• Are the requirements in the rule clearly stated?
• Does the rule contain technical language or jargon that isn't clear?
• Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
• Would more (but shorter) sections be better?
• Could we improve clarity by adding tables, lists, or diagrams?
• What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an organization, business, labor union, *etc.*). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dot.gov/privacy.html*.

List of Subjects in 49 CFR Part 575

Consumer protection, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 575 as follows:

PART 575—CONSUMER INFORMATION

1. The authority citation for part 575 continues to read as follows:

Authority: 49 U.S.C. 32302, 32304A, 30111, 30115, 30117, 30123, 30166, and 30168, Pub. L. 104–414, 114 Stat. 1800, Pub. L. 109–59, 119 Stat. 1144, Pub. L. 110–140, 121 Stat. 1492, 15 U.S.C. 1232(g); delegation of authority at 49 CFR 1.50.

2. Revise Appendix D to § 575.104 to read as follows:

§ 575.104 Uniform tire quality grading standards.

* * * * *

Appendix D—User Fees

1. *Use of Government Traction Skid Pads:* A fee of $125 will be assessed for each hour, or fraction thereof, that the traction skid pads at Goodfellow Air Force Base, San Angelo, Texas are used. This fee is based upon the market price of the use of the traction skid pads.

2. Fee payments shall be by check, draft, money order, or Electronic Funds Transfer System made payable to the Treasurer of the United States.

3. The fee set forth in this Appendix continues in effect until adjusted by the Administrator of NHTSA. The Administrator reviews the fee set forth in this Appendix and, if appropriate, adjusts it by rule at least every 2 years.

Issued on: January 10, 2011.

Claude Harris,

Acting Associate Administrator for Enforcement.

[FR Doc. 2011–643 Filed 1–12–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 101029546–0547–01]

RIN 0648–BA39

Atlantic Highly Migratory Species; Bluefin Tuna Bycatch Reduction in the Gulf of Mexico Pelagic Longline Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to require the use of "weak hooks" in the Gulf of Mexico (GOM) pelagic longline (PLL) fishery. A weak hook is a circle hook that meets NMFS' current size and offset restrictions for the GOM PLL fishery, but is constructed of round stock wire that is thinner-gauge than the circle hooks currently used, *i.e.,* no larger than 3.65 mm in diameter. Weak hooks can allow incidentally hooked bluefin tuna (BFT) to escape capture because the hooks are more likely to straighten when a large fish is hooked. Requiring weak hooks in the GOM will reduce bycatch of BFT, allow the long-term beneficial socio-economic benefits of normal operation of directed fisheries in the GOM with minimal short-term negative socio-economic impacts, and have both short- and long-term beneficial impacts on the stock status of Atlantic BFT, an overfished species. Since 2007, NMFS has conducted research on weak hooks used on PLL vessels operating in the GOM to reduce the incidental catch of large BFT during directed PLL fishing for other species. Preliminary results show that the use of a weak hook can significantly reduce the amount of BFT caught incidentally by PLL vessels in the GOM. The purpose of the proposed action is to reduce PLL catch of Atlantic BFT in the GOM, which is the only known BFT spawning area for the western Atlantic stock of BFT. This action would be consistent with the advice of the International Commission for the Conservation of Atlantic Tunas (ICCAT) Standing Committee for Research and Statistics (SCRS) that ICCAT may wish to protect the strong 2003 year class until it reaches maturity and can contribute to spawning. The purpose is also to allow directed fishing for other species to continue within allocated BFT sub-quota limits. This measure would be consistent with the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), including the BFT rebuilding program.

DATES: Written comments will be accepted until February 12, 2011. NMFS will hold three public hearings on this proposed rule on February 7, 2011, in Silver Spring, MD; February 9, 2011, in Panama City, FL; and February 10, 2011, in Kenner, LA to receive comments from fishery participants and other members of the public regarding this proposed rule. An operator-assisted conference call will be held to receive comments, only on this proposed rulemaking, from HMS Advisory Panel members on February 8, 2011. This is not an HMS Advisory Panel meeting, and the conference call will be open to members of the public, who may observe and comment to the extent time permits. Please see the **SUPPLEMENTARY INFORMATION** section of this proposed rule for specific dates, times, and locations.

ADDRESSES: The public hearings will be held in Maryland, Florida, and Louisiana. Please see the **SUPPLEMENTARY INFORMATION** section of this ANPR for specific dates, times, and locations.

You may submit comments, identified by 0648–BA39, by any one of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov*
• Fax: 301–713–1917, Attn: Margo Schulze-Haugen
• Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope "Comments on the Proposed Rule to Reduce Bluefin Tuna Bycatch in the Gulf of Mexico."
• Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and generally will be

posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Dianne Stephan by phone at 978–281–9260 or Randy Blankinship by phone at 727–824–5399.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tuna Conventions Act (ATCA), which authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement recommendations of ICCAT. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the 2006 Consolidated HMS FMP, which details the management measures for Atlantic HMS fisheries including the PLL fishery.

Background

NMFS is issuing a proposed rule that would require the use of "weak hooks" by PLL vessels fishing in the GOM. A weak hook is a circle hook that meets NMFS' current size and offset restrictions but is constructed of round wire stock that is thinner-gauge (*i.e.,* no larger than 3.65 mm in diameter) than the circle hooks currently used in the PLL fishery. The purpose of the proposed action is to reduce PLL catch of Atlantic BFT in the GOM, which is the only known BFT spawning area for the western Atlantic stock of BFT. This measure would also be consistent with the ICCAT SCRS advice that ICCAT may wish to protect the strong 2003 year class until it reaches maturity and can contribute to spawning. Implementation of weak hooks in the GOM PLL fishery by spring 2011 is important because the strong 2003 year class is beginning to enter adulthood, and it is likely that some of them will begin to spawn in the GOM this spring. Also, reducing the incidental BFT catch in the GOM may enable the PLL fishery to continue to operate year-round by increasing the likelihood that landings and dead discards will remain below the quota. The proposed rule would require a new gear technology that could allow the GOM PLL fleet to continue routine directed fishing operations (*e.g.,* yellowfin tuna (YFT) and swordfish) while decreasing the numbers of incidentally caught BFT. Weak hooks can allow incidentally hooked BFT to escape capture because the hooks are more likely to straighten when a large fish is hooked, thus releasing the fish.

This action is necessary to achieve domestic management objectives under the Magnuson-Stevens Act, and to implement the 2006 Consolidated HMS FMP, including goals to rebuild stocks and end overfishing. Atlantic BFT has historically been documented as overfished with overfishing occurring. Since 1998, an ICCAT rebuilding plan, which was implemented in the Consolidated HMS FMP, has been in place with the goal of rebuilding the western BFT stock by 2019. Strict quotas and domestic regulations have been in place to achieve this goal, including a prohibition on all directed fishing on BFT in the GOM in recognition that is the sole known spawning area for the western BFT stock. Although directed fishing for BFT is prohibited in the GOM, the incidental catch of BFT has become an area of heightened concern due to the status of the stock and mortality of incidentally caught spawning BFT in the directed PLL fishery that targets YFT and swordfish. Furthermore, a recent stock assessment conducted by ICCAT's SCRS in October 2010, shows that a strong 2003 year class is expected to begin to contribute to an increase in spawning biomass after several years. In particular, the SCRS notes "that the 2010 assessment is the first time that this strong 2003 year-class has been clearly demonstrated, likely as a result of age assignment refinements resulting from the growth curve and additional years of data; more observations from the fishery are required to confirm its relative strength. A further concern is that subsequent year-classes, although even less well estimated, are the lowest observed values in the time series. The Commission may wish to protect the 2003 year class until it reaches maturity and can contribute to spawning." While the increased presence of spawning BFT in the GOM could provide a positive impact on the stock, PLL interactions with spawning BFT could also be expected to increase with the higher number of fish in this year class. This could lead to increased incidental catches (and discards) of BFT, potentially diminishing the reproductive impact of this large year class to the western BFT stock.

Several other factors have also heightened concern about BFT recently, such as the April 2010 Deepwater Horizon/BP oil spill in the GOM and potential impacts on BFT, particularly in the GOM. In addition, some environmental groups have called for the suspension of the entire Atlantic BFT fishery and the creation of a permanent BFT sanctuary in the GOM spawning area. In May 2010, the Center for Biological Diversity petitioned NMFS to list BFT as threatened or endangered under the Endangered Species Act and to designate critical habitat for the species. NMFS published a 90-Day Finding on the Petition to List Atlantic Bluefin Tuna as Threatened or Endangered under the Endangered Species Act on Sept. 21, 2010 (75 FR 57431). The analysis of that petition is ongoing.

Tuna researchers working on tagging projects in the GOM have noted that almost all BFT caught by PLL vessels are dead due to the high metabolic stress endured during capture from the warm water. Promising research results, from an experiment (the weak hook study) conducted by the NMFS Harvesting Systems and Engineering Branch, Pascagoula, MS, have found over the past 3 years that the weak hook, which is designed to bend under pre-determined loads, could potentially result in the quick release of large BFT, as well as some large pelagic sharks in PLL fisheries. The PLL vessel operators and owners involved in the study have shown support for use of weak hooks. Initial results show the potential for increasing the biomass of the western BFT stock in the short- and long-term with some potential adverse impacts to directed fisheries (i.e., approximately a 7 percent reduction in YFT and 41 percent reduction in swordfish retained for sale).

