limited access permit as specified in Amendment 5. In this case, some fishermen did not realize they needed both the open access permit and the limited access endorsement.

In total, 73 vessels will or have been eliminated from the rock shrimp fishery under current regulations due to not meeting the 15,000–pound requirement, the renewal period, or both. Thus 47 percent of the 155 endorsements originally issued may be eliminated if no changes are made to the current requirements and even more could be eliminated in the future for the same reasons.

In the Gulf of Mexico shrimp fishery, participants are selected each year to provide economic data to NMFS. Similar data for the South Atlantic shrimp fishery would allow NMFS to conduct analyses required by the Magnuson-Stevens Act and other applicable law. These data would also allow the Council to fully understand how proposed management measures would impact shrimp fishermen and dealers.

Amendment 7 proposes to rename the commercial vessel permit and the limited access endorsement; remove the requirement for a minimum level of landings for the renewal of a limited access endorsement; allow the reissue of a limited access endorsement that had been terminated because of failure to meet that minimum level; allow the reissue of an endorsement that had been terminated because of failure to renew it in a timely manner; and require the submission of economic data by participants in the fishery if selected.

The Council has submitted Amendment 7 for Secretarial review, approval, and implementation. NMFS' decision to approve, partially approve, or disapprove Amendment 7 will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability. After consideration of these factors, and consistency with the Magnuson-Stevens Act and other applicable laws, NMFS will publish a notice of agency action in the **Federal Register** announcing the Agency's decision to approve, partially approve, or disapprove Amendment 7, and the associated rationale.

Consideration of Public Comments

Public comments received by 5 p.m. eastern time, on July 31, 2009, will be considered by NMFS in the approval/disapproval decision regarding Amendment 7.

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

Dated: May 26, 2009

Kristen C. Koch,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–12640 Filed 5–29–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–XN22

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Bottom Longline Petition

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

ACTION: Denial of a petition for emergency rulemaking.

SUMMARY: NMFS announces its decision to deny a petition for emergency or interim rulemaking under the Administrative Procedure Act (APA) and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Several non-governmental organizations (NGOs) petitioned the U.S. Department of Commerce to immediately promulgate an emergency or interim rule under the Magnuson-Stevens Act to address loggerhead sea turtle interactions in the bottom longline component of the commercial reef fish fishery in the Gulf of Mexico (Gulf). NMFS finds the emergency rulemaking is not warranted because of an emergency rule promulgated independently at the request of Gulf of Mexico Fishery Management Council (Council), which satisfies the legal mandates of the Magnuson-Stevens Act and Endangered Species Act (ESA) for protecting hardshell sea turtles.

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone 727–824–5305, fax 727–824–5308, e-mail *Peter.Hood@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS published a notice of receipt of petition for rulemaking on February 25, 2009 (74 FR 8494), and invited public comments for 30 days ending March 27, 2009. Summaries of and responses to comments are provided in the Response to Public Comments section below.

The Petitions

Oceana has petitioned the Council and NMFS to implement emergency regulations for the bottom longline component of the Gulf reef fish fishery to reduce the high levels of loggerhead sea turtle bycatch in the fishery and to implement appropriate long-term actions, through an amendment to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP), to ensure adequate protection for the loggerhead sea turtle populations. The Oceana petition specifically requests NMFS prohibit the use of reef fish bottom longline gear in waters shallower than 55 fathoms (100m) in the Gulf to protect loggerhead sea turtles within the depths where all observed takes have occurred, and that NMFS prohibit the use of squid as bait when fishing with reef fish bottom longlines in waters deeper than 55 fathoms (100m) to further reduce the possibility of takes.

Another petition from the Center for Biological Diversity, Defenders of Wildlife, Earthjustice, Caribbean Conservation Corporation, Gulf Restoration Network, and Turtle Island Restoration Network alleges NMFS has violated the ESA by allowing the bottom longline component of the reef fish fishery to continue to operate, given evidence it has exceeded its take based on the incidental take statement (ITS) from a 2005 biological opinion (opinion). This petition requests that NMFS close the bottom longline component of the Gulf reef fish fishery immediately until NMFS has put in place sufficient measures to protect loggerhead sea turtles consistent with the guidelines of the ESA.

According to the petitions filed by the NGOs, the reasons sea turtle bycatch by reef fish bottom longlines requires emergency action are: (1) A NMFS report released in 2008 suggests hardshell sea turtle take has exceeded that allowed by the ITS from a 2005 opinion. The opinion concluded continued authorization of the Gulf reef fish fishery managed under the FMP was not likely to jeopardize the continued existence of sea turtles and smalltooth sawfish. An ITS was issued with the opinion specifying anticipated sea turtle and smalltooth sawfish take on a 3-year basis. For hardshell sea turtles, the anticipated 3-year incidental take for the bottom longline component of the Gulf reef fish fishery was 113 takes, of which 56 would be lethal. The 2008 NMFS report using observer data estimated the level of take during an 18-month period was between 411 and 1,983 hardshell sea turtles, primarily comprised of loggerhead sea turtles. This number has been revised in a 2009 NMFS report using 2008 observer data to between 463 and 2,020 hardshell sea

turtles for the 30-month time period. (2) Information from the Florida Fish and Wildlife Conservation Commission shows declining trends in the number of nesting loggerhead sea turtles on Florida beaches. Loggerhead sea turtle nesting at Florida index nesting beaches has declined 40 percent between 1989 and 2008. These declines have been interpreted as a possible decline in the sub-adult and adult population. (3) By not taking action, NMFS is in violation of the ESA. Specifically, the petitioners allege NMFS cannot ensure against jeopardy by continuing to authorize Gulf reef fish bottom longline fishing without having assessed the impacts of excessive take by the fishery in violation of ESA section 7(a)(2). They also allege that by allowing the fishery to continue, NMFS is allowing loggerhead sea turtle take to continue in violation of ESA sections 7(d) and 9.

Response to Assertions and Proposed Management Measures Set Forth in the Petition

NMFS agrees with the NGOs' assertion that estimated hardshell sea turtle, in particular loggerhead sea turtle take, has exceeded the level prescribed in the 2005 biological opinion. As a result, management action was needed to provide protection for threatened loggerhead sea turtles in compliance with the ESA and to reduce sea turtle bycatch and bycatch mortality in compliance with national standard 9 (NS 9) of the Magnuson-Stevens Act. NMFS and the Council had already initiated efforts to address the issue prior to receipt of either petition. Thus, NMFS has promulgated an emergency rule at the request of the Council to reduce hardshell sea turtle takes while the Council develops long-term measures in Amendment 31 to the FMP. This emergency rule moves the bottom longline component of the eastern Gulf reef fish fishery seaward of a line approximating the 50–fathom (91–m) depth contour and prohibits the use of longlines in the eastern Gulf once the deepwater grouper and tilefish quotas are met.

In developing the emergency rule, NMFS determined the selected measures were sufficient to meet the legal requirements of the Magnuson-Stevens Act and the ESA. All but one sea turtle observed taken were on sets in waters less than 50 fathoms (91 m) in the eastern Gulf. Restricting bottom longlines to waters greater than 50 fathoms is consistent with regulations in the western Gulf. No sea turtle takes were observed in the western Gulf where reef fish bottom longline gear is restricted to the area seaward of a line approximating 50 fathoms (91 m). Thus, reductions in the potential for interactions between bottom longline gear and sea turtles would be achieved without unduly restricting fishing activity in deeper water where the deepwater grouper and tilefish fisheries are prosecuted. In addition, prohibiting squid as bait was not considered in the emergency rule because it is unclear how much reduction in take would result from such a measure and it is unclear what effect this would have on the bait industry if the Council did not adopt a similar long-term measure in Amendment 31.

Response to Comments

A total of 305 comments were received on the petitions for rulemaking. Of those comments, 232 were in support of the petitions and the remaining comments were against it. One comment in support of the petition was from an NGO that included 49,320 electronic signatories to their letter. Another series of comments in support of the petitions were conducted through a postcard campaign consisting of 220 identical responses. A summary of the comments and NMFS' responses follows.

Comment 1: Several commenters indicated the information used to estimate the level of take by the bottom longline component of the commercial reef fish fishery is highly uncertain. They indicated more research is needed to determine the level of interactions between sea turtles and this gear before action is taken, particularly in light of the adverse economic impacts that would result to the bottom longline component of the fishery if it were closed or moved seaward of 50 fathoms (91 m) in the eastern Gulf. They believed that, in light of the poor national economy, affected fishermen would have a hard time finding alternative fisheries to operate in or other jobs if they were put out of business.

Response: NS 9 of the Magnuson-Stevens Act requires that conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. The bycatch reduction and monitoring requirements in the Magnuson-Stevens Act apply to a broad range of living marine species, including sea turtles. Additionally, the ESA requires that the Federal government protect and conserve species and populations that are endangered or threatened with extinction, and conserve the ecosystems on which these species depend. Section 7 of the ESA requires all Federal agencies to use their authorities to carry out their programs for the conservation of endangered and threatened species and to ensure any action is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of their critical habitat.

Both the Magnuson-Stevens Act and ESA require NMFS to use the best available scientific information. In addition, ESA case law requires that when faced with data uncertainty, decisions should give the benefit of the doubt to the species (i.e., favor protection of the species). With respect to estimating bycatch, a 2004 NMFS national working group on bycatch reviewed regional issues related to fisheries and bycatch and discussed advantages and disadvantages of various methods for estimating bycatch, including fishery-independent surveys, self-reporting through logbooks, port sampling, recreational sampling, at-sea observation (observers and electronic monitoring), and stranding networks. Although all methods may contribute to useful information for estimating bycatch, the national working group concluded at-sea observation (observers or electronic monitoring) provides the best mechanism to obtain reliable and accurate bycatch estimates for many fisheries.

Given the above, the Southeast Fisheries Science Center (SEFSC) used observer data to estimate the number of loggerhead sea turtle takes for comparison with the anticipated takes specified in the 2005 biological opinion's ITS. This estimate constitutes the best scientific information available and must be used to guide the agency's decision. They found the anticipated take level had been exceeded by the bottom longline component of the reef fish fishery, and even the lower bounds of the 95–percent confidence intervals around the take estimates were above the anticipated takes specified in the ITS.

Comment 2: Some comments suggested factors other than bottom longline fishing are responsible for declines in sea turtle populations and that mortality from the fishery was a fraction of the total. These factors included coastal construction, coastal development, beach renourishment, and hurricanes. Therefore, it is unfair to single out the bottom longline component of the reef fish fishery to attain a reduced sea turtle mortality rate.

Response: Although many factors contribute to hardshell sea turtle mortality, NMFS is obligated to address hardshell sea turtle bycatch in the

fishery because of NS 9 of the Magnuson-Stevens Act and section 7 of the ESA (see above). NMFS has exercised this obligation to reduce take in other fisheries, such as the requirement of turtle excluder devices in Gulf and South Atlantic shrimp fisheries and the requirement of turtle release gear on federally permitted vessels in the Gulf reef fish fishery and the highly migratory species pelagic longline fishery. With respect to other hardshell sea turtle takes from other human activities such as coastal construction, coastal development, and beach renourishment, NMFS consults with other action agencies with respect to endangered and threatened species. Under the ESA, all action agencies are required to conserve endangered and threatened species, including hardshell sea turtles.

Comment 3: Higher numbers of loggerhead sea turtle takes should be seen as an indicator that loggerhead sea turtle populations are increasing rather than decreasing.

Response: Past and current estimates of hardshell sea turtle takes have been derived through different methodologies. Take estimates for the 2005 biological opinion were based on catch and effort reported in the Coastal Fisheries Logbook Program and the Supplementary Discard Data Program. However, it is recognized that extrapolated bycatch estimates still may be inaccurate if there is less than complete compliance with the logbook requirement or if reporting significantly misrepresents actual fishing effort. The take estimates reported by the SEFSC from 2006 through 2008 were derived from observer data applied to effort estimates reported from logbook data for the bottom longline component of the reef fish fishery. Observer data are generally thought to be more reliable than self-reported data (see above), and logbooks are noted as more useful in providing estimates of total effort by area and season. Therefore, because the take estimates were derived through different methodologies, this may account for some of the differences in take estimates between studies.

Other information implies loggerhead sea turtle populations may be declining. For the past 20 years, the Florida Fish and Wildlife Conservation Commission coordinated a detailed sea turtle nesting-trend monitoring program, the Index Nesting Beach Survey (INBS). The INBS counts represent approximately 69 percent of known loggerhead sea turtles nesting in Florida. In addition, Florida accounts for approximately 90 percent of loggerhead sea turtle nesting activity within the southeastern United States nesting population, which is considered the world's second largest population. Loggerhead sea turtle nests were counted annually at core index nesting beaches in Florida from 1989 through 2008 on both the Atlantic and Gulf coasts. Counts of nests indicated a declining trend in loggerhead sea turtle nesting. Many scientists have suggested the observed decline in the annual counts of loggerhead sea turtle nests on index and statewide beaches in peninsular Florida can best be explained by a decline in the number of adult female loggerhead sea turtles in the population.

Comment 4: Comments received on banning squid for bait by the bottom longline component of the reef fish fishery were mixed. Some comments indicated the measure to ban squid should be considered in an emergency rule. Others indicated there is little evidence that using baits other than squid will reduce sea turtle takes, and so this measure should not be considered unless new information suggests otherwise.

Response: Studies of loggerhead sea turtles caught by the pelagic longline fishery and in captive laboratory experiments found loggerhead sea turtles preferred dead squid over finfish. Researchers have suggested captive loggerhead sea turtles were more likely to swallow whole squid than finfish because squid has a more flexible and tough muscle texture. Finfish baits were bitten off in smaller pieces and loggerhead sea turtles were able to avoid the hook. Although these studies suggest prohibiting the use of squid or squid parts in the bottom longline component of the reef fish fishery could reduce loggerhead sea turtle interactions with gear, it is unknown by what percentage loggerhead sea turtle hooking incidents would be reduced. Therefore, further research is needed to predict the extent of take reduction from a prohibition of squid for bait for the bottom longline component of the reef fish fishery.

Comment 5: One comment suggested that because the information on interactions between the reef fish bottom longline gear and sea turtles is uncertain, the fishery should be allowed to continue under an exempted fishing permit (EFP)to collect this information. Participants in the fishery would then be allowed to operate as long as they collected data for use in assessing interactions between sea turtles and longline gear.

Response: For this information to be used to examine sea turtle interactions with bottom longline gear, the work would need to be performed within a scientific research program. NMFS and other agencies do sponsor research on fisheries and species listed under the ESA. For example, NMFS' Cooperative Research Program specifically encourages fishermen be included in the data collection process. Should research be funded on the interaction of reef fish bottom longlines with sea turtles and the proposal includes the involvement of commercial reef fish vessels landing their catch, an EFP could be issued to participating vessel(s) subject to the requirements under 50 CFR 600.745.

Comment 6: Some comments indicated if the bottom longline component of the reef fish fishery is to be closed, the closure be for as short of a time period as possible. They pointed out sea turtle takes appear to be highest in the late spring to summer, and suggested a closure be targeted for those seasons.

Response: Immediate reductions in hardshell sea turtle takes are needed to reduce takes by the bottom longline component of the reef fish fishery. NMFS has taken short-term action to reduce this bycatch through an emergency rule. The rule, effective May 18, 2009, expires on October 28, 2009, may be extended for up to another 186 days. During this time, NMFS will be preparing a new biological opinion for the fishery, which will assess the impacts on listed species. NMFS will be monitoring sea turtle take to evaluate the reductions. While the rule is in effect, the Council is developing long-term measures to reduce bottom longline takes by the reef fish fishery. Alternatives being considered by the Council to reduce takes includes season-area closures. The Council will be taking public comment on these measures as it develops Amendment 31. Comments on closures, the timing of closures, and the duration of the closures should be submitted to the Council during appropriate comment periods. Additionally, should the Council approve and submit Amendment 31 for approval by the Secretary of Commerce, NMFS will provide additional opportunities for public comment.

Agency Decision

After considering the assertions and proposed management measures set forth in the petitions and all public comments, NMFS has determined the specific measures requested in the petitions should not be addressed via emergency rulemaking at this time. NMFS agrees that hardshell sea turtle takes need to be reduced and has taken action at the request of the Council to implement an emergency rule to achieve

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

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

Dated: May 26, 2009

Samuel D. Rauch III,

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

[FR Doc. E9–12656 Filed 5–29–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 090508897–9896–01]

RIN 0648–AX85

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. Background

A. Need for Action

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