amendments to NIST Handbook 44, ''Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices (NIST Handbook 44).'' Those items address weighing and measuring devices used in commercial measurement applications, that is, devices that are normally used to buy from or sell to the general public or used for determining the quantity of product sold among businesses. Issues on the agenda of the NCWM Laws and Regulations Committee relate to proposals to amend NIST Handbook 130, ''Uniform Laws and Regulations in the area of legal metrology and engine fuel quality'' and NIST Handbook 133 ''Checking the Net Contents of Packaged Goods.'' This notice contains information about significant items on the NCWM Committee agendas, but is not inclusive of all agenda items. As a result, the following items are not consecutively numbered.

**NCWM Specifications and Tolerances Committee**

The following items are proposals to amend NIST Handbook 44:

**General Code**

Item 310–2. Appendix D—Definition of Electronic Devices, Software-Based: This item removes the terms ''built-for-purpose'' and ''not-built-for-purpose'' and instead defines software-based devices as either ''embedded software devices (Type P)'' or ''programmable or loadable metrological software devices (Type U)''.

**Liquid-Measuring Devices**

Item 330–1. Temperature Compensation for Liquid-Measuring Devices Code: This is a proposal to add provisions to Handbook 44 to allow retail motor fuel dispensers to be equipped with the automatic means to deliver product with the volume compensated to a reference temperature. (See also Item 232–1 below under the Laws and Regulations Committee.)

**Vehicle Tank Meters**

Item 331–1. Meter Size (Marking Requirements): This is a proposal to require meter size markings on vehicle tank meters, except for milk meters.

Item 331–3. Automatic Temperature Compensation for Refined Petroleum Products: This proposal adds provisions to Handbook 44, which defines the period of use and conditions of use when selling fuel through a device equipped with automatic temperature compensation capabilities.

**Multiple Dimension Measuring Devices**

Item 358–1. A.1. General., Note 7 in Table S.4.1.b., and Appendix D. Definitions: This proposal adds new definitions for a ''hexahedron'' and an ''irregularly shaped object'' and clarifies a complex marking requirement that currently exists in this code.

Items 358–2. Value of Dimension/Volume Division Value, 358–3 Position Test and 358–4 Test Objects: These proposals add requirements to those devices capable of measuring irregularly shaped objects.

**NCWM Laws and Regulations Committee**

The following item is a proposal to amend NIST Handbook 130:

**Method of Sale of Commodities Regulation**

Item 232–1. Temperature Compensation for Petroleum Products: Several proposals will be considered that would allow temperature compensation to take place on a voluntary or mandatory basis or limit compensation to metering systems with certain flow capacities or specific sales applications. Most of the proposals would allow compensation to occur only if certain conditions are met by the seller.

Item 232–2. Biodiesel and Fuel Ethanol Labeling: This item requires the identification and labeling of biodiesel fuels and blends at retail service stations.

Dated: December 19, 2007.

**Richard F. Kayser,**

*Acting Deputy Director.*

[FR Doc. E7–25609 Filed 1–3–08; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 071221887–7889–01]**

**RIN 0648–XE55**

### Endangered and Threatened Species; ''Not Warranted'' Endangered Species Act Listing Determination for the Atlantic White Marlin

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

**ACTION:** Notice of finding under the Endangered Species Act and availability of status review document.

**SUMMARY:** We, NMFS, announce our finding that listing the Atlantic white marlin (*Tetrapturus albidus*) as an endangered or threatened species under the Endangered Species Act (ESA) is not warranted, and we announce the availability of the status review document.

**DATES:** The finding announced in this notice was made on December 26, 2007.

**ADDRESSES:** A copy of the status review document may be downloaded from the following web address: *http://sero.nmfs.noaa.gov*. Requests for a hard copy of the status review document should be addressed to Dr. Stephania Bolden, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

**FOR FURTHER INFORMATION CONTACT:** Stephania Bolden, NMFS, Southeast Regional Office (727) 824–5312, or Marta Nammack, NMFS, Office of Protected Resources (301) 713–1401.