On an annual basis, ICAAT issues the United States its BFT quota, which is further divided among fisheries under the Consolidated HMS FMP. Under the Consolidated HMS FMP, PLL vessels are currently allocated 8.1 percent of the available landings quota for the incidental retention (and dead discards) of BFT while directing on other target

species such as YFT and swordfish in the GOM and swordfish in the North Atlantic. In the last few years however, the total PLL landings and dead discards, all of which must be reported to ICCAT, have exceeded the Consolidated HMS FMP-based PLL allocation (*i.e.*, landings and dead discards comprised 23 percent of the U.S. catch in 2009, substantially more than the 8 percent allocation of the U.S. quota assigned for the PLL fishery). Beginning in 2007, to provide quota sufficient for the PLL fleet to operate for the entire fishing year (based on the best available estimates of discards and landings), NMFS has added to the Longline category sub-quota a substantial portion of quota unharvested by other categories in the prior year. In 2008 and 2009, NMFS provided 54 mt and 83 mt, respectively, during the annual quota specification process to cover the Longline category sub-quota overages. After 2010, the amount of unharvested ICCAT-issued quota that the United States may carry forward to the subsequent year will be substantially reduced (from 50 percent of the total U.S. quota to 10 percent). In addition, if U.S. quota for 2011 and beyond remains at current levels, or less, there is the potential that other directed BFT fisheries (*e.g.*, commercial and recreational handgear fisheries) may fully utilize their sub-quotas. Under these types of quota constraints, NMFS may, in future years, have to consider closing the PLL target fisheries to avoid further incidental catch of BFT or consider closing directed BFT fisheries in order to manage the fishery within the available U.S. quota and FMP-based quota allocations.

The objectives of this proposed rulemaking are to: (1) Enhance stock rebuilding by increasing BFT spawning potential and subsequent recruitment into the fishery, (*i.e.*, rapidly implement the proposed action to increase the survival of spawning BFT in 2011 in the GOM particularly the 2003 year class); (2) constrain PLL BFT catch to the incidental BFT quota allocation; (3) allow the PLL fleet to continue to participate in their directed fisheries (*e.g.*, YFT and swordfish) year-round with less risk of fishery interruption due to insufficient incidental quota availability (*i.e.*, minimize negative social and economic impacts to the PLL directed fisheries); (4) reduce the need for BFT quota reallocation from directed fisheries or the Reserve to cover PLL BFT bycatch (*i.e.*, minimize negative and social impacts to BFT directed fisheries); and (5) minimize negative ecological impacts on non-target or protected species.

As required by current regulation under the authority of ATCA, the retention of BFT in the PLL fishery is allowed incidentally to the targeted catch of YFT and swordfish. This incidental catch of BFT must be within the target catch retention limits of one BFT per 2,000 lbs of target catch, two BFT per 6,000 lbs, and three BFT per 30,000 lbs. BFT that are caught in excess of these existing target catch retention limits must be discarded and, for purposes of the discussion in this proposed rule, may be considered bycatch. Bluefin tuna that are discarded dead are counted against the quota along with landed BFT. In this proposed rule and related to BFT in the PLL fishery, the terms "incidental catch" and "bycatch" are used within this context.

Background and History

A brief history on the management of the PLL fishery is provided below as it pertains to this proposed action. A more complete summary of Atlantic HMS management can be found in the 2006 Consolidated HMS FMP, in the annual HMS SAFE Reports, and online at *http://www.nmfs.noaa.gov/sfa/hms/*.

NMFS has implemented a series of management measures designed to regulate the incidental catch of BFT in non-directed Atlantic fisheries. In 1981, NMFS prohibited the use of longlines for any directed BFT fishery, implemented incidental catch limits, and established northern and southern management areas where different catch limits applied (46 FR 8012, January 26, 1981). PLL fishermen were restricted to two BFT per vessel per trip in the southern region and 2 percent by weight of all other fish on board in the northern region. In 1982, ICCAT recommended a ban on directed fishing for BFT in the GOM. Over the following decade, the value of BFT increased dramatically and fishing practices evolved with respect to incidental catch of BFT. In response, NMFS established various management measures to discourage PLL vessels from developing a directed fishery for this valuable species while allowing for the retention of some incidentally caught BFT, which included altering target catch requirements and adjusting geographic management areas (57 FR 365, January 6, 1992).

Despite these efforts, incidental catch of BFT by U.S. PLL vessels continued. NMFS continued to evaluate management alternatives to achieve a balance between allowing the retention of true incidentally-caught BFT while preventing a directed fishery and reducing discards.

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). As part of the 1999 FMP, the regulations for all Atlantic HMS, including billfish, were consolidated into one part of the Code of Federal Regulations, 50 CFR Part 635. The 1999 FMP was the first FMP for Atlantic tunas and included numerous management measures governing all HMS fisheries including the sub-allocation of 8.1 percent of the United States' overall ICCAT allocated quota for BFT landed by PLL vessels incidental to directed fishing operations targeting other species. Other highlights from the 1999 FMP included a measure to close an area of ocean off the Mid-Atlantic Bight to PLL fishing during the month of June in an attempt to minimize bycatch of BFT and ensure compliance with ICCAT recommendations. The HMS FMP also considered, but did not implement, further modifications to target catch requirements because of the difficulty in determining catch levels and landings allowances that would likely reduce dead discards.

NMFS also stated that a comprehensive approach to time/area closures would be undertaken as part of a bycatch reduction strategy after further analysis of the data and consultation with the HMS and Billfish advisory panels. This led to the development of a draft Technical Memorandum, which was made available to the public on November 2, 1999 (64 FR 59162).

Subsequent to the release of the Technical Memorandum, NMFS considered three alternative actions to reduce bycatch and/or bycatch mortality in the Atlantic HMS PLL fishery: status quo, gear modifications that would decrease hook-ups and/or increase survival of bycatch species, and the prohibition of PLL fishing (closures) in areas where rates of bycatch are higher. A proposed rule was published December 15, 1999 (64 FR 69982), for which alternatives were identified and analyzed in a draft Supplemental Environmental Impact Statement (64 FR 73550, December 30, 1999), that included proposed closed areas for PLL gear in the western GOM and off the southeast coast of the United States.

During the comment period on the proposed rule, NMFS received comments on many issues related to the proposed time/area closures. In particular, commenters asserted that a proposed closure in the western GOM would not adequately address juvenile swordfish bycatch in the DeSoto Canyon area of the eastern portion of the Gulf.

Additionally, commenters noted the significant economic impacts associated with large scale area closures on vessel operators and shoreside support services that would need considerable time for adjustment and relocation. Given these comments, NMFS analyzed the potential impacts of an additional closed area in the DeSoto Canyon area. Subsequently, NMFS published supplementary information regarding the potential impacts of closing the DeSoto Canyon Area together with a revised summary of the IRFA prepared for the proposed rule (65 FR 24440, April 26, 2000). The comment period for the proposed rule was reopened through May 12, 2000, and NMFS specifically requested comments on the extent to which delayed effectiveness of the closure could mitigate the economic impacts of area closures.

On August 1, 2000, NMFS published a final rule that prohibited live bait longlining in the GOM and prohibited PLL fishing at any time in the DeSoto Canyon area (beginning November 2000) and East Florida Coast (beginning February 2001), and from February through April of each year in the Charleston Bump area (beginning February 2001) (65 FR 47214, August 1, 2000). In the PLL fishery, some species of sea turtles are sometimes caught or become entangled in the fishing gear. Because sea turtle species are listed as threatened or endangered under the Endangered Species Act (ESA), provisions of the ESA, such as Section 7 Consultation apply to the PLL fishery. During the course of the August 1, 2000, rulemaking, the PLL fleet exceeded the incidental take statement for sea turtles established during the ESA Section 7 Consultation for the 1999 FMP. That, combined with new information on sea turtles and the uncertainty regarding the effect of the closures on sea turtles, resulted in reinitiation of consultation and issuance of a new Biological Opinion (BiOp) (June 30, 2000), which concluded that the continuation of the PLL fishery as proposed was likely to jeopardize the continued existence of leatherback and loggerhead sea turtles.

As a result of the June 2000 BiOp jeopardy finding, NMFS needed to implement certain measures to reduce sea turtle bycatch in the PLL fishery. NMFS decided that further analyses of observer data and additional population modeling of loggerhead sea turtles would be needed to determine more precisely the impact of the PLL fishery on sea turtles. Because of this, NMFS reinitiated consultation on the HMS fisheries on September 7, 2000. In the interim, NMFS implemented emergency regulations, based on historical data on sea turtle interactions, to reduce the short-term effects of the PLL fishery on sea turtles, including the closure of a portion of the Northeast Distant Statistical Area (NED) and a requirement that dipnets and line clippers be carried and used on PLL vessels to aid in the release of any captured sea turtle. These regulations published on October 13, 2000 (65 FR 60889).

NMFS issued a BiOp on June 8, 2001 (revised on June 14, 2001), which again concluded that the continued operation of the Atlantic PLL fishery was likely to jeopardize the continued existence of loggerhead and leatherback sea turtles. Accordingly, the BiOp provided a reasonable and prudent alternative (RPA) to avoid jeopardy. The RPA included the following elements: Closing the NED area effective July 15, 2001, and conducting a research experiment in this area on various PLL gear modifications to reduce sea turtle bycatch and bycatch mortality in the PLL fishery. The BiOp also included a requirement that all vessels permitted for HMS fisheries post sea turtle handling and release guidelines. This requirement was modified to specify its application only to bottom and PLL vessels by an August 31, 2001, memorandum from the Office of Protected Resources.

On July 13, 2001, NMFS published an emergency rule (66 FR 36711) to implement several of the June 2001 BiOp requirements. NMFS published an amendment to the emergency rule to incorporate the change in requirements for the handling and release guidelines that were published in the **Federal Register** on September 24, 2001 (66 FR 48812).

On July 9, 2002, NMFS published the final rule (67 FR 45393) implementing measures required under the June 14, 2001 BiOp on Atlantic HMS to reduce the incidental catch and post-release mortality of sea turtles and other protected species in HMS fisheries, with the exception of the gangion placement measure. The rule implemented the NED closure, required the length of any gangion to be 10 percent longer than the length of any floatline if the total length of any gangion plus the total length of any floatline is less than 100 meters, and prohibited vessels from having hooks on board other than corrodible, non-stainless steel hooks. The final rule also required all HMS bottom and PLL vessels to post sea turtle handling and release guidelines in the wheelhouse. NMFS did not implement the gangion placement requirement because it appeared to result in an unchanged number of interactions with loggerhead sea turtles and an apparent increase in interactions with leatherback sea turtles.

