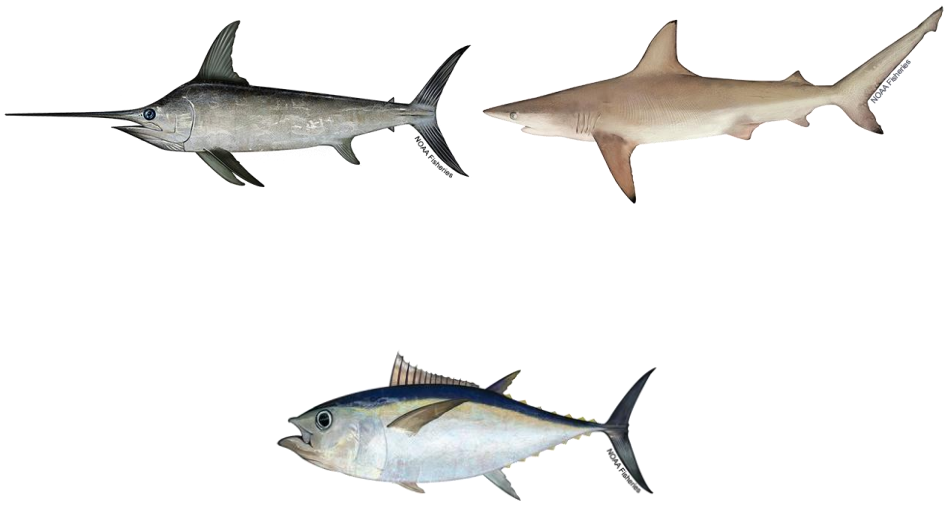
Proposed Rule on Pelagic and Demersal Indicator Species Regulations for Atlantic Highly Migratory Species

Draft Environmental Assessment (ID: EAXX-006-48-1HQ-1752655560), Regulatory Impact Review, and Initial Regulatory Flexibility Analysis



Atlantic Highly Migratory Species Management Division
Office of Sustainable Fisheries
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
United States Department of Commerce

April 2026

Action:	Proposed Rule to Remove Atlantic Highly Migratory Species (HMS) Regulations Related to Pelagic and Demersal Indicator Species
Type of Statement:	Draft Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis
Lead Agency:	National Marine Fisheries Service Office of Sustainable Fisheries
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Abstract: The National Marine Fisheries Service (NMFS) is considering changes to the pelagic and demersal indicator species regulations and pelagic and demersal indicator species lists. The intent of any changes would be to increase fishing flexibility, remove regulatory inefficiencies, and optimize the ability of pelagic and bottom longline fisheries to harvest available quotas to the extent practicable while still achieving fishery management and conservation goals. NMFS is taking this action consistent with the Magnuson-Stevens Fishery Conservation and Management Act, including section 304(g)(1).

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1 Introduction

1.1 Regulatory Authorities

The National Marine Fisheries Service (NMFS), on behalf of the Secretary of Commerce, is responsible for managing Atlantic highly migratory species (HMS)[1], including the Federal Atlantic shark, tuna, billfish, and swordfish fisheries, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq*.) and consistent with the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq*.). Under the Magnuson-Stevens Act, NMFS must, consistent with ten National Standards, manage fisheries to maintain optimum yield on a continuing basis, while preventing overfishing. Since the early 1990s, under the authority provided in § 304(g)(1) of the Magnuson-Stevens Act, NMFS has implemented several fishery management plans (FMPs), FMP amendments, and numerous regulations relating to Atlantic HMS fisheries (see 16 U.S.C. 1854(g)(1)). Currently, NMFS manages HMS fisheries under the 2006 Consolidated Atlantic HMS FMP (HMS FMP), its amendments, and implementing regulations at 50 Code of Federal Regulations (CFR) part 635.

The Magnuson-Stevens Act requires measures necessary for the conservation and management of the fishery to be consistent with the ten National Standards set forth in § 301(a) or 16 U.S.C. § 1851(a). While all the National Standards are relevant, specific to the objectives of this action, the National Standards state that measures must: prevent overfishing while achieving optimum yield from the fishery (National Standard 1); be based on the best scientific information available (National Standard 2); to the extent practicable, manage the stock throughout its range and manage interrelated stocks as a unit or in close coordination (National Standard 3); take into account and allow for variations among fisheries, fishery resources, and catches (National Standard 6); and minimize bycatch, and to the extent bycatch cannot be avoided, minimize the mortality of bycatch (National Standard 9). Furthermore, the Magnuson-Stevens Act allows for management actions to designate zones where and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear (§ 303(b)(2)(A) or 16 U.S.C. 1853(b)(2)(A)). The Magnuson-Stevens Act also allows for management actions to establish specified limitations which are necessary and appropriate on the catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors) (§ 303(b)(3)(A) or 16 U.S.C. 1853(b)(3)(A)). In accordance with both the Magnuson-Stevens Act (see § 304(g)(1)(E) requiring NMFS to review, on a continuing basis, and revise as appropriate, the conservation and management measures for Atlantic HMS) and ATCA, NMFS analyzed the potential environmental consequences, including ecological, economic, and social impacts, for the alternatives in this document and associated proposed rule. The goal of this action is to consider changes to the pelagic and demersal indicator species regulations to increase fishing flexibilities, remove regulatory inefficiencies, and optimize the ability of pelagic and bottom longline

[1] The Magnuson–Stevens Act, Section 3, defines the term "highly migratory species" as tuna species, marlin (*Tetrapturus* spp. and *Makaira* spp.), oceanic sharks, sailfishes (*Istiophorus* spp.), and swordfish (*Xiphias gladius*) (16 U.S.C. § 1802(21)). Further, the Magnuson-Stevens Act, Section 3, defines the term "tunas species" as albacore tuna (*Thunnus alalunga*), bigeye tuna (*Thunnus obesus*), bluefin tuna (*Thunnus thynnus*), skipjack tuna (*Katsuwonus pelamis*), and yellowfin tuna (*Thunnus albacares*) (16 U.S.C. § 1802(44)).

fisheries to harvest available quotas to the extent practicable while still achieving fishery management and conservation goals in the HMS pelagic and bottom longline fisheries.

In addition to the Magnuson-Stevens Act and ATCA, any management measures must also be consistent with other applicable laws including, but not limited to, the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Coastal Zone Management Act (CZMA).As described below, this document is a consolidated document that is meant to comply with all these statutes.

1.2 Brief Summary of Management History

Prior to 2006, NMFS implemented a number of time/area closures (now referred to as spatial management areas), which include gear restricted areas in the Atlantic Ocean and Gulf of America, which applied specifically to either pelagic longline or bottom longline gear. These spatial management areas included the Charleston Bump, DeSoto Canyon, East Florida Coast, and Mid-Atlantic shark closed area (later renamed the Mid-Atlantic Bottom Longline Gear Restricted Area).

Once these areas were established, NMFS realized that having quantifiable criteria to differentiate between pelagic longline and bottom longline fishing gear in gear restricted areas would assist with effective monitoring of and compliance with HMS gear restricted areas. Moreover, such criteria could assist in removing any ambiguities by clarifying that pelagic longline gear would logically be expected to capture pelagic species and vice-versa. As a result, in 2006, NMFS published the HMS FMP and its final rule, which among other things, established a five-percent weight limit on the allowable amount of pelagic indicator species that bottom longline vessels may possess or land from pelagic longline gear restricted areas, and established a five-percent weight limit on the allowable amount of demersal indicator species that pelagic longline vessels may possess or land from bottom longline gear restricted areas (measured relative to the total weight of all pelagic and demersal indicator species) (71 FR 58058, October 2, 2006). The indicator species were chosen because they constituted the primary target species in pelagic and bottom longline fisheries in 2000 through 2004. Based on public comment regarding the draft pelagic and demersal indicator species lists, NMFS modified the list of demersal indicator species by removing certain sharks (silky and hammerhead sharks) and by adding several species of tilefish (tilefish, blueline tilefish, and sand tilefish). These modifications were made because the aforementioned shark species can be caught on both pelagic and bottom longlines, and because the tilefish species were indicative of demersal fishing activity. These species are listed in Tables 2 and 3 to Appendix A to Part 635, and can be found below in Table 1.1.

Table 1.1. List of Indicator Species to Determine Composition of Catch.

Pelagic Species	**Demersal Species**
Albacore tuna, *Thunnus alalunga*	Atlantic sharpnose shark, *Rhizoprionodon terraenovae*
Bigeye tuna, *Thunnus obesus*	Black grouper, *Mycteroperca bonaci*
Blue shark, *Prionace glauca*	Blackfin snapper, *Lutjanus buccanella*

Bluefin tuna, *Thunnus thynnus*	Blacknose shark, *Carcharhinus acronotus*
Dolphin fish, *Coryphaena hippurus*	Blacktip shark, *Carcharhinus limbatus*
Porbeagle shark, *Lamna nasus*	Blueline tilefish, *Caulolatilus microps*
Shortfin mako shark, *Isurus oxyrinchus*	Bonnethead shark, *Sphyrna tiburo*
Skipjack tuna, *Katsuwonus pelamis*	Bull shark, *Carcharhinus leucas*
Swordfish, *Xiphias gladius*	Cubera snapper, *Lutjanus cyanopterus*
Thresher shark, *Alopias vulpinus*	Dog snapper, *Lutjanus jocu*
Wahoo, *Acanthocybium solandri*	Finetooth shark, *Carcharhinus isodon*
Yellowfin tuna, *Thunnus albacares*	Gag grouper, *Mycteroperca microlepis*
	Lane snapper, *Lutjanus synagris*
	Lemon shark, *Negaprion brevirostris*
	Mangrove snapper, *Lutjanus griseus*
	Marbled grouper, *Dermatolepis inermis*
	Misty grouper, *Epinephelus mystacinus*
	Mutton snapper, *Lutjanus analis*
	Nurse shark, *Ginglymostoma cirratum*
	Queen snapper, *Etelis oculatus*
	Red grouper, *Epinephelus morio*
	Red hind, *Epinephelus guttatus*
	Red snapper, *Lutjanus campechanus*
	Rock hind, *Epinephelus adscensionis*
	Sand tilefish, *Malacanthus plumieri*
	Sandbar shark, *Carcharhinus plumbeus*
	Schoolmaster snapper, *Lutjanus apodus*
	Silk snapper, *Lutjanus vivanus*
	Snowy grouper, *Epinephelus niveatus*

	Speckled hind, *Epinephelus drummondhayi*
	Spinner shark, *Carcharhinus brevipinna*
	Tiger shark, *Galeocerdo cuvieri*
	Tilefish, *Lopholatilus chamaeleonticeps*
	Vermilion snapper, *Rhomboplites aurorubens*
	Warsaw grouper, *Epinephelus nigritus*
	Yellowedge grouper, *Epinephelus flavolimbatus*
	Yellowfin grouper, *Mycteroperca venenosa*
	Yellowtail snapper, *Ocyurus chrysurus*

The five-percent weight limit was based on data from 2000 through 2004 analyzed in the HMS FMP that indicated that the five-percent threshold was slightly above the average weight of pelagic species that were reported in the Coastal Fisheries logbook (4.45 percent), and slightly above the average weight of demersal species that were reported in the Atlantic HMS logbook (4.52 percent).

