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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3000

[WO-310-1310-PP-24 1A]

RIN 1004-AE01

Minerals Management: Adjustment of Cost Recovery Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the Bureau of Land Management (BLM) mineral resources regulations to update some fees that cover the BLM's cost of processing certain documents relating to its mineral programs and some filing fees for mineral-related documents. These updates include fees for actions such as lease applications, name changes, corporate mergers, and lease consolidations.

DATES: *Effective date:* This final rule is effective October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Tim Spisak, Chief, Division of Fluid Minerals, 202-452-5061, or Cynthia Ellis, Regulatory Affairs Specialist, (202) 452-5012. Persons who use a telecommunications device for the deaf (TDD) may leave a message for these individuals with the Federal Information Relay Service (FIRS) at 1-800-877-8339, 24 hours a day, 7 days a week.

ADDRESSES: You may send inquiries or suggestions to Director (630), Bureau of Land Management, MS-LS 401, 1849 C Street, NW., Washington, DC 20240; Attention: RIN 1004-AE01.

SUPPLEMENTARY INFORMATION:

Background

The BLM has specific authority to charge fees for processing applications and other documents relating to public lands under Section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. In 2005, the BLM published a final cost recovery rule (70 FR 58854) establishing or revising certain fees and service charges, and establishing the method it would use to adjust those fees and service charges on an annual basis.

At 43 CFR 3000.12(a), the regulations provide that the BLM will annually adjust fees established in Subchapter C according to changes in the Implicit Price Deflator for Gross Domestic Product (IPD-GDP), which is published quarterly by the U.S. Department of Commerce. (See also 43 CFR 3000.10.) Because the fee recalculations are simply based on a mathematical formula, we have changed the fees in a final rule without providing opportunity for notice and comment. This final rule will allow the BLM to update these fees and service charges by October 1 of this year, as required by the 2005 regulation. The public had an opportunity to comment on this procedure during the comment period on the original cost recovery rule, and this new rule simply administers the procedure set forth in those regulations. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(b)(B) and (d)(3) that notice and public comment procedures are unnecessary, and that the rule may be effective less than 30 days after publication.

Discussion of Final Rule

BLM's first fee update rule became effective on October 1, 2007. 72 FR 50882 (Sept. 5, 2007). The fee updates effective each October 1 are based on

the IPD-GDP for the 4th Quarter of the preceding calendar year. See 72 FR 50882. This fee update is based on the IPD-GDP for 4th Quarter 2007, thus reflecting inflation over the four calendar quarters since 4th Quarter 2006.

This rule also includes a minor amendment to BLM's stated method of rounding numbers to arrive at the final fee. The final 2005 and 2007 rules stated that values would be rounded "to the nearest \$5.00." 70 FR 58855; 72 FR 50884. In this rule we adjust for the first time the geothermal nomination fee of \$100 plus \$0.10 per acre nominated.¹ Because rounding the adjusted value for a fee of \$0.10 to the nearest \$5.00 cannot be sensibly implemented, we will round values for fees under \$1.00 to the nearest penny. Pursuant to the Administrative Procedure Act, 5 U.S.C. section 553(b)(B), BLM finds that notice and public comment procedure on this point are unnecessary because this is a minor revision that is consistent with general business practices. Moreover, BLM did not receive any comments on rounding when it proposed to round fees down or up to the nearest \$5.00 in the 2005 proposed rule. 70 FR 41540. The Attorney General's Manual on the APA states that the term "unnecessary" in 5 U.S.C. section 553(b)(B) "refers to the issuance of a minor rule or amendment in which the public is not particularly interested." FEDERAL ADMINISTRATIVE PROCEDURE SOURCEBOOK 63 (William F. Funk, Jeffrey S. Lubbers & Charles Pou, Jr., eds., ABA Publishing 3d ed. 2000). BLM has determined that this amendment falls within that category.

The calculations that resulted in the new fees are included in the table below.

