DEPARTMENT OF COMMERCE

[Docket No. 970903224–7224–01; I.D. 082297A]

RIN 0648–AK40

National Oceanic and Atmospheric Administration

Administrative Procedures Applicable to the Management of Highly Migratory Species

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

ACTION: Proposed procedural guidelines.

SUMMARY: NMFS proposes to revise the administrative procedures it follows to prepare and issue highly migratory species (HMS) fishery management plans (FMPs) and FMP amendments (FMP amendments) and implementing regulations for the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea in response to recent amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The proposed revised procedures include opportunities for involvement by the public, the Department of State (DOS), the U.S. Coast Guard (USCG), the Fishery Management Councils (FMCs), the International Committee for the Conservation of Atlantic Tunas (ICCAT) Advisory Committee (IAC), the ICCAT Commissioners, and advisory panels (APs) appointed under the MSFCMA and the Atlantic Tunas Convention Act (ATCA).

DATES: Comments are invited and must be received on or before October 15, 1997.

ADDRESSES: Questions or comments regarding the proposed revised HMS procedures may be mailed or faxed to Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (fax: 301–713–1917). Copies of this notice are also available at this address.

FOR FURTHER INFORMATION CONTACT: Liz Lauck or Jill Stevenson, Highly Migratory Species Management Division, Office of Sustainable Fisheries, NMFS, Telephone: (301) 713–2347.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

On November 28, 1990, the President signed into law the Fishery Conservation Amendments of 1990 (Pub. L. 101–627), which amended the Magnuson-Stevens Act. Pub. L. 101–627 gave the Secretary of Commerce (Secretary) the authority to manage tuna, as of January 1, 1992, in the exclusive economic zone (EEZ) in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea under authority of the Magnuson-Stevens Act (16 U.S.C. 1811). Pub. L. 101–627 also transferred from the Councils to the Secretary, effective November 28, 1990, the management authority for the other highly migratory species in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea (16 U.S.C. 1854(f)(3)). In 1996, the Magnuson-Stevens Act was further amended to require APs of balanced representation to be created to assist in the development of FMPs and FMP amendments for Atlantic HMS.

Under the proposed revised procedures, the DOS, USCG, FMCs, IAC, and ICCAT Commissioners (Consulting Parties) would be consulted during the development of FMPs. They would be sent draft FMP documents, including the draft FMP or amendment, proposed rule, and draft EIS. The IAC and FMCs would participate in the HMS APs and, as such, would be consulted during several phases of the HMS process.

B. Purpose and Scope

The Magnuson-Stevens Act, at 16 U.S.C. 1854(f)(3), requires that the Secretary undertake the following three major categories of actions regarding the conservation and management of HMS:

1. Identification of research and information priorities, including observer requirements and necessary data collection and analysis;
2. Preparation and amendment of FMPs; and
3. Diligent pursuit, through international management entities (such as ICCAT), of international fishery management measures.

This document proposes the process that NMFS would follow in undertaking the second category of actions—preparing, issuing, and implementing through final regulations HMS FMPs and amendments. NMFS emphasizes that this process is not intended to address the other two categories of actions except in general terms where they affect the development and implementation of fishery management measures for HMS. The process proposed herein is designed to address the statutory planning and rulemaking requirements of both the Magnuson-Stevens Act and the ATCA regarding management of Atlantic HMS. The process for preparing and amending FMPs for HMS described in this document incorporates ATCA requirements so that they are met whenever the United States acts to implement ICCAT recommendations through the FMP and its implementing regulations.

C. Highly Migratory Species

The Magnuson-Stevens Act, at 16 U.S.C. 1802(14), defines the term ''highly migratory species'' as tuna species, marlin (*Tetrapturus* spp. and *Makaira* spp.), oceanic sharks, sailfishes (*Istiophorus* spp.), and swordfish (*Xiphias gladius*). Further, the Magnuson-Stevens Act, at 16 U.S.C. 1802(27), defines the term ''tuna species'' as albacore tuna (*Thunnus alalunga*), bigeye tuna (*Thunnus obesus*), bluefin tuna (*Thunnus thynnus*), skipjack tuna (*Katsuwonus pelamis*), and yellowfin tuna (*Thunnus albacares*).