Within the HMS FMP and final rule, NMFS further stated that, if necessary, the five-percent weight limit and the list of indicator species could be modified in the future based upon a review of historic and current landings and the effectiveness of the regulation.

Since 2006, NMFS has implemented additional time/area closures and gear restricted areas, and backstopped regulations related to areas designated by fishery management councils, including marine protected areas in the South Atlantic, time/area closures in the Caribbean, and habitat areas of particular concern in the Gulf of America. Additionally, NMFS has established or improved the effectiveness of a variety of mechanisms that are used to monitor and aid in compliance (i.e., vessel monitoring systems (VMS)) of pelagic and bottom longline vessels fishing within gear restricted areas. Currently, all vessels with pelagic longline gear on board are required to install and use a VMS unit, and bottom longline vessels are required to install and use a VMS unit when bottom longline gear is on board off South Carolina, North Carolina, and Virginia between 33°00'N. lat. and 36°30'N. lat. from January 1 through July 31. In addition to VMS units always being on, operating, and reporting position data, prior to leaving port for any trip, all longline vessels must declare any HMS the vessel will target on that trip and the specific type(s) of fishing gear that will be on board the vessel ("hail-out"). If the vessel is participating in multiple fisheries or switches to a different gear type or target species group, the vessel must submit another declaration.

Furthermore, since 2006, there have been changes to the management of HMS on the pelagic and demersal indicator species lists. Sandbar sharks cannot be retained in commercial fisheries unless participants are part of the shark research fishery (73 FR 40658, July 15, 2008). The retention

and sale of oceanic whitetip sharks were prohibited when caught in association with ICCAT fisheries (76 FR 53652, August 29, 2011). Porbeagle sharks can only be retained on pelagic longline gear when they are dead at haulback (81 FR 57803, August 24, 2016). The commercial retention limit for shortfin mako sharks has been set at zero since 2022 (87 FR 39373, July 1, 2022). Lastly, oceanic whitetip shark was removed from the pelagic species list and placed on the prohibited sharks list, following their Endangered Species Act (ESA) listing as threatened and subsequent consultations on HMS fisheries (89 FR 278, January 3, 2024).

In recent years, NMFS has received numerous requests from both pelagic and bottom longline fishermen, including HMS Advisory Panel members, to remove both the pelagic and demersal indicator species regulations and corresponding pelagic and demersal indicator species lists as a way to provide increased flexibility to operate more efficiently. For example, pelagic and bottom longline fishermen have found that these regulations hinder their ability to catch non-HMS while fishing with appropriate gear in gear restricted areas. These fishermen have pointed out inequities in the various fishing regulations, i.e., that fishermen who do not hold HMS permits on their vessels are not required to follow the federal HMS regulations when fishing for non-HMS in the same areas with the same fishing gears. Furthermore, some pelagic and demersal indicator species lists may no longer be retained under federal regulations for Fishery Management Council-managed species, and at a minimum, the species lists may need to be updated.

NMFS presented on this topic at the Fall 2021 HMS Advisory Panel meeting and solicited recommendations for maintaining, updating, or removing the indicator species lists and/or associated gear regulations.[2] The Advisory Panel was generally supportive of removing these species lists and regulations.

1.3 Proposed Action, Purpose, and Need

Proposed Action: NMFS is considering changes to the HMS pelagic and demersal indicator species regulations and the pelagic and demersal indicator species lists.

Purpose: The purpose of this action is to increase fishing flexibilities, remove regulatory inefficiencies, and optimize the ability of pelagic and bottom longline fisheries to harvest available quotas to the extent practicable while still achieving fishery management and conservation goals in the HMS pelagic and bottom longline fisheries.

Need: The need for this action is to modify or remove inefficient and outdated regulations to increase fishing flexibility and possibly allow additional fishing opportunities for HMS pelagic and bottom longline fisheries.

1.4 Scope and organization of this document related to the National Environmental Policy Act

In considering this proposed action, NMFS must comply with a number of Federal statutes and executive orders, including NEPA (42 U.S.C. 4321 *et seq*.). To comply with these requirements and eliminate redundancies to the extent practicable, NMFS consolidates all the requirements into one comprehensive document. For this action, Chapter 4 of this document, in addition to other sections as referenced within Chapter 4, should be considered the EA required under NEPA. The purpose of an EA is to provide sufficient evidence and analysis for determining

[2] Information regarding the September 2021 HMS Advisory Panel is available at https://www.fisheries.noaa.gov/event/september-2021-hms-advisory-panel-meeting

whether to prepare an EIS or a finding of no significant impact (FONSI) and to aid in the Agency's compliance with NEPA when no EIS is necessary.

In developing EA, NMFS adhered to the procedural requirements of NEPA as amended, and the NAO 216-6A with its accompanying Companion Manual. Consistent with the procedures laid out in the Companion Manual, this document focuses on whether the environmental effects of the proposed action are significant. Effects or impacts refer to changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives. Effects can include ecological, aesthetic, historic, cultural, economic, social, or health effects. They can be beneficial or adverse or both. Effects that are remote in time, geographically remote, or the product of a lengthy causal chain are not included. Additionally, effects do not include those effects that NMFS has no ability to prevent due to the limits of its regulatory authority, that would occur regardless of the proposed action, or that would need to be initiated by a third party.

1.5 Scope and organization of this document related to other applicable laws and Executive Orders

As described above, when considering this proposed action, NMFS consolidated the analyses and discussion for all the requirements and laws that NMFS must comply with into one comprehensive document. Thus, this consolidated document considers, in addition to the NEPA requirements as described above, the requirements under all relevant statutes and executive orders including the Magnuson-Stevens Act, Executive Order 12866 (E.O. 12866, Regulatory Planning and Review), and the Regulatory Flexibility Act (RFA). For this action, in addition to any references stated withing the chapters, Chapter 5 addresses the requirements under E.O. 12866, also known as the RIR; Chapter 6 provides the IRFA required under RFA; and Chapter 7 provides additional consistency information that is required under specific sections of the Magnuson-Stevens Act and other statutes such as the CZMA, ESA, and MMPA. While NMFS wrote some of the chapters to comply with the specific requirements under these various statutes and executive orders, it is the document as a whole that meets all the federal requirements and not any individual chapter.

2 Summary of the Alternatives

A number of federal requirements, such as NEPA, E.O. 12866, and the RFA, require a consideration of reasonable alternatives. This chapter lists and defines the alternatives that NMFS considered. These alternatives were designed to meet the purpose and need for the action (see Section 1.3), meet all the requirements under the multiple federal requirements, and include a "no action" alternative. To the extent needed, this chapter explains how the specific requirements of an alternative were derived. Additional descriptions and supporting analyses of any effects of these alternatives are provided in later chapters of this document. When developing the alternatives listed below, NMFS considered the following screening criteria to determine whether an alternative is reasonable:

- An alternative must be consistent with the Magnuson-Stevens Act, including the 10 National Standards set forth in the Magnuson-Stevens Act.
- An alternative must be administratively feasible. The costs associated with implementing an alternative cannot be prohibitively exorbitant or require unattainable infrastructure.
- An alternative cannot violate other laws (e.g., ESA, MMPA).
- An alternative must be consistent with the HMS FMP and its amendments.
- An alternative must be consistent with ICCAT recommendations as implemented by NMFS under ATCA.

2.1 Alternatives for Pelagic and Demersal Indicator Species Management

NMFS is considering three alternatives specific to pelagic and demersal indicator species regulations and associated pelagic and demersal indicator species lists.

Alternative 1: Keep the Current Regulations for Pelagic and Demersal Indicator Species and the Pelagic and Demersal Indicator Species Lists. – No Action

Under Alternative 1, the No Action alternative, NMFS would maintain the current pelagic and demersal indicator species regulations at 50 CFR 635.21(c)(1)(i) and (d)(2). Currently, to be considered a pelagic longline vessel when fishing in a bottom longline gear restricted area, no more than five percent (by weight) of the species possessed or landed may be demersal indicator species, as measured relative to the total weight of all pelagic and demersal indicator species possessed or landed. Likewise, to be considered a bottom longline vessel when fishing in a pelagic longline gear restricted area, no more than five percent (by weight) of the species possessed or landed may be pelagic indicator species, as measured relative to the total weight of all pelagic and demersal indicator species possessed or landed. As part of this alternative, NMFS would also keep the lists of pelagic and demersal indicator species (Tables 2 and 3 to Appendix A to 50 CFR part 635).

Alternative 2: Update the Pelagic and Demersal Indicator Species Lists and Keep the Current Regulations for the Pelagic and Demersal Indicator Species.

Under Alternative 2, NMFS would update the lists of pelagic and demersal indicator species (Tables 2 and 3 of Appendix A to 50 CFR part 635). NMFS would maintain the current regulations at 50 CFR 635.21(c)(1)(i) and (d)(2) implementing a five-percent weight limit on possessing or landing indicator species, as described under Alternative 1.

NMFS considered current regulations and analyzed logbook data to determine which species should be added or removed from the updated pelagic and demersal indicator species lists. Our consideration was based on several factors including, but not limited to, determination of the primary species landed in pelagic and bottom longline fisheries, consideration of HMS that are prohibited or have no retention or limited retention, or consideration of species that are prohibited or have no retention or limited retention in areas under the relevant non-HMS regulations.

Specifically, NMFS analyzed the fleet-wide landings data based on Coastal Fisheries and Atlantic HMS logbook data from 2020 through 2024 (Tables 2.1 and 2.2) and reviewed the current regulations both at 50 CFR part 622 and part 635.