During this time frame, NMFS again proposed changes to the PLL BFT target catch requirements and other modifications to the Longline category regulations in December 2002 (67 FR 78404, December 24, 2002). The May 2003 final rule set the incidental retention/target catch requirements as follows: One large medium or giant BFT per vessel per trip may be landed, provided that at least 2,000 lb (907 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold; two large medium or giant BFT may be landed incidentally to at least 6,000 lb (2,727 kg) of species other than BFT; and three large medium or giant BFT may be landed incidentally to at least 30,000 lb (13,620 kg) of species other than BFT (68 FR 32414 May 30, 2003). The final rule also set Longline category allocations at no more than 60 percent of the Longline category quota for landing in the area south of 31 degrees north latitude. Twenty-five mt are allocated for incidental catch by PLL vessels fishing in the Northeast Distant gear restricted area. The required advance notice for any inseason adjustment to target catch requirements was set at 21 days. These target catch requirements and subquota allocations remain in effect today.

On November 28, 2003, based on the conclusion of the NED experiment and based on preliminary data indicating that the Atlantic PLL fishery may have exceeded the ITS established in the June 14, 2001 BiOp, NMFS published a Notice of Intent (NOI) to prepare a Supplemental Environmental Impact Statement (SEIS) to assess the potential effects on the human environment of proposed alternatives and actions under a proposed rule to reduce sea turtle bycatch (68 FR 66783).

In January 2004, NMFS reinitiated consultation after receiving data that indicated the Atlantic PLL fishery exceeded the ITS for leatherback sea turtles in 2001–2002 and for loggerhead sea turtles in 2002. In the spring of 2004, NMFS released a proposed rule to require PLL fishermen to use certain hook and bait types, and take other measures to reduce sea turtle takes and mortality. The resulting June 1, 2004 BiOp considered these measures and concluded that the PLL fishery as proposed was not likely to jeopardize the continued existence of loggerhead sea turtles, but was still likely to jeopardize the continued existence of leatherback sea turtles.

On July 6, 2004, NMFS published a final rule (69 FR 40734) pursuant to the

2004 PLL BiOp implementing many gear and bait restrictions and requiring certain sea turtle handling and release tools and methods. Specifically, the 2004 final rule required vessel operators participating in the PLL fishery for Atlantic HMS operating outside of the NED, at all times, to possess onboard and/or use only 16/0 or larger non-offset circle hooks and/or 18/0 or larger circle hooks with an offset not to exceed 10 degrees. Only whole finfish and squid baits could be possessed and/or utilized with the allowable hooks outside of the NED. The 2004 rule also re-opened the NED to PLL fishing for Atlantic HMS, but required vessels with PLL gear onboard in that area, at all times, to possess and/or use only 18/0 or larger circle hooks with an offset not to exceed 10 degrees. Within the NED, only whole mackerel and squid baits may be possessed and/or utilized with allowable hooks. Finally, NMFS required specific sea turtle release equipment to be possessed on board PLL vessels and adherence to specific handling and release techniques for sea turtles. The sea turtle handling and release placards and protocols were revised, and a video showing proper sea turtle handling techniques was mailed to all PLL vessel owners. The placards, protocols, and video were made available in English, Spanish, and Vietnamese.

In 2006, NMFS merged the FMP for Atlantic Tunas, Swordfish, and Sharks and the Atlantic Billfish FMP into one Consolidated HMS FMP. The final rule implementing the 2006 Consolidated HMS FMP (71 FR 58058, Oct. 2, 2006) contained several management measures applicable to the PLL fishery. These included: (1) Mandatory workshops for the safe release, disentanglement, and identification of protected resources for PLL vessel owners and operators; (2) implementation of the Madison-Swanson and Steamboat Lumps Marine Reserves to complement Gulf of Mexico Fishery Management Council regulations; and, (3) a clarification of the definitions of bottom longline and PLL gear based upon the species composition of the catch onboard or offloaded.

NMFS also thoroughly considered and analyzed time/area closures as a means to minimize bycatch and bycatch mortality in HMS fisheries in the Environmental Impact Statement that supported the Consolidated HMS FMP. The EIS analyzed the ecological, economic, and social impacts of 12 alternatives and subalternatives for potential PLL closures in the Atlantic and GOM on blue and white marlin, sailfish, spearfish, BFT, pelagic and large coastal sharks, and leatherback, loggerhead, and other sea turtles as part of the management measures considered to reduce bycatch. To evaluate the potential overall conservation benefits of each closure scenario, NMFS analyzed the impacts of the redistribution of fishing effort under various redistribution schemes (e.g., fleet-wide redistribution of effort into all open areas or redistribution of effort only to open areas of the GOM). Redistribution of effort refers to fishing effort that is, or may be, applied in another location due to a closure. Previous research and requests for closures of portions of the GOM to protect BFT did not consider redistribution of effort when proposing a closure. These requests included research that presumed fishermen would simply stop fishing altogether if they could not fish in the closed areas. NMFS analyses were the only analyses at the time that modeled the potential for redistribution of effort related to closures in the GOM.

NMFS found that with some level of redistributed effort, no one closure, or combination of closures, would have reduced bycatch of all of the species considered. In addition to implementing complementary HMS management measures in the Madison-Swanson and Steamboat Lumps Marine Reserves, the final 2006 Consolidated HMS FMP established criteria to consider when assessing possible new time/area closures or making modifications to existing time/area closures. Criteria that would be considered may include, but are not limited to, the following: Any ESA-related issues, concerns, recommendations, or requirements including those in applicable Biological Opinions; bycatch rates of protected species, prohibited HMS, or non-target species both within the specified or potential closure area(s) and throughout the fishery; bycatch rates and post-release mortality rates of bycatch species associated with different gear types; applicable research; new or updated landings; bycatch and fishing effort data; social and economic impacts; and the practicability of implementing new or modified closures, including consistency with the FMP, Magnuson-Stevens Act, ATCA, and other applicable law. If the species is an ICCAT-managed species, NMFS would consider the effects of domestic and international fisheries on that species before implementing time/area closures. Other factors that NMFS would consider before implementing time/area closures include, but are not limited to, gear types and the location and timing of a closed area. NMFS would attempt to balance the ecological benefits with economic and social impacts. NMFS would also consider alternatives to closed areas, such as reducing quotas, mandatory gear modifications, or alternative fishing practices such as designated fishing days. Thus, before the implementation of a time/area closure, NMFS would determine that such a closure would be the best option for a given set of management goals, consistent with the FMP, the Magnuson-Stevens Act, and applicable law. Although NMFS decided at the time to not move forward with an HMS PLL closure in the GOM given the implications associated with redistribution of fishing effort, it stated its intent to continue to pursue other alternatives to reduce bycatch in the GOM, especially for BFT.

Since 2006, there have been additional regulatory and management actions potentially affecting PLL vessels in the GOM. These include Amendment 1 to the Consolidated HMS FMP (74 FR 28018, June 12, 2009), which revised HMS Essential Fish Habitat and designated a new Habitat Area of Particular Concern (HAPC) for BFT spawning areas in the GOM, and implementation of a small closure to protect reef species in the GOM named the "Edges 40 Fathom Closure" (74 FR 66585, December 16, 2009). There has also been a positive 90–Day Finding on a Petition to List Atlantic Bluefin Tuna as Threatened or Endangered Under the ESA (75 FR 57431, September 21, 2010), although this is a preliminary step in any listing process. With regard to sea turtles, NMFS has recently proposed to list the Northwest Atlantic loggerhead sea turtle as "endangered" under the ESA (75 FR 12598, March 16, 2010).

In the spring of 2007, observer coverage in the GOM was increased to better characterize the interaction of the PLL fleet with BFT on the spawning ground with coverage approaching 100 percent during the spawning season (April to mid-June). In 2010, approximately 50 percent of trips during the BFT spawning season were observed, which provides a reliable estimate of bluefin tuna bycatch. Starting in 2007, the NMFS Engineering and Harvesting Branch of the Southeast Fisheries Science Center (SEFSC), Mississippi Laboratories, began conducting scientific research in consultation and cooperation with the domestic PLL fleet in the GOM to develop and assess the efficacy of new technologies for reducing the bycatch mortality of BFT in the directed YFT fishery. During the first year of the

research, experiments were conducted aboard the NOAA research vessel R/V Gandy to collect data on the relative force exerted by BFT and YFT when captured on PLL gear. Treatments of three different breaking strengths of monofilament leader were tested to determine which leader strength would effectively release BFT yet retain YFT. Based on promising results that indicated certain monofilament leaders were capable of releasing BFT of the sizes captured, NOAA researchers began working with hook manufacturers to develop a hook design that has less tensile strength than standard hook designs. Research conducted since has continued to evaluate the efficacy of a weaker 16/0 circle hook in reducing the bycatch of BFT by comparing it to a standard 16/0 circle hook used in the PLL fishery during targeted fishing operations. (See Research Experiment section below.)

Since January 1, 2007, shark limited access and swordfish limited access permit holders who fish with longline or gillnet gear have been required to attend a Protected Species Safe Handling, Release, and Identification Workshop and submit a certificate to NMFS indicating that they have attended a workshop in order to renew their shark and swordfish permits. These mandatory workshops teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. The overall goal of the workshops is to provide fishermen with the skills needed to reduce the mortality of protected species to meet the requirements of the 2004 PLL BiOp. Approximately two workshops are held monthly in locations along the Atlantic coast and the GOM. Over 100 workshops have been conducted since 2006.

On April 20, 2010, an explosion and subsequent fire damaged the Deepwater Horizon MC252 oil rig, which capsized and sank approximately 50 miles southeast of Venice, LA. Oil flowed for 86 days into the GOM from a damaged well head on the sea floor. In response to the Deepwater Horizon/BP oil spill, NMFS issued a series of emergency rules (75 FR 24822, May 6, 2010; 75 FR 26679, May 12, 2010; 75 FR 27217, May 14, 2010) closing a portion of the GOM exclusive economic zone (EEZ) to all fishing. The fishery closures ranged in size from 6,817 sq. mi. (<4 percent of the U.S. GOM) on May 2, 2010, to 88,522 sq. mi. (approx. 37 percent of the U.S. GOM) on June 2, 2010. NMFS continues to adjust the spatial dimensions of the fishery closed area as new information becomes available regarding areas affected by oil. Information regarding the current status of the oil spill related fishery closed area may be found at *http://sero.nmfs.noaa.gov/*.