D. Preparation and Amendment of FMPs

As delegated by the Secretary, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) would issue FMPs or FMP amendments for HMS in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. The Magnuson-Stevens Act directs the Secretary to undertake the following actions in preparing and amending FMPs for HMS:

1. Conduct public hearings at appropriate times and places;
2. Establish an AP balanced in its composition to fairly represent the commercial fishing involved for each FMP to be prepared or amended;
3. Consult with and consider the comments and views of affected Councils, the ICCAT Commissioners, the IAC, and the AP;
4. Evaluate the probable effects of conservation and management measures on affected fishery participants, and minimize, to the extent practicable, any disadvantage to U.S. fishermen in relation to foreign competitors; and
5. Review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for HMS has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measures contained in the FMP.
6. Pursue comparable international fishery management measures with respect to HMS.

The relationship between the Magnuson-Stevens Act and ATCA is not clearly addressed in either law. This document proposes a planning and rulemaking process for managing HMS species that NMFS believes to be consistent with both the Magnuson-

Stevens Act and ATCA. Whenever practicable, NMFS will issue one regulation under the authority of both statutes. NMFS does not intend that this process, primarily administrative in character, will resolve conflicts and ambiguities between the Magnuson-Stevens Act and ATCA.

II. Process for the Management of HMS

This document proposes the establishment of a general process for the preparation and implementation of: (1) FMPs; (2) FMP amendments; and (3) international management measures for HMS as required by the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the ATCA, 16 U.S.C. 971 *et seq.* This process would be followed by NMFS in order to fulfill the Secretary's responsibilities for managing HMS under these statutes.

Under the provisions of the Magnuson-Stevens Act and ATCA, several possible regulatory scenarios exist for HMS management, including: (1) An FMP that includes no international fishery management measures (e.g., those species for which ICCAT has made no recommendations to date, such as oceanic sharks); (2) an FMP that includes international fishery management measures authorized by and consistent with both Magnuson-Stevens Act and ATCA requirements; and (3) international fishery management measures, based upon ICCAT recommendations, implemented under ATCA but not yet included within an FMP (e.g., Atlantic tuna regulations promulgated under ATCA before preparation of and inclusion in an FMP). The proposed HMS management process addresses primarily the first two of these alternatives. The process for promulgating Atlantic tuna regulations under ATCA does not require as many steps or as much time as is required for preparation of an FMP or FMP amendment under the Magnuson-Stevens Act; however, it is NMFS'' intent to prepare an FMP (or FMPs) for Atlantic tunas. The rulemaking process for implementation of ICCAT recommendations that would be implemented by regulations in the absence of an FMP is discussed in this notice in abbreviated form. This particular rulemaking process would be used to implement ICCAT recommendations for an interim period until FMPs are prepared for all HMS designated by the Magnuson-Stevens Act, or until any existing HMS FMPs are amended to incorporate ICCAT recommendations.

HMS Management Process—Outline

1. Phase 1—Planning and Scoping
   a. Publish Notice-of-intent to prepare FMP or FMP amendment and (Environmental Impact Statement(EIS)/Environmental Assessment (EA)
   b. Draft issues/options statement
   c. Hold AP meeting
   d. Hold scoping meetings with the public
2. Phase 2—Preparation and Review of Draft Documents
   a. Prepare draft FMP amendment, EIS, proposed rule
   b. International management recommendations
   c. Solicit comments from Consulting Parties
   d. Hold AP meeting
3. Phase 3—Preparation of Proposed FMP or Amendment and Proposed Regulations and Public Review
   a. Notice of availability to the public and proposed regulations published
   b. Public hearings
   c. Hold AP meeting to consider comments
4. Phase 4—Preparation of Final Documents and Final Regulations Prepare final rule, FMP amendment, and Final EIS (FEIS)
5. Phase 5—Approval and Implementation
   a. Publish final rule
   b. Distribute FEIS and FMP amendment
6. Phase 6—Continuing and Contingency Fishery Management
   a. Hold AP meetings as needed
   b. Framework management measures or FMP amendments
   c. Take emergency actions, if necessary, for contingency fishery management