Given the review of the regulations, NMFS would remove porbeagle and shortfin mako sharks from the list of pelagic indicator species (Table 2 to Appendix A to part 635). Currently, pelagic longline fishermen can only retain porbeagle sharks which are dead at haulback. Any porbeagle sharks which are alive at the time of haulback must be released unharmed, to the extent practicable. Therefore, NMFS believes porbeagle sharks should not be considered an indicator of a pelagic longline vessel. Shortfin mako sharks have a retention limit of zero in all HMS fisheries, including the pelagic longline fishery. Therefore, shortfin mako sharks cannot be present on board and so should not be considered an indicator of a pelagic longline vessel. Furthermore, NMFS would remove dog snapper, marbled grouper, schoolmaster snapper, speckled hind, and warsaw grouper from the list of demersal indicator species (Table 3 to Appendix A to part 635). Currently, dog snapper, marbled grouper, and schoolmaster snapper are no longer federally managed species and their inclusion on the demersal indicator species list is no longer necessary. NMFS would remove speckled hind and warsaw grouper from the list of demersal indicator species as these species are no longer allowed to be harvested or possessed in or from the South Atlantic Exclusive Economic Zone (EEZ) as defined at 50 CFR part 622. Lastly, based on the review of landings data, NMFS would add scamp and greater amberjack to the list of demersal indicator species as landings for these species average above 16,000 pounds (lb) whole weight (ww) annually among HMS bottom longline vessels as shown in Table 2.1. As a result, the modified species on the indicator lists are shown in Table 2.3.

Table 2.1. Total pounds ww, percent of total landings, and average annual landings by weight of species landed on bottom longline trips fleet-wide 2020-2024. Species and landings in bold are those managed by the HMS Management Division. Species with total landings under 1,500 lb were omitted, including demersal indicator species such as red hind, sand tilefish, misty grouper, and schoolmaster grouper. Source: Coastal Fisheries Logbook.

Species	**Total Landings 2020 -2024 (lb ww)**	**Percent of Total Landings**	**Average Annual Landings 2020-2024 (lb ww)**
Red grouper*	9,248,172	37.14	1,849,634

Red snapper*	3,323,985	13.35	664,797
Yellowedge grouper*	2,869,734	11.53	573,947
Tilefish*	2,778,228	11.16	555,646
Blacktip shark*	**1,077,833**	**4.33**	**215,567**
Gag grouper*	874,411	3.51	174,882
Blueline tilefish*	653,908	2.63	130,782
Sandbar shark*	**566,728**	**2.28**	**113,346**
Bull shark*	**500,411**	**2.01**	**100,082**
Snowy grouper*	414,102	1.66	82,820
Mutton snapper*	306,088	1.23	61,218
Scamp	295,598	1.19	59,120
Atlantic sharpnose shark*	**240,555**	**0.97**	**48,111**
Speckled hind*	150,612	0.60	30,122
Tiger shark*	**147,985**	**0.59**	**29,597**
Lemon shark*	**138,864**	**0.56**	**27,773**
Finetooth shark*	**130,520**	**0.52**	**26,104**
Greater amberjack	120,628	0.48	24,126
Spinner shark*	**107,204**	**0.43**	**21,441**
Black grouper*	82,345	0.33	16,469

Margate	70,188	0.28	14,038
Hammerhead shark	**65,224**	**0.26**	**13,045**
Silk snapper*	62,251	0.25	12,450
Mangrove snapper*	61,818	0.25	12,364
Warsaw grouper*	57,375	0.23	11,475
Blacknose shark*	**56,080**	**0.23**	**11,216**
Almaco jack	40,851	0.16	8,170
Red porgy	39,074	0.16	7,815
Jolthead porgy	36,392	0.15	7,278
Nurse shark*	**34,921**	**0.14**	**6,984**
Gray triggerfish	34,388	0.14	6,878
Queen snapper*	31,899	0.13	6,380
Atlantic, red, and white hake	30,684	0.12	6,137
Cobia	28,053	0.11	5,611
Lane snapper*	25,743	0.10	5,149
Dolphin fish**	18,159	0.07	3,632
Yellowfin grouper*	17,776	0.07	3,555
Blackfin snapper*	17,152	0.07	3,430
Vermilion snapper*	16,603	0.07	3,321

Black bellied rosefish	12,438	0.05	2,488
Wahoo**	12,118	0.05	2,424
Lesser amberjack	11,046	0.04	2,209
Scorpionfish-Thornyheads	10,936	0.04	2,187
Great hammerhead shark	**9,609**	**0.04**	**1,922**
Blackfin tuna	8,379	0.03	1,676
Barrelfish	7,893	0.03	1,579
Bar jack	5,998	0.02	1,200
Bearded brotula	4,748	0.02	950
Grunts	3,203	0.01	641
Ocean triggerfish	3,029	0.01	606
Conger eel	2,902	0.01	580
Yellowtail snapper*	2,769	0.01	554
Swordfish**	**2,536**	**0.01**	**507**
Rock hind*	2,512	0.01	502
Bonnethead shark*	**2,401**	**0.01**	**480**
African pompano	1,853	0.01	371
Black Margate	1,768	0.01	354
Cubera snapper*	1,604	0.01	321

Total	**24,880,284**	**100.00**	**-**
Total HMS	**3,080, 871**	**12.38**	**-**
Total Non-HMS	**21,799,413**	**87.61**	**-**

* Species currently on the demersal indicator species list

** Species currently on the pelagic indicator species list

Table 2.2. Total pounds ww, percent of total landings, and average annual landings by weight of species landed on pelagic longline trips fleet-wide from 2020-2024. Species and landings in bold are those managed by the HMS Management Division. Species with total landings under 8,000 lb ww were omitted, including pelagic indicator species such as blue and porbeagle sharks. Source: Atlantic HMS Logbook.

Species	Total Landings 2020 -2024 (lb ww)	Percent of Total Landings 2020-2024	Average Annual Landings 2020-2024 (lb ww)
Swordfish**	**74,528,256**	**35.45**	**14,905,651**
Yellowfin tuna**	**59,543,180**	**28.32**	**11,908,636**
Bigeye tuna**	**40,048,447**	**19.05**	**8,009,689**
Albacore tuna**	**20,542,965**	**9.77**	**4,108,593**
Bluefin tuna**	5,864,051	2.79	1,172,810
Dolphin fish **	5,038,337	2.40	1,007,667
Escolar	1,407,293	0.67	281,459
Wahoo**	1,063,887	0.51	212,777
Shortfin mako shark**	**685,393**	**0.33**	**137,079**
Opah	521,486	0.25	104,297
Blackfin tuna	470,181	0.22	94,036

Pomfrets	364,404	0.17	72,881
Common thresher shark**	**125,919**	**0.06**	**25,184**
Skipjack tuna**	**33,008**	**0.02**	**6,602**
Total	**210,236,807**	**100.00**	**-**
Total HMS	**201,371,219**	**95.78**	**-**
Total Non-HMS	**8,865,588**	**4.22**	**-**

** Species currently on the pelagic indicator species list

Table 2.3 Modified Indicator Species List under Alternative 2

Pelagic Species	**Demersal Species**
Albacore tuna, *Thunnus alalunga*	Atlantic sharpnose shark, *Rhizoprionodon terraenovae*
Bigeye tuna, *Thunnus obesus*	Black grouper, *Mycteroperca bonaci*
Blue shark, *Prionace glauca*	Blackfin snapper, *Lutjanus buccanella*
Bluefin tuna, *Thunnus thynnus*	Blacknose shark, *Carcharhinus acronotus*
Dolphin fish, *Coryphaena hippurus*	Blacktip shark, *Carcharhinus limbatus*
Skipjack tuna, *Katsuwonus pelamis*	Blueline tilefish, *Caulolatilus microps*
Swordfish, *Xiphias gladius*	Bonnethead shark, *Sphyrna tiburo*
Thresher shark, *Alopias vulpinus*	Bull shark, *Carcharhinus leucas*
Wahoo, *Acanthocybium solandri*	Cubera snapper, *Lutjanus cyanopterus*
Yellowfin tuna, *Thunnus albacares*	Finetooth shark, *Carcharhinus isodon*
	Gag grouper, *Mycteroperca microlepis*
	Greater amberjack, *Seriola dumerili*
	Lane snapper, *Lutjanus synagris*
	Lemon shark, *Negaprion brevirostris*
	Mangrove snapper, *Lutjanus griseus*

	Misty grouper, *Epinephelus mystacinus*
	Mutton snapper, *Lutjanus analis*
	Nurse shark, *Ginglymostoma cirratum*
	Queen snapper, *Etelis oculatus*
	Red grouper, *Epinephelus morio*
	Red hind, *Epinephelus guttatus*
	Red snapper, *Lutjanus campechanus*
	Rock hind, *Epinephelus adscensionis*
	Sand tilefish, *Malacanthus plumieri*
	Sandbar shark, *Carcharhinus plumbeus*
	Scamp, *Mycteroperca phenax*
	Silk snapper, *Lutjanus vivanus*
	Snowy grouper, *Epinephelus niveatus*
	Spinner shark, *Carcharhinus brevipinna*
	Tiger shark, *Galeocerdo cuvieri*
	Tilefish, *Lopholatilus chamaeleonticeps*
	Vermilion snapper, *Rhomboplites aurorubens*
	Yellowedge grouper, *Epinephelus flavolimbatus*
	Yellowfin grouper, *Mycteroperca venenosa*
	Yellowtail snapper, *Ocyurus chrysurus*

Alternative 3: Remove the Regulations for Pelagic and Demersal Indicator Species and Pelagic and Demersal Indicator Species Lists. – *Preferred Alternative*

Under Alternative 3, the preferred alternative, NMFS would remove the current regulations at 50 CFR 635.21(c)(1)(i) and (d)(2) implementing a five-percent weight limit on the allowable amount of indicator species that pelagic longline and bottom longline vessels may possess or land when fishing in pelagic and bottom longline gear restricted areas, described under Alternative 1. NMFS would also remove the pelagic and demersal indicator species lists (Tables 2 and 3 of Appendix A to 50 CFR part 635).

3 Affected Environment

This section describes the affected environment (e.g., the biology of managed HMS, the fisheries involved, the gears used, and the communities involved) relative to the management measures under consideration. This chapter provides an overview of the current conditions of the fisheries, which serve as baselines against which to compare potential effects of the different alternatives.

3.1 Summary of Atlantic HMS

The Secretary of Commerce delegated the authority to manage HMS fisheries to NMFS. The HMS Management Division, within the Office of Sustainable Fisheries, develops regulations for HMS fisheries. Because of the highly migratory nature of HMS, NMFS manages HMS fisheries in federal waters (domestic) and the high seas (international). For most HMS fisheries (directed and incidental), federally permitted HMS fishermen are required to follow federal regulations in state waters, unless state regulations are at least as restrictive as relevant federal regulations. NMFS works closely with States, Councils, and the interstate fisheries management commissions to ensure complementary regulations are implemented across state jurisdictions. States are invited to send representatives to HMS Advisory Panel meetings and to participate in stock assessments, public hearings, or other fora. For more information related to state regulations, please refer to Chapter 1 of the HMS Stock Assessment and Fishery Evaluation (SAFE) Report.[3] For more information on the complete HMS management history, please refer to the HMS FMP and its amendments.[4] For the implementing regulations, see 50 CFR part 635.