FIXED COST RECOVERY FEES FY09

Document/action	Existing fee ²	Existing value ³	IPD-GDP increase ⁴	New value ⁵	New fee ⁶
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150):					
Noncompetitive lease application	\$360	\$357.88	\$9.20	\$367.08	\$365
Competitive lease application	140	138.88	3.57	142.45	140
Assignment and transfer of record title or operating rights	80	80.12	2.06	82.18	80
Overriding royalty transfer, payment out of production	10	10.68	0.27	10.95	10
Name change, corporate merger or transfer to heir/devisee	185	186.95	4.80	191.75	190
Lease consolidation	395	395.27	10.16	405.43	405
Lease renewal or exchange	360	357.88	9.20	367.08	365
Lease reinstatement, Class I	70	69.44	1.78	71.22	70
Leasing under right-of-way	360	357.88	9.20	367.08	365
Geophysical exploration permit application—Alaska	25	⁷ 25
Renewal of exploration permit—Alaska	25	⁸ 25
Geothermal (part 3200):					

¹ When the 2007 cost recovery fee update rule was issued, we did not update this fee because it

had been in effect less than one year. 72 FR 50884 n.9 (table).

FIXED COST RECOVERY FEES FY09—Continued

Document/action	Existing fee ²	Existing value ³	IPD—GDP increase ⁴	New value ⁵	New fee ⁶
Noncompetitive lease application	360	357.88	9.20	367.08	365
Competitive lease application	140	138.88	3.57	142.45	140
Assignment and transfer of record title or operating right	80	80.12	2.06	82.18	80
Name change, corporate merger or transfer to heir/devisee	185	186.95	4.80	191.75	190
Lease consolidation	395	395.27	10.16	405.43	405
Lease reinstatement	70	69.44	1.78	71.22	70
Nomination of lands	100	100	2.57	102.57	105
plus per acre nomination fee	0.10	0.10	0.00257	0.10257	.10
Site license application	55	53.42	1.37	54.79	55
Assignment or transfer of site license	55	53.42	1.37	54.79	55
Coal (parts 3400, 3470):					
License to mine application	10	10.68	0.27	10.95	10
Exploration license application	295	293.78	7.55	301.33	300
Lease or lease interest transfer	60	58.76	1.51	60.27	60
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580):					
Applications other than those listed below	30	32.05	0.82	32.87	35
Prospecting permit application amendment	60	58.76	1.51	60.27	60
Extension of prospecting permit	95	96.15	2.47	98.62	100
Lease modification or fringe acreage lease	25	26.71	0.69	27.40	25
Lease renewal	460	459.37	11.81	471.18	470
Assignment, sublease, or transfer of operating rights	25	26.71	0.69	27.40	25
Transfer of overriding royalty	25	26.71	0.69	27.40	25
Use permit	25	26.71	0.69	27.40	25
Shasta and Trinity hardrock mineral lease	25	26.71	0.69	27.40	25
Renewal of existing sand and gravel lease in Nevada	25	26.71	0.69	27.40	25
Multiple Use; Mining (Group 3700):					
Notice of protest of placer mining operations	10	10.68	0.27	10.95	10
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870):					
Application to open lands to location	10	10.68	0.27	10.95	10
Notice of Location	15	16.02	0.41	16.43	15
Amendment of location	10	10.68	0.27	10.95	10
Transfer of mining claim/site	10	10.68	0.27	10.95	10
Recording an annual FLPMA filing	10	10.68	0.27	10.95	10
Deferment of assessment work	95	96.15	2.47	98.62	100
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	25	26.71	0.69	27.40	25
Mineral patent adjudication:					
(more than 10 claims)	2,690	2,692.12	69.19	2,761.31	2,760
(10 or fewer claims)	1,345	1,346.06	34.59	1,380.65	1,380
Adverse claim	95	96.15	2.47	98.62	100
Protest	60	58.76	1.51	60.27	60

Source for Implicit Price Deflator for Gross Domestic Product data: U.S. Department of Commerce, Bureau of Economic Analysis.