Information Distribution/ Recordkeeping/Comments

The NMFS Office of Sustainable Fisheries would notify fishery interests and FMCs of forthcoming management actions regarding HMS. A ''facsimile transmission list'' of affected FMCs, ICCAT Commissioners and Advisory Committee members, AP members, Federal and state agencies, various fishery interests, and requesting members of the public presently is maintained by that Office to send advance notices of forthcoming actions (to add your name to the ''FAX NETWORK'', call 301–713–2347). The list would be maintained under the proposed procedures. Also, notices of forthcoming hearings, meetings, public review and comment periods, and regulatory actions would be mailed to all who request this service. Copies of important draft, revised, and final documents (e.g., FMPs and amendments) would be mailed to those requesting such documents. Up-to-date quota monitoring and fishery regulation information is presently and would continue to be available on a telephone information hotline (301–713–1279, 508–281–9305). This information as it relates to tunas can presently be accessed and would continue to be accessible through the Atlantic tunas automated telephone permitting system (1–888-USA-TUNA) and on the Internet (http://www.usatuna.com).

Comments received by NMFS during all phases of the HMS process would be considered to determine the need for initiation of rulemaking or changes in the FMP, FMP amendment, or supporting documents. NMFS would maintain a record of all public meetings during all phases of FMP or FMP amendment development. The record would summarize the discussions between NMFS representatives and constituents (including the AP) and would be included in NMFS' administrative record supporting the development and implementation of the subject FMP or amendment.

Consistent with the Administrative Procedure Act (APA), 5 U.S.C. 553, public comments received on proposed regulations (Phase 3) would be summarized and addressed in the preamble to the final regulations (Phase 5) to implement the FMP or amendment. New public comments regarding the draft final (supplemental) environmental impact statement (F(S)EIS) (i.e., comments regarding new or different issues not previously expressed during the Phase 3 public comment period on the draft (supplemental) environmental impact statement (D(S)EIS) would be summarized and addressed in the F(S)EIS (Phase 4) and filed for in the final public review under the National Environmental Policy Act (NEPA) (Phase 5). Council on Environmental Quality (CEQ) regulations require that an agency preparing a FEIS or final supplemental EIS (FSEIS) must: Assess and consider public comments, both individually and collectively, received on the D(S)EIS; respond to such comments by one of several means; and provide a summary of the comments and responses in the F(S)EIS. In this case, these comments would include those received on the D(S)EIS in Phase 2 and on the draft F(S)EIS in Phase 4.

1. Phase 1—Planning and Scoping

The objectives of Phase 1 would be to: (1) Determine the nature and scope of the resource and management issues for

the subject fishery that need to be addressed and identify alternative management approaches for their resolution; (2) provide the AP and the general public an opportunity to communicate views and concerns early in the rulemaking process; (3) develop a clear and concise written summary, for the species under consideration, of the major fishery management issues and options for addressing them (this document is referred to as the ''issues/options statement''); and (4) fulfill the ''scoping'' action requirements for environmental analyses prepared under NEPA (refer to section 1501.7 of 40 CFR parts 1500–1508, the CEQ regulations for implementing NEPA, and to NOAA Administrative Order 216–6, NOAA's guidance for compliance with NEPA).

a. *Notice-of-intent to prepare FMP or FMP Amendment and EIS.* NMFS would publish in the **Federal Register** a notice-of-intent (notice) regarding FMPs and amendments. The notice would serve to notify the public of any scheduled public scoping meetings and would contain: (1) A statement of NMFS' intent to prepare and implement an FMP or amendment, promulgate new or amend existing regulations, and prepare, if applicable, an EIS or supplemental EIS (SEIS); (2) appropriate information concerning the availability of any relevant issues/options statement (see section b below); (3) a preliminary schedule of events; (4) date(s), time(s) and place(s) of the scheduled scoping meeting(s); and (5) a statement of whether or not the FMP or amendment would include any measures intended to implement fishery management recommendations of ICCAT (or any other international fishery management body). If necessary, the above information may be divided and published by more than one notice.

If NMFS is preparing an EIS or SEIS in support of the FMP or amendment, NMFS would include within the notice-of-intent, to be published before beginning the scoping process, those items required under the CEQ regulations (40 CFR parts 1500–1508). These items include the following: (1) A description of the proposed action and possible alternatives; (2) the agency's proposed scoping process, including scoping meeting information, if applicable; and (3) the name and address of an agency contact who can answer questions regarding the proposed action and the (S)EIS.

b. *Draft Issues/options statement.* NMFS would prepare a succinct draft statement of fishery issues, various options for addressing them, and potential management objectives; the ''issues/options statement.'' If ICCAT has recommended management measures for the fishery under consideration, the draft issues/options statement would outline the Secretary's preliminary recommendations as to the appropriate U.S. actions to implement any ICCAT recommendations. The draft issues/options statement would be available to the public upon request, would be summarized in the notice, if appropriate, would be distributed to members of the relevant APs, and would be made available at any public scoping meetings.

c. *AP meeting.* NMFS would consult during Phase 1 with the relevant AP and other affected Federal agencies (e.g., U.S.G.C. or the U.S. Customs Service). Consultation with the AP would take place in an AP meeting, called by NMFS and open to the public. This meeting would focus on concepts, issues, and management options. Documents would be provided to the AP in a timely manner and would generally include the draft issues/options statement. After reviewing comments from the AP, NMFS would revise documents as necessary prior to their preparation for public review and comment. The views and comments of the AP would be part of the permanent official administrative record supporting the development and implementation of the subject HMS FMP or FMP amendment.

d. *Scoping meetings.* At least one scoping meeting would be held during Phase 1. The objectives of the scoping meeting(s) would be to: (1) Allow NMFS representatives to meet directly with the fishery interests; (2) review the draft issues/option statement in a public forum so that each fishery interest is aware of NMFS' views, as well as those of other interests; (3) provide all fishery interests an equal and early opportunity to present their views; and (4) encourage discussion of any mutual concerns relevant to the management of the fishery.

Scoping meetings would be initiated by NMFS, would be open to the public, and would be announced and scheduled at times and places considered convenient for fishery interests. The date, location, and time of each scoping meeting would be announced to the public by timely **Federal Register** notice and directly by NMFS over its FAX NETWORK.

2. Phase 2—Preparation of Draft Documents; Initial Review by Consulting Parties

Draft FMPs or amendments would contain all provisions required by 16 U.S.C. 1853 and 1854 and would comply with all other Magnuson-Stevens Act requirements.

The following objectives of Phase 2 have been identified: (1) To review and consider comments submitted by the AP and the public at the scoping meetings, and to prepare and distribute a revised issues/options statement; and (2) to prepare all draft documents required for regulatory actions to implement or amend an HMS FMP under the Magnuson-Stevens Act and other applicable law;

a. *Prepare draft documents.* The draft documents that would be prepared in Phase 2 could include the following and would be circulated to all Consulting Parties. An AP meeting would be held during this phase to assess comments from the Consulting Parties and recommend revisions of the following draft documents:

1. Draft FMP or FMP amendment: The draft FMP or FMP amendment and supporting analyses would examine fully all appropriate fishery issues, propose alternative management measures to address the identified fishery issues or problems, assess the environmental, economic, and social impacts of each alternative measure, and could identify the preferred measures. Finally, the FMP or amendment would identify research and information priorities, including observer requirements and necessary data collection and analysis, for managing the fishery of concern.