**SUPPLEMENTARY INFORMATION:**

**Background**

In August 2001, we received a petition from the Biodiversity Legal Foundation (subsequently renamed the Center for Biological Diversity, or CBD) and James R. Chambers requesting us to list the Atlantic white marlin (*Tetrapturus albidus*) as a threatened or endangered species under the ESA. We convened a status review team (SRT) to assess the species' status and the degree of threat to the species with regard to section 4(a)(1) factors in the ESA. The 2002 SRT determined that two of these section 4(a)(1) factors were of concern for white marlin: overutilization and the inadequacy of existing regulatory mechanisms. While the 2002 SRT concluded that the white marlin stock had not declined to levels at which it was then in danger of extinction, it noted that the stock could decline to a level that would warrant ESA protection if fishing mortality was not reduced significantly and relatively quickly. After considering the conclusions of the 2002 SRT, we determined that listing white marlin was not warranted (67 FR 57204; September 9, 2002). Subsequently, CBD and the Turtle Island Restoration Network (TIRN) filed a complaint in the district court for the District of Columbia challenging our listing decision. A settlement agreement was reached wherein it was agreed that we would revisit the status of the white marlin following the 2006 stock assessment by the International Commission for the Conservation of Atlantic Tunas (ICCAT).

Following ICCAT's completion of its 2006 white marlin stock assessment, we announced that a status review of the Atlantic white marlin was initiated and

solicited information regarding the status of and threats to the species (71 FR 76639; December 21, 2006). NMFS' Southest Regional Office (SERO) convened a new biological review team (BRT) to commence a new comprehensive status review. This BRT incorporated results from both the 2002 and 2006 ICCAT stock assessments, and reviewed the 2002 status review document, papers prepared at workshops and symposia to assist in the new stock assessment, current journal articles, reports from the 2004 billfish grant program, information submitted in response to our request for additional information, presentations by invited experts, and existing management of the fisheries in order to determine the status of and threats to the white marlin.

The BRT prepared a status review document that represents their efforts to compile and evaluate the best scientific and commercial data available on white marlin to date. The BRT sought and incorporated peer review comments on the status review document. The BRT submitted their final status review document to SERO on December 10, 2007. Copies of the status review document are available upon request (see **ADDRESSES**).

**Life History**

White marlin are billfish (Family Istiophoridae) that inhabit the tropical and temperate waters of the Atlantic Ocean and adjacent seas. Distribution of white marlin differs from the blue marlin (*Makaira nigricans*) and sailfish (*Istiophorus platypterus*) that range throughout both the Atlantic and Indo-Pacific regions. White marlin exhibit sexually dimorphic growth patterns, with females growing larger than males. White marlin are primarily general piscivores, but also feed on squid and other prey items. Spawning activity occurs during the spring (March through June) in northwestern Atlantic tropical and sub-tropical waters marked by relatively high surface temperatures (20°-29°C) and salinities (> 35 ppt). It is believed there are at least five spawning areas in the western north Atlantic: northeast of Little Bahama Bank off the Abaco Islands; northwest of Grand Bahama Island; southwest of Bermuda; the Mona Passage, east of the Dominican Republic; and the Gulf of Mexico. There is a paucity of information regarding the age and growth of white marlin.

Recently both morphometric and genetic information has provided evidence that there is a fifth species of Istiophoridae in the western North Atlantic - the roundscale spearfish (*T. georgii*). The roundscale spearfish closely resembles the white marlin, and the two may often be confused. Roundscale spearfish are not hybrids; they have a clearly different genetic lineage to sympatric billfish species. Limited data indicate that the roundscale spearfish is distributed widely in the western North Atlantic and is particularly abundant in the Sargasso Sea. Little is known about the life history of the roundscale spearfish. Further, the so-called ''hatchet marlin'' (*Tetrapturus* sp.), another putative congener that exhibits truncated dorsal and anal fins, is likely a phenotypic expression exhibited in both roundscale spearfish and white marlin and not a separate species.