Status of BFT and Primary Target Species

Western Atlantic BFT Stock Assessment

ICCAT's SCRS conducted their latest BFT stock assessments in September 2010. The text below (under the headings of "State of the Stock" through "Management Recommendations") is quoted from the executive summary of the western BFT stock assessment found in the Report of the SCRS, Madrid, Spain, October 4–8, 2010. It is important to note that in its summary text, the SCRS made reference to only a few specific TAC levels and associated probabilities of success for purposes of illustrating the chances of rebuilding the stock (maintaining B above B_{MSY}) through the rebuilding period and preventing overfishing (maintaining F below F_{MSY}) around certain thresholds, under the low and high recruitment scenarios. However, SCRS considered and presented a broad range of TACs under the low recruitment, high recruitment, and combined scenarios in "Kobe II matrix" tables that were part of the SCRS report. Note that the SCRS uses the abbreviation "t" for tons; it is equivalent to mt.

"State of the Stock

"A new assessment was conducted this year, including information through 2009. The most influential change since the 2008 assessment was the use of a new growth curve that assigns fish above 120 cm to older ages than did the previous growth curve. As a result, the base model estimates lower fishing mortality rates and higher biomasses for spawners, but also less potential in terms of the maximum sustainable yield. The trends estimated during the 2010 assessment are consistent with previous analyses in that spawning stock biomass (SSB) declined steadily from 1970 to 1992 and has since fluctuated between 21 percent and 29 percent of the 1970 level. In recent years, however, there appears to have been a gradual increase in SSB from the low of 21 percent in 2003 to an estimated 29 percent in 2009. The stock has experienced different levels of fishing mortality (F) over time, depending on the size of fish targeted by various fleets. Fishing mortality on spawners (ages 9 and older) declined markedly after 2003.

"Estimates of recruitment were very high in the early 1970s, and additional analyses involving longer catch and index series suggest that recruitment was also high during the 1960s. Since 1977, recruitment has varied from year to year without trend with the exception of a strong year-class in 2003. The 2003 year-class is estimated to be the largest since 1974, but not quite as large as those prior to 1974. The 2003 year class is expected to begin to contribute to an increase in spawning biomass after several years. The Committee expressed concern that the year-class estimates subsequent to 2003, while less reliable, are the lowest on record.

"A key factor in estimating maximum sustainable yield (MSY)-related benchmarks is the highest level of recruitment that can be achieved in the long term. Assuming that average recruitment cannot reach the high levels from the early 1970s, recent F (2006–2008) is 70 percent of the MSY level and SSB_{2009} is about 10 percent higher than the MSY level. Estimates of stock status are more pessimistic if a high recruitment scenario is considered (F/F_{MSY}=1.9, B/B_{MSY}=0.15).

"One important factor in the recent decline of fishing mortality on large BFT is that the TAC had not been taken during this time period until 2009, due primarily to a shortfall by the United States fisheries (until 2009). Two plausible explanations for the shortfall were put forward previously by the Committee: (1) That availability of fish to the United States fishery has been abnormally low, and/or (2) the overall size of the population in the Western Atlantic declined substantially from the level of recent years. While there is no overwhelming evidence to favor either explanation over the other, the base case assessment implicitly favors the first hypothesis (regional changes in availability) by virtue of the estimated increase in SSB. The decrease indicated by the U.S. catch rate of large fish is matched by an increase in several other large fish indices. Nevertheless, the Committee notes that there remains substantial uncertainty on this issue and more research needs to be done.

"The SCRS cautions that the conclusions of this assessment do not capture the full degree of uncertainty in the assessments and projections. An important factor contributing to uncertainty is mixing between fish of eastern and western origin. Limited analyses were conducted of the two stocks with mixing in 2008, but little new information was available in 2010. Based on earlier work, the estimates of stock status can be expected to vary considerably depending on the type of data used to estimate mixing (conventional tagging or isotope signature samples) and modeling assumptions made. More research needs to be done before mixing models can be used operationally for management advice. Another important source of uncertainty is recruitment, both in terms of recent levels (which are estimated with low precision in the assessment), and potential future levels (the "low" vs. "high" recruitment hypotheses which affect management benchmarks). Improved knowledge of maturity at age will also affect the perception of changes in stock size. Finally, the lack of representative samples of otoliths requires determining the catch at age from length samples, which is imprecise for larger BFT.

"Outlook

"A medium-term (10-year) outlook evaluation of changes in spawning stock size and yield over the remaining rebuilding period under various management options was conducted. Future recruitment was

assumed to fluctuate around two alternative scenarios: (i) Average levels observed for 1976–2006 (85,000 recruits, the low recruitment scenario) and (ii) levels that increase as the stock rebuilds (MSY level of 270,000 recruits, the high recruitment scenario). The Committee has no strong evidence to favor either scenario over the other and notes that both are reasonable (but not extreme) lower and upper bounds on rebuilding potential.

"The outlook for BFT in the West Atlantic with the low recruitment scenario (is more optimistic with respect to current stock status than that from the 2008 assessment (owing to the use of improved information on the growth of BFT). A total catch of 2,500 t is predicted to have at least a 50 percent chance of achieving the convention objectives of preventing overfishing and maintaining the stock above the MSY level. The outlook under the high recruitment scenario is more pessimistic than the low recruitment scenario since the rebuilding target would be higher; a total catch of less than 1,250 t is predicted to maintain F below F_{MSY}, but the stock would not be expected to rebuild by 2019 even with no fishing.

"[The Kobe II matrices] summarize the estimated chance that various constant catch policies will allow rebuilding under the high and low recruitment scenarios for the base-case. The low recruitment scenario suggests the stock is above the MSY level with greater than 60 percent probability and catches of 2,500 t or lower will maintain it above the MSY level. If the high recruitment scenario is correct, then the western stock will not rebuild by 2019 even with no catch, although catches of 1,100 t or less are predicted to have a 60 percent chance to immediately end overfishing and initiate rebuilding. The Committee notes that considerable uncertainties remain for the outlook of the western stock, including the effects of mixing and management measures on the eastern stock.

"Effects of current regulations

"The Committee previously noted that Recommendation 06–06 was expected to result in a rebuilding of the stock towards the convention objective, but also noted that there has not yet been enough time to detect with confidence the population response to the measure. This statement is also true for Recommendation 08–04, which was implemented in 2009. Some of the available fishery indicators as well as the current assessment suggest the spawning biomass of western BFT may be slowly rebuilding.

"Management recommendations

"In 1998, the Commission initiated a 20-year rebuilding plan designed to achieve B_{MSY} with at least 50 percent probability. In response to recent assessments, in 2008 the Commission recommended a total allowable catch (TAC) of 1,900 t in 2009 and 1,800 t in 2010 [Rec. 08–04].

"The current (2010) assessment indicates similar historical trends in abundance as in previous assessments. The strong 2003 year class has contributed to stock productivity such that biomass has been increasing in recent years.

"Future stock productivity, as with prior assessments, is based upon two hypotheses about future recruitment: A 'high recruitment scenario" in which future recruitment has the potential to achieve levels that occurred in the early 1970's and a "low recruitment scenario" in which future recruitment is expected to remain near present levels. Results in previous assessments have shown that long term implications of future biomass are different between the two hypotheses and this research question remains unresolved. However, the current (2010) assessment is also based on new information on western BFT growth rates that has modified the Committee's perception of the ages at which spawning and maturity occur. Maturity schedules remain very uncertain, and, thus, the application of the new information in the current (2010) assessment accentuates the differences between the two recruitment hypotheses.

"Probabilities of achieving B_{MSY} within the Commission rebuilding period were projected for alternative catch levels. The "low recruitment scenario" suggests that biomass is currently sufficient to produce MSY, whereas the "high recruitment scenario" suggests that B_{MSY} has a very low probability of being achieved within the rebuilding period. Despite this large uncertainty about the long term future productivity of the stock, under either recruitment scenario current catches (1,800 t) should allow the biomass to continue to increase. Also, catches in excess of 2,500 t will prevent the possibility of the 2003 year class elevating the productivity potential of the stock in the future.

"The SCRS notes that the 2010 assessment is the first time that this strong 2003 year-class has been clearly demonstrated, likely as a result of age assignment refinements resulting from the growth curve and additional years of data; more observations from the fishery are required to confirm its relative strength. A further concern is that subsequent year-classes, although even less well estimated, are the lowest observed values in the time series. The Commission may wish to protect the 2003 year class until it reaches maturity and can contribute to spawning. Maintaining catch at current levels (1,800 t) may offer some protection.

"As noted previously by the Committee, both the productivity of western Atlantic BFT and western Atlantic BFT fisheries are linked to the eastern Atlantic and Mediterranean stock. Therefore, management actions taken in the eastern Atlantic and Mediterranean are likely to influence the recovery in the western Atlantic, because even small rates of mixing from East to West can have significant effects on the West due to the fact that Eastern plus Mediterranean resource is much larger than that of the West."

ICCAT's 2010 Western Atlantic BFT Recommendation

At its November 2010 meeting, ICCAT adopted a measure for western Atlantic BFT that, among other things, reduced the TAC from 1,800 mt to 1,750 mt for both the 2011 and 2012 fishing seasons—a 2.8 percent reduction overall. The Kobe II matrices show that, under the low recruitment scenario, the new TAC has a 99 percent probability of maintaining the fishing mortality of western bluefin tuna for 2011 and 2012 below the fishing mortality associated with MSY and a 95 percent probability of maintaining the stock above the biomass that will support MSY (B_{MSY}) through the end of the rebuilding period, i.e., by 2019. Under the combined scenario, the TAC has a 54 percent probability of ending overfishing within 2 years and a 48 percent probability of rebuilding the stock to the B_{MSY} level by the end of the rebuilding period. Under the high recruitment scenario, the TAC has an 8 percent probability of ending overfishing within two years and a zero chance of rebuilding the stock to the B_{MSY} level by the end of the rebuilding period. Under any scenario, the agreed TAC is expected to support continued stock growth if compliance with agreed rules remains strong.