2. Draft proposed regulations: Only draft proposed regulations would be prepared in Phase 2 as opposed to formal proposed regulations consisting of both preamble and regulatory text, which would be prepared and published in Phase 3.

3. Draft NEPA documents (EA, Draft EIS (DEIS), or DSEIS; Draft Regulatory Impact Review (DRIR); and Initial Regulatory Flexibility Analysis (IRFA) if applicable;

4. Draft statement assessing nature and effectiveness of management measures for implementing the ICCAT recommendations;

5. Draft SF–83I and supporting statement for approval of information-collection requirements under the Paperwork Reduction Act.

6. Draft section 7 consultation under the Endangered Species Act;

7. Initial consistency determination under the Coastal Zone Management Act; and

8. Other documents as may be required.

3. Phase 3—Preparation of Revised Documents and Proposed Regulations; Public Review and Comment Period of the Proposed FMP/Amendment and Proposed Rule

The following objectives have been identified for Phase 3: (1) Consider and evaluate all comments received during the public review and comment periods of Phase 2; (2) make necessary changes in preparing ''revised'' documents; (3) prepare proposed regulations for implementing the FMP or amendment that accurately reflect the contents of the revised FMP or amendment and other revised documents and that meet all regulatory requirements necessary for publication in the **Federal Register**; (4) provide a formal period for public review and comment on the FMP or amendment and the proposed implementing regulations, as published in the **Federal Register**; and (5) hold an AP meeting to discuss previously submitted public comments.

Notice of availability to the public and proposed regulations published. NMFS would publish in the **Federal Register** for public review and comment: (1) The notice of availability of the revised FMP or amendment and other revised supporting documents for public review and comment; (2) proposed regulations to implement the FMP or amendment; and (3) notice of any scheduled public hearings, if additional hearings are held.

The Phase 3 period for public comment for the FMP or amendment, proposed regulations, and revised supporting documents would be 60 days. The comment period on proposed regulations that are minor revisions to existing regulations could be less than 60 days. If significant changes are made in the revised FMP or amendment over the draft documents, or if significant new issues are addressed, additional public hearings could be held.

AP meetings. The relevant AP would meet just prior to the close of the public comment period. The purpose of this meeting would be to consider comments received during the comment period and to make recommendations to NMFS in preparation for final rulemaking.

A notice of scheduled public hearings would be published in advance in the **Federal Register**. Public hearings would be held on the draft FMP or FMP amendment, draft supporting documents, draft NEPA documents (D(S)EIS or EA), and proposed regulations. Hearings would be conducted at appropriate times and in appropriate locations in the geographical areas concerned so as to allow all interested persons to be heard. A NMFS official would preside over these hearings and receive the public testimony that would be recorded and become part of the administrative record.

Comment periods for each document are summarized in the following table:

Draft FMP/Amend	60–90 days.
EA	45–60 days.
D(S)EIS	45–60 days.
Proposed Regulations	60 days, unless minor revisions.

As a matter of standard agency practice, NMFS would not respond to or address public comments received during Phase 2 on an individual basis unless such comments are on the D(S)EIS, in which case the F(S)EIS will respond to any comments. All comments received in Phase 2 would be considered carefully and evaluated by NMFS during Phase 3 in preparing the revised FMP or FMP amendment, revised supporting documents, the draft F(S)EIS, and proposed implementing regulations.

The review period for a D(S)EIS would be initiated by a formal filing of the D(S)EIS with the U.S. Environmental Protection Agency (EPA), which would also publish a **Federal Register** notice of the availability of the D(S)EIS for public review and comment.

NMFS would prepare these revised documents based upon review and evaluation of comments from Consulting Parties and the AP received during Phase 2. The revised documents would contain NMFS' preferred proposed management measures and the requisite analyses of expected biological, economic, and social impacts. Revised documents would be subject to all appropriate agency and Federal standards for approval and implementation of final FMPs and FMP amendments.