We determined that the Atlantic white marlin constitutes a single species throughout the Atlantic Ocean, there are no populations that warrant consideration of listing in a significant portion of the species' range, and there are no populations of the species that meet the discrete and significant standards set forth in our policy regarding recognition of distinct vertebrate population segments (61 FR 4722; February 7, 1996). There is no information that indicates that any segment of the white marlin population is discrete or distinct, or that there is any specific geographic area within the Atlantic Ocean that should be considered more or less significant than another. White marlin are considered to be a panmictic species: individuals move about freely within the Atlantic Ocean, over thousands of miles, and breed freely with other members of the population. Presence of larvae suggests there are at least five spawning areas in the western north Atlantic Ocean, and there is no evidence to suggest special nursery areas. No population of white marlin is markedly separated from other populations of the same taxon, nor is there biological, ecological, or genetic evidence to suggest unusual or unique populations, or populations that are more at risk than others.

**Fishery Landings and Management**

Atlantic billfish, including white marlin, have historically been landed as incidental catch of foreign and domestic commercial pelagic longline fisheries, or in directed recreational and artisanal fisheries. The majority of billfish fishing mortality in the Atlantic Ocean results from pelagic longline fisheries: total Atlantic-wide longline landings of white marlin mostly range between 1,000 to 2,000 metric tons (mt) annually, of which the United States accounts for about 5 percent. While the directed commercial effort is principally targeted toward tuna species and swordfish, billfish occur in the same area as these other pelagic species, making them susceptible to the gear. Although total Atlantic-wide white marlin landings from longline fisheries have fluctuated between 610 and 1,966 mt over the past 25 years, total landings have declined annually from 1,242 mt to 610 mt between 2000 and 2004 (the last year for which landings data are available). The U.S. proportion of total Atlantic-wide white marlin landings has been reduced from a 25-year average of 5 percent to 3 percent of the 2000–2004 mean reported total (29 mt of 861 mt total).

White marlin, along with other billfish and tunas, are managed internationally by the member nations of theICCAT). ICCAT, through the Standing Committee for Research and Statistics, conducts regular stock assessments for species under its purview: white marlin stock assessments were conducted in 2002 and 2006, and a 2010 assessment is scheduled. By consensus ICCAT adopts binding resolutions and makes recommendations to manage for maximum catch of species under its purview. ICCAT's Compliance Committee tracks landings and makes official determinations of non-compliance.

Recreational fishers seek Atlantic blue marlin, white marlin, and sailfish as highly-prized species in the United States, Venezuela, Bahamas, Brazil, and many countries in the Caribbean Sea and west coast of Africa. White marlin are managed in the United States under the Consolidated Atlantic Highly Migratory Species Fishery Management Plan (FMP) and previously under the Billfish FMP. The FMP prohibits retention, landing, or sale of billfish (including white marlin) caught by commercial fishing vessels in U.S. waters, reserving those species for recreational anglers. The objective of the FMP is to end overfishing and rebuild stocks. In addition, the FMP seeks to coordinate domestic regulations with international management measures to control Atlantic-wide fishing mortality. In the United States, Atlantic blue marlin, white marlin, and Atlantic sailfish can be landed only by recreational fishermen fishing from either private vessels or charterboats.

**Status of the Species**

Population estimates available for the 2007 status review indicate that the number of white marlin in the size range vulnerable to the commercial longline fishery is between 100,000 and 2,000,000, likely around 200,000, and that the current stock of white marlin is on the order of 20 percent carrying capacity (i.e., K) or greater. Population

abundance trajectories in the 2006 ICCAT stock assessment no longer exhibit the long-term downward trend in population abundance seen in the 2002 ICCAT stock assessment; population estimates indicate both an increase in number and in the ratio of current biomass to unfished biomass (i.e., B/K). Atlantic-wide white marlin landings, as reported by ICCAT, have been continually reduced since 1996, and have been less than 1,000 mt for the last 4 years. The calculated probabilities of white marlin biomass under five fishing mortality projections considered (from 0.16 - 0.32) were more optimistic in 2007 relative to 2002. Estimates of fishing mortality (i.e., F) decreased annually from 17 percent in 2002 to 9 percent in 2006.