How Fees Are Adjusted

The figures in the “New Value” column in the table above, not those in

² The Existing Fee was established by the 2007 cost recovery fee update rule published September 5, 2007 (72 FR 50882), effective October 1, 2007.

³ The Existing Value is the figure from the “New Value” column in the rule published September 5, 2007 (72 FR 50882).

⁴ From 4th Quarter 2006 (117.522) to 4th Quarter 2007 (120.542) the IPD—GDP increased by 2.57%. The value in the IPD—GDP Increase column is 2.57% of the Existing Fee.

⁵ The sum of the Existing Value and IPD—GDP Increase is the New Value.

⁶ The New Fee for 2009 is the New Value rounded to the nearest \$5.00.

⁷ Section 365 of the Energy Policy Act of 2005 (Pub. L. 109—58) directed in subsection (i) that “the Secretary shall not implement a rulemaking that would enable an increase in fees to recover additional costs related to processing drilling-related permit applications and use authorizations.” In the 2005 cost recovery rule, the BLM interpreted

the “New Fee” column, will be used in the following year as the basis for calculating the annual adjustment to these fees. Because the new values are rounded to the nearest \$5.00, or the nearest penny for fees under \$1.00 (see above), in setting the new fees, future fees based on the figures in the “New Fee” column would become significantly over-or-under-valued over time. In today’s rule, the figures in the Existing Value column are from the New

this prohibition to apply to geophysical exploration permits. 70 FR 58854—58855. While the \$25 fees for geophysical exploration permit applications for Alaska and renewals of exploration permits for Alaska pre-dated the 2005 cost recovery rule and were not affected by the Energy Policy Act prohibition, we interpret the provision quoted as prohibiting us from increasing this \$25 fee.

⁸ We interpret the Energy Policy Act prohibition discussed in footnote 7, above, as prohibiting us from increasing this \$25 fee, as well.

Value column in the final rule of September 5, 2007. However, if the “New Value” column is blank because the fee was not updated in this rule, future adjustments will be based on the figures in the “New Fee” column. Adjustments to future fees will be made by multiplying the annual change in the IPD—GDP by the reported New Value in the previous year’s rule. This calculation will define a new value for that year, which will then be rounded to the nearest \$5.00, or the nearest penny for fees under \$1.00, to establish the new adjusted fee.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and the Office of Management and

Budget has not reviewed this rule under Executive Order 12866. We have made the assessments required by E.O. 12866 and the results are given below.

The BLM has determined that the rule will not have an annual effect on the economy of \$100 million or more. It will not 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. The changes in today's rule are much smaller than those in the 2005 or 2007 final rules, which did not approach the threshold in E.O. 12866.

For instructions on how to view a copy of the analysis prepared in conjunction with the 2005 final rule, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section, above.

This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This rule does not change the relationships of the onshore minerals programs with other agencies' actions. These relationships are included in agreements and memoranda of understanding that would not change with this rule.

In addition, this final rule does not materially affect the budgetary impact of entitlements, grants, or loan programs, or the rights and obligations of their recipients. This rule does apply an inflation factor that increases some existing user fees for processing documents associated with the onshore minerals programs. However, these fee increases are less than 3% and do not materially affect the budgetary impact of user fees.

Finally, this rule will not raise novel legal issues. As explained above, this rule simply implements an annual process to account for inflation that was proposed and explained in the 2005 cost recovery rule.

The Regulatory Flexibility Act

This final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. For the purposes of this section, a small entity is defined by the Small Business Administration (SBA) for mining (broadly inclusive of metal mining, coal mining, oil and gas extraction, and the mining and quarrying of nonmetallic minerals) as an individual, limited partnership, or small company considered to be at arm's length from the control of any parent

companies, with fewer than 500 employees. The SBA defines a small entity differently, however, for leasing Federal land for coal mining. A coal lessee is a small entity if it employs not more than 250 people, including people working for its affiliates.