4. Phase 4—Preparation of Final Documents and Final Regulations

The objectives of Phase 4 would be to: (1) Consider and evaluate all comments received during Phase 3, including those of the AP; (2) determine what final changes are necessary in all final documents; (3) prepare the final documents; and (4) complete all final agency requirements of documentation and regulatory procedure supporting the Phase 5 actions.

If a D(S)EIS was prepared and subjected to public review and comment in Phase 3, a draft F(S)EIS would be prepared in Phase 4. This draft F(S)EIS should meet all legal requirements for an F(S)EIS even though it would not be filed with EPA and subjected to the final NEPA review (cooling-off period) until Phase 5.

Documents To Be Prepared and Document Contents.

(1) The final FMP or amendment, all final supporting documents;

(2) The final F(S)EIS or EA; and

(3) The final implementing regulations in appropriate form for approval, issuance, and implementation. The documents to be prepared in final form during Phase 4 would include all those listed as revised (or draft in the case of the F(S)EIS) under Phase 3.

Based on the public comments received during Phase 3, NMFS could make changes in the FMP or FMP amendment management measures and corresponding analyses of environmental, economic, and social impacts. NMFS would not communicate with fishery interests or members of the public on the rulemaking during Phase 4, except to provide FMP or amendment status information. Furthermore, NMFS would not make public its decisions regarding the contents of a final FMP or FMP amendment, final supporting documents, and final implementing regulations until the Assistant Administrator has approved and issued the FMP or amendment publicly (see Phase 5) and filed the implementing final regulations with the Office of the **Federal Register**.

NMFS may hold consultations in Phase 4 under special circumstances, particularly if ICCAT recommendations are to be implemented through the FMP or amendment and the public comments received during Phase 3 have raised new, significant or problematic issues.

5. Phase 5—Approval and Implementation

The following objectives have been identified for Phase 5: (1) File the F(S)EIS with EPA and complete the final NEPA public review period prior to final agency action to approve and implement the FMP or amendment; (2) approve and issue the final FMP or amendment; and (3) implement the FMP by final regulations.

Approval procedures and timing. Any F(S)EIS prepared for a final FMP or amendment would be filed with EPA prior to the Assistant Administrator's final approval and issuance of such FMP or amendment. As required by the CEQ regulations implementing NEPA, no final agency decision (here the issuance of an FMP, amendment, or a final rule where no FMP is involved) would be made until the later of either 90 days after publication of the notice of availability of the D(S)EIS or 30 days

after publication of the notice of availability of the F(S)EIS.

Approval of the final FMP or amendment and implementing final regulations by the Assistant Administrator, as well as clearance of the final regulations by the Department of Commerce and the Office of Management and Budget for promulgation and publication in the **Federal Register**, would follow standard NOAA and Departmental procedures. The Magnuson-Stevens Act requires that the final regulations must be promulgated within 30 days of the end of the comment period on the proposed regulations.

6. Phase 6—Continuing and Contingency Fishery Management

Once an FMP for a HMS has been approved and implemented by final regulations, there would be a continuing need for monitoring the fishery and the effectiveness of the FMP and undertaking necessary FMP adjustments. Such adjustments would respond to changing fishery or resource conditions and, for certain fisheries, respond to international management actions and recommendations. These actions collectively comprise the ''continuing fishery management phase.'' The AP would be convened whenever necessary to address continuing fishery management issues and to consider necessary actions.

It is anticipated that many of these FMP changes would be made through framework regulatory adjustment measures incorporated in each FMP; accordingly, it should not be necessary to repeat the full FMP amendment process outlined in this notice each time a change in the regulations is required. As examples, annual changes in quotas based upon the latest stock assessment or the latest ICCAT recommendations and in-season regulatory adjustments could be made through framework measures (see discussion below).

Management adjustments would be based upon the latest and best available scientific information concerning the stock and fishery. Under 50 CFR 600.315, NMFS has the responsibility to assure that an annual Stock Assessment and Fishery Evaluation (SAFE) report is prepared, reviewed annually, and changed as necessary for each FMP. The SAFE report would summarize the most recent biological conditions of the managed species, as well as the social and economic conditions of the recreational and commercial fishing sectors and fish processing industries. The SAFE report would also provide a basis for determining annual harvest levels, documenting significant trends or changes in the resource and fishery over time, assessing the effectiveness of the management program, identifying required management adjustments, and identifying fishery data needs.