The 2010 ICCAT western Atlantic BFT recommendation is scheduled to enter into force in June 2011. NMFS plans to implement the U.S. portion of the TAC in the spring of 2011 via proposed and final rulemaking to set quotas for the domestic fishing categories.

BFT and the Gulf Oil Spill

Data are not available, at this time, to demonstrate any specific effects of the Deepwater Horizon/BP oil spill on the BFT, YFT, swordfish, or other HMS resources. However, it is possible that the oil spill could have impacts on fish eggs and larval stages of species (including BFT, YFT, swordfish, and other highly migratory species that occur in the GOM). Oil from the spill has dispersed on the surface as well as deep within the water column, but in the time since the well head was capped, oil has disappeared from some areas. BFT spawn from April to mid-June. Oil that was present in surface waters could have affected the survival of eggs and larvae and affected recruitment. Effects on the physical environment such as low oxygen and the inter-related effects that culminate and magnify through the food web could lead to impacts on the ability of larvae and post-larvae to survive, even if they never encountered oil. In addition, effects of oil exposure may not always be lethal, but can create sub-lethal effects on the eggs, larva, and early life stages of fish. There is the potential that the stressors can be additive, and each stressor may increase the susceptibility to the harmful effects of the other. Conversely, juvenile BFT, YFT, swordfish, and most other HMS

are pelagic in nature, have a fast growth rate, and quickly gain the ability to swim over long distances. This capability may allow juvenile HMS to avoid areas of concentrated oil. In addition, there would be less potential impacts to HMS juveniles and adults if oil remains on the surface, continues to wash ashore, or continues to decompose to non-lethal levels.

Atlantic Yellowfin Tuna Stock Assessment

As described above, the GOM PLL fishery targets YFT and, to a lesser extent, swordfish. These species, along with BFT and others, are managed by ICCAT. The ICCAT SCRS conducted a full stock assessment for YFT in 2008, applying both an age-structured model and a non-equilibrium production model to the available catch data through 2006. In summary, 2006 catches were estimated to be well below MSY levels, stock biomass was estimated to be near the Convention Objective (near B_{MSY} or the level of biomass that can sustain MSY) and fishing mortality rates somewhat below F_{MSY}. Trends through 2006 indicate declining effective effort and some recovery of stock levels. However, when the uncertainty around the point estimates from both models is taken into account, there was still about a 60 percent chance that stock status was not consistent with Convention Objectives.

North Atlantic Swordfish Stock Assessment

The current SCRS results for swordfish indicate that the stock is at or above B_{MSY}. The estimated relative biomass trend shows a consistent increase since 2000. The relative trend in fishing mortality shows that the level of fishing peaked in 1995, followed by a decrease until 2002, followed by small increase in the 2003–2005 period and downward trend since then. Fishing mortality has been below F_{MSY} since 2005. The results suggest that there is a greater than 50 percent probability that the stock is at or above B_{MSY}, and thus ICCAT's rebuilding objective has been achieved. However, it is important to note that, since 2003, the catches have been below the TAC, greatly increasing the chances for a fast recovery. Overall, the stock was estimated to be somewhat less productive than the previous assessment, with the intrinsic rate of increase, *r,* estimated at 0.44 compared to 0.49 in 2006.

GOM PLL Fishery

The PLL fishery for Atlantic HMS primarily targets swordfish, YFT, and bigeye tuna in various areas and seasons. Secondary target species include dolphin (fish), albacore tuna, and, to a lesser degree, sharks. Although PLL gear can be modified (e.g., depth of set, hook type, hook size, bait, *etc.*) to target swordfish, tunas, or sharks, it is generally a multi-species fishery. These vessel operators are opportunistic, switching gear style and making subtle changes to target the fish providing the most economic benefit for each individual trip. PLL gear sometimes attracts and hooks non-target finfish with little or no commercial value, as well as species that cannot be legally retained by commercial fishermen, such as billfish. PLL gear may also interact with protected species such as marine mammals, sea turtles, and seabirds. Thus, this gear has been classified as a Category I fishery with respect to the Marine Mammal Protection Act (MMPA). Any species (or undersized catch of permitted species) that cannot be legally landed is required to be released, regardless of whether the catch is dead or alive.

The U.S. PLL fishery has historically been comprised of five relatively distinct segments with different fishing practices and strategies. These segments are: (1) The GOM YFT fishery; (2) the South Atlantic-Florida east coast to Cape Hatteras swordfish fishery, although historical catches have decreased because of the Florida East Coast and Charleston Bump time/area closures; (3) the Mid-Atlantic and New England swordfish and bigeye tuna fishery; (4) the U.S. distant water swordfish fishery; and, (5) the Caribbean Islands tuna and swordfish fishery. In addition to geographical area, these segments have historically differed by percentage of various target and non-target species, gear characteristics, and deployment techniques. Some vessels fish in more than one fishery segment during the course of a year. Due to the various changes in the fishery (*i.e.,* regulations, operating costs, market conditions, species availability, *etc.*) the fishing practices and strategies of these different segments may change over time.

GOM vessels primarily target YFT year-round; however, a handful of these vessels directly target swordfish, either seasonally or year-round. Longline fishing vessels that target YFT in the GOM also catch and sell dolphin (fish), swordfish, other tunas, and sharks. During YFT fishing, few swordfish are captured incidentally. Many of these vessels participate in other GOM fisheries (targeting shrimp, shark, and snapper/grouper) during allowed seasons. Home ports for this fishery include, but are not limited to, Madiera Beach, FL; Panama City, FL; Dulac, LA; and Venice, LA.

Research Experiment

NMFS, Engineering and Harvesting Branch of the Southeast Fisheries Science Center (SEFSC), Mississippi Laboratories, worked with the GOM PLL fleet from 2007–2010, to collaboratively develop technology to address a growing concern about bycatch mortality of spawning BFT. Research efforts focused on how to take advantage of the difference in the relative larger size of spawning bluefin as compared to the target species, YFT. NMFS researchers worked with hook manufacturers to develop a hook design that has less tensile strength than standard hook designs. Research conducted in 2008–2010 evaluated the efficacy of a weaker 16/0 circle hook in reducing the bycatch of BFT by comparing it to a standard 16/0 circle hook used in the PLL fishery.

The control treatment was an industry standard Mustad 16/0 circle hook (model 39960D) with 0° of offset, constructed of 4.0 mm steel wire with Duratin coating. The experimental treatment was a custom made Mustad 16/0 circle hook (model 39988D) with 0° of offset, constructed from 3.65 mm steel wire with Duratin coating. Experimental hooks and standard 16/0 circle hooks were alternated on the longline during sets. Other than the experimental design requirements, captains were allowed to fish normally and chose the location of fishing, length of trips, total number of hooks fished, etc. All vessels participating in the experiment carried NMFS trained observers who collected fishery data as described by the SEFSC PLL Observer Program. Over the course of the study from 2008–10, data was collected from six vessels completing 34 trips with 311 PLL sets deploying 198,606 total hooks (99,303 of each hook type).

A total of 33 BFT were caught during the experiment, of which 10 were caught on the experimental hook for a statistically significant reduction of 56.5 percent compared to the control hook (95 percent confidence interval (CI) = 8.7 percent to 79.3 percent). Vessels landed a total of 2,065 YFT, of which 1,016 were caught on the experimental hook for a reduction of 3.2 percent (95 percent CI = 11.2 percent to −5.6 percent; a negative number denotes an increase), which was not statistically significant. Not all YFT caught are retained for sale mainly due to some fish not meeting the minimum size limit. The difference in YFT retained for sale between the control and experimental hooks was analyzed and

showed a reduction of 7.0 percent (95 percent CI = 15.6 percent to −2.5 percent), which was not statistically significant.

The total swordfish catch per unit effort (CPUE) (number of fish per 1,000 hooks) for the control and experimental hooks (1.21 and 1.15, respectively) were not significantly different. The difference in the catch of swordfish retained for sale (0.34 control and 0.20 experimental) was not statistically significant. The difference in CPUEs for the control and experimental hooks for wahoo (1.48 and 1.09 respectively) was statically significant. The difference in CPUEs for dolphin fish (4.25 and 3.93 respectively) and escolar (1.81 and 1.78 respectively) were not significantly different. A total of 96 white marlin and roundscale spearfish combined were caught and discarded with 38 and 58 fish caught on the control and experimental hook, respectively, for an increase of 52.7 percent that was marginally significant.

The data presented suggest a weaker circle hook design may have the potential to mitigate bycatch mortality of BFT with minimal reduction in the retention of the YFT target catch and some potential reduction in swordfish retained. The evaluation of the condition of hooks that caught BFT shows that BFT interaction with control hooks (the currently required hook/industry standard) commonly results in deformation of the hook. These observations suggest some portion of the 53 straightened control hooks that resulted in fish escapement were likely due to BFT interactions.

There are several factors that contribute to the application of the level of force necessary to straighten a hook during the interactions with animals. It would be difficult to assess all of these factors. This research has shown that YFT weight is a contributing factor. It is reasonable to suspect the same is true for BFT. Other factors which may influence the level of force exerted on a hook by an animal during interaction include: Water temperature, currents, fishing depth, hooks between floats, distance to the nearest float, interaction with other animals on the longline, and vessel hauling practices.

The retention rate of YFT with the experimental hook was highly variable among the vessels participating in the experiment. The two vessels with the highest reduction of YFT also had the highest rate of fish escapement due to straightened experimental hooks. Attempts were made to standardize the gear configurations as much as possible during this fishery dependant research. Therefore, it is probable that variability in YFT retention rates was a result of the variability in hauling practices. NMFS anticipates that this variability in the performance of the new hook design will be reduced over time as fishermen become more familiar with fishing with the weak hook. As with any new conservation technology, minor adjustments in fishing practices are often needed in order to optimize the gear performance. However, the majority of the vessels involved with the study continue to use the new hook design. Additional vessels, not involved in the study, have purchased the experimental hook for use. Additional research will improve the statistical precision and confidence of the results and, if conducted on a year round basis, will help evaluate possible temporal effects of the weak hook on the target catch.