We agree with the BRT that white marlin population models likely include a composite of data for white marlin and roundscale spearfish combined, as roundscale spearfish have been recorded as white marlin, and hence, all stock assessment parameters (including abundance, landings, fishing mortality) reflect the status of the two species combined. No information is available describing interspecific competition, or potential geographic overlap/separation, between the roundscale spearfish and white marlin. Limited data suggest the roundscale spearfish is widely distributed in the western North Atlantic, and abundant in the Sargasso Sea area during the winter period. It is unknown whether the proportion of either species has changed over time, and it is not possible to separate the two species in the historical catch records.

It is pragmatic to conclude that the data used in the ICCAT white marlin stock assessments is overwhelmingly dominated by white marlin (*T. albidus*) relative to roundscale spearfish (*T. georgii*). Roundscale spearfish have been intermittently referenced in the scientific literature since 1840. Since then, it has taken more than 150 years to observe a sufficient number of specimens to clearly identify the species via genetic tissues and morphometrics. There is no information available suggesting differences between the species that would indicate that either species has a greater or less susceptibility to be caught in the fishery, nor information regarding likelihood of catchability differences between species by gear type, baits, season, or geographic area. Given the difficulty in visually differentiating the roundscale spearfish from the white marlin (scale morphology and relationship between length of anal fin relative to distance between anus and leading edge of anal fin), it is easy to understand why confusion between the species has occurred. Meanwhile, journal articles noting the roundscale spearfish have been infrequent, indicating rarity of species; a greater number of specimens would have led to an earlier clarification between the two species. The only data available regarding proportion of white marlin to roundscale spearfish are extremely limited in time and space; a genetic re-analysis of specimens identified at the dock as white marlin over the last few years during a single tournament confirmed that 17.5 percent were actually roundscale spearfish. Therefore, we conclude that while based on a composite of the two species, the ICCAT stock assessment indicators (e.g., K) for white marlin overwhelmingly reflect the status of the white marlin.

We concur with the BRT's finding that there is no indication depensation is occurring. There is no evidence that any white marlin size class has been lost, nor any reason to expect one to be lost. Based on catch distributions from 1950 through 2004, there is no evidence of range constriction for white marlin. Both the BRT and NMFS find that compliance with ICCAT requirements by member nations and white marlin population trends improved between 2002 and 2006 as exhibited through real catch reductions and stable/increasing catch per unit effort (CPUE); this is an expected response to reduced fishing mortality. Notably, CPUE would also respond similarly to a large number of year classes in the population and/or surprisingly stable recruitment from year to year. While the extent of compliance with ICCAT recommendations and illegal, unreported, and unregulated (IUU) fishing are not completely understood, the best available information indicates that the current regulatory mechanisms have been sufficient to prevent continued stock decline of white marlin. We conclude that it is likely that, under current management regimes, the white marlin stock will remain stable or continue to increase. It appears that both decreasing population size and biomass, and sustained increase in fishing mortality (i.e., F), have been abated by management efforts.

**Factors Affecting Atlantic White Marlin**

The 2007 BRT examined the ESA section 4(a)(1) factors as they apply to white marlin: 1) the present or threatened destruction, modification, or curtailment of its habitat or range; 2) overutilization for commercial, recreational, scientific, or educational purposes; 3) disease or predation; 4) the inadequacy of existing regulatory mechanisms; and 5) other natural or manmade factors affecting its continued existence. The two criteria the BRT was most concerned about for white marlin were overutilization and the adequacy of existing regulatory mechanisms. The BRT equated overfishing with overutilization and determined that the white marlin are not being overutilized, as population abundances no longer exhibit the 2002 downward trend, and population estimates indicate both an increase in number and the ratio of current biomass to unfished biomass; we agree that both terms refer to overexploitation to a point of diminishing returns.

We examined the ESA section 4(a)(1) factors relative to white marlin based on the status review document, and our conclusions for each follow: 1) There is no evidence of present or threatened destruction, modification, or curtailment of its range or habitat; 2) overutilization has previously occurred, but is not currently occurring; 3) there is no evidence that predation or disease is affecting the white marlin; 4) current regulatory mechanisms are adequate to prevent continued stock decline of white marlin; and 5) no natural or manmade factors were identified that were affecting the continued existