus potentially provide benefits associated with their improved business planning.</p>	<p>None.</p>

7.0 FINAL REGULATORY FLEXIBILITY ANALYSIS (FRFA)

This FRFA is conducted to comply with the RFA (5 U.S.C. 601 et seq.). The goal of the RFA is to minimize the economic burden of federal regulations on small entities. To that end, the RFA directs federal agencies to assess whether a proposed regulation is likely to result in significant economic impacts to a substantial number of small entities, and identify and analyze any significant alternatives to the proposed rule that accomplish the objectives of applicable statutes and minimize any significant effects on small entities. Certain data and analysis required in an FRFA are also included in other chapters of this document. Therefore, this FRFA incorporates by reference the economic analyses and impacts in Chapter 4 of this document.

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

Section 604(a)(1) of the RFA requires agencies to state the need for, and objective of, the final action. The need for this action is to simplify and clarify the regulatory process regarding RFDs. RFDs increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the General category time period subquotas. Additionally, this action would reestablish a General category retention limit on open days for better understanding by General category quota participants and clarify the existing HMS dealer regulations to improve the understanding of vessel and dealer restrictions and requirements for participants in the General category BFT fishery to ensure better compliance by dealers and dealers' agents when operating on an RFD. The objective of this action is to modify the process of scheduling RFDs and reestablish a General category default daily retention limit for large medium or giant BFT on open days. As effort controls, both RFDs and daily retention limits are meant to extend General category fishing opportunities through a greater portion of the General category time period subquotas, prevent overharvest of quota in any period, and improve distribution of fishing opportunities without increasing BFT mortality. Lastly, this action would clarify existing HMS dealer regulations and the definition of a BSD tag to improve the understanding of vessel and dealer restrictions and requirements for participants in the General category BFT fishery. The effects of these changes are primarily administrative and no environmental or economic effects are anticipated. Please see Chapter 1 for a full description of the reasons why this action is being considered.

7.2 Statement of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Act

Section 604(a)(2) of the RFA requires a summary of significant issues raised by the public response to the IRFA, a summary of the Agency's assessment of such issues, and a statement of any changes made in the rule as result of the comments. NMFS received 34 written comment on the proposed rule and Draft EA during the public comment period. A summary of those comments and the agency's responses are described in Chapter 10 of this document. No comments specifically referenced the IRFA, although the Agency did receive some comments regarding the anticipated or perceived economic impacts of the rule. The comments and responses included below are those that pertain specifically to such economic impacts.

Comment: NMFS received a variety of comments regarding a specific RFD schedule. Some commenters supported the preferred three-day RFD schedule. One commenter supported a three-day RFD schedule, but suggested that NMFS modify the days to Sunday, Monday, and Friday. The majority of commenters suggested that NMFS set four RFDs per week from July 1 through November 30, with Sunday being added as the additional RFD. These commenters felt that the past years' schedule of three RFDs per week was not effective in extending the fishing season and stated that a four-day RFD schedule would extend the quota later into the season, while also reducing market saturation and improving BFT prices. Other commenters felt having four RFDs a week would have a negative economic impact on local coastal communities, would eliminate fishing opportunities for participants who can only fish on the weekend, and could result in safety-at-sea issues. Without specifying which specific days, some commenters supported four or more RFDs. A few of these commenters suggested six RFDs a week as long as NMFS had the flexibility to increase or decrease fishing days by waiving RFDs when needed, while one comment supported as many RFDs per week needed to stabilize the BFT market. One commenter supported four RFDs per week from August through December.

Response: A primary objective of this action is to slow the harvest rate of BFT in order to provide General category fishing opportunities through a greater portion of the General category time periods. As stated in the response to Comment 2, the RFD schedule in recent years (e.g., three RFDs per week on Tuesdays, Fridays, and Saturdays) has been effective at allowing extra fishing opportunities. However, the time period subquotas have still been reached quickly resulting in early closures of the General category. After reviewing public comments and catch rate data, NMFS has determined that it is appropriate to set a fourth RFD per week from July 1 through November 30 in 2024 to further slow the rate of catches in the General category and provide for additional fishing opportunities later into the applicable time periods. NMFS will evaluate/review the data from the 2024 fishing season to determine how well a fourth RFD achieves that objective. NMFS recognizes that a four-day RFD schedule in 2024, specifically a Sunday, Tuesday, Friday, and Saturday schedule, would eliminate BFT commercial fishing opportunities on the weekend and may negatively affect commercial fishermen that currently only fish for BFT on the weekend. However, all General category and HMS Charter/Headboat permit holders that fish commercially for BFT are affected when the subquota is harvested quickly and the season is closed after only a few days. In those cases, commercial fishing opportunities for all General category and HMS Charter/Headboat permit holders fishing commercially for BFT are negatively affected. By setting a four-day RFD schedule in 2024, we believe more fishing opportunities will be available for all General category participants later into each time period. Furthermore, NMFS has the ability to waive RFDs, if necessary. We believe this added flexibility provides NMFS effective tools to manage the General category fishery. Regarding safety-at-sea, NMFS recognizes that fishing can be dangerous in the best of circumstances. NMFS does not believe that a four-day RFD schedule inherently causes more safety issues than a three-day RFD schedule. Under either schedule, fishermen are not required to go fishing and must make their own determination about whether to fish given the weather or other safety-at-sea conditions. If a schedule of four RFDs per week in 2024 is successful at extending fishing opportunities throughout the fishing season, fewer fishermen may feel the need to go fishing on a non-RFD if the weather or other conditions are hazardous.

Comment: NMFS received multiple comments that did not support establishing a default three-fish daily retention limit in the month of June and a default one-fish daily retention limit for all other months in time periods when the fishery is open (*i.e.*, January through March and July through December). Commenters expressed concerns that a three-fish daily retention limit for the month of June results in too many landings in June for the June through August time period, contrary to the goal of this action. These commenters were also concerned that the default retention limit would not provide NMFS the flexibility to modify the retention limit if needed. Other commenters stated that a one-fish daily retention limit would preserve resources and ensure better market prices for BFT.

Response: NMFS disagrees that having a default of three-fish daily retention limit in June is contrary to the objectives of this action or would reduce the flexibility needed to modify the retention limit. In recent years, the rate of landings and overall fishing effort in the General category is typically slow in early June. For example, in 2023, the average amount of BFT harvested per day in June, with the three-fish daily limit, was 1.5 mt. In July, with the 1-fish daily limit, the average amount harvested per day was 8.9 mt. In recent years, after consideration of the relevant criteria provided under § 635.27(a)(7), which includes consideration of catch rates, NMFS has regularly set the daily retention limit for the beginning of the June through August time period at three fish (*e.g.*, 86 FR 27814, May 24, 2021; 87 FR 32094, May 27, 2022; 88 FR 34454, May 30, 2023). During the month of June, NMFS monitors the landings closely, and, as appropriate, NMFS can reduce the limit to a one-fish daily retention limit to ensure fishing opportunities in all respective General category time periods and to ensure that the available quota is not exceeded. Any change in the retention limit considers the relevant criteria and includes consideration of the catch rates associated with the various authorized gear types (*e.g.*, harpoon, rod and reel). Throughout the season, NMFS monitors landings and catch rates and will close the fishery or modify retention limits as appropriate to ensure the quotas are not exceeded. NMFS will continue to monitor and evaluate the effectiveness of all these management measures in the context of current conditions to determine whether other actions are necessary.

Comment: One commenter referenced National Standard 4, which requires that conservation and management measures shall not discriminate between residents of different states, and expressed concerns that RFDs are set only for when BFT arrive off Maine versus year-round. Another commenter stated that NMFS has a responsibility to protect the economic value of the BFT fishery under the Magnuson-Stevens Act and codifying effort controls will not provide the flexibility to do so.

Response: The preferred alternatives are designed to extend fishing opportunities through a greater portion of the General category time period subquotas, prevent overharvest of quota in any period, and improve distribution of fishing opportunities without increasing BFT mortality. This action also provides flexibility to waive codified RFDs (see response to comment 1). Consistent with National Standard 4, the preferred alternatives do not discriminate between residents of different States, as the measures considered in this action apply the same rules to all General category and HMS Charter/Headboat permit holders with a commercial sale endorsement fishing commercially for BFT regardless of their state of residence. The preferred

RFD schedule does not apply only to certain regions. Instead, it applies to all regions, during time periods in which landings have been the highest, shortening the time it takes to meet relevant subquotas, resulting in inseason closures earlier than desired, and contributing to market gluts. In the final rule establishing the 2023 RFD schedule, NMFS considered, among other things, RFDs for the December and January through March time periods (88 FR 33839, May 25, 2023). Based on public comment, at that time, NMFS did not finalize RFDs for those time periods, in part because the weather during those periods already limits participation. NMFS did not reconsider RFDs during those time periods in this rule as the reasons for not finalizing them in 2023 still apply. NMFS emphasizes that the Magnuson-Stevens Act requires the consideration and application of numerous factors when developing fishery conservation and management measures, including the ten National Standards. The proposed rule and EA did discuss past market conditions and recognized that this action should also help prevent large numbers of BFT from entering the market at the same time, which may indirectly affect price. While NMFS considered economic factors in the development of this action, the primary purpose of RFDs is not economic in nature. Rather, RFDs are an effort control used to extend General category fishing opportunities through a greater portion of the General category time period subquotas, prevent overharvest of quota in any period, and improve distribution of fishing opportunities without increasing BFT mortality.

7.3 Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule

Section 604(a)(3) of the RFA requires agencies to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made in the rule as a result of such comments.

NMFS did not receive any comments from the Chief Counsel for Advocacy of the SBA in response to the proposed rule.

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

Section 604(a)(4) of the RFA requires agencies to provide descriptions of, and where feasible, an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the *Federal Register*, which NMFS did on December 29, 2015 (80 FR 81194). In that final rule, effective on July 1, 2016, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the

commercial fishing industry, North American Industry Classification System (NAICS 11411), for RFA compliance purposes. NMFS considers all HMS permit holders to be small entities because they had average annual receipts of less than \$11 million for commercial fishing. The SBA has established size standards for all other major industry sectors in the United States, including the scenic and sightseeing transportation (water) sector (NAICS code 487210, for-hire), which includes charter/party boat entities. SBA has defined a small charter/party boat entity as one with average annual receipts (revenue) of less than \$14 million.

As discussed in Chapter 3, the proposed rule would apply to the 2,630 Atlantic Tunas General category permit holders and 4,175 Charter/Headboat permit holders, of which, 1,873 hold Charter/Headboat permits with a commercial sale endorsement. More information regarding the description of the fisheries affected, and the categories and number of permit holders can be found in the 2022 HMS SAFE Report.

7.5 Description of the Projected Reporting, Recordkeeping, and other Compliance Requirements of the Final Rule, including an Estimate of the Classes of Small Entities which will be Subject to the Requirements of the Report or Record

Section 604(a)(5) of the RFA requires agencies to describe any new reporting, record-keeping and other compliance requirements. The action does not contain any new collection of information, reporting, or record-keeping requirements.

7.6 Description of the Steps the Agency Has Taken to Minimize Significant Economic Impact of the Final Rule on Small Entities Consistent with the Stated Objectives of Applicable Statutes

Section 604(a)(6) of the RFA requires agencies to describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternatives adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. As described below, NMFS analyzed several different alternatives in this final rulemaking, and provides rationales for identifying the preferred alternatives to achieve the desired objectives. As stated above, NMFS did not develop alternatives for the regulatory clarifications of dealer activities on RFDs. The effects of these changes are primarily administrative and no environmental or economic effects are expected.

Thus, the alternatives considered and analyzed are described below. The FRFA assumes that each vessel will have similar catch and gross revenues to show the relative impact of the final action on vessels.

7.6.1 General Category Restricted-Fishing Days Alternatives and Sub-Alternatives

Under Alternative A, the status-quo alternative, NMFS would maintain the status quo and, as needed, would continue the recent practice of conducting an annual rulemaking to set a schedule of RFDs for upcoming fishing years. The average annual revenue for BFT landed in the General

category is approximately \$9.9 million based on the average ex-vessel price from 2018 through 2022 and adjusted for inflation using the GDP Deflator. Overall, RFDs do not modify the General category quota and are designed to extend fishing opportunities through a greater proportion of the time periods in which they apply by spreading fishing effort out over time. To the extent that the ex-vessel revenue for a BFT sold by a General or HMS Charter/Headboat permitted vessel (with a commercial endorsement) may be higher when a lower volume of domestically caught BFT is on the market at one time, the use of RFDs may result in some short-term increase in BFT prices, and the value of BFT for the applicable General category time periods could increase. These increases in price are unlikely to impact the overall average annual revenue. Under this alternative, General category participants would continue to have the same opportunity to land the annual General category quota and subquotas as they have in the past few years. As such, NMFS expects this status quo alternative would have neutral economic impacts as it does not expect this alternative to have new economic impacts on small entities participating in the fishery beyond those currently occurring.

Under Alternative B, which NMFS is considering as four sub-alternatives (Sub-Alternative B1 is the preferred sub-alternative), NMFS would modify the process for setting an RFD schedule. Under this alternative, NMFS would no longer need to conduct an annual rulemaking to set an RFD schedule. Instead, NMFS would codify the General category time periods and days in which RFDs would be applied as a default. NMFS could, if needed and as appropriate, conduct rulemaking to change the codified RFD schedule (e.g. remove an RFD or add an RFD). NMFS clarifies that this rulemaking could be for a change to the schedule on either a temporary (e.g., effective only for one fishing year) or permanent basis. NMFS may waive these scheduled RFDs for the specific time periods and days on which they apply by adjusting the daily BFT retention limit from zero up to five after considering the criteria at § 635.27(a)(7). NMFS also may waive previously designated RFDs effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct only tag-and-release fishing for BFT under 50 CFR § 635.26(a). Codification of default RFDs would provide greater certainty and predictability than annual rulemaking to schedule all RFDs for a certain year, providing some positive economic impacts to General category participants and dealers in terms of business planning. As stated above, the average annual revenue for BFT landed in the General category is approximately \$9.9 million based on the average ex-vessel price from 2018 through 2022 and adjusted for inflation using the GDP Deflator. To the extent that the ex-vessel revenue for a BFT sold by a General or HMS Charter/Headboat permitted vessel with a commercial endorsement may be higher when a lower volume of domestically caught BFT is on the market at one time, the use of RFDs may result in some short-term increase in BFT prices, and the value of BFT for the applicable General category time periods could increase.

As part of Alternative B, NMFS is considering four sub-alternatives specifying different days of the week when RFDs would take place to the RFD schedule for 2024 and subsequent years. In general, three of the sub-alternatives (B1, B2, B3) have similar economic impacts because they establish the same number of RFDs and RFDs do not modify the General category quota and are designed to extend fishing opportunities through a greater proportion of the time periods in which they apply by spreading fishing effort out over time. To the extent that the ex-vessel revenue for a BFT sold by a General or HMS Charter/Headboat permitted vessel with a

commercial endorsement may be higher when a lower volume of domestically caught BFT is on the market at one time, the use of RFDs may result in some short-term increase in BFT prices, and the value of the General category time period subquotas could increase.

Under Sub-Alternative B1, the preferred alternative, NMFS would codify a three-day-per-week RFD schedule for every Tuesday, Friday, and Saturday from July 1 through November 30. This sub-alternative could have neutral to minor beneficial economic impacts on small entities participating in the fishery beyond those currently occurring because this schedule could extend fishing opportunities through a greater portion of the time periods while also reducing the influx of BFT products into the market resulting in short-term increases in ex-vessel prices and revenues for General category participants, but these short-term increases in price are unlikely to impact the overall average annual revenue.

Under Sub-Alternative B2, NMFS would codify a three-day-per-week RFD schedule for every Thursday, Friday, and Saturday from July 1 through November 30. This sub-alternative could have neutral to minor adverse economic impacts on small entities participating in the fishery as four consecutive landings days could increase the influx of BFT products into the market resulting in a short-term decrease in ex-vessel prices and revenues for General category participants. This short-term decrease in BFT prices are unlikely to impact the overall average annual revenue.

Under Sub-Alternative B3, NMFS would codify a three-day-per-week RFD schedule for every Friday, Saturday, and Sunday from July 1 through November 30. This sub-alternative could have neutral to minor adverse economic impacts on small entities participating in the fishery as RFDs for an entire weekend could negatively impact General category participants who can only commercially fish for BFT on the weekends. At this time, because current reporting requirements only track when a BFT is landed and not how often vessels fish, NMFS does not have estimates on how many General category permit holders follow this approach. However, under this sub-alternative, as with the other sub-alternatives, all permit holders would have the opportunity to fish for BFT on non-RFDs. Based in part on public comments and upon reviewing fishing activities in past years, NMFS anticipates that General category participants would adjust their fishing schedules, similar to fishermen behavior during past years' RFD schedules. As such, allowing four consecutive landing days could increase the influx of BFT products into the market resulting in a short-term decrease in ex-vessel prices and revenues for General category participants. This short-term decrease in BFT prices is unlikely to impact the overall average annual revenue.

Under Sub-Alternative B4, NMFS would codify a 4-day (or more)-per-week RFD schedule. Based on public comment and further reviewing of catch data, NMFS now believes that this sub-alternative could have minor beneficial to adverse economic impacts on small entities participating in the General category fishery as 4 or more RFDs could, rather than extending fishing opportunities, actually limit opportunities for General category participants to land the BFT quota and subquotas possibly resulting in underharvest and derby-like conditions. NMFS believes that a greater derby-like effect is expected with greater number of RFDs per week. This derby-like effect, if large enough, could lead to an influx of BFT products into the market, which

depending on the schedule, could result in a decrease in ex-vessel prices and revenues for General category participants, which may negatively impact overall average revenue. For instance, based on public comment, NMFS now believes that a 4 non-consecutive-day RFD schedule could reduce the influx of BFT products into the market which could result in short-term increases in ex-vessel prices and revenues and thus minor beneficial impacts for some General category participants who are able to participate on all open days. Overall, for the fleet, such a schedule would result in 3 days per week for commercial BFT fishing opportunities. Under this scenario, NMFS would anticipate that some General category participants may be unable to take advantage of the limited open days; however, NMFS would anticipate the General category quota being fully utilized as effort would likely shift to the 3 open days. This would likely have neutral economic impacts because all participants will have the same opportunities to fish commercially on open days. However, an RFD schedule of 5 or more days per week would result in 2 or fewer days per week for commercial BFT fishing opportunities. Under this scenario, NMFS would anticipate greater numbers of General category participants being unable to take advantage of more limited open days. If fishing effort is reduced enough, this may lead to an underharvest of the General category quota and subquotas and underutilization of the available fishery resource. In this scenario, NMFS would anticipate more adverse economic impacts.

As stated above in Sub-Alternative B1, NMFS is codifying a three-day RFD schedule on Tuesdays, Fridays, and Saturdays from July 1 through November 30. However, based on public comment on the proposed rule and draft EA, NMFS is adding Sunday as an additional non-codified fourth RFD for the 2024 fishing year. Additionally, as noted above in the comments and responses, in further reviewing recent catch data, NMFS notes that from 2021 through 2023 for the months with RFDs in place, the rate of landings on Sundays was relatively high (~14 metric tons (mt) per day). The Sunday RFD would not be codified into the regulations at this time to allow for NMFS to gather additional data and observe how the fishery functions. Thus, for the 2024 fishing year, we are setting an RFD schedule of 4 days (i.e., Sunday, Tuesday, Friday, and Saturday) every week from July 1 through November 30. When the July through November time period is open to fishing, all General category participants could fish on Monday, Wednesday, and Thursday. At this time, NMFS believes that this schedule in 2024 would likely have neutral to adverse economic impacts on individual General category participants who could only commercially fish for BFT on the weekends. However, these individuals would have the opportunity to fish commercially for other tunas (*e.g.*, bigeye, albacore, yellowfin, skipjack) and non-HMS managed species on the weekends. Overall for the fleet, such a schedule would likely have neutral to minor beneficial economic impacts because all participants will have the same opportunities to fish commercially on open days and there is no change to the overall BFT General category quota and subquotas which NMFS anticipates would be fully landed with a possible increase in ex-vessel price due to landings being spread out over time.

Under Alternative C, NMFS would remove RFDs from the existing HMS regulations and no longer set RFDs for the General category. As stated earlier in this document, the goal of RFDs is to extend General category fishing opportunities through a greater portion of the General category time periods. Without RFDs, high catch rates early in each time period would prompt NMFS to prematurely close the General category because the quota has been reached, even

though fish may still be available on fishing grounds. Premature closure would mean commercial fishermen operating under the General category could not fish for, possess, retain, or sell commercial sized BFT. To the extent that the ex-vessel revenue for a BFT sold by a General or HMS Charter/Headboat permitted vessel (with a commercial endorsement) may be higher when a lower volume of domestically caught BFT is on the market at one time, the use of RFDs may result in some short-term increase in BFT prices, and the value of the General category time period subquotas could increase. This alternative could have neutral to minor adverse economic impacts on small entities participating in the fishery. General category participants would likely land the subquotas over an extremely short time period increasing the influx of BFT products into the market, potentially resulting not only in an earlier closure of the fishery but also a slight decrease in ex-vessel prices and revenues for General category participants which may negatively impact overall average revenue.

7.6.2 General Category Retention Limit Alternatives

Under Alternative D1, the status-quo alternative, NMFS would maintain the current regulations at 50 CFR § 635.23(a)(3) which do not establish a default retention limit on open days (i.e., non-RFDs) when the General category is open. Under this alternative, NMFS may set the General category default daily retention limit for large medium or giant BFT over a range of zero (on RFDs) to five BFT per vessel for each time period in an action published in the Federal Register. The daily retention limit would apply to General category permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. Overall, the use of retention limits would likely have neutral to minor beneficial economic impacts on small entities participating in the General category fishery as they could extend the length of the General category time periods when BFT can be landed, providing additional fishing opportunities while also reducing the influx of BFT products into the market which could result in a short-term increase in ex-vessel prices for General category participants. This short-term increase in BFT prices are unlikely to impact the overall average annual revenue. NMFS expects the status-quo alternative to have neutral economic impacts as it does not change existing management.

Under Alternative D2, NMFS would establish a General category default daily retention limit of one large medium or giant BFT per vessel on open days when the General category is open. The daily retention limit would apply to General category permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. Retention limits would likely have neutral to minor beneficial economic impacts on small entities participating in the General category fishery as they could extend the length of the General category time periods when BFT can be landed, providing additional fishing opportunities while also reducing the influx of BFT products into the market which could result in a short-term increase in ex-vessel prices for General category participants. However, since the current practice in recent years is to set a daily retention limit of three large medium or giant BFT per vessel on days when the General category is open, starting June 1 through June 30, a default of one BFT could potentially constrain the revenue of vessels that might have been able to land two or three BFT on open days from June 1 through June 30. Although this alternative may have a short-term minor adverse impact on a limited number of individuals and

their revenues (likely resulting in a short-term decrease in ex-vessel revenue), NMFS expects that the overall average annual revenue would unlikely be impacted.

Under Alternative D3, the preferred alternative, NMFS would establish a General category daily retention limit of three large medium or giant BFT per vessel on open days in June and one large medium or giant BFT on days during all other months when the fishery is open (i.e., January through March and July through December; the General category BFT fishery is not open during the months of April and May) unless adjusted with an inseason action. The daily retention limit would apply to General category permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. Retention limits would likely have neutral to minor beneficial economic impacts on small entities participating in the General category fishery as retention limits could extend the length of the General category time periods when BFT can be landed, providing additional fishing opportunities while also reducing the influx of BFT products into the market which could result in an increase in a short-term increase ex-vessel prices for General category participants. Implementation of these default retention limits would align with current management practices and provide additional fishing opportunities in all respective time periods. Codifying the current retention limits management practices would potentially reduce some uncertainty regarding future retention limits for General category participants and dealers and thus lead to some positive economic impacts associated with their improved business planning. NMFS expects that the overall average annual revenue would unlikely be impacted.

8.0 APPLICABLE LAWS

While this document comprehensively analyzes the alternatives considered for all the requirements under applicable laws and executive orders, this chapter provides summaries of how this action complies with various statutes or executive orders that were not discussed in earlier chapters. These include parts of the Magnuson-Stevens Act, E.O. 13132, E.O. 12898, and the CZMA.

8.1 The National Standards of the Magnuson-Stevens Fishery Conservation and Management Act

NMFS has determined that the preferred alternatives are consistent with the Magnuson-Stevens Act and other applicable laws. The analyses in this document are consistent with the Magnuson-Stevens Act National Standards (NS) (see 50 CFR Part 600, Subpart D for National Standard Guidelines).

NS1 requires NMFS to prevent overfishing while achieving, on a continuing basis, optimum yield from each fishery for the U.S. fishing industry. The preferred measures in this action are consistent with NS1 as it would build upon current management measures to prevent overfishing of BFT and manage the U.S. fisheries for this stock consistently with the measures recommended by ICCAT. NMFS continues to limit BFT mortality by U.S. fishermen in accordance with the strict quota limits set by ICCAT and established under approved conservation and management programs. Amendment 13 to the Consolidated HMS FMP addressed OY in the allocation of U.S. bluefin quota among all quota categories (see Section 9.1.1 of Amendment 13). This final rule does not impact those allocations and is consistent with optimizing utilization of quota.

NS2 requires that conservation and management measures be based on the best scientific information available. The preferred alternatives in this document are consistent with NS2. The preferred alternatives consider the relevant BFT stock status information from the most recent BFT stock assessment conducted by ICCAT's SCRS. The SCRS is comprised of stock assessment scientists from numerous ICCAT Contracting Parties, including the United States, and their stock assessments are subject to rigorous analysis and review by a panel of experts from participating ICCAT Contracting Parties. NMFS has determined the SCRS assessments to be the best scientific information available.

NS3 requires that, to the extent practicable, an individual stock of fish be managed as a unit throughout its range and interrelated stocks of fish be managed as a unit or in close coordination. The preferred alternatives in this document are consistent with NS3. The preferred alternatives for this action reflect management of the western Atlantic BFT stock, throughout their range in the U.S. Exclusive Economic Zone (EEZ). The fact that the range of this HMS stock extends beyond the U.S. EEZ is reflected in the development, implementation, and enforcement of conservation and management measures with ICCAT Contracting Parties throughout the Atlantic Ocean and the adjacent seas.

NS4 requires that conservation and management measures do not discriminate between residents of different states. Furthermore, if it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation should be fair and equitable to all fishermen; be

reasonably calculated to promote conservation; and should be carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. The preferred alternatives in this document are consistent with NS4. The preferred alternatives for this action are designed to extend fishing opportunities through a greater portion of the General category time period subquotas, prevent overharvest of quota in any period, and improve distribution of fishing opportunities without increasing BFT mortality. The preferred alternatives do not discriminate between residents of different States, as the measures considered in this action would subject all fishermen to the same rules regardless of their state of residence. This action does not allocate or assign fishing privileges among various fishermen.

NS5 requires that conservation and management measures should, where practicable, consider efficiency in the utilization of fishery resources, with the exception that no such measure shall have economic allocation as its sole purpose. The preferred alternatives in this document are consistent with NS5. The preferred alternatives would modify the regulatory process for scheduling RFDs by codifying a schedule of RFDs for the 2024 fishing year and subsequent fishing years; set an additional non-codified RFD for 2024; and establish a General category default daily retention limit of three large medium or giant BFT per vessel on open days in June and one large medium or giant BFT per vessel on open days for all other months in time periods where the fishery is open. Lastly, this action would clarify existing HMS dealer regulations and the definition of a BSD tag. The effects of these changes are primarily administrative and no environmental or economic effects are anticipated thus NMFS did not develop alternatives. The preferred alternatives would maintain efficiency in utilization of the fishery resource. This measure would continue to allow General category participants to land BFT within the established General category quota while extending fishing opportunities throughout the various time periods and preventing premature closures of the General category. The General category quota would be managed consistent with existing conservation and management measures, which appropriately considered efficiency in the utilization of fishery resources through the rulemaking process that adopted those measures. No additional efficiency considerations are presented with this rulemaking.

NS6 states that conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. The preferred alternatives would modify the regulatory process for scheduling RFDs by codifying a schedule of RFDs for the 2024 fishing year and subsequent fishing years; set an additional RFD for only the 2024 fishing year; and establish a General category default daily retention limit of three large medium or giant BFT per vessel on open days in June and one large medium or giant BFT per vessel on open days for all other months in time periods where the fishery is open. Lastly, this action would clarify existing HMS dealer regulations and the definition of a BSD tag. The effects of these changes are primarily administrative and no environmental or economic effects are anticipated thus NMFS did not develop alternatives. The BFT General category quota would be distributed and managed consistent with existing conservation and management measures, which appropriately considered variations among, and contingencies in, fisheries, fishery resources, and catches throughout the rulemaking processes that adopted those measures.

NS7 states that conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. The preferred alternatives in this document are consistent

with NS7. The preferred alternatives would not implement new requirements that would increase costs for General category participants. The economic impacts section of the EA provides detailed analyses of the costs associated with each alternative. The preferred alternatives were also structured to avoid unnecessary duplication by taking into account existing requirements on the relevant fisheries and existing measures in place for BFT.

NS8 states that conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts on such communities. The preferred alternatives in this document are consistent with NS8. The social and economic impacts of the preferred alternatives on fishing communities generally are expected to be neutral to minor beneficial because they provide General category participants, tournament operators, and dealers with definite days that would be open and closed during the commercial BFT fishing year to plan travel to fishing grounds or engage in other fishing endeavors each General category time period and the applicable retention limits when the fishery is open. Overall, NMFS took into consideration impacts on fishing communities and seeks to minimize adverse economic impacts by providing for fishing opportunities throughout the fishing season through the preferred alternatives.

NS9 states that conservation and management measures shall, to the extent practicable, minimize bycatch, and to the extent that bycatch cannot be avoided, minimize the mortality of such bycatch. The preferred alternatives in this document are consistent with NS9. The preferred alternatives are not expected to cause significant changes in fishing effort, areas, or practices, and thus are not expected to lead to increases in potential bycatch or increased interactions with non-target, incidentally caught species, including protected species.

NS10 states that conservation and management measures shall, to the extent practicable, promote the safety of human life at sea. The preferred alternatives in the document are consistent with NS10 and do not inherently cause more safety issues than other alternatives. No impact to safety of life at sea is anticipated to result from these preferred alternatives. The preferred alternatives would not require fishermen to travel greater distances, fish in bad weather, or otherwise fish in an unsafe manner. Fishing effort and practices are unlikely to change as a result of the preferred alternatives.

8.2 E.O. 13132: Federalism

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

8.3 E.O. 12898 Environmental Justice Concerns

Executive Order 12898 requires agencies to identify and address disproportionately high and adverse environmental effects of its regulations on minority and low-income populations. To determine whether environmental justice concerns exist, the demographics of the affected geographic area should be examined to ascertain whether minority populations and low-income

populations are present. If so, a determination must be made as to whether implementation of the alternatives may cause disproportionately high and adverse human health or environmental effects on these populations. Additionally, NMFS recently finalized a national Equity and Environmental Justice (EEJ) Strategy (May 2023, see <https://www.fisheries.noaa.gov/feature-story/noaa-fisheries-releases-final-equity-and-environmental-justice-strategy>). This strategy outlines a plan for integrating EEJ initiatives into all aspects of fisheries management, and addresses several EOs that have been recently issued (EO 14096, 14091, 13985, 14008, 12898) to advance EEJ efforts in the Federal Government.

Community profile information is available in the 2006 Consolidated HMS FMP (Chapter 9); a report by MRAG, Americas, Inc., and Jepson (2008) titled “Updated Profiles for HMS Dependent Fishing Communities” (Appendix E of Action 2 to the 2006 Consolidated Atlantic HMS FMP); and the 2015 HMS SAFE Report (NMFS 2015). The 2015 HMS SAFE Report and the “Updated Profiles for HMS Dependent Fishing Communities” social impact assessment (MRAG et al. 2008) updated community profiles presented in the 2006 Consolidated HMS FMP, and provided new social impact assessments for HMS fishing communities along the Atlantic and Gulf of Mexico coasts. The 2011 and 2012 HMS SAFE Reports (NMFS 2011; NMFS 2012) include updated census data for all coastal Atlantic states, and some selected communities that are known centers of HMS fishing, processing, or dealer activity. Demographic data indicate that coastal counties with fishing communities are variable in terms of social indicators like income, employment, and race and ethnic composition. Communities such as New Bedford, Massachusetts and Beaufort, North Carolina would likely experience greater difficulty recovering from economic hardships caused by job losses in the recreational and commercial fishing sectors.

Overall, the preferred alternatives in this action would not have any effects on human health nor are they expected to have any disproportionate social effect on minority and low-income communities. However, the preferred alternative to codify Tuesday, Friday, and Saturday while adding Sunday as an additional non-codified RFD for 2024 may have neutral to minor adverse economic impacts on commercial fishermen who may only fish on the weekends. Furthermore, this alternative could likely limit fishing opportunities weekly for General category participants to land the quota and subquotas resulting in derby-like conditions. However, NMFS believes this schedule will allow for dealers to plan to move BFT product through the market and therefore reduce the amount of General category BFT landed but unsold. NMFS also believes that this schedule of two consecutive open days (Monday; Wednesday-Thursday) followed by four RFDs (Sunday, Tuesday, Friday, Saturday) would reduce the influx of BFT products into the market which could result in short-term increase in ex-vessel prices and revenues for General category participants. Any social or economic impacts are expected to be neutral to slightly positive in the short- and long-term through the potential increases in economic opportunities and are anticipated to affect the fishing sectors and communities equally as General category participants, tournament operators, and dealers with definite days that would be open and closed during the commercial BFT fishing year to plan travel to fishing grounds or engage in other fishing endeavors each General category time period and the applicable retention limits when the fishery is open.

8.4 Coastal Zone Management Act

The Coastal Zone Management Act (CZMA, 1972; reauthorized in 1996) requires that federal actions be consistent, to the extent practicable, with the enforceable policies of all state coastal zone management programs. NMFS finds the alternatives analyzed for this action to be consistent to the maximum extent practicable with the enforceable policies of states that have approved coastal zone management programs. This determination was submitted for review by the responsible state agencies on February 23, 2024, under section 307 of the CZMA. NMFS received responses from the States of Alabama, Connecticut, Delaware, Florida, Georgia, Maryland, New Hampshire, New Jersey, New York, North Carolina, and South Carolina. No responses were received from the States, Commonwealths, or Territories of Louisiana, Maine, Massachusetts, Mississippi, Puerto Rico, Rhode Island, Virginia, or the Virgin Islands, and therefore consistency is being inferred. The State of Texas responded that their Coastal Management Program is not reviewing NMFS actions for federal consistency.

8.5 Essential Fish Habitat

Pursuant to 16 U.S.C. 1855(b)(1), and as implemented at 50 CFR 600.815, the Magnuson-Stevens Act requires NMFS to identify and describe EFH for each life stage of managed species and to evaluate the potential adverse effects of fishing activities on EFH, including the cumulative effects of multiple fisheries activities. If NMFS determines that fishing gears are having an adverse effect on HMS EFH, or other species' EFH, then NMFS must include management measures that minimize adverse effects to the extent practicable.

In the 2006 Consolidated HMS FMP and Amendment 1 to the 2006 Consolidated HMS FMP, NMFS reviewed the various HMS gear types with the potential to affect EFH. Based on the best information available at that time, NMFS determined that there was no evidence that physical effects caused by any authorized HMS gears were affecting EFH for targeted or non-targeted species, to the extent that physical effects can be identified on the habitat or the fisheries. NMFS conducted a literature review as part of Draft Amendment 10 to the 2006 Consolidated HMS FMP (81 FR 62100, September 8, 2016). NMFS completed the HMS EFH 5-Year Review in 2015 to investigate additional impacts of HMS fishing gears on HMS EFH since Amendment 1. NMFS did not find any significant changes in effects to HMS EFH from HMS and non-HMS fishing gear types. NMFS found no new information that any authorized HMS gear would have adverse effects on EFH. The Final Amendment 10 was published on September 7, 2017 (82 FR 42329). The measures in this action are not expected to change the fishing gear types authorized relative to the status quo. Therefore, this action in the context of the fishery as a whole will not have an adverse impact on EFH and an EFH consultation is not required.

NMFS recently initiated an HMS EFH 5-year review to gather all new information and determine whether modifications to existing EFH descriptions and designations are warranted. The HMS EFH Draft 5-Year Review was completed on May 4, 2023 (88 FR 28531). The EFH Final 5-Year Review was released on April 18, 2024 (89 FR 89 FR 27715). As a result of this review and the recommended updates to HMS EFH, we expect to begin working on Amendment 17.

8.6 Protected Resources

The preferred alternatives considered in this action are likely to have neutral impacts on protected resources, including sea turtles, or sharks listed under the ESA or marine mammals. The purpose of this action is to modify the process of scheduling RFDs and reestablish a General category default daily retention limit for large medium and giant BFT on open days. As effort controls, both RFDs and daily retention limits are meant to extend General category fishing opportunities through a greater portion of the General category time period subquotas, prevent overharvest of quota in any period, and improve distribution of fishing opportunities without increasing BFT mortality. The gear types affected by this action are all tended gears with a low potential to harm protected resources. Gears authorized for use in the General category commercial BFT fishery include handline, rod and reel, bandit gear, harpoon, and green-stick. Protected resources such as sea turtles, or sharks listed under the ESA or marine mammals have a low likelihood of interacting with these gear types. If an individual of one of these species were to be captured or hooked, it would be quickly removed and released since each of these gears is actively tended. Because these gears would continue to be actively tended, each of the alternatives would have neutral direct and indirect impacts in the short and long term on protected resources.

9.0 LIST OF AGENCIES AND PERSONS CONSULTED

This EA, Regulatory Impact Review, and IRFA were prepared by Larry Redd, Erianna Hammond, Dianne Stephan, Kathy Goldsmith, Brad McHale, Cliff Hutt, Sarah McLaughlin, George Silva, Karyl Brewster-Geisz, and Randy Blankinship, from the HMS Management Division, Office of Sustainable Fisheries. Please contact the HMS Management Division for a complete copy of current regulations for the HMS commercial and recreational fisheries.

Atlantic Highly Migratory Species Management Division
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10.0 PUBLIC COMMENT AND AGENCY RESPONSE

NMFS received 34 written comments on the proposed rule (89 FR 13667, February 23, 2024) as well as oral comments during the public hearing by webinar on March 18, 2024. Written comments can be found at www.regulations.gov by searching “NOAA-NMFS-2024-0021.” Below, NMFS summarizes and responds to the comments made on the proposed rule during the comment period.

Comment 1: NMFS received multiple comments expressing concerns with codifying specific days as RFDs. Commenters felt that codifying RFDs would not provide NMFS the flexibility to respond to changes in BFT stock status, the environment, the regulations, and market conditions.

Response: NMFS disagrees that codifying specific days as RFDs would reduce the flexibility needed to respond to such changes. As stated in the proposed rule, we may waive previously scheduled RFDs under certain circumstances, consistent with § 635.23(a)(7). Specifically, we may waive an RFD(s) by adjusting the daily BFT retention limit from zero up to five on specified RFDs, after considering the inseason adjustment determination criteria at § 635.27(a)(7). These considerations include, among other things, review of dealer reports, daily landing trends, and the availability of BFT on fishing grounds. We would announce any such waiver by filing a retention limit adjustment with the Office of the Federal Register for publication. NMFS also may waive previously designated RFDs effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT. Similarly, if NMFS is conducting a rulemaking as a result of changes in the BFT stock status, BFT quotas, or other related situations, NMFS could consider the combined impacts of RFDs and those changes on the fishery, and, if needed and appropriate, propose changes to the codified RFD schedule.

Comment 2: NMFS received several comments suggesting that the preferred three-day RFD schedule has not been effective in extending the length of the season. Some commenters noted that data pre- and post-establishment of RFDs indicate that NMFS should take other measures to control effort better. Many commenters stated that NMFS should set additional RFDs per week as the preferred three-day RFD schedule has not accomplished the primary goal to allow fishing opportunities later into the applicable time periods.

Response: NMFS disagrees that RFDs have not been effective in meeting its primary goal of extending the fishing season. NMFS acknowledges that in the past few years with the three-day RFD schedule of Tuesday, Friday, and Saturday from July 1 through November 30, the subquotas have still been harvested before the end of each time period, necessitating an early closure. However, this is because landings rates continue to be very high compared to past landings rates. This increase in landings rates may be due to various factors including increased availability of BFT and favorable weather conditions. The use of RFDs has extended the applicable time periods and has provided for additional fishing opportunities throughout each time period. Without RFDs, because of those high landings rates, the time period subquotas would likely have been met within days of each time period opening. Such a quick closure would not provide fishing opportunities through much of the fishing season. Thus, after considering

public comment and reviewing daily catch landings data in recent and past years, NMFS is finalizing the codification of a three-RFD schedule. NMFS is further setting a fourth non-codified RFD for the 2024 fishing year (see Responses 3 and 4 for more information). NMFS believes the addition of a fourth day will further the objective of extending the fishing season and continuing to provide equitable fishing opportunities throughout the year and intends to evaluate after the 2024 fishing year whether a permanent codification of a fourth RFD is warranted.

Comment 3: NMFS received a variety of comments regarding a specific RFD schedule. Some commenters supported the preferred three-day RFD schedule. One commenter supported a three-day RFD schedule, but suggested that NMFS modify the days to Sunday, Monday, and Friday. The majority of commenters suggested that NMFS set four RFDs per week from July 1 through November 30, with Sunday being added as the additional RFD. These commenters felt that the past years' schedule of three RFDs per week was not effective in extending the fishing season and stated that a four-day RFD schedule would extend the quota later into the season, while also reducing market saturation and improving BFT prices. Other commenters felt having four RFDs a week would have a negative economic impact on local coastal communities, would eliminate fishing opportunities for participants who can only fish on the weekend, and could result in safety-at-sea issues. Without specifying which specific days, some commenters supported four or more RFDs. A few of these commenters suggested six RFDs a week as long as NMFS had the flexibility to increase or decrease fishing days by waiving RFDs when needed, while one comment supported as many RFDs per week needed to stabilize the BFT market. One commenter supported four RFDs per week from August through December.

Response: A primary objective of this action is to slow the harvest rate of BFT in order to provide General category fishing opportunities through a greater portion of the General category time periods. As stated in the response to Comment 2, the RFD schedule in recent years (*e.g.*, three RFDs per week on Tuesdays, Fridays, and Saturdays) has been effective at allowing extra fishing opportunities. However, the time period subquotas have still been reached quickly resulting in early closures of the General category. After reviewing public comments and catch rate data, NMFS has determined that it is appropriate to set a fourth RFD per week from July 1 through November 30 in 2024 to further slow the rate of catches in the General category and provide for additional fishing opportunities later into the applicable time periods. NMFS will evaluate/review the data from the 2024 fishing season to determine how well a fourth RFD achieves that objective. NMFS recognizes that a four-day RFD schedule in 2024, specifically a Sunday, Tuesday, Friday, and Saturday schedule, would eliminate BFT commercial fishing opportunities on the weekend and may negatively affect commercial fishermen that currently only fish for BFT on the weekend. However, all General category and HMS Charter/Headboat permit holders that fish commercially for BFT are affected when the subquota is harvested quickly and the season is closed after only a few days. In those cases, commercial fishing opportunities for all General category and HMS Charter/Headboat permit holders fishing commercially for BFT are negatively affected. By setting a four-day RFD schedule in 2024, we believe more fishing opportunities will be available for all General category participants later into each time period. Furthermore, NMFS has the ability to waive RFDs, if necessary. We believe this added flexibility provides NMFS effective tools to manage the General category fishery.

Regarding safety-at-sea, NMFS recognizes that fishing can be dangerous in the best of circumstances. NMFS does not believe that a four-day RFD schedule inherently causes more safety issues than a three-day RFD schedule. Under either schedule, fishermen are not required to go fishing and must make their own determination about whether to fish given the weather or other safety-at-sea conditions. If a schedule of four RFDs per week in 2024 is successful at extending fishing opportunities throughout the fishing season, fewer fishermen may feel the need to go fishing on a non-RFD if the weather or other conditions are hazardous.

Comment 4: NMFS received many comments in support of adding Sunday as a fourth RFD per week. The commenters who supported adding Sunday as an RFD noted the highest commercial landings and effort occur on Sunday. Some recreational commenters who supported Sunday as a fourth RFD felt the high commercial fishing effort on Sundays is detrimental to any recreational vessels trying to fish. One commenter noted fishing tournaments in New England do not operate on Sundays, and therefore a Sunday RFD would not cause any impacts to any General category participants in such tournaments. Some commenters opposed the addition of a Sunday RFD, noting that the addition of Sunday would eliminate commercial BFT fishing on weekends.

Response: After considering public comment and further reviewing daily catch landings data in recent and past years, NMFS has determined that Sunday should be added as an additional non-codified RFD in 2024 because Sundays have recently been high landings days in the General category. From 2021 through 2023 for the months with RFDs in place, the rate of landings on Sundays was relatively high (~14 metric tons (mt) per day). Recognizing the concerns from stakeholders regarding the addition of Sunday, at this time we are adding Sunday as an additional non-codified RFD per week only for the 2024 fishing year. This limited time should allow the opportunity to collect data and determine if it would be appropriate to include Sunday as a codified fourth RFD in future years. We recognize that the use of RFDs may allow for an increase in recreational catches of BFT on RFDs, including on weekends. However, the purpose of this action is not to increase recreational landings, but to extend the General category BFT fishery for the 2024 and subsequent years. Although recreational landings may increase on RFDs, we note that the recreational quota has not been reached in recent years. Additionally, we emphasize that Charter/Headboat permitted vessels must abide by established retention limits when fishing recreationally on RFDs. Thus, we anticipate that recreational landings would remain within the current annual Angling category quota.

Furthermore, we acknowledge that some HMS tournaments in the New England region may not include fishing on Sundays. However, we are aware of some fishing tournaments that take place on Sundays in other regions during time periods when catch rates are high. RFDs that occur on a tournament date may negatively affect BFT fishing at those tournaments since some tournament participants are General category permit holders and are prohibited from fishing for BFT on RFDs. However, on an RFD, General category permit holders may still participate in non-BFT fishing during the tournament and may land sharks (if they also hold a shark endorsement), swordfish, billfish, and/or bigeye, albacore, yellowfin (YFT), and skipjack tunas recreationally as otherwise allowed. Additionally, on an RFD, Charter/Headboat-permitted vessels may participate recreationally in HMS fishing tournaments, including for BFT, under the applicable Angling category restrictions and size class limits.

Comment 5: NMFS received multiple comments that did not support establishing a default three-fish daily retention limit in the month of June and a default one-fish daily retention limit for all other months in time periods when the fishery is open (*i.e.*, January through March and July through December). Commenters expressed concerns that a three-fish daily retention limit for the month of June results in too many landings in June for the June through August time period, contrary to the goal of this action. These commenters were also concerned that the default retention limit would not provide NMFS the flexibility to modify the retention limit if needed. Other commenters stated that a one-fish daily retention limit would preserve resources and ensure better market prices for BFT.

Response: NMFS disagrees that having a default of three-fish daily retention limit in June is contrary to the objectives of this action or would reduce the flexibility needed to modify the retention limit. In recent years, the rate of landings and overall fishing effort in the General category is typically slow in early June. For example, in 2023, the average amount of BFT harvested per day in June, with the three-fish daily limit, was 1.5 mt. In July, with the 1-fish daily limit, the average amount harvested per day was 8.9 mt. In recent years, after consideration of the relevant criteria provided under § 635.27(a)(7), which includes consideration of catch rates, NMFS has regularly set the daily retention limit for the beginning of the June through August time period at three fish (*e.g.*, 86 FR 27814, May 24, 2021; 87 FR 32094, May 27, 2022; 88 FR 34454, May 30, 2023). During the month of June, NMFS monitors the landings closely, and, as appropriate, NMFS can reduce the limit to a one-fish daily retention limit to ensure fishing opportunities in all respective General category time periods and to ensure that the available quota is not exceeded. Any change in the retention limit considers the relevant criteria and includes consideration of the catch rates associated with the various authorized gear types (*e.g.*, harpoon, rod and reel). Throughout the season, NMFS monitors landings and catch rates and will close the fishery or modify retention limits as appropriate to ensure the quotas are not exceeded. NMFS will continue to monitor and evaluate the effectiveness of all these management measures in the context of current conditions to determine whether other actions are necessary.

Comment 6: NMFS received multiple comments suggesting that NMFS negotiate for more BFT quota at ICCAT citing increases in BFT biomass and shifts in BFT fishing grounds, resulting in high landings. Several commenters noted that the BFT stock has rebounded and is healthy. Some commenters noted that more quota is needed to address recreational trophy and tournament landings, both of which potentially affect General category participation and landings. One commenter expressed that NMFS should consider a special allocation for giant BFT caught in tournaments with no commercial sale.

Response: The most recent western Atlantic BFT stock assessment, conducted in 2021, determined that the overfished status remains unknown and that the stock is not subject to overfishing. This stock status remains in effect. In 2022, NMFS increased the baseline U.S. BFT quota to 1,316.14 mt (not including the 25-mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area), as codified at § 635.27(a), consistent with Recommendation 21–07 adopted by ICCAT at the November 2021 annual meeting (87 FR 33049, June 1, 2022). ICCAT Recommendation 22–10

maintained the U.S. BFT quota as specified above. Further information on the BFT stock assessment and stock status can be found in the 2022 rule referenced above and associated EA.

Regarding more quota for recreational trophy and tournament landings this would require modifications to the BFT quota for the Angling category quota and subquotas and NMFS is not considering modifications of the Angling category in this action. Additionally, regarding a special allocation for giant BFT caught in tournaments with no commercial sale, NMFS is not considering this modification, as it would require modifications to the BFT quota for the General category quota and subquotas. Amendment 13 to the 2006 Consolidated HMS FMP and its final rule (87 FR 59966, October 3, 2022) considered modifications to the BFT category subquotas. As described in Amendment 13, NMFS determined that the current structure of the BFT fishery provides equitable fishing opportunities. As such, Amendment 13 did not modify the General category subquota percentages. However, Amendment 13 eliminated the Purse Seine category and proportionally reallocated Purse Seine category quota to all of the other BFT quota categories, including the General and Angling categories, resulting in an increase to the General category and Angling category quota and subquotas.

Comment 7: One commenter referenced National Standard 4, which requires that conservation and management measures shall not discriminate between residents of different states, and expressed concerns that RFDs are set only for when BFT arrive off Maine versus year-round. Another commenter stated that NMFS has a responsibility to protect the economic value of the BFT fishery under the Magnuson-Stevens Act and codifying effort controls will not provide the flexibility to do so.

Response: The preferred alternatives are designed to extend fishing opportunities through a greater portion of the General category time period subquotas, prevent overharvest of quota in any period, and improve distribution of fishing opportunities without increasing BFT mortality. This action also provides flexibility to waive codified RFDs (see response to comment 1). Consistent with National Standard 4, the preferred alternatives do not discriminate between residents of different States, as the measures considered in this action apply the same rules to all General category and HMS Charter/Headboat permit holders with a commercial sale endorsement fishing commercially for BFT regardless of their state of residence. The preferred RFD schedule does not apply only to certain regions. Instead, it applies to all regions, during time periods in which landings have been the highest, shortening the time it takes to meet relevant subquotas, resulting in inseason closures earlier than desired, and contributing to market gluts. In the final rule establishing the 2023 RFD schedule, NMFS considered, among other things, RFDs for the December and January through March time periods (88 FR 33839, May 25, 2023). Based on public comment, at that time, NMFS did not finalize RFDs for those time periods, in part because the weather during those periods already limits participation. NMFS did not reconsider RFDs during those time periods in this rule as the reasons for not finalizing them in 2023 still apply.

NMFS emphasizes that the Magnuson-Stevens Act requires the consideration and application of numerous factors when developing fishery conservation and management measures, including the ten National Standards. The proposed rule and EA did discuss past market conditions and recognized that this action should also help prevent large numbers of BFT from entering the

market at the same time, which may indirectly affect price. While NMFS considered economic factors in the development of this action, the primary purpose of RFDs is not economic in nature. Rather, RFDs are an effort control used to extend General category fishing opportunities through a greater portion of the General category time period subquotas, prevent overharvest of quota in any period, and improve distribution of fishing opportunities without increasing BFT mortality.

Comment 8: NMFS received multiple comments expressing concerns with General category permit holders' participation in HMS tournaments. These commenters stated that tournaments contribute significantly to landings of General category BFT in the summer. Some commenters noted that BFT landed by General category vessels participating in tournaments that include BFT should not count toward the General category quota. Some commenters suggested that NMFS should require tournaments to be catch and release only for BFT. Some commenters suggested that NMFS should require all commercially-sized BFT that are landed during tournaments be weighed in dressed form rather than whole form. One commenter expressed that HMS Charter/Headboat vessels should be able to continue to fish in and sell BFT landed in tournaments.

Response: NMFS disagrees that tournament landings contribute significantly to BFT General category landings in the summer. While we acknowledge that tournament landings do affect landings in the General category, non-tournament landings constitute the majority of landings in the General category fishery in the summer. Furthermore, under the current regulations General category and HMS Charter/Headboat permitted vessels with a commercial sale endorsement may participate in BFT fishing tournaments (on non-RFDs) and must comply with Atlantic Tunas General category regulations to land and sell commercial sized BFT, see § 635.4(c)(3). In recent years both fishermen and dealers have expressed concerns regarding General category participation in HMS fishing tournaments. At this time, NMFS is not considering action to modify existing regulations regarding General category participation in HMS tournaments. NMFS may consider potential changes to these regulations in the future, if warranted.

Comment 9: NMFS received multiple comments suggesting alternative options to RFDs for the purpose of controlling fishing effort. One commenter suggested that NMFS take action regarding dealer and fishermen communication to reduce unsold fish. Some commenters noted that NMFS should not issue permits unless General category or HMS Charter/Headboat permit holders show proof of meeting safety regulations. These commenters cited that non-compliance of commercial safety gear, stickers, and handling restrictions by Charter/Headboat permit holders leads to an increase in General category fishing by inexperienced or unsafe fishermen resulting in BFT that are not handled properly for sale or landed and unsold.

Response: NMFS believes that RFDs and retention limits offer the best options to pace General category landings to extend fishing opportunities through a greater portion of the time periods. Furthermore, as part of this action, we are clarifying existing regulations to improve the understanding of vessel and dealer restrictions and requirements for participants in the General category BFT fishery. Through these measures, NMFS believes the number of unsold fish should be reduced. Additionally, in recent years (most recently in 2023), we have actively encouraged operators of vessels authorized to sell bluefin tuna to contact their local Atlantic tuna dealers before departing on a trip to determine if dealers are willing to purchase BFT.

Regarding the commercial fishing vessel safety requirements, these requirements are promulgated and enforced by the U.S. Coast Guard, not by NMFS. Such provisions can be found in 46 CFR part 28. Modifying the prerequisites to obtain an HMS permit is outside the scope of this action, however NMFS takes the suggestion under advisement.

Comment 10: NMFS received one comment requesting that NMFS ban imports of BFT or YFT when the fishery is open and ban imported farm/pen raised tunas.

Response: This comment is outside of the scope of this action. Information regarding import restrictions can be found on the NMFS Office of International Affairs, Trade, and Commerce webpage at <https://www.fisheries.noaa.gov/about/office-international-affairs-trade-and-commerce>.

Finding of No Significant Impact

I. Purpose of Finding of No Significant Impact (FONSI):

The National Environmental Policy Act (NEPA) requires the preparation of an Environmental Impact Statement (EIS) for any proposal for a major federal action significantly affecting the quality of the human environment (42 U.S.C. 4332(C)). The Council on Environmental Quality (CEQ) regulations direct agencies to prepare a FONSI when an action not otherwise excluded will not have a significant impact on the human environment (40 CFR §§ 1500.4(b), 1500.5(b) and 1501.6). To evaluate whether a significant impact on the human environment is likely, the CEQ regulations direct agencies to analyze the potentially affected environment and the degree of the effects of the proposed action (40 CFR § 1501.3(b)). In doing so, agencies should consider the geographic extent of the affected area (i.e., national, regional or local), the resources located in the affected area (40 CFR § 1501.3(b)(1)), and whether the project is considered minor or small-scale (NOAA Administrative Order [NAO] 216-6A, Compliance with the National Environmental Policy Act, Executive Orders 12114, Environmental Effects Abroad of Major Federal Actions; 11988 and 13690, Floodplain Management and 11990, Protection of Wetlands,” and the Companion Manual for NAO 216-6A, “Policy and Procedures for Implementing the National Environmental Policy Act and Related Authorities,” Appendix A-2). In considering the degree of effect on these resources, agencies should examine, as appropriate, short- and long-term effects, beneficial and adverse effects, and effects on public health and safety, as well as effects that would violate laws for the protection of the environment (40 CFR § 1501.3(b)(2)(i)-(iv); NAO 216-6A Appendix A-2 - A-3), and the magnitude of the effect (e.g., negligible, minor, moderate, major). CEQ identifies specific criteria for consideration (40 CFR § 1501.3(b)(2)(i)-(iv)). Each criterion is discussed below with respect to the proposed action and considered individually as well as in combination with the others.

In preparing this FONSI, we reviewed the EA for the *Rule to Set Atlantic Bluefin Tuna General Category Effort Controls and Clarify Related Regulations*, which evaluates the affected area, the scale and geographic extent of the preferred alternatives, and the no action alternative, and the degree of effects on those resources (including the duration of impact, and whether the impacts were adverse and/or beneficial and their magnitude). The Final EA is hereby incorporated by reference per 40 CFR § 1501.6(b)). NMFS has identified two preferred alternatives and one-subalternative (B, B1, and D3) that would meet the purpose and need, and which hereafter are referred to as the “preferred alternatives”.

II. Approach to Analysis:

The preferred alternatives are determined to be small-scale or minor, and therefore, the scale of the project is not considered to meaningfully contribute to a significant impact. The preferred alternatives modify the process of scheduling RFDs; codify and a schedule of Tuesday, Friday, and Saturday from July 1 through November 30; set a 2024 RFD schedule for every Sunday, Tuesday, Friday, and Saturday from July 1 through November 30; establish a General category default retention limit of three large medium or giant bluefin tuna (BFT) per vessel on open days in June and one large medium or giant BFT on open days during all other months when the fishery is open.

The preferred alternatives are expected to only cause minor impacts to social and economic resources and are not considered to meaningfully contribute to a significant impact. Additionally, the preferred alternatives are not connected to other actions that have caused or may cause effects to resources in the affected area, and therefore, there is no potential for the effects of the preferred alternatives to add to the effects of other projects such that the effects taken together could be significant. Thus, no significant impacts are anticipated by the preferred alternatives.

III. Geographic Extent and Scale of the Preferred Alternatives:

The preferred alternatives modify the process of scheduling RFDs by codifying a schedule of RFDs for the 2024 fishing year and subsequent fishing years; set an additional non-codified RFD for the 2024 fishing year; establish a General category default retention limit of three large medium or giant BFT per vessel on open days in June and one large medium or giant BFT on open days during all other months when the fishery is open; and make clarifications to BFT dealer regulations and the definition of a BSD tag to address dealer and dealer agent activities on RFDs. NMFS did not develop alternatives for the regulatory clarifications of dealer activities on RFDs. The effects of these changes are primarily administrative and no environmental or economic effects are expected. The preferred alternatives apply for the BFT General category (commercial) fishery in the U.S. exclusive economic zone, as defined at 50 CFR § 600.10, in the Atlantic, Gulf of Mexico, and Caribbean Sea. Most state and territorial waters within three miles of the coast and some international waters are also subject to Federal BFT measures. Therefore the preferred alternatives are regional in their geographic extent and the environmental effects analyzed in the EA occur at a relatively small scale.

IV. Degree of Effect:

A. The potential for the preferred alternatives to threaten a violation of Federal, state, or local law, or requirements imposed for environmental protection.

The preferred alternatives will not threaten a violation of any federal, state, or local law, or requirement imposed for the protection of the environment. The preferred alternatives will be consistent with the Magnuson-Stevens Act, ATCA, relevant statutes, and fisheries regulations at 50 CFR part 635. Additionally, NMFS has determined that the preferred alternatives are consistent to the maximum extent practicable with the enforceable policies of those coastal states in the Atlantic that have approved coastal zone management programs. Letters were sent to those states requesting their concurrence when the proposed rule was published in the *Federal Register* (89 FR 13667, February 23, 2024). In response, states concurred with the agency's determination, or did not respond so consistency from those states is inferred.

B. The degree to which the preferred alternatives are expected to affect public health or safety.

The preferred alternatives are not expected to affect public health or safety. Fishing activity or behavior would not change as a result of the preferred alternatives. Fisheries that catch BFT take place in open ocean waters where interaction with the general public is unlikely.