The SBA would consider many, if not most, of the operators the BLM works with in the onshore minerals programs to be small entities. The BLM notes that this final rule does not affect service industries, for which the SBA has a different definition of "small entity."

The final rule will affect a large number of small entities since nearly all of them will face fee increases for activities on public lands. However, we have concluded that the effects will not be significant. The average increase in the fixed fees will be less than 3 percent as a result of this final rule. The adjustments result in no increase in the fee for processing of 28 documents relating to the BLM's minerals programs. The highest adjustment is for mineral patent adjudications involving more than 10 mining claims, which will be increased by \$70.00. For the 2005 final rule, the BLM completed a threshold analysis which is available for public review in the administrative record for that rule. (For instructions on how to view a copy of that analysis, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section, above.) The analysis for the 2005 rule concluded that the fees would not have a significant economic effect on a substantial number of small entities. The fee increases implemented in today's rule are substantially smaller than those provided for in the 2005 rule or in the 2007 update, which adjusted the fees after two years rather than one.

The Small Business Regulatory Enforcement Fairness Act

This final rule is not a "major rule" as defined at 5 U.S.C. 804(2). The final rule will not have an annual effect on the economy greater than \$100 million; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. For the 2005 final rule, which established the fee adjustment procedure that this rule implements, the BLM completed a threshold analysis, which is available for public review in the administrative record for that rule. The fee increases implemented in today's rule are substantially smaller than those provided for in the 2005 rule

or in the 2007 update, which adjusted the fees after two years rather than one.

Executive Order 13132, Federalism

This final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. In accordance with Executive Order 13132, therefore, we find that the final rule does not have significant Federalism effects. A Federalism assessment is not required.

The Paperwork Reduction Act of 1995

These regulations contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we submitted a copy of the proposed information collection requirements to the Office of Management and Budget (OMB) for review. The OMB approved the information collection requirements under the following Control Numbers:

Oil and Gas

- (1) 1004-0034 which expires April 30, 2009;
- (2) 1004-0074 which expires December 31, 2009;
- (3) 1004-0137 which expires July 31, 2010;
- (4) 1004-0162 which expires February 28, 2009;
- (5) 1004-0185 which expires July 31, 2009;

Geothermal

- (6) 1004-0132 which expires July 31, 2010;

Coal

- (7) 1004-0073 which expires March 31, 2010;

Mining Claims

- (8) 1004-0025 which expires November 30, 2009;
- (9) 1004-0114 which expires February 28, 2010; and

Leasing of Solid Minerals Other Than Oil Shale

- (10) 1004-0121 which expires November 30, 2009.

Takings Implication Assessment (Executive Order 12630)

As required by Executive Order 12630, the Department of the Interior has determined that this rule will not cause a taking of private property. No private property rights will be affected by a rule that merely reports changes in service fees. The Department therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the BLM finds that this final rule will not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Executive Order.

The National Environmental Policy Act (NEPA)

The BLM has determined that this final rule is administrative and involves only procedural changes addressing fee requirements. In promulgating this rule, the government is conducting routine and continuing government business of an administrative nature having limited context and intensity. Therefore, it is categorically excluded from environmental review under Section 102(2)(C) of NEPA, pursuant to 516 DM 2.3A and 516 DM 2, Appendix 1, Items 1.7 and 1.10. In addition, the final rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM 2, Appendix 2.

Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means categories of actions which do not individually or cumulatively have a significant effect on the human environment and which have been determined to have no such effect in procedures adopted by a Federal agency, and therefore require neither an environmental assessment nor an environmental impact statement.

The Unfunded Mandates Reform Act of 1995

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, because it will not result in state, local, private sector, or tribal government expenditures of \$100 million or more in any one year. This rule will not significantly or uniquely affect small governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, the BLM has determined that this final rule does not include policies that have tribal implications. A key factor is whether the rule would have substantial direct effects on one or more Indian tribes. The BLM has not found

any substantial direct effects. Consequently, the BLM did not utilize the consultation process set forth in section 5 of the Executive Order.

Information Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Nation's Energy Supply (Executive Order 13211)

In accordance with Executive Order 13211, the BLM has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The distribution of or use of energy would not be unduly affected by this final rule. It merely adjusts certain administrative cost recovery fees to account for inflation.

Author

The principal author of this rule is Tim Spisak, Division of Fluid Minerals, assisted by Cynthia Ellis of the Division of Regulatory Affairs, Bureau of Land Management.

List of Subjects in 43 CFR Part 3000

Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: September 11, 2008.

Julie A. Jacobson,
Acting Assistant Secretary—Land and Minerals Management.

■ For reasons stated in the preamble, the Bureau of Land Management amends 43 CFR Chapter II as follows:

PART 3000—MINERALS MANAGEMENT: GENERAL

■ 1. The authority citation for part 3000 continues to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.*, 301–306, 351–359, and 601 *et seq.*; 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.*; and Pub. L. 97–35, 95 Stat. 357.

Subpart 3000—General

■ 2. Revise § 3000.12 (a) to read as follows:

§ 3000.12 What is the fee schedule for fixed fees?

(a) The table in this section shows the fixed fees that you must pay to BLM for the services listed for Fiscal Year 2009. These fees are nonrefundable and must be included with documents you file under this chapter. Fees will be adjusted annually according to the change in the Implicit Price Deflator for Gross

Domestic Product (IPD–GDP) by way of publication of a final rule in the **Federal Register**, and will subsequently be posted on the BLM Web site (<http://www.blm.gov>) before October 1 each year. Revised fees are effective each year on October 1.

FY 2009 PROCESSING AND FILING FEE TABLE

Document/action	FY 2009 fee
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150):	
Noncompetitive lease application	\$365
Competitive lease application	140
Assignment and transfer of record title or operating rights	80
Overriding royalty transfer, payment out of production	10
Name change, corporate merger or transfer to heir/devisee	190
Lease consolidation	405
Lease renewal or exchange	365
Lease reinstatement, Class I	70
Leasing under right-of-way	365
Geophysical exploration permit application—Alaska	25
Renewal of exploration permit—Alaska	25
Geothermal (part 3200):	
Noncompetitive lease application	365
Competitive lease application	140
Assignment and transfer of record title or operating rights	80
Name change, corporate merger or transfer to heir/devisee	190
Lease consolidation	405
Lease reinstatement	70
Nomination of lands	10
plus per acre nomination fee	0.10
Site license application	55
Assignment or transfer of site license	55
Coal (parts 3400, 3470):	
License to mine application ..	10
Exploration license application	300
Lease or lease interest transfer	60
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580):	
Applications other than those listed below	35
Prospecting permit application amendment	60
Extension of prospecting permit	100
Lease modification or fringe acreage lease	25
Lease renewal	470
Assignment, sublease, or transfer of operating rights	25
Transfer of overriding royalty	25
Use permit	25

FY 2009 PROCESSING AND FILING FEE TABLE—Continued

Document/action	FY 2009 fee
Shasta and Trinity hardrock mineral lease	25
Renewal of existing sand and gravel lease in Nevada	25
Multiple Use; Mining (part 3730):	
Notice of protest of placer mining operations	10
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870):	
Application to open lands to location	10
Notice of location*	15
Amendment of location	10
Transfer of mining claim/site	10
Recording an annual FLPMA filing	10
Deferment of assessment work	100
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	25
Mineral patent adjudication ...	2,760 (more than 10 claims)
	1,380 (10 or fewer claims)
Adverse claim	100
Protest	60

* To record a mining claim or site location, you must pay this processing fee along with the initial maintenance fee and the one-time location fee required by statute. (43 CFR part 3833).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 635

[Docket No. 070801432-8663-02]

RIN 0648-AV92

Atlantic Highly Migratory Species; Atlantic Tuna Fisheries; Pelagic and Bottom Longline Fisheries; Gear Authorization and Turtle Control Devices

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

ACTION: Final rule.