3.1.1 Summary of Atlantic HMS Stock Status

The stock status determination criteria, thresholds used to determine the stock status, and information on the stock status for HMS are presented in Chapter 2 of the HMS SAFE Report. Generally, domestic shark assessments are conducted through the Southeast Data, Assessment, and Review (SEDAR) process.[5] On the international level, ICCAT has assessed numerous HMS stocks, and has conducted several ecological risk assessments for various HMS species, among other things. Stock assessments and management recommendations are listed on ICCAT's website.[6]

3.1.2 Biology and Life History

NMFS manages over 50 species of Atlantic tunas, swordfish, billfish, and sharks. NMFS expects that the preferred alternatives in this action could primarily affect BAYS tunas, BFT, swordfish, and sharks. The life histories for all managed HMS, including those that could be affected by the various alternatives considered in this document (listed in Chapter 2), are described in detail in the HMS FMP. Additional information about managed HMS, including life histories, distribution, and habitat associations is generally included in Chapter 3 of the HMS FMP and its

[3] HMS SAFE Reports are available at https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-highly-migratory-species-stock-assessment-and-fisheries-evaluation-reports

[4] HMS FMP and its amendments are available at https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-hms-fishery-management-plans-and-amendments

[5] All SEDAR reports are available online at https://sedarweb.org/sedar-projects

[6] ICCAT recommendations, resolutions, and stock assessment information are available at https://www.iccat.int

subsequent amendments. In particular, Amendment 10 to the HMS FMP (82 FR 42329, September 7, 2017) (Amendment 10) addressed essential fish habitat (EFH) for Atlantic HMS and contains detailed descriptions of life history profiles for HMS. Biology and life history information from the aforementioned sources is not repeated here. Detailed descriptions of the biology and life histories of HMS can be found in Chapter 3 of the HMS FMP, the Affected Environment section of all subsequent amendments, and in the HMS SAFE Report.

3.1.3 Habitat

Most HMS reside in the water column and are highly mobile. Some species such as marlins move primarily throughout open-ocean waters but can be found inshore and other species such as sharks are found inshore in bays and estuaries and closer to the bottom or offshore in open oceans. The Magnuson-Stevens Act requires NMFS to identify and describe essential fish habitat (EFH) for the fishery (§ 303(a)(7)). As part of this requirement, NMFS first must review which habitats are essential for spawning, growing, and living in order to define which habitat is essential or EFH. NMFS must then evaluate the potential adverse effects of fishing activities on EFH, including the cumulative effects of multiple fisheries activities (50 CFR 600.815). NMFS has described EFH numerous times over the years. HMS EFP can be viewed online using the EFH Mapper[7].

3.2 Description of the Fishery

Specific information regarding participation rates and landings by pelagic and bottom longline vessels fishing for HMS can be found in Chapter 4 of the HMS SAFE Report. More information regarding participation in fisheries for non-HMS included in the indicator species lists (e.g., grouper, snapper, and tilefish) can be found by visiting the websites of the five Atlantic-based Fishery Management Councils.[8]

3.2.1 Fishery Participants

In order to understand the scope of potential effects of this action on relevant HMS permit holders permitted to fish with pelagic or bottom longline gear, NMFS analyzed the number of vessels and dealer permits issued. As of October 2023, approximately 164 Swordfish Directed, 63 Swordfish Incidental, 188 Shark Directed, 221 Shark Incidental, and 223 Atlantic Tunas Longline category limited access permits were issued. It is important to note that the number of permit holders that actively fish is substantially lower than the number of vessels issued a permit. For more information regarding the distribution of these permits across states and territories, please see Chapter 4 of the HMS SAFE Report.

3.2.2 Economic Environment

Total ex-vessel annual revenues landed in 2022 in HMS fisheries were $41.1 million. Based on dealer reports, approximately 60 percent of 2022 total revenues were landed by pelagic longline gear. Additionally, two percent of landings by value were from vessels using bottom longline

[7] The EFH Mapper is available at https://www.fisheries.noaa.gov/resource/map/essential-fish-habitat-mapper.

[8] Links to council websites available at https://www.fisheries.noaa.gov/topic/partners

gear. For more information on the overall economic status of HMS fisheries, please see Chapter 8 of the HMS SAFE Report.

4 Environmental Consequences of Alternatives

As described in Section 1.4, this chapter should be considered the EA required under NEPA. In developing this EA, NMFS adhered to the procedural requirements of NEPA, as amended, and the NAO 216-6A with its Companion Manual. Consistent with the procedures laid out in the Companion Manual, this document focuses on whether the environmental effects of the proposed action are significant.

For tracking purposes, the unique identification number of this EA is: EAXX-006-48-1HQ-1752655560.

4.1 Purpose and Need for the Proposed Agency Action

As described in Section 1.3 of this document, the purpose of this action is to increase fishing flexibilities, remove regulatory inefficiencies, and optimize the ability of pelagic and bottom longline fisheries to harvest available quotas to the extent practicable while still achieving fishery management and conservation goals in the HMS pelagic and bottom longline fisheries. This action is needed to modify or remove inefficient and outdated regulations to increase fishing flexibility and possibly allow additional fishing opportunities for HMS pelagic and bottom longline fisheries.

4.2 Alternatives Considered

As described in Chapter 2, NMFS developed three alternatives related to pelagic and demersal indicator species management. These alternatives meet the screening criteria presented in Chapter 2 and, for the purposes of NEPA, are considered to be a reasonable range of alternatives for this proposed action and include an analysis of a no action alternative, alternatives that are technically and economically feasible, and meet the purpose and need of the proposal. The effects of implementing these alternatives are described below. While the alternatives are briefly described below, more information on the specifics regarding what each alternative entails can be found in Chapter 2.

4.3 Impact of Alternatives

NMFS is considering three alternatives related to pelagic and demersal indicator species management. Chapter 2 fully describes each alternative; those descriptions are summarized here. Chapter 3 describes the affected environment, including the status of the stocks, fishery participants, and economic environment that NMFS considered in evaluating these alternatives.

4.3.1 Ecological Evaluation

Alternative 1 – No Action

Under Alternative 1, the No Action alternative, NMFS would maintain the current regulations at 50 CFR 635.21(c)(1)(i) and (d)(2). As part of this alternative, NMFS would also keep the lists of pelagic and demersal indicator species (Tables 2 and 3 to Appendix A to 50 CFR part 635). The ecological impacts of Alternative 1 on HMS are expected to be neutral in the short term and long term. The target species for the HMS pelagic and bottom longline fisheries are quota-managed and this alternative would not affect the overall total allowable catches (TACs) or U.S. quotas for swordfish, yellowfin tuna, bigeye tuna (species targeted in the pelagic longline fishery), or sharks

(species targeted in the bottom longline fishery), which prevent overfishing, are based on the best scientific information available, and are consistent with ICCAT recommendations. Additionally, effort and catch in the pelagic longline or bottom longline fishery are unlikely to increase and, if recent trends continue, could decrease as the actual number of pelagic and bottom longline vessels are likely to be small when compared to past years. This alternative is not anticipated to impact effort or catch in HMS pelagic and bottom longline fisheries.

Alternative 2

Under Alternative 2, NMFS would update the lists of pelagic and demersal indicator species (Tables 2 and 3 of Appendix A to 50 CFR part 635). NMFS would maintain the current regulations at 50 CFR 635.21(c)(1)(i) and (d)(2) implementing a five-percent weight limit on possessing or landing indicator species. While this alternative would update the list of indicator species, such an update would be unlikely to affect the amount of effort or catch by pelagic or bottom longline vessels. As such, the ecological impacts of this alternative would be similar to those described under Alternative 1, above.

Alternative 3 – Preferred Alternative

Under Alternative 3, the preferred alternative, NMFS would remove the current regulations at 50 CFR 635.21(c)(1)(i) and (d)(2) implementing a five-percent weight limit on the allowable amount of indicator species that pelagic longline and bottom longline vessels may possess or land when fishing in pelagic and bottom longline gear restricted areas. NMFS would also remove the pelagic and demersal indicator species lists (Tables 2 and 3 of Appendix A to 50 CFR part 635).

As described in Section 1.2, the current pelagic and demersal indicator species may be outdated, difficult to enforce, and no longer needed since NMFS has implemented other ways to determine what gear type a vessel is using. For example, all pelagic longline vessels are required to operate VMS and bottom longline vessels with directed shark permits are required to operate VMS in the Mid-Atlantic Bottom Longline Gear Restricted Area. Because of these regulatory changes, NMFS believes that pelagic and bottom longline fishermen would continue to fish responsibly within gear restricted areas without the pelagic and demersal indicator species regulations. Removal of the indicator species regulations would not alter these other regulations. Thus, because pelagic and bottom longline vessels would continue to follow all the reporting and other requirements (such as the area closures) specific to their permits, including non-HMS permits, NMFS does not believe removing the indicator species regulations would have significant impacts on HMS or non-HMS stocks. Thus, NMFS expects the ecological impacts of this alternative would be similar to those described under Alternative 1, above.

4.3.2 Social and Economic Impacts

Alternative 1 - No Action

Under Alternative 1, the No Action alternative, NMFS would maintain the current regulations at 50 CFR 635.21(c)(1)(i) and (d)(2). As part of this alternative, NMFS would also keep the lists of pelagic and demersal indicator species (Tables 2 and 3 to Appendix A to 50 CFR part 635). When NMFS established the pelagic and demersal indicator species regulations in 2006, the intended purpose, in part, was to improve the monitoring and effectiveness of, and compliance with, HMS gear restricted areas. At the time, for bottom longline vessels reporting in the Coastal

Fisheries logbook, on average, from 2000 through 2004, over 95 percent of the reported landings were demersal indicator species, as measured relative to the total amount of indicator species landings. Furthermore, according to Atlantic HMS logbook data reported by pelagic longline vessels, on average, from 2000 through 2004, over 95 percent of the reported landings were pelagic indicator species, as measured relative to the total amount of indicator species landings. In recent years, specifically 2020 through 2024, Coastal Fisheries logbook data from bottom longline vessels indicate that, on average, over 99 percent of the reported landings were demersal indicator species, as measured relative to the total amount of indicator species landings. Additionally Atlantic HMS logbook data from pelagic longline vessels, during this same time, indicate that over 99 percent of the reported landings were pelagic indicator species, as measured relative to the total amount of indicator species landings. Based on these data, it is reasonable to assume that HMS pelagic longline vessels are indeed targeting and catching pelagic species and HMS bottom longline vessels are targeting and catching demersal species. Although the pelagic and demersal indicator species regulations may have served to deter vessels from fishing with prohibited gear in HMS gear restricted areas when the gear restricted areas were still new, and these regulations may have assisted with monitoring and compliance with HMS gear restricted areas to a degree, the data indicate that such requirements may no longer be necessary.

Furthermore, NMFS understands that the pelagic and demersal indicator species regulations are difficult to enforce on the water and dockside and that enforcement may not be using the pelagic and demersal indicator species regulations to determine the gear used. Internal discussions with the NMFS Office of Law Enforcement (OLE) suggested that that OLE agents in the field may not be using these regulations in part due to the difficult nature of trying to determine the ratio of pelagic and demersal indicator species possessed on board the vessel during boarding inspections. Additionally, timing issues may arise as agents must wait for all catch to be offloaded before being able to weigh out the amount of pelagic and demersal species landed. As such, the regulations may not be accomplishing their original goal.

Alternative 1 would likely result in neutral short-term and minor adverse long-term social and economic impacts because HMS pelagic and bottom longline fishermen would continue to operate under current regulatory conditions. Maintaining the status quo would continue to restrict the ability of pelagic and bottom longline fishermen to switch gears in gear restricted areas to possibly fish for non-HMS, thus resulting in a missed opportunity to earn revenue from their non-HMS catch. For example, a pelagic longline fisherman with permits for both HMS and Council-managed species fishing within the Mid-Atlantic Bottom Longline Gear Restricted Area, during the bottom longline closure period, must abide by HMS regulations regarding indicator species as they are more restrictive. This fisherman may decide to fish with another legal gear type in addition to pelagic longline gear (i.e., vertical hook-and-line gear) within the gear restricted area, with the most used vertical hook-and-line gear being “bandit rigs” (Helies and Jamison, 2013). Because vertical hook-and-line gear is suspended in the water column it is likely that both pelagic and demersal species will be caught. Vertical hook-and-line gear is used to target non-HMS such as tilefish that are on the demersal indicator species list. Under this scenario, if the fisherman exceeds the five-percent demersal indicator species weight limit they may be subject to enforcement action as they are assumed to be bottom longline fishing under the HMS regulations. This limitation only applies to those HMS-permitted longline fishermen who also have Council permits fishing within HMS gear restricted areas. Non-HMS fishermen using vertical hook-and-line gear in the gear restricted area are not impacted by the pelagic and

demersal indicator species regulations. In other words, under the current regulations, which would be maintained under Alternative 1, HMS fishermen may lose out on fishing opportunities, which can have both a minor adverse economic impact in terms of lost ex-vessel revenues and also a minor adverse social impact in terms of an inability to participate in activities others in the same area and communities regularly participate.

Alternative 2

Under Alternative 2, NMFS would update the lists of pelagic and demersal indicator species (Tables 2 and 3 of Appendix A to 50 CFR part 635). As part of this alternative, NMFS would also maintain the current regulations at 50 CFR 635.21(c)(1)(i) and (d)(2) implementing a five-percent weight limit on possessing or landing indicator species. Under this alternative, NMFS would update the pelagic and demersal indicator species lists based on several factors including, but not limited to, determination of the primary species landed in pelagic and bottom longline fisheries, consideration of HMS that are prohibited or have no retention or limited retention, or consideration of species that are prohibited or have no retention in areas under the relevant fishery management councils. This alternative would likely result in similar social and economic impacts to Alternative 1 because pelagic and bottom longline fishing would continue under the pelagic and demersal indicator species five-percent weight limit.

Alternative 3 – Preferred Alternative

Under Alternative 3, the preferred alternative, NMFS would remove the current indicator species regulations at 50 CFR 635.21(c)(1)(i) and (d)(2). NMFS would also remove the pelagic and demersal indicator species lists (Tables 2 and 3 of Appendix A to 50 CFR part 635).

As stated in Section 1.3, the purpose of this action is to increase fishing flexibility, remove regulatory inefficiencies, and optimize the ability of pelagic and bottom longline fisheries to harvest available quotas to the extent practicable while still achieving fishery management and conservation goals in the HMS pelagic and bottom longline fisheries. Removing the pelagic and demersal indicator species regulations and species lists would provide HMS permitted longline fishermen with more fishing flexibility. HMS pelagic and bottom longline fishermen who hold permits for HMS and Council-managed species at the same time would be able to land the allowable amount of pelagic and demersal species under those permits without the restrictive five-percent weight limit. Increased flexibility would allow HMS pelagic and bottom longline fishermen the opportunity to use fishing gears (i.e., bandit gear) authorized under regulations for Council-managed species in the same way as fishermen that hold only permits for Council-managed species, noting that HMS fishermen cannot retain bluefin tuna with a gear type onboard the vessel that is not authorized for bluefin tuna retention under an Atlantic Tunas Longline category permit. This alternative may allow for additional opportunities to harvest available quotas for both HMS and non-HMS (e.g., grouper, snapper, tilefish) and thus generate some additional revenue on HMS trips.

NMFS notes that the active number of HMS permitted vessels which may engage in these fishing activities are relatively small when compared to the number of vessels issued an HMS permit. Thus, this alternative would likely have neutral to minor beneficial short-term and long-term social and economic impacts.

4.3.3 Comparison of National Environmental Policy Act Alternatives

Table 4.3 provides a qualitative comparison of the impacts associated with the various alternatives considered in this rulemaking. This table summarizes the impacts that were discussed in detail in Sections 4.3.1 and 4.3.2.

Table 4.3 Comparison of NEPA alternatives considered.

Alternative	Ecological	Social and Economic
Alternative 1	Neutral	Neutral to Minor Adverse
Alternative 2	Neutral	Neutral to Minor Adverse
Alternative 3 (*Preferred Alternative*)	Neutral	Neutral to Minor Beneficial

4.4 The Reasonably Foreseeable Effects of the Proposed Action

The determination of "significance" is central to establishing what level of NEPA review is required for a proposed activity or decision. NEPA requires agencies to prepare an environmental impact statement for any proposed activity or decision "significantly affecting the quality of the human environment." For the purpose of making a determination regarding whether the proposed action significantly affects the quality of the human environment, NMFS considers only adverse effects to be significant. In other words, if a proposed action had only beneficial effects, NMFS would determine that the proposed action does not significantly affect the quality of the human environment, and would not, therefore, produce an environmental impact statement. NMFS would, however, consider beneficial effects when conducting the appropriate level of environmental review.

When considering whether the reasonably foreseeable effects of the proposed activity or decision are significant, NMFS analyzes the potentially affected environment and degree of the effects of the activity or decision. In considering the potentially affected environment, NMFS considers, as appropriate to the specific action, the affected geographic area, and the national, regional, and local contexts. NMFS also identifies the resources in the geographic area that they reasonably foresee being adversely impacted by the proposed activity or decision and considers the following impacts: ecological, aesthetic, historic, cultural, economic, social, and public health and safety. The goal of this section is to describe those impacts and reasonably foreseeable future actions with regard to the management measures presented in this document.

Overall, the preferred alternative and all other alternatives in this EA would have neutral ecological impacts on species caught in the HMS pelagic and bottom longline fisheries. The target species for the pelagic and bottom longline fisheries are quota-managed and the overall TACs or U.S. quotas for swordfish, yellowfin tuna, bigeye tuna (species targeted in the pelagic longline fishery), and sharks (species targeted in the bottom longline fishery) are based on the best scientific information available, are consistent with ICCAT recommendations, and would not change under this action. Furthermore, the preferred alternative may also allow for some additional opportunities for the commercial harvest of non-HMS (e.g., grouper, snapper, tilefish). These species are also quota-managed and their respective commercial quotas would not change or be exceeded under this action.

The preferred alternative (Alternative 3) would likely have neutral to minor beneficial social and economic impacts for HMS pelagic and bottom longline fishermen. Preferred Alternative 3 would increase fishing flexibilities and likely allow for some additional fishing opportunities for the HMS pelagic and bottom longline fishermen. Furthermore, elimination of the pelagic and demersal indicator species regulations removes regulatory differences between fishermen using the same gears within the same area.

The preferred alternative considered in this action is likely to have neutral effects on protected resources, including sea turtles, sharks listed under the ESA, or marine mammals protected by the MMPA. The purpose of the preferred alternative is to increase fishing flexibility, remove regulatory inefficiencies, and optimize the ability of pelagic and bottom longline fisheries to harvest available quotas to the extent practicable while still achieving fishery management and conservation goals in the HMS pelagic and bottom longline fisheries. While the preferred alternative considered in this action would increase opportunities to land HMS and non-HMS, we do not expect an increase in effort or gear modifications that would increase interactions with protected resources. See Section 7.4 for more information on impacts to protected resources.

The other alternatives considered in this EA would have neutral to minor adverse social and economic impacts for HMS pelagic and bottom longline fishermen. Both the status quo and Alternative 2 would continue to maintain pelagic and demersal indicator species regulations that may be outdated, difficult to enforce, and no longer necessary to determine the gear types being used by either pelagic or bottom longline fishing vessels in HMS gear restricted areas. Both of these alternatives could contribute to inequitable fishing opportunities for HMS pelagic and bottom longline fishermen who hold permits for both HMS and Council-managed fisheries. Although Alternative 2 would update the pelagic and demersal indicator species lists, the current five-percent weight limit would continue to be in effect thus limiting the flexibility of pelagic and bottom longline fishermen.

None of the alternatives considered would have any aesthetic, historic, or cultural impacts.

On March 4, 2026, NMFS published the final rule (91 FR 10696) for Amendment 15 to the HMS FMP (Amendment 15). The final rule was effective on April 3, 2026. Amendment 15 considered modification, data collection, and analysis of four current spatial management areas that restrict or prohibit commercial fishing (Mid-Atlantic shark, Charleston Bump, East Florida Coast, and DeSoto Canyon closed areas). These closed areas had been in place for approximately 20 years, and the prohibition on fishing in those areas during all or part of the year led to a commensurate decrease in fishery-dependent data, complicating efforts to assess the effectiveness of the areas in meeting conservation and management needs. To address the lack of fishery-dependent data inside the closed areas and to assess their effectiveness, Amendment 15 modified the timing of the Mid-Atlantic shark area, modifies the boundaries of the Charleston Bump and East Florida Coast closed areas to create low- and/or high-bycatch-risk areas, and maintains the current boundaries and timing of the DeSoto Canyon closed area. This action also establishes a process to collect data from all the spatial management areas and review that data as needed and on a regular basis, while also renaming the closed areas (now referred to as spatial management areas) to more closely reflect their intended uses. This rule does not implement a fleet-wide requirement for vessel owners to pay for electronic monitoring sampling costs as proposed but requires pelagic longline vessel owners to pay for the electronic monitoring sampling costs if

their vessels choose to fish within the low-bycatch-risk areas of the Charleston Bump and East Florida Coast spatial management areas.