Weak Hook Implementation in the PLL Fishery

In this proposed rule, NMFS proposes to require all PLL vessels fishing in the GOM to use weak hooks. This alternative would limit vessel operators participating in the Atlantic HMS PLL fishery in the GOM, at all times, to possess and/or use only weak hooks immediately upon the effective date of the action. A weak hook would be defined as a circle hook, meeting current size and offset restrictions, constructed of only round wire stock that is no larger than 3.65 mm in diameter. All other existing requirements for the GOM PLL fishery would remain in effect including, but not limited to: Existing hook size and shape requirements; existing bait requirements; existing time/area closures and live bait restrictions in the GOM PLL fishery; and existing possession and use requirements for bycatch mitigation gear, as well as sea turtle handling and release training and guidelines currently specified by NMFS. The fishery would continue to comply with all requirements of existing biological opinions.

The agency would conduct simultaneously an outreach program and work with dealers and vessel operators to educate and ensure the requirement is understood and implemented. Research programs would continue to determine the effect on bycatch and discard mortality of BFT and other bycatch, as well as target catches.

Assuming similar reductions from gear modifications as reflected in the GOM PLL BFT mitigation research, implementation of weak hooks could reduce the bycatch of BFT in the GOM PLL fishery by approximately 56.5 percent. This would likely result in a reduction in the number of BFT caught in the GOM from an annual average of 285 individual fish from 2006–2009 to approximately 124 individual fish. Reductions in interactions of this magnitude could have positive impacts on the BFT population by minimizing bycatch of spawning BFT, and thus bycatch mortality due to incidental interactions with PLL gear. Post-release mortality is expected to be reduced because BFT straighten the weak hooks relatively quickly after being caught and likely do not incur as high a level of metabolic stress as when the fish stay on the hook until being retrieved upon haul-back of the gear. Due to the fact that BFT have the highest level of energy available at the moment when they become hooked, NMFS suspects that escapement occurs soon after hook-up. Years of observer data and research fishing have shown that most BFT are dead upon haul-back of PLL gear set in the GOM. A reduction in the number of BFT captured incidentally by PLL operations in the GOM could possibly save 124 spawning BFT annually. Some positive ecological impacts may be realized in the near future if the weak hook is implemented prior to the 2011 spawning season. Rapid implementation could aid in the survival of the large 2003 year class identified by the ICCAT SCRS as warranting particular management attention. Enhanced survival of spawners from this year class may improve spawning success and size of subsequent year classes, ultimately increasing stock biomass.

While research results indicated a reduction in BFT bycatch, the results indicated a 52.7 percent increase in bycatch of white marlin and roundscale spearfish, combined, with the use of weak hooks as compared to the catch rate of the standard circle hook currently used by the GOM PLL fleet. The weak hook research indicated an increase of 52.7 percent in white marlin/roundscale spearfish catch, and this analysis assumes that the increase in catch would be proportionally the same for live discards and dead discards, thus representing a 52.7 percent increase in each. For the purposes of this analysis, NMFS assumes a 52.7 percent increase in dead discards. White marlin are considered to be overfished, although much uncertainty exists about the current population status due in part to confusion of white marlin with roundscale spearfish in various databases. Roundscale spearfish were recently recognized as a distinct, separate species (75 FR 57698;

September 22, 2010). The status of roundscale spearfish stocks is unknown. NMFS determined that listing white marlin as endangered or threatened under the ESA was not warranted in both 2002 and 2008.

According to logbook data, the average annual bycatch of white marlin in the GOM PLL fishery from 2006–2009 was 299 individual fish. With weak hook use in the GOM, the expected catch of white marlin in the GOM PLL fishery could increase by 158 to approximately 457 individual white marlin, annually. Due to the difficulty of distinguishing roundscale spearfish from white marlin, it is likely that some roundscale spearfish are included in the reporting of white marlin catches. Therefore, the estimate of additional white marlin catch would likely be a combination of white marlin and roundscale spearfish.

According to observer data, white marlin dead discards in the GOM PLL fishery in 2009 were 13,200 lbs, which equates to 275 individual fish (using the 2008 average white marlin dead discard weight of 48 lbs). NMFS fishery observers are trained to distinguish white marlin from roundscale spearfish; therefore, it is likely that roundscale spearfish are not included in the white marlin dead discard data for 2009. If white marlin dead discards increase by 52.7 percent (as found during research fishing), an additional 144 white marlin could be discarded dead. There may also be some additional roundscale spearfish dead discards that could occur with the use of weak hooks; however, NMFS is unable to provide an estimate at this time. NMFS found no significant difference in bycatch of blue marlin or sailfish while using industry standard circle hooks and the experimental weak hook on PLL gear in the GOM.

With regard to target species and other marketable catch, data from the GOM PLL BFT mitigation research indicate that the experimental weak hook facilitates the release of BFT but also decreases YFT and swordfish catch by 3.2 percent and 5.0 percent, respectively. The reduction in catch for YFT and swordfish was not statistically significant. Further, use of the weak hook may decrease the number of YFT and swordfish retained for sale (meaning fish equal to or larger than the minimum size) by 7.0 percent and 41.2 percent, respectively. The reductions in fish retained for sale were not statistically significant. With use of the weak hook, the number of wahoo caught may decrease by 26.6 percent. The results for pelagic and large coastal sharks were not significant; although, observations were mixed with reduction in catch observed for some species and increases in catch for others. These uncertain results are likely due to low numbers of observations during the experiment. The results of the weak hook study for species with low sample size (<10 individuals) cannot be relied upon to determine the effects of using the experimental hook.

With the use of weak hooks in the GOM PLL fishery, potential decreases in YFT, swordfish, and wahoo catches, by number of fish, may have positive ecological benefits for all three species by leaving more sexually mature individuals in the ecosystem. Decreased YFT and swordfish catches may have negative ecological impacts for species known to interact with PLL gear if an increase in fishing effort occurs in order to offset reduced YFT catches. Increased effort may result in an increase in bycatch and bycatch mortality of non-target species, including billfish and protected resources. With the use of weak hooks, potential decreases in lancetfish bycatch by 14.8 percent (which was statistically significant) may have positive ecological benefits for lancetfish by leaving more fish in the ecosystem to reproduce.

A reduction in catch of some pelagic and large coastal sharks did occur with the experimental hook; although only a few observations were recorded and the reduction was not statistically significant. If some reduction in catch of pelagic or large coastal sharks actually occurs with the use of weak hooks, some unquantifiable positive ecological benefits for pelagic and large coastal sharks may occur due to the reduction in marketable sharks retained.

The use of weak hooks in the GOM PLL fishery would continue to provide positive ecological impacts, similar to the existing required standard circle hook, by facilitating the removal of fishing gear, which is expected to increase post-hooking survival of species caught incidentally to target fishing operations, including protected species. Additionally, anecdotal reports from scientists that conducted the weak hook study indicated that the weak hook was easier to dislodge from incidentally captured/foul hooked leatherback sea turtles than the currently required standard circle hook.

Magnuson-Stevens Act National Standard 9 was identified in the 2006 Consolidated HMS FMP along with National Standard 1 as priority management goals for HMS fisheries, particularly the Atlantic PLL fishery. National Standard 9 states that "conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided minimize the mortality of such bycatch." National Standard 9 applies to all species and fisheries. National Standard 1 states that "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. The 2006 HMS FMP analysis of alternatives for time area closures and combinations of closures showed higher bycatch levels for some species and lower for others. NMFS did not prefer any new closures in the 2006 Consolidated HMS FMP, except the complementary measures in the Madison-Swanson and Steamboat Lumps Marine Reserves, and did not modify any closures at that time primarily because no closure alternative or combination of alternatives would substantially reduce the bycatch of all species considered, assuming redistribution of effort, and address other goals of the FMP, including minimizing any negative impacts.

This proposed action is expected to reduce BFT bycatch. The recent NMFS weak hook study was conducted in response to concerns for spawning age BFT PLL post release survivability in the GOM and provides information that may help to reduce bycatch and bycatch mortality of spawning age BFT. Preliminary results of the study showed a reduction, no change, or inconclusive results in the bycatch of species caught on PLL gear in the GOM except for an increase in bycatch of white marlin and roundscale spearfish. NMFS does not believe that this increase is likely to have population or ecosystem effects for those species because the predicted increase of 144 white marlin (or 1.05 mt in 2009 at 48 lb per fish) dead discards represents less than 0.8 percent of the total amount of international white marlin catch (which includes recreational landings and commercial dead discards) in the North Atlantic (406 mt in 2009). Due to misidentification of roundscale spearfish as white marlin, the total of white marlin international catch also includes some roundscale spearfish and, as such, indicates that any potential increase in roundscale spearfish that might occur in the GOM PLL fishery as a result of this proposed action should be very small in relation. In addition, NMFS already has comprehensive regulations in place to conserve these species in its domestic fisheries. Under current regulations, PLL vessels are not allowed to retain white marlin/roundscale spearfish, and any that are captured must be released alive or

discarded if dead. Additionally, PLL vessels are currently required to possess and use protected species safe handling and release gears and techniques that aid in releasing hooked animals, including white marlin, and maximize post-release survival without removing the fish from the water. Most white marlin/roundscale spearfish that are hooked are released alive. Beyond PLL vessels, current regulations also include a ban on retention on all commercial fishing vessels, observer coverage and mandatory reporting on commercial fishing vessels, a recreational size limit, and an annual 250 marlin landings limit in recreational fisheries.

If this proposed action was finalized, NMFS would continue research with weak hook technology and closely monitor white marlin and roundscale spearfish catch through observer coverage in the fishery. Should the increased catches of white marlin and roundscale spearfish continue, NMFS would investigate potential mitigation measures that might be implemented if necessary to reduce the catches and/or reduce the bycatch mortality associated with the catches. Such measures could include adopting a seasonal application of the weak hook, modification or removal of the weak hook requirement or other measures as necessary and appropriate. NMFS would closely monitor fleet activities and catch statistics and consider making management measures adjustments, including use of inseason management authority, should the data warrant. Given the conservation and management measures in place and continued research and monitoring, and taking into account the National Standard 9 Guidelines, NMFS believes that this proposed rule minimizes bycatch and bycatch mortality to the extent practicable.