C. The degree to which the preferred alternatives are expected to affect a sensitive biological resource, including:

a. Federal threatened or endangered species and critical habitat;

The preferred alternatives are not expected to have adverse impacts on threatened or endangered species or jeopardize critical habitat. It will not increase fishing effort compared to previous levels, and those levels were determined to not jeopardize the continued existence and recovery of species listed under the ESA or adversely modify designated critical habitat.

On May 15, 2020, NMFS issued a BiOp concluding ESA section 7 consultation on the Operation of the HMS Fisheries (Excluding Pelagic Longline) under the Consolidated Atlantic HMS Fishery Management Plan. The BiOp concluded that these fisheries (including handgear and bottom longline fisheries) are not likely to jeopardize the continued existence of listed species, including sea turtles, sawfish, Atlantic sturgeon, scalloped hammerhead shark (Caribbean and Central Atlantic DPS), oceanic whitetip shark, and giant manta ray, nor adversely affect the critical habitat of listed species. NMFS is implementing the RPMs and Terms and Conditions of this BiOp. This action is not anticipated to affect the above-referenced ESA-listed species in any way not previously analyzed for existing regulations, including the provision for exempted fishing activities, and there is no new information that would alter this conclusion. Any of the covered ESA-listed species taken would be considered against the Incidental Take Statement in both 2020 BiOps for all HMS fisheries, as long as the operations are consistent with the Reasonable and Prudent Measures in that BiOp, namely: any protected resources caught while engaging in research activities must be safely handled, resuscitated, and released, and all protected resource interactions must be reported to NMFS.

The preferred measures would not have adverse impacts on protected species, or have any additional adverse effects on endangered species or critical habitat beyond those considered in the 2020 BiOp and in the 2006 Consolidated HMS FMP. The preferred alternatives are anticipated to increase fishing opportunities by extending the fishing season longer through a greater portion of the time periods. This action is not expected to change fishing patterns or effects on critical habitat from prior years, or to allow substantial damage to ocean and coastal habitats. Thus, no further consultation is necessary.

b. Stocks of marine mammals as defined in the Marine Mammal Protection Act;

Interactions with marine mammals are managed in accordance with the MMPA “List of Fisheries” categories for each appropriate sector (including HMS fisheries that interact with BFT), and the preferred alternatives are not anticipated to change the effort in these fishery sectors in any manner that would increase the potential for interaction with non-listed marine mammals as previously analyzed in the 2006 Consolidated HMS FMP.

c. Essential fish habitat identified under the Magnuson-Stevens Fishery Conservation and Management Act;

The preferred alternatives are not expected to adversely affect EFH. It would not increase the overall fishing effort or change impacts on EFH, or allow substantial damage to ocean and coastal habitats and/or EFH. As discussed in the 2006 Consolidated HMS FMP and its amendments, the primary fishing gears to harvest BFT in the General category (rod and reel, handline, harpoon) are fished in the water column and have little impact on coastal resources or bottom substrate. Water column features also are identified as EFH, but there is no evidence that physical effects caused by fishing for HMS are adversely affecting EFH to the extent that detrimental effects can be identified.

d. Bird species protected under the Migratory Bird Treaty Act;

Because the preferred alternatives are not expected to change the current fishery practices or behavior overall, no effects to bird species are anticipated from its implementation. See the HMS SAFE Report for more information.

e. National marine sanctuaries or monuments;

National Marine Sanctuaries and Monuments have regulations governing activities within their boundaries. The preferred alternatives do not supersede those regulations. The primary fisheries that catch BFT prosecuted under the preferred alternatives do not use any substrate-contacting gear, so no ground disturbing impacts are expected to result from the action. No impacts to national marine sanctuaries or monuments are anticipated.

f. Vulnerable marine or coastal ecosystems, including, but not limited to, shallow or deep coral ecosystems;

The preferred alternatives are not expected to adversely affect vulnerable marine, coastal, or coral ecosystems. The action does not include any substrate-disturbing activity and is not expected to change fishing patterns or impacts.

g. Biodiversity or ecosystem functioning (e.g., benthic productivity, predator-prey relationships, etc.)

The preferred alternatives are not expected to have a significant impact on biodiversity and ecosystem function within the affected area, because the action is not expected to change fishing practices, and/or interactions with non-target and endangered or threatened species. See analysis under item C.a. above.

D. The degree to which the preferred alternatives are reasonably expected to affect a cultural resource: properties listed or eligible for listing on the National Register of Historic Places; archeological resources (including underwater resources); and resources important to traditional cultural and religious tribal practice.

No impacts are expected to occur in any of the above areas as a result of the preferred alternatives. The management measures would occur in offshore waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea and would not occur in any areas listed in the National

Register of Historic Places. The preferred alternatives have no potential to cause loss or destruction of significant scientific, cultural, or historical resources because there are no significant scientific, cultural, or historical resources within the action area.

E. The degree to which the preferred alternatives have the potential to have a disproportionately high and adverse effect on the health or the environment of minority or low-income communities, compared to the impacts on other communities (E.O. 12898).

Because the preferred alternatives are not expected to change the current fishery practices or behavior overall, no disproportionately high or adverse effects on the health or the environment of minority or low-income communities is expected. The action could decrease the time vessels spend fishing for BFT weekly but could also allow fishermen more time fishing for BFT overall because the time periods during which RFDs and retention limits would apply may extend the time periods longer. Additionally, because individual BFT fishermen may be provided more days to land fish, they might fish for longer during the season, dealers, suppliers, and other related industries within the community could experience positive benefits. The preferred alternatives were identified as preferred because they are expected to minimize ecological and economic impacts and provide for the sustained participation of fishing communities.

F. The degree to which the preferred alternatives are likely to result in effects that contribute to the introduction, continued existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of the species.

Most vessels in the General category fishery do not travel between ecologically different bodies of water or exchange ballast water. No activity associated with the preferred alternatives will involve the potential introduction or spread of noxious weeds or nonnative invasive species.

G. The potential for the preferred alternatives to cause an effect to any other physical or biological resources where the impact is considered substantial in magnitude (e.g., irreversible loss of coastal resources such as marshland or seagrass), or over which there is substantial uncertainty or scientific disagreement.

The preferred alternatives are expected to cause an effect to any other physical or biological resource, nor is there substantial uncertainty or scientific disagreement on the impacts of the action. The action would modify the process of scheduling RFDs by codifying a schedule of RFDs for the 2024 fishing year and subsequent fishing years (Tuesday, Friday, and Saturday from July 1 through November 30); set an additional non-codified RFD for the 2024 fishing year; establish a General category default retention limit of three large medium or giant bluefin tuna (BFT) per vessel on open days in June and one large medium or giant BFT on open days during all other months when the fishery is open; and make clarifications to BFT dealer regulations and the definition of a BSD tag to address dealer and dealer agent activities on RFDs. NMFS did not develop alternatives for the regulatory clarifications of dealer activities on RFDs. The effects of these changes are primarily administrative and no environmental or economic

effects are expected. It will be consistent with the objectives of the 2006 Consolidated HMS FMP as analyzed in the 2006 Consolidated HMS FMP FEIS. No increase in fishing effort or change in current fishing practices is expected relative to recent fishing years.

V. Other Actions Including Connected Actions:

NMFS is developing a rulemaking that considers modifications to the reporting requirements for HMS, with an advance notice of proposed rulemaking released in 2024 (88 FR 30699, May 12, 2023), which could result in large changes to commercial and recreational reporting requirements. This rulemaking will be finalized after implementation of the preferred alternatives (rulemaking) and will consider the cumulative impacts from the subsequent rule. The impacts of the reporting requirement modifications are not known at this time.

VI. Mitigation and Monitoring:

The U.S. domestic BFT management programs include numerous management measures to implement ICCAT management recommendations and for consistency with the 2006 Consolidated HMS FMP. NMFS uses a variety of controls such as BFT subquotas, retention limits, size limits, and reporting requirements to provide reasonable BFT fishing and harvest opportunities over a wide geographic range within available quotas, while minimizing and avoiding significant environmental impacts. See Chapter 5 of the EA.

DETERMINATION

The CEQ NEPA regulations, 40 CFR § 1501.6, direct an agency to prepare a FONSI when the agency, based on the EA for the proposed action, determines not to prepare an EIS because the action will not have significant effects. In view of the information presented in this document and the analysis contained in the supporting final EA prepared for the *Rule to Set Atlantic Bluefin Tuna General Category Effort Controls and Clarify Related Regulations*, it is hereby determined that the preferred alternatives and promulgation of the *Rule to Set Atlantic Bluefin Tuna General Category Effort Controls and Clarify Related Regulations* will not significantly impact the quality of the human environment. The Final Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis for the *Rule to Set Atlantic Bluefin Tuna General Category Effort Controls and Clarify Related Regulations* is hereby incorporated by reference. In addition, all beneficial and adverse impacts of the preferred alternatives as well as mitigation measures have been evaluated to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.



Kelly Denit
Director, Office of Sustainable Fisheries, NOAA Fisheries

5/9/2024
Date