SUMMARY: NMFS authorizes green-stick gear for the harvest of Atlantic tunas, including bluefin tuna (BFT), and requires a sea turtle control device in

Atlantic Highly Migratory Species (HMS) pelagic longline (PLL) and bottom longline (BLL) fisheries. At this time, NMFS is not authorizing harpoon gear for the harvest of Atlantic tunas in the Highly Migratory Species (HMS) Charter/Headboat (CHB) category as originally proposed. The purpose of this final rule is to ensure fishermen harvest Atlantic tunas within quotas, size limits, or other established limitations and to distinguish green-stick fishing gear from current definitions of other authorized gear types. This final rule also addresses use of sea turtle control devices in the PLL and BLL fisheries to achieve and maintain low post-release mortality of sea turtles thus maintaining consistency with the 2004 Biological Opinion (BiOp) for the Atlantic PLL fishery and to increase safety at sea for fishermen when handling sea turtles caught or entangled in longline fishing gear. NMFS also has revised its list of equipment models that NMFS has approved as meeting the minimum design specifications for the careful release of sea turtles caught in hook and line fisheries.

DATES: The amendments to § 600.725; § 635.2; § 635.21 introductory text (first sentence), (c)(2)(v)(A), (c)(2)(v)(B), (c)(5)(iii)(C)(3), (e)(1)(ii), (e)(1)(iii), (e)(1)(v), (g); and § 635.71 are effective on October 23, 2008. The amendments to § 635.21 introductory text (second sentence), (c)(2)(v)(D), (c)(2)(v)(G), (c)(5)(i) introductory text, (c)(5)(i)(M), (c)(5)(ii)(A), and (c)(5)(ii)(C)(1) are effective on January 1, 2009.

ADDRESSES: For copies of the Final Environmental Assessment (EA), or other related documents, please write to the Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910, or call at (301)713-2347 or fax to (301)713-1917. Copies are also available on the HMS website at <http://www.nmfs.noaa.gov/sfa/hms/>.

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

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement recommendations by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has

been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). The implementing regulations for Atlantic HMS are at 50 CFR parts 600 and 635.

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). Among other things, these regulations included a list of fishing gears authorized for harvest of HMS. On October 2, 2006, NMFS published in the **Federal Register** final regulations (71 FR 58058), effective November 1, 2006, implementing the “Final Consolidated Atlantic HMS Fishery Management Plan” (Consolidated HMS FMP), which consolidated the management of all Atlantic HMS (i.e., sharks, swordfish, tunas, and billfish) into one comprehensive FMP.

Background

Background information about green-stick gear authorization and sea turtle control device requirements was provided in the preamble to the proposed rule (73 FR 24924; May 6, 2008). Please see the proposed rule for complete background information. This final rule: (1) authorizes green-stick gear for the harvest of Atlantic tunas by Atlantic Tunas General category permitted vessels; (2) authorizes green-stick gear for the harvest of Atlantic tunas by HMS CHB permitted vessels; (3) authorizes green-stick gear for harvest of Atlantic tunas by Atlantic Tunas Longline category permitted vessels (but continues to restrict BFT retention to incidental retention only); and (4) requires possession and use of a sea turtle control device as an addition to the already existing requirements for sea turtle bycatch mitigation gear in PLL and BLL fisheries. This action is published in accordance with the framework procedures set forth in the Consolidated HMS FMP and is supported by the analytical documents prepared for the Consolidated HMS FMP. As described in the Response to Comments and Changes from the Proposed Rule sections of this document, NMFS has reconsidered the proposed rule preferred alternative regarding authorization of harpoon use on HMS CHB vessels and has decided to maintain the status quo for regulations regarding authorized harpoon use as Atlantic tuna fishing gear.