Additionally, in May 2024, NMFS announced the availability of a scoping document (89 FR 36763) to consider potential changes to the gear regulations in HMS. While management measures implemented since 1999 have helped achieve fishery management and conservation goals, the combination of over two decades of gear-specific measures may have had unanticipated consequences. Changes in species distribution, fishing gears, fishing techniques, market conditions, and fishing interests warrant a reexamination of some gear-specific management measures to see if they are still meeting applicable goals. NMFS is currently considering the public comments received and developing the proposed rule.

After considering these impacts and reasonably foreseeable effects, NMFS has determined, pending public comment, that the action does not have a reasonably foreseeable significant effect on the quality of the human environment and therefore an EA is the appropriate level of environmental review for this action.

4.5 List of Agencies and Persons Consulted

This draft document was developed with input from many people including NMFS staff, NMFS contractors, the public, constituent groups, and the HMS Advisory Panel. More information including a list of the specific NMFS staff and contractors responsible for drafting this document is included in Chapter 8.

4.6 Draft Certification of Page Limit

NMFS has considered the factors mandated by NEPA and, pending public comment, this draft EA represents NMFS' good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits. This prioritization reflects NMFS' expert judgment and any considerations addressed briefly or left unaddressed were, in NMFS' judgment, comparatively not of a substantive nature that meaningfully informed the consideration of environmental effects and the resulting decision on how to proceed.

4.7 Draft Certification of Deadline

This draft EA represents NMFS' good-faith effort to fulfill NEPA's requirements within the congressionally mandated timeline. Once this EA is finalized, this effort will be substantially complete. At that time, NMFS will have thoroughly considered the factors mandated by NEPA and in NMFS' judgment, the analysis contained in the, at that time, final EA will be adequate to inform and reasonably explain NOAA's decision regarding this proposed activity.

5 Regulatory Impact Review

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

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

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

E.O. 12866 further requires the Office of Management and Budget to review proposed regulations that are considered to be "significant." A significant regulatory action is one that is likely to:

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

5.1 Description of the Management Objectives

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

5.2 Description of the Fishery

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

5.3 Statement of the Problem

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

5.4 Description of Each Alternative

Please see Chapter 2 for a summary of each alternative and Chapter 4 for a complete description of each alternative and its expected ecological, social, and economic impacts.

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

Table 5.1 summarizes the net economic benefits and costs of each of the alternatives analyzed in this EA. Additional details and more complete analyses are provided in Chapter 4.

5.6 Conclusion

As noted above, under E.O. 12866, a regulation is a "significant regulatory action" if it is likely to: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the procedures established to implement section 6 of E.O. 12866, the Office of Management and Budget has determined that this action is not significant. A summary of the expected net economic benefits and costs of each alternative, which are based on supporting text in Chapter 4, can be found in Table 5.1.

Table 5.1 Net economic benefits and costs of alternatives.

Alternative	Economic Benefits	Economic Costs
Alternative 1: Keep the current regulations for pelagic and demersal indicator species and the pelagic and demersal indicator species lists. – No Action	This alternative may have neutral economic benefits since fishing rates and effort are not expected to change from current levels.	This alternative may have neutral economic costs since fishing rates and effort are not expected to change from current levels. However, this alternative may result in missed economic opportunities for pelagic and bottom longline fishermen because their ability to switch gears in HMS gear restricted areas could continue to be negatively impacted as the five-percent weight threshold would still be in effect.
Alternative 2: Update the pelagic and demersal indicator species lists and keep the current regulations for the pelagic and demersal indicator species.	This alternative may have neutral economic benefits since fishing rates and effort are not expected to change from current levels.	This alternative may have neutral economic costs since fishing rates and effort are not expected to change from current levels. However, this alternative may result in missed economic opportunities for pelagic and bottom longline fishermen because their ability to switch gears in HMS gear restricted areas could continue to be negatively impacted as the five-percent weight threshold would still be in effect.
Alternative 3: Remove the regulations for pelagic and demersal indicator species and pelagic and demersal indicator species lists. - *Preferred Alternative*	This alternative may have neutral economic benefits since fishing rates and effort are not expected to change from current levels. However, this alternative may have minor economic benefits because HMS pelagic and bottom longline operators may have expanded flexibility to use other gear types to land HMS and non-HMS pelagic and demersal species.	This alternative may have neutral economic costs since fishing rates and effort are not expected to change from current levels.

6 Initial Regulatory Flexibility Act

This IRFA is conducted to comply with the RFA (5 U.S.C. 601 *et seq*.). The goal of the RFA is to minimize the economic burden of federal regulations on small entities. To that end, the RFA directs Federal agencies to assess whether a proposed regulation is likely to result in significant economic impacts to a substantial number of small entities, and identify and analyze any significant alternatives to the proposed rule that accomplish the objectives of applicable statutes and minimize any significant effects on small entities.

6.1 Description of the Reasons Why Action is Being Considered

Per section 603(b)(1) of the RFA, the purpose of this proposed rulemaking is to increase fishing flexibility, remove regulatory inefficiencies, and optimize the ability of pelagic and bottom longline fisheries to harvest available quotas to the extent practicable while still achieving fishery management and conservation goals in the HMS pelagic and bottom longline fisheries. Please see Chapter 1 for a full description of the reasons why this action is being considered.

6.2 Statement of the Objectives of, and Legal Basis for, the Proposed Rule

Section 603(b)(2) of the RFA requires agencies to state the objective of, and legal basis for the proposed action. Please see Chapter 1 for a full description of the objectives of, and legal basis for this action.

6.3 Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

Section 603(b)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with the SBA Office of Advocacy and an opportunity for public comment (see 13 CFR § 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the Federal Register, which NMFS did on December 29, 2015 (80 FR 81194). In that final rule, effective on July 1, 2016, NMFS established a small business size standard of $11 million in annual gross receipts for all businesses in the commercial fishing industry (North American Industry Classification System (NAICS) code 11411)) for RFA compliance purposes. NMFS completed a review of the small business size standard on November 24, 2025 (90 FR 52917) that resulted in maintaining the existing size standard. NMFS considers all HMS permit holders to be small entities because they had average annual receipts of less than $11 million for commercial fishing.

As discussed in Chapter 3, the proposed rule would apply to the permit holders of 164 Swordfish Directed, 63 Swordfish Incidental, 188 Shark Directed, 221 Shark Incidental, and 223 Atlantic Tunas Longline category limited access permits. NMFS considers all commercial HMS permit holders to be small entities because they have average annual receipts of less than their sector's standard of $11 million. NMFS has determined that the proposed rule would not likely affect any

small governmental jurisdictions. More information regarding the description of the fisheries affected, and the categories and number of permit holders can be found in HMS SAFE Report.

6.4 Description of the Projected Reporting, Record-Keeping, and other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities which will be Subject to the Requirements of the Report or Record

Section 603(b)(4) of the RFA requires agencies to describe any new reporting, record-keeping and other compliance requirements. The action does not contain any new collection of information, reporting, or record-keeping requirements.

6.5 Identification of all Relevant Federal Rules which may Duplicate, Overlap, or Conflict with the Proposed Rule

Under section 603(b)(5) of the RFA, agencies must identify, to the extent practicable, relevant federal rules which duplicate, overlap, or conflict with the proposed action. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other fishery management measures. These include, but are not limited to, the Magnuson-Stevens Act, ATCA, the High Seas Fishing Compliance Act, MMPA, ESA, NEPA, the Paperwork Reduction Act, and the CZMA. This proposed action has been determined not to duplicate, overlap, or conflict with any federal rules.

6.6 Description of any Significant Alternatives to the Proposed Rule that Accomplish the Stated Objectives of Applicable Statutes and that Minimize any Significant Economic Impact of the Proposed Rule on Small Entities

One of the requirements of an IRFA is to describe any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. The analysis shall discuss significant alternatives such as: 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, or any part thereof, for small entities. These categories of alternatives are described at 5 U.S.C. § 603(c)(1)-(4). NMFS examined each of these categories of alternatives. Regarding the first, second, and fourth categories, NMFS cannot establish differing compliance or reporting requirements for small entities or exempt small entities from coverage of the rule or parts of it because all of the businesses impacted by this rule are considered small entities and thus the requirements are already designed for small entities. 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. As described below, NMFS analyzed several different alternatives in this proposed rulemaking, and provides rationales for identifying the preferred alternative to achieve the desired objectives. The alternatives considered and analyzed are described below. The IRFA assumes that each vessel will have similar catch and gross revenues to show the relative impact of the proposed action on vessels.

Under Alternative 1, the No Action alternative, NMFS would maintain the current regulations at 50 CFR 635.21(c)(1)(i) and 635.21(d)(2). As part of this alternative, NMFS would also keep the

lists of pelagic and demersal indicator species (Tables 2 and 3 to Appendix A to 50 CFR part 635). Under this alternative, NMFS would continue to differentiate between vessels using pelagic and bottom longline gear based upon the percentages of pelagic and demersal indicator species catch onboard or landed. Maintaining the status quo would continue to restrict the ability of pelagic and bottom longline fishermen to switch gears in gear restricted areas to possibly fish for non-HMS, thus resulting in a missed opportunity to earn revenue from their non-HMS catch. Furthermore, this alternative would likely not change fishing rates and efforts by pelagic and bottom longline fishermen from current levels. Thus, Alternative 1 would likely result in neutral to minor adverse economic impacts on small entities participating in HMS pelagic and bottom longline fisheries.

Under Alternative 2, NMFS would update the lists of pelagic and demersal indicator species (Tables 2 and 3 of Appendix A to 50 CFR part 635). As part of this alternative, NMFS would also maintain the current regulations at 50 CFR 635.21(c)(1)(i) and (d)(2) implementing a five-percent weight limit on possessing or landing pelagic and demersal indicator species. Under this alternative, NMFS would update the pelagic and demersal indicator species lists based on several factors including, but not limited to, determination of the primary species landed in pelagic and bottom longline fisheries, consideration of HMS that are prohibited or have no retention or limited retention, or consideration of species that are prohibited or have no retention in areas under the relevant fishery management councils. This alternative would continue to restrict the ability of pelagic and bottom longline fishermen to switch gears in gear restricted areas to possibly fish for non-HMS, thus resulting in a missed opportunity to earn revenue from their non-HMS catch. Furthermore, this alternative would likely not change fishing rates and efforts by pelagic and bottom longline fishermen from current levels. Thus, Alternative 2 would likely result in neutral to minor adverse economic impacts on small entities participating in HMS pelagic and bottom longline fisheries.