(a) *Framework management measures*. To the extent possible, NMFS/NOAA intends to include within each HMS FMP framework regulatory adjustment procedures that facilitate making annual and in-season changes in management measure under conditions requiring ''real time'' regulatory responses to fishery circumstances. If ICCAT recommends new fishery management measures or changes in existing measures for a fishery managed under an implemented FMP, NMFS would consider such recommendations and, if consistent with the requirements of both the Magnuson-Stevens Act and ATCA, incorporate them in the FMP and implementing regulations. It is anticipated that the regulatory framework mechanism in each FMP would provide the authority for most such periodic changes in management measures. The framework procedures would allow adjustments to the management measures within the scope and criteria established by the FMP and in a more expeditious manner than through the full FMP amendment process. Framework measures would be particularly useful where annual ICCAT recommendations for a fishery must be implemented within a short time period.

It is anticipated that an FMP with framework measures may initially take longer to prepare since it must: (1) Anticipate and describe situations expected to occur; (2) establish criteria, procedures, and limits for regulatory actions; (3) allow for public comment on the range of potential actions, if identifiable, and on the degree of regulatory discretion held by the Secretary; and (4) provide documentation to support the framework under other applicable law. It is noted that framework measures alone do not satisfy statutory requirements of the Magnuson-Stevens Act, other applicable law, and Executive Orders. These requirements include full analyses of expected environmental effects of regulatory actions under framework provisions, and the opportunity for public review and comment.

(b) *Emergency actions*. Pursuant to 16 U.S.C. 1855(c), the Secretary may promulgate emergency or interim regulations to address an emergency existing in any fishery without regard to whether an FMP exists for the fishery. The Secretary also may promulgate interim measures to reduce overfishing for any fishery. Emergency or interim regulations that change any existing FMP or amendment shall be treated as an amendment to such FMP or FMP amendment for the duration of the emergency period. The Secretary may implement emergency or interim regulations for HMS for up to 180 consecutive days from the date of publication of the emergency rule in the **Federal Register** and for one additional period of not more than 180 days, provided the public has had an opportunity to comment on the emergency regulations or interim measures. Prior to promulgating emergency or interim regulations for the HMS with which ICCAT is concerned, the Secretary would consult with the appropriate entities.

D. Regulations Implementing ICCAT Recommendations Without an FMP

The ATCA authorizes the Secretary to promulgate regulations as may be necessary and appropriate to carry out ICCAT recommendations under 16 U.S.C. 971d(c) upon favorable action by the Secretary of State under 16 U.S.C. 971c(a). Section 971d(c) requires the Secretary to: (1) Publish a general notice of proposed rulemaking in the **Federal Register**, and (2) afford interested persons an opportunity to participate in the rulemaking process through submission of written data, views, or arguments and through one or more public hearings.

In the event that the Secretary must implement ICCAT recommendations when no FMP has been prepared or would not be prepared in sufficient time NMFS would inform the Secretary of State regarding the actions considered appropriate for the United States with regard to ICCAT recommendations within 5 months of ICCAT's notifying the United States of its recommendations. NMFS would publish a proposed rule in the **Federal Register** to implement ICCAT recommendations and would provide a public review and comment period, including one or more public hearings. The proposed regulations would contain a statement of the considerations involved in issuing the regulations, a statement assessing the nature and effectiveness of the measures for implementing the recommendations of ICCAT that are being or will be carried out by other countries whose vessels fish for the subject species in the ATCA.