Implementation of weak hooks in the GOM PLL fishery would be expected to have moderate negative social and economic impacts in the short-term for those vessels able to successfully utilize the weak hook when fishing with PLL for YFT and other species in the GOM and greater temporary negative economic impacts for those vessels that are unable to quickly alter their fishing techniques to successfully utilize the weak hook technology. NMFS gear researchers have found that fishermen participating in research tend to work through a learning curve with new technology and generally improve their performance with a particular gear over time.

As mentioned above, a reduction in catch of some pelagic and large coastal sharks did occur with the experimental hook; although only a few observations were recorded and the reduction was not statistically significant. If some reduction in catch of pelagic or large coastal sharks actually occurs with the weak hook, some unquantifiable negative economic impacts may occur due to the reduction in marketable sharks retained. Conversely, some unquantifiable economic benefits may result if fishing efficiency increases and fishermen lose less fishing time clearing lines and handling large unmarketable sharks. Additionally, fishermen may experience a reduction in economic losses due to damaged or lost fishing gear.

A probability analysis of the potential change in numbers of BFT incidentally caught, but allowed to be retained due to target catch tolerances, showed only a small reduction with the use of the weak hook. Because only a small portion of the BFT caught are available for landing, the 56.5 percent reduction in catch observed with the weak hook design will not likely result in a 56.5 percent reduction in landings. The majority of trips that landed BFT actually caught more than twice as many BFT as they landed. Therefore, for a majority of trips, the new hook design will not affect the opportunity for vessels to land the allowable number of BFT under existing regulations. The probability analysis used observer data from 2009 and 2010, and estimated any changes in landings that might have occurred if the weak hook had been used. There were 68 observed trips in 2009 and 34 trips observed in 2010 during the BFT tuna observer coverage period. The estimates are based on 2009 and 2010 non-experimental data where 320 BFT were caught with 47 landed during observed trips in 2009, and 115 BFT were caught with 12 landed during observed trips in 2010. The maximum number of BFT caught during a trip was 18 and the maximum number of BFT landed from a trip was two. Results show that use of the weak hook is predicted to decrease the number of BFT retained by only 14 percent (i.e., from 59 observed landings to 51 predicted) with the use of weak hooks. This minor reduction in landings would likely result in minimal negative economic impacts.

The use of weak hooks in the GOM PLL fishery is predicted to have indirect positive economic and social impacts to both the PLL fishery and on the targeted BFT fishery. In past years, the PLL fishery has landed and discarded dead BFT substantially in excess of its allocated quota. If landings and discards can be brought more into alignment with FMP sub-quotas, then management actions with likely substantial negative impacts, such as closure of the PLL fishery, may not need to be considered for quota management purposes. Exceeding PLL allocated incidental quotas (landings and dead discards) has also meant that the BFT sub-quotas have had to be reallocated from prior year underage, the reserve, or directed categories with underharvest to ensure the United States does not exceed its total ICCAT allocated quota. In the near future, however, NMFS may not have the same ability to reallocate quota if ICCAT quotas decrease and directed BFT categories fully meet their own individual quota allocations. The anticipated increased availability of adult (and greater than or equal to the commercial minimum size limit of 73 inches curved fork length) BFT as the strong 2003 year class continues to mature increases the likelihood of, not only increased landings from directed fishing categories, but increased incidental interactions with PLL gear as well. Unless incidental BFT catch is brought into alignment with the available BFT incidental PLL quota, it is possible that quota may need to be transferred from directed quota categories resulting in early closures and negative social and economic impacts to these directed BFT fisheries or that the PLL fishery would have to be closed prior to the end of the fishing year.

Request for Comments

Comments on this proposed rule may be submitted via *http://www.regulations.gov,* mail, or fax. Comments may also be submitted at a public hearing (*see* Public Hearings and Special Accommodations below). NMFS solicits comments on this proposed rule by February 12, 2011 (*see* **DATES** and **ADDRESSES**).

NMFS will hold three public hearings for this proposed rule. The meeting times, dates, and locations follow. All meetings will begin with an opportunity for individuals to receive information and ask questions about the GOM PLL BFT Mitigation Research followed by a public hearing.

1. February 7, 2011, 2 p.m. to 5 p.m. Eastern Standard Time (EST), NOAA Science Center, 1301 East-West Highway, Silver Spring, MD, 20910.

2. February 9, 2011, 5 p.m. to 8 p.m. Central Standard Time (CST), NMFS Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL, 32408

3. February 10, 2011, 5 p.m. to 8 p.m. CST, Hilton New Orleans Airport Hotel, 901 Airline Drive, Kenner, LA, 70062

An operator-assisted conference call will be held to receive comments from

HMS Advisory Panel members on February 8, 2011, from 2 p.m. to 4 p.m. EST (phone number 888–989–6419; participant code 3557004). This will be a conference call to hear comments from HMS Advisory Panel members; however, the public is invited to participate, and this is not an HMS Advisory Panel meeting. Priority will be given to comments from the Advisory Panel and comments from the general public will be heard as time allows.

The hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Peter Cooper at (301) 713–2347 at least 7 days prior to the hearing date. The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (*e.g.,* alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the MSA, ATCA, and other applicable law, subject to further consideration after public comment.

NMFS prepared an environmental assessment for this rule that discusses the impact on the environment as a result of this rule. In this proposed action, NMFS is considering requiring the use of weak hooks by PLL vessels fishing in the GOM. This measure is meant to provide a new gear technology for PLL vessels to continue routine fishing operations in the GOM on directed fisheries such as YFT while increasing the live release of incidentally caught Atlantic BFT to further stock recovery of this overfished species. A copy of the environmental assessment is available from NMFS (*see* **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (*see* **ADDRESSES**).

In compliance with section 603(b)(1) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking is, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to further BFT stock recovery by increasing live releases of incidentally caught BFT and adding flexibility by providing a new gear technology for PLL vessels to continue routine fishing operations in the GOM.

In compliance with section 603(b)(2) of the Regulatory Flexibility Act, the objectives of this proposed rulemaking are to: (1) Enhance stock rebuilding by increasing BFT spawning potential and subsequent recruitment into the fishery, (*i.e.,* rapidly implement the proposed action to increase the survival of spawning BFT in 2011 in the GOM particularly the 2003 year class); (2) constrain PLL BFT catch to the incidental BFT quota allocation; (3) allow the PLL fleet to continue to participate in their directed fisheries (e.g., YFT and swordfish) year-round with less risk of fishery interruption due to insufficient incidental quota availability (i.e., minimize negative social and economic impacts to the PLL directed fisheries); (4) reduce the need for BFT quota reallocation from directed fisheries or the Reserve to cover PLL BFT bycatch (i.e., minimize negative and social impacts to BFT directed fisheries); and (5) minimize negative ecological impacts on non-target or protected species.

Section 603(b)(3) requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. NMFS considers all HMS permit holders to be small entities because they either had average annual receipts less than $4.0 million for fish-harvesting, average annual receipts less than $6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small Business Administration (SBA) size standards for defining a small versus large business entity in this industry.

The GOM PLL fishery is comprised of fishermen who hold an Atlantic Tunas Longline, a Swordfish Directed or Incidental Permit, and a Shark Directed or Incidental limited access permit and the related industries including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities according to the size standards set by the SBA. The proposed rule would apply to PLL vessels that fish in the GOM. As of October 2010, there were 248 Atlantic tuna longline limited access permit holders. Of these, 136 were registered in states along the coast of the GOM (including all Florida vessels). However, based on logbook records from 2006 to 2009, on average, only 51 PLL vessels were actively operating in the GOM annually, with a high of 55 vessels in 2007 and a low of 47 in 2006 and 2009. During the summer of 2010, preliminary vessel monitoring system information indicated that the number of active PLL vessels in the GOM decreased by more than 79% due to the Deepwater Horizon/BP oil spill and associated fishery closures.

This proposed rule does not contain any new reporting or recordkeeping requirements, but would require a new compliance requirement (5 U.S.C. 603 (b)(4)). Fishing vessels with PLL gear onboard would be required, at all times, in all areas of the GOM open to HMS PLL fishing, to possess onboard and/or use only circle hooks meeting current size and offset restrictions, as well as being constructed of only round wire stock that is no larger than 3.65 mm in diameter. This proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. NMFS does not believe that the new regulations proposed to be implemented would duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

Under section 603(c), agencies are required to describe any alternatives to the proposed rule which accomplish the

stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in the Environmental Assessment for the proposed action. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c) (1)–(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with legal obligations, NMFS cannot exempt small entities or change the reporting requirements only for small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting requirements (category two above). Fishing vessels with PLL gear onboard would be required, at all times, in all areas of the GOM open to HMS PLL fishing, to possess onboard and/or use only circle hooks meeting current size and offset restrictions as well as being constructed of only round wire stock that is no larger than 3.65 mm in diameter. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. Perhaps there are performance or design standards that could be designed for weak hooks and BFT bycatch reduction, but they are not practical given the current understanding of this new technology.

NMFS considered and analyzed three main alternatives for this proposed rule. The first alternative was the status quo, no action alternative. This alternative would maintain existing hook and bait requirements in the Atlantic PLL fishery in the GOM. The second alternative would require all PLL vessels fishing in GOM to use weak hooks and is the preferred alternative. Finally, the third alternative would consider establishing additional time/area closures in the GOM. Under this alternative, an area of the GOM would be closed to PLL fishing and could extend over the entire GOM or a subarea. Temporal extents of a closure could be timed to the spawning season for BFT in the GOM, April to mid-June, or for shorter or longer time frames (*i.e.*, year round). Areal extents of a closure could be restricted to portions of the GOM where particularly high concentrations of spawning BFT have been observed while minimizing inclusion of areas with high directed YFT fishing operations. Adaptive management programs might also be considered with the temporal/spatial extent of the time/area changes based on real-time information on distribution and abundance of target and non-target species as well as the socio-economic needs of the fishery. In addition to these three alternatives, NMFS also considered other options such as prohibition on all retention of BFT in the GOM (*i.e.,* no incidental retention of BFT allowed) and adjustment of target catch retention limits (*i.e.,* modify current limits of one BFT per 2,000 lbs of target catch, two BFT per 6,000 lbs and three BFT per 30,000 lbs). As these alternatives either do not reduce mortality of BFT but rather convert discards to landings (or vice versa), or may have substantial negative social and economic impacts and cannot be implemented in short time frames, these alternatives were determined to not meet the objectives of the action and were not considered further.