Under preferred Alternative 3, NMFS would remove the current regulations at 50 CFR 635.21(c)(1)(i) and (d)(2) implementing a five-percent weight limit on the allowable amount of indicator species that pelagic longline and bottom longline vessels may possess or land when fishing in pelagic and bottom longline gear restricted areas. NMFS would also remove the pelagic and demersal indicator species lists (Tables 2 and 3 of Appendix A to 50 CFR part 635). The goal of this action is to increase fishing flexibility, remove regulatory inefficiencies, and optimize the ability of pelagic and bottom longline fisheries to harvest available quotas to the extent practicable while still achieving fishery management and conservation goals in the HMS pelagic and bottom longline fisheries. Under this alternative, HMS pelagic and bottom longline fishermen would have more fishing flexibility that may allow for additional HMS and non-HMS landings. HMS pelagic and bottom longline fishermen who hold permits for HMS and Council-managed species at the same time will be able to land the allowable amount of pelagic and demersal species under those permits without the restrictive five-percent weight limit. Increased flexibility would allow HMS pelagic and bottom longline fishermen the opportunity to use fishing gears (i.e., bandit gear) authorized under regulations for Council-managed species in the same way as fishermen that hold only permits for Council-managed species. Nothing that HMS fishermen cannot retain bluefin tuna with a gear type onboard the vessel that is not authorized for bluefin tuna retention under an Atlantic Tunas Longline category permit. This alternative may allow for additional opportunities to harvest available quotas for both HMS and non-HMS (e.g., grouper, snapper, tilefish) and thus generate some additional revenue on HMS trips. Thus,

NMFS believes Alternative 3 would likely result in neutral or minor beneficial economic impacts on small entities participating in HMS pelagic and bottom longline fisheries.

7 Applicable Laws

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

7.1 The Magnuson-Stevens Act: The National Standards

Section 301(a) of the Magnuson-Stevens Act notes that any fishery management plan prepared and any regulation promulgated to implement any such plan needs to be consistent with 10 National Standards (NSs) (see 16 U.S.C. 1851(a)). As described below, the analyses in this document are consistent with those NSs and the NS Guidelines (see 50 CFR Part 600, Subpart D for National Standard Guidelines), subject to further consideration after public comment

NS1 requires NMFS to prevent overfishing while achieving, on a continuing basis, optimum yield from each fishery for the U.S. fishing industry. The preferred alternative in this document is consistent with NS1 as it would build upon current management efforts to rebuild, manage, and conserve target species in accordance with Magnuson-Stevens Act requirements and the NS1 guidelines. The preferred alternative is not expected to have significant impacts on the allowable level of fishing pressure, catch rates, or distribution of fishing effort. The preferred alternative aims to increase fishing flexibility, remove regulatory inefficiencies, and optimize the ability of pelagic and bottom longline fisheries to harvest available quotas to the extent practicable while still achieving fishery management and conservation goals in the HMS pelagic and bottom longline fisheries.

NS2 requires that conservation and management measures be based on the best scientific information available. The preferred alternative in this document is consistent with NS2. The preferred alternative considers the relevant HMS stock status information, and data used for the analysis in this document consist of up-to-date data sources including logbooks from the last several years. Taken together, this information constitutes the best scientific information available and serves as the basis for the preferred alternative.

NS3 requires that, to the extent practicable, an individual stock of fish be managed as a unit throughout its range and interrelated stocks of fish be managed as a unit or in close coordination. The preferred alternative in this document is consistent with NS3. The preferred alternative in this action reflects management of HMS stocks, throughout their range in the U.S. Atlantic EEZ. The fact that the ranges of HMS stocks extend beyond the U.S. EEZ is reflected in the development, implementation, and enforcement of conservation and management measures with ICCAT Contracting Parties throughout the Atlantic Ocean and the adjacent seas.

NS4 requires that conservation and management measures do not discriminate between residents of different states. Furthermore, if it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation should be fair and equitable to all fishermen; be reasonably calculated to promote conservation; and should be carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. The preferred alternative in this document is consistent with NS4. The preferred alternative would apply to all limited access permit holders that use pelagic or bottom longline

gear across the entire U.S. Atlantic EEZ. The preferred alternative does not allocate or assign fishing privileges among various fishermen.

NS5 requires that conservation and management measures should, where practicable, consider efficiency in the utilization of fishery resources, with the exception that no such measure shall have economic allocation as its sole purpose. The preferred alternative in this document is consistent with NS5. The preferred alternative was analyzed for changes in the efficiency of utilization of the fishery resource. The goal of this proposed rule is to increase fishing flexibility, remove regulatory inefficiencies, and optimize the ability of pelagic and bottom longline fisheries to harvest available quotas to the extent practicable while still achieving fishery management and conservation goals in the HMS pelagic and bottom longline fisheries. This action is expected to increase efficiency in the utilization of fishery resources. As demonstrated in the EA, the preferred alternative does not focus solely on economic allocation, but is expected to have neutral to minor beneficial economic impacts.

NS6 states that conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. The preferred alternative in this document is consistent with NS6. HMS quotas would be distributed and managed consistent with existing conservation and management measures, which appropriately considered variations among, and contingencies in, fisheries, fishery resources, and catches throughout the rulemaking process that adopted those measures.

NS7 states that conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. The preferred alternative in this document is consistent with NS7. The preferred alternative was chosen, in part, to minimize costs while maximizing flexibility in the HMS pelagic and bottom longline fisheries. The economic impacts section of the EA provides detailed analyses of the costs associated with each alternative. The preferred alternative was also structured to avoid unnecessary duplication by taking into account existing requirements and measures on the relevant fisheries.

NS8 states that conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts on such communities. The preferred alternative in this document is consistent with NS8. The social and economic impacts of the preferred alternative on fishing communities are expected to be neutral to minor beneficial (as described in Chapters 4, 6, and 7).

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

NS10 states that conservation and management measures shall, to the extent practicable, promote the safety of human life at sea. The preferred alternative in this document is consistent with NS10. No impact to safety of life at sea is anticipated to result from the preferred alternative. The

preferred alternative would not result in fishermen having to travel greater distances, fish in bad weather, or otherwise fish in an unsafe manner. To the extent that the preferred alternative increases flexibilities and additional fishing opportunities, the preferred alternative may provide minor improvements for the safety of human life at sea as fishermen would not need to travel greater distances to fish offshore outside the gear restricted areas and instead could switch gear and fish nearshore. That said, overall, fishing effort and practices are unlikely to change significantly as a result of the preferred alternative.

7.2 Magnuson-Stevens Act: Essential Fish Habitat

Pursuant to section 303(a)(7) of the Magnuson-Stevens Act (16 U.S.C. 1853(a)(7)), and as implemented at 50 CFR § 600.815, the Magnuson-Stevens Act requires NMFS to identify and describe EFH for each life stage of managed species and to evaluate the potential adverse effects of fishing activities on EFH, including the cumulative effects of multiple fisheries activities. If NMFS determines that fishing gears are having an adverse effect on HMS EFH, or other species' EFH, then NMFS must include management measures that minimize adverse effects to the extent practicable.

NMFS originally described and identified EFH and related EFH regulatory elements for all HMS in the management unit in the 1999 FMP. Since then, NMFS has reviewed available data and modified HMS EFH numerous times. Specific to the actions in this document, in the HMS FMP and Amendment 1 to the HMS FMP (finalized in 2009), NMFS reviewed the various HMS gear types to determine whether those gear types had the potential to affect EFH. Based on the best scientific information available at that time, NMFS determined that there was no evidence that physical effects caused by any authorized HMS gears were affecting EFH for targeted or non-targeted species, to the extent that physical effects can be identified on the habitat or the fisheries. In 2015, NMFS completed an HMS EFH 5-year review to investigate additional effects of HMS fishing gears on HMS EFH since Amendment 1. NMFS did not find any significant changes in effects to HMS EFH from HMS and non-HMS fishing gear types and no new information that any authorized HMS gear would have adverse effects on EFH. Based on findings from the 2015 HMS EFH 5-year review, updates were made to HMS EFH in Amendment 10 (82 FR 42329, September 7, 2017).

NMFS recently completed an HMS EFH 5-year review (89 FR 27716, April 18, 2024) to gather all new information and determine whether modifications to existing EFH descriptions and designations are warranted. The information used in the 5-year review did not indicate that any gears authorized in HMS fisheries would have an adverse effect on EFH.

The preferred alternative in this action is not expected to change the fishing gear types authorized relative to the status quo. Therefore, the preferred alternative in the context of the fishery as a whole would not have an adverse effect on EFH and an EFH consultation is not required.

7.3 Magnuson-Stevens Act: Cumulative Impacts and Mitigation

Section 303(a)(9) of the Magnuson-Stevens Act requires that FMPs and FMP amendments include a fishery impact statement that analyzes the likely cumulative impacts of conservation and management measures and possible mitigation measures. While this rulemaking is not an

FMP or FMP amendment, providing this information can provide a more full understanding of the possible effects of the rulemaking.

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

Overall, the preferred alternative and all other alternatives in this EA would have neutral ecological impacts on species caught in the HMS pelagic and bottom longline fisheries. The target species for the pelagic and bottom longline fisheries are quota-managed and the overall TACs or U.S. quotas for swordfish, yellowfin tuna, bigeye tuna (species targeted in the pelagic longline fishery), and sharks (species targeted in the bottom longline fishery) are based on the best scientific information available, are consistent with ICCAT recommendations, and would not change under this action. Furthermore, the preferred alternative may also allow for some additional opportunities for the commercial harvest of non-HMS (e.g., grouper, snapper, tilefish). These species are also quota-managed and their respective commercial quotas would not change or be exceeded under this action.

The preferred alternative (Alternative 3) would likely have neutral to minor beneficial social and economic impacts for HMS pelagic and bottom longline fishermen. Preferred Alternative 3 would increase fishing flexibilities and likely allow for some additional fishing opportunities for the HMS pelagic and bottom longline fishermen. Furthermore, elimination of the pelagic and demersal indicator species regulations removes regulatory differences between fishermen using the same gears within the same area.

The other alternatives considered in this EA would have neutral to minor adverse social and economic impacts for HMS pelagic and bottom longline fishermen. Both the status quo and Alternative 2 would continue to maintain pelagic and demersal indicator species regulations that may be outdated, difficult to enforce, and no longer necessary to determine the gear types being used by either pelagic or bottom longline fishing vessels in HMS gear restricted areas. Both of these alternatives could contribute to inequitable fishing opportunities for HMS pelagic and bottom longline fishermen who hold permits for both HMS and Council-managed fisheries. Although Alternative 2 would update the pelagic and demersal indicator species lists, the current five-percent weight limit would continue to be in effect thus limiting the flexibility of pelagic and bottom longline fishermen.