NMFS would consider the public comments before publishing final regulations in the **Federal Register** and would summarize and respond to these comments in the preamble of the final rule. The final regulations generally

would become effective 30 days after the date of filing for public inspection with the Office of the **Federal Register**, and will be applicable to all vessels and individuals subject to U.S. jurisdiction on the date prescribed by NMFS.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Because this is a document concerning agency procedure or practice, under 5 U.S.C. 553(b)(B) prior notice and opportunity for public comment is not required to be given. Nevertheless, because NMFS wishes to establish revised procedures with the benefit of the public's comment, NMFS is voluntarily giving prior notice and an opportunity for public comment.

Because prior notice and opportunity for public comment is not required by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

These proposed guidelines contain no new collection of information requirements.

Dated: September 12, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082897D]

Endangered Species; Permits

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

ACTION: Issuance of permits 1038, 1040, 1046, 1047, 1049, and 1050 (P628, P631, P639, P640, P642, and P644).

SUMMARY: Notice is hereby given that NMFS has issued permits to Trihey and Associates in Concord, CA; the State of California, Jackson Demonstration State Forest in Fort Bragg, CA (JDSF); the U.S. National Park Service (Point Reyes National Seashore and Golden Gate National Recreation Area) in Fort Mason and San Francisco, CA (NPS); the Marin Municipal Water District in Corte Madera, CA (MMWD); the Bodega Marine Laboratory in Bodega Bay, CA (BML); and ENTRIX Incorporated in Walnut Creek, CA that authorize takes of adult and juvenile, threatened, central California coast coho salmon (*Oncorhynchus kisutch*) for the purpose of scientific research, subject to certain conditions set forth therein.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6066).

SUPPLEMENTARY INFORMATION: The permits were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–222).

Notice was published on March 25, 1997 (62 FR 14115) that an application had been filed by Trihey and Associates (P628) for a scientific research permit. Permit 1038 was issued to Trihey and Associates on July 29, 1997. Permit 1038 expires on June 30, 2002.

Notice was published on April 18, 1997 (62 FR 19104) that an application had been filed by JDSF (P631) for a scientific research permit. Permit 1040 was issued to JDSF on July 29, 1997. Permit 1040 expires on June 30, 2002.

Notice was published on April 8, 1997 (62 FR 16789) that an application had been filed by NPS (P639) for a scientific research permit. Permit 1046 was issued to NPS on August 1, 1997. Permit 1046 expires on June 30, 2002.

Notice was published on April 8, 1997 (62 FR 16789) that an application had been filed by MMWD (P640) for a scientific research permit. Permit 1047 was issued to MMWD on August 12, 1997. Permit 1047 expires on June 30, 2002.

Notice was published on March 26, 1997 (62 FR 14403) that an application had been filed by BML (P642) for a scientific research permit. Permit 1049 was issued to BML on August 18, 1997. Permit 1049 expires on June 30, 2002.

Notice was published on April 18, 1997 (62 FR 19104) that an application had been filed by ENTRIX Incorporated (P644) for a scientific research permit. Permit 1050 was issued to ENTRIX Incorporated on August 12, 1997. Permit 1050 expires on June 30, 2002.

Issuance of the permits, as required by the ESA, was based on a finding that such actions: (1) Were requested/proposed in good faith, (2) will not operate to the disadvantage of the ESA-listed species that is the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: September 5, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090897D]

Endangered Species; Permits

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

ACTION: Receipt of two applications for scientific research permits (P629, 1066).

SUMMARY: Notice is hereby given that the Salmon Trollers Marketing Association in Fort Bragg, CA (STMA) and Donald W. Alley and Associates in Brookdale, CA (DWAA) have applied in due form for permits that would authorize takes of a threatened species for scientific research.

DATES: Written comments or requests for a public hearing on either of these applications must be received on or before October 20, 1997.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707 575–6066).

Written comments or requests for a public hearing should be submitted to the Protected Species Division in Santa Rosa, CA.

SUPPLEMENTARY INFORMATION: STMA and DWAA request permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

STMA (P629) requests a five-year permit for takes of adult and juvenile, threatened, central California coast coho salmon (*Oncorhynchus kisutch*) associated with fish population studies