Alternative 1, the status quo, no action alternative would not result in any additional economic impacts to small entities in the short-term. NMFS does not anticipate a significant change in landings, ex-vessel prices, or operating costs relative to the "status quo" for small entities under this alternative. However, adverse economic impacts in the medium and long-term could result if no action is taken to address the incidental catch of BFT in the GOM PLL fishery. Adverse economic impacts could occur if the longline quota for BFT is exceeded and a partial or total closure of the fishery is implemented.

The preferred alternative, Alternative 2, would require vessels with PLL gear onboard, at all times, in all areas of the GOM open to PLL fishing, to possess onboard and/or use only circle hooks meeting current size and offset restrictions as well as being constructed of only round wire stock that is no larger than 3.65 mm in diameter. This alternative would result in some minor increases in equipment costs for the new hooks, would likely impact vessel operations, and would also potentially impact catch rates and thus potentially reduce vessel revenues.

Alternative 2 would result in moderate positive social and economic benefits if this measure is able to reduce the bycatch of BFT in the GOM sufficiently to allow the PLL fishery to continue operating in the GOM. However, there would likely be some increased economic costs associated with switching to the weak hook.

This alternative would result in some minor increases in equipment costs associated with acquiring the new weak hooks. Direct cost of purchasing weak hooks is anticipated to increase expenses by $.02 per hook. An informal telephone survey of hook suppliers provides a price of approximately $0.34 per hook for 16/0 commercial grade circle hooks and approximately $0.36 per hook for 16/0 circle hooks constructed of 3.65 mm diameter round wire stock. Assuming that an average of 1,600 hooks per vessel are needed initially to equip vessels with enough required hooks for one trip, the compliance cost, on a per vessel basis, would be approximately $576. NMFS intends to explore opportunities to mitigate costs for PLL fishermen with their initial purchase of the required supply of weak hooks once the weak hook gear is finalized as a requirement. Opportunities might include third party sponsorship of a voucher program where eligible PLL vessels that actively fish in the GOM would be eligible for their initial supply of weak hooks. NMFS specifically requests comments about such a potential voucher program.

Hook replacement rates are anticipated to increase with use of the weak hook. Researchers during the GOM PLL BFT mitigation research estimated that requiring the weak hook would result in a 4.41 hooks per 1,000 hooks increase in the rate of hook replacement due to straightened hooks and YFT hook deformation. The researchers anticipated that this rate was an underestimate; however, they estimated the cost of additional hook replacement with the weak hook to be less than $3.00 per 1,000 hooks set. The standard 16/0 circle hooks currently in use will continue to be used in the U.S. Atlantic and inventories of unused standard 16/0 hooks could be sold to vessels fishing Atlantic outside of the GOM.

With regard to PLL vessels fishing in the Atlantic, but outside the GOM, NMFS solicits specific comment on gear stowage procedures that could allow vessels entering or exiting the GOM with hooks not meeting the weak hook requirement. Such stowage procedures would need to allow vessels to transit the GOM while ensuring the enforceability of weak hook requirements.

Alternative 2 would also potentially impact vessel catch rates, and thus potentially reduce vessel revenues.

Based on the GOM PLL BFT mitigation research results, catch rates for several commercially important species were found to be lower using the new weak hooks versus the standard 16/0 circle hooks. The researchers found a statistically significant (at the 5 percent level) reduction in the total catch of BFT and wahoo when weak hooks were used compared to conventional circle hooks. The total catch of BFT was reduced 56.5 percent when weak hooks were used in the experiment. This reduction includes both discards and BFT retained for sale. Based on observer reports of the number of BFT discarded versus retained in the GOM, the researchers estimate that the experimental results indicate that the use of weak hooks would result in approximately a 14 percent reduction in BFT retained for sale given the BFT incidental retention limits. The total catch of wahoo using the weak hook was reduced by 26.6 percent.

The research also observed reduction in the number of YFT and swordfish retained for sale. While these results were not statistically significant at the 5 percent level, the reductions in YFT and swordfish retained did have p-values ≤ 0.15. Weak hooks in the experiment resulted in a 7 percent reduction in YFT retained for sale and 41.2 percent reduction in swordfish retained for sale. No other commercially targeted species observed during the research exhibited catch rate differences between weak hooks and conventional circle hooks with p-values of ≤ 0.15. Therefore, given that YFT is often the target catch for PLL trip in the GOM and the heterogeneous nature of fishing vessel operations, this analysis conservatively includes the observed reductions in YFT and swordfish. In addition, NMFS also ran the analysis with just BFT and wahoo which exhibited statistically significant differences in catch at the 5 percent level to help illustrate the range of possible outcomes.

Using vessel logbook catch data, NMFS translated the reductions in catch observed in the research experiment into potential fishery revenue impacts that may result from requiring the use of weak hooks in the GOM. The calculations are detailed in the EA for this proposed rule which is available on request. Based on the research results, the estimated per trip reduction in revenues that would potentially result from requiring the use of weak hooks in the GOM is approximately $2,265.

Based on HMS logbook reports from 2006 to 2009, the average number of PLL trips taken per vessel per year in the GOM is 9.7. Multiplying 9.7 trips per vessel by the estimated $2,265 per trip reduction in catch revenues results in an estimated reduction of $21,974 in commercial fishing revenues per vessel per year in the GOM resulting from switching to weak hooks. Alternatively, if the analysis only considers the statistically significant reductions in catch at the 5 percent level, as used in the research study, the estimated reduction in annual catch revenues per vessel in the GOM for Alternative 2 would be $1,351 (9.7 trips × $139). This lower estimate may also represent the potential improvements in catch rates that may occur over time as fishermen adapt to the new weak hook technology. NMFS does not foresee that the national net benefits and costs would change significantly in the long term as a result of implementation of the proposed action.

Alternative 3 may cause some fishermen to shift effort to fishing areas outside the GOM and there could be changes in the distribution of the fleet with some fishermen possibly exiting the fishery. Predicting fishermen's behavior is difficult, especially as some factors that may determine whether to stay in the fishery, relocate, or leave the fishery are beyond NMFS' control (fuel prices, infrastructure, hurricanes, *etc.*). While some fishermen will continue to fish in the remaining open areas of the Atlantic, Caribbean, and Gulf of Mexico, others may be forced to leave the fishery entirely, such as selling their permits and going out of business, as a result of the closure. Changes in fishing patterns may result in fishermen having to travel greater distances to reach more favorable grounds, which would likely result in increased fuel, bait, ice, and crew costs. While there may be a potential increase in travel, this is unlikely to raise significant safety concerns because the fleet is highly mobile. The potential shift in fishing grounds, should it occur, could result in fishermen selecting new ports for offloading. This would likely have negative social and economic consequences for traditional ports of offloading, including processors, dealers, and supply houses, and positive social and economic consequences for any new selected ports of offloading. NMFS conducted a detailed, comprehensive socio-economic analysis for the time/area alternatives considered in the 2006 Consolidated HMS FMP and found that the economic impacts of each of the closures considered may be substantial, ranging in losses of up to several million dollars annually, depending upon the closure and displacement of a significant number of fishing vessels. Since the data analysis conducted in the 2006 Consolidated HMS FMP, several events have affected the GOM including Hurricane Katrina, Hurricane Rita, and the DWH/BP oil spill among other events. These events resulted in negative economic impacts. While these further impacts have occurred, NMFS believes the closure analysis in 2006 still reflects the substantial impacts of the alternatives that are likely to occur. Cumulatively, the impacts of the closures would likely be adverse and greater than in 2006. Additionally, Alternative 3 in this proposed rule doesn't meet all of the objectives of this proposed rule because it doesn't rapidly enhance BFT stock rebuilding by increasing BFT spawning potential and subsequent recruitment into the fishery (*i.e.* rapidly implement the proposed action to increase the survival of spawning BFT by spring 2011 in the GOM).

List of Subjects in 50 CFR Part 635

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

Dated: January 10, 2011.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

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

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

2. In § 635.2, the definition of "round wire stock" is added to read as follows:

§ 635.2 Definitions.

* * * * *

Round wire stock means round metal wire, typically used in the manufacturing of fishing hooks, that has not been forged, or otherwise treated in any way to increase the original factory tensile strength set by the hook manufacturer.

* * * * *

3. In § 635.21, paragraph (c)(5)(iii)(C)(*2*)(*i*) is revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(C) * * *

(*2*) * * *

(*i*) For purposes of paragraphs (c)(5)(iii)(C)(*1*), and (c)(5)(iii)(C)(*2*) of this section, the outer diameter of an 18/0 circle hook at its widest point must be no smaller than 2.16 inches (55 mm), and the outer diameter of a 16/0 circle hook at its widest point must be no smaller than 1.74 inches (44.3 mm), when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). The distance between the hook point and the shank (*i.e.,* the gap) on an 18/0 circle hook must be no larger than 1.13 inches (28.8 mm), and the gap on a 16/0 circle hook must be no larger than 1.01 inches (25.8 mm). The allowable offset is measured from the barbed end of the hook, and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side. The only allowable offset circle hooks are those that are offset by the hook manufacturer. In the Gulf of Mexico, as described at 600.105(c), circle hooks also must be constructed of corrodible round wire stock that is no larger than 3.65 mm in diameter.

* * * * *

4. In § 635.71, add paragraph (a)(54) to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(54) Possess, use, or deploy, in the Gulf of Mexico, any circle hook, other than as described at § 635.21(c). Vessels in the Gulf of Mexico, with pelagic gear onboard, are prohibited from possessing, using, or deploying circle hooks that are constructed of round wire stock which is larger than 3.65 mm in diameter.

* * * * *

[FR Doc. 2011–689 Filed 1–12–11; 8:45 am]

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