Mitigation is an important mechanism that federal agencies can use to minimize, prevent, or eliminate damage to the human and natural environments associated with their actions. Mitigation efforts may include one or more of the following: avoiding the impact by not taking a certain action or parts of an action; minimizing impacts by limiting the degree or magnitude of the action and its implementation; rectifying the impact by repairing, rehabilitating, or restoring

the affected environment; reducing or eliminating the impact over time through preservation and maintenance operations during the life of the action; and compensating for the impact by replacing or providing substitute resources or environments. If needed, NMFS may consider mitigation, provided that the mitigation efforts do not circumvent the goals and objectives of the rulemaking or the mandate to rebuild fisheries under the Magnuson-Stevens Act. None of the alternatives, preferred or not, would damage the human or natural environments.

NMFS expects some changes in current fishing practices as HMS pelagic and bottom longline fishermen would have more flexibility to use fishing gears authorized under regulations for Council-managed species in gear restricted areas which may result in some additional fishing opportunities for HMS commercial longline fishermen to catch additional non-HMS while fishing with appropriate gear. These increases are expected to be small in scale and would impact a handful of vessels fishing in the gear restricted areas. Further, vessels would deploy gear that has already been analyzed and authorized for use in those areas under the HMS and Council FMPs. Additionally, the regulations regarding HMS gear restricted areas would still be in effect (i.e., pelagic longline vessels are prohibited from fishing in pelagic longline gear restricted areas and bottom longline vessels are prohibited from fishing in bottom longline gear restricted areas) and HMS pelagic and bottom longline vessels would continue to be monitored via the use of VMS. The target species for the pelagic and bottom longline fisheries are quota-managed and the overall TACs or U.S. quotas for swordfish, yellowfin tuna, bigeye tuna (species targeted in the pelagic longline fishery), and sharks (species targeted in the bottom longline fishery) are based on the best scientific information available, are consistent with binding ICCAT recommendations, and would not change under this action. Furthermore, catch of non-HMS (e.g., grouper, snapper, tilefish) are also quota-managed and their respective commercial quotas would not change or be exceeded under this action. Although species would no longer be listed on the pelagic and demersal species lists in the HMS regulations, these species continue to be listed and managed under the respective HMS and Council regulations and FMPs. For example, HMS are described at 50 CFR 635.1, 635.2, and Table 1 of Appendix A to part 635. Thus, the preferred alternative would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or substantially alter current fishing practices or bycatch mortality rates.

7.4 Protected Species

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

result in the destruction or adverse modification of critical habitat, NMFS specifies Reasonable and Prudent Measures and Terms and Conditions to mitigate the effects of the action and authorizes any allowable "incidental take" of the species.

In May 2020, NMFS issued a Biological Opinion for all Atlantic HMS fisheries except the pelagic longline fishery and a Biological Opinion for the Atlantic HMS pelagic longline fishery, which both state that the continued operation of HMS fisheries is not likely to jeopardize the continued existence of ESA-listed species including sea turtles, sawfish, Atlantic sturgeon, scalloped hammerhead shark (Central and Southwest Atlantic Distinct Population Segment), oceanic whitetip shark, and giant manta ray. NMFS has implemented the Reasonable and Prudent Measures and Terms and Conditions of the two 2020 Biological Opinions. In July 2022, the HMS Management Division requested reinitiation of consultation on the effects of the Atlantic HMS pelagic longline fishery. Reinitiation of consultation on the pelagic longline fishery was requested due to new information on mortality of giant manta rays. During the reinitiated formal consultation, NMFS continues the operation of the HMS fisheries under the 2020 Biological Opinion, including continued implementation of the Reasonable and Prudent Measures and Terms and Conditions to minimize the amount or extent of incidental take until the issuance of an amendment to the 2020 Biological Opinion, or a new Biological Opinion. This proposed action is not anticipated to affect the above-referenced ESA-listed species in any way not previously analyzed for existing regulations, including the provision for exempted fishing activities, and there is no new information that would alter this conclusion.

The MMPA established a national policy to prevent marine mammal species and population stocks from declining beyond the point where they ceased to be significant functioning elements of the ecosystems of which they are a part. The MMPA prohibits, with certain exceptions, the "take" of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the United States. The Atlantic Ocean, Caribbean, and Gulf of America pelagic longline fisheries are classified as a Category I fishery, which means it has a frequent likelihood of seriously injuring or killing marine mammals. The HMS bottom longline is listed as a Category III fishery, which means it has a remote likelihood of seriously injuring or killing marine mammals. Owners of vessels or gear engaging in a Category I or II fishery are required under MMPA to register with NMFS and accommodate an observer aboard their vessels if requested. Commercial vessel owners or operators, or fishermen, in Category I or III fisheries must report all incidental mortalities and injuries of marine mammals during the course of commercial fishing operations to NMFS. Although the pelagic longline fishery is considered a Category I fishery, with the high likelihood of serious injury or mortality to marine mammals, this action is not likely to produce additional adverse impacts to marine mammals that were not analyzed in the HMS FMP or its amendments and existing regulations.

Under Section 118 of MMPA, the Pelagic Longline Take Reduction Team (PLTRT) is charged with developing recommendations to reduce bycatch of pilot whales in the Atlantic pelagic longline fishery. NMFS considered these recommendations and developed a take reduction plan (74 FR 23349, May 19, 2009) that became effective June 18, 2009.

NMFS reconvened the Team in 2015 and 2016 to develop additional take reduction recommendations and meet the MMPA goal. On December 15, 2020, NMFS published a proposed rule to amend the regulations for the PLTRP under the Marine Mammal Protection Act

based on consensus recommendations by the PLTRT, which is a multi-stakeholder group comprised of representatives from the fishing industry, academia, and non-governmental organizations (85 FR 81168). The purpose of the proposed rule is to reduce mortalities and serious injuries of short-finned pilot whales incidental to Atlantic portion of the Atlantic pelagic longline fishery. On June 6, 2023, NMFS published a final rule to amend the regulations for the PLTRP (88 FR 36965). The final rule removed the Cape Hatteras Special Research Area, modified the mainline length requirements for the EEZ portion of the Mid-Atlantic Bight, and implemented terminal gear (hook and gangion) requirements in order to make the hooks the weakest part of the terminal gear (so that the hooks straighten before the gangion breaks) in portions of the U.S. Atlantic EEZ. More information is available on the PLTRT website.

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

The preferred alternative considered in this action (Alternative 3) is likely to have neutral effects on protected resources, including sea turtles, sharks listed under the ESA, or marine mammals protected by the MMPA. The purpose of the preferred alternative is to increase fishing flexibility, remove regulatory inefficiencies, and optimize the ability of pelagic and bottom longline fisheries to harvest available quotas to the extent practicable while still achieving fishery management and conservation goals in the HMS pelagic and bottom longline fisheries. The gear types affected by this action are pelagic and bottom longline. Although the preferred alternative considered in this action would increase opportunities to land HMS and non-HMS, we do not expect an increase in effort or gear modifications that would increase interactions with protected resources such as sea turtles, sharks listed under the ESA or marine mammals protected by the MMPA. If an individual of one of these species were to be captured or hooked, it would be quickly removed and released since each of these gears is actively tended. Because these gears would continue to be actively tended, each of the alternatives would have neutral direct and indirect impacts in the short and long term on protected resources.

The No Action alternative considered (Alternative 1) would not implement any new management measures. As a result, no reduction of fishing pressure or related mortality for these species, and no reduction of pressure on other protected resources would be expected from the status quo. No modifications with respect to authorized fishing gear would be made under Alternative 2, and therefore no changes in impacts to protected resources from the status quo would be expected. Under the Alternatives 1 and 2, incidentally caught individuals would be quickly removed and released since each of the authorized gears is actively tended. Because these gears would continue to be actively tended, the non-preferred alternatives would be expected to have neutral direct and indirect impacts in the short- and long-term on protected resources.

7.5 Coastal Zone Management Act

The CZMA (1972; reauthorized in 1996) requires that federal actions be consistent, to the extent practicable, with the enforceable policies of all state coastal zone management programs. This action explores alternatives that would consider modifying or removing the pelagic and demersal indicator species regulations and associated pelagic and demersal indicator species lists. The goal of this proposed rule is to increase fishing flexibility, remove regulatory inefficiencies, and optimize the ability of pelagic and bottom longline fisheries to harvest available quotas to the extent practicable. NMFS finds the alternatives analyzed in this action to be consistent to the maximum extent practicable with the enforceable policies of states that have approved coastal zone management programs. NMFS is seeking concurrence with respect to the preferred alternative and will ask for states' agreement with this determination during the proposed rule stage.

7.6 Paperwork Reduction Act

This action contains no new collection-of-information requirements subject to the Paperwork Reduction Act.

8 List of Agencies and Persons Consulted

This document of this rulemaking involved input from many people including NMFS staff, NMFS contractors, the public, constituent groups, and the HMS Advisory Panel. Staff and contractors from the HMS Management Division, in alphabetical who worked on this document include:

- Heather Baertlein, Data Management Specialist
- Randy Blankinship, Division Chief
- Karyl Brewster-Geisz, Branch Chief
- Sarah McLaughlin, Management and Program Analyst
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The development of this document also involved considerable input from other staff members and Offices throughout NOAA including, but not limited to, the Office of the General Counsel, Southeast Fisheries Science Center, and Northeast Fisheries Science Center.

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9 References

Helies, F. C., and J. L. Jamison. 2013. Continuation of Catch Characterization and Discards within the Snapper-Grouper Vertical Hook-and-Line Fishery of the South Atlantic United States. GSAFFI #113 (250082/0). Available at https://sedarweb.org/documents/sedar-68-rd38-a-continuation-of-catch-characterization-and-discards-within-the-snapper-grouper-vertical-hook-and-line-fishery/ [accessed on 7 April 2025].

NMFS. 2006. Final 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan, NMFS, HMS Management Division. National Marine Fisheries Service, Office of Sustainable Fisheries, Highly Migratory Species Management Division, Silver Spring, MD. Public Document. Available at https://www.fisheries.noaa.gov/management-plan/consolidated-atlantic-highly-migratory-species-management-plan [accessed on June 16 2025].

NMFS. 2023. Stock Assessment and Fishery Evaluation (SAFE) Report for Atlantic Highly Migratory Species, 2015. Silver Spring MD: U.S. Department of Commerce, National Marine Fisheries Service. Public Document. Available at https://www.fisheries.noaa.gov/resource/document/2023-stock-assessment-and-fishery-evaluation-report-atlantic-highly-migratory [accessed on June 16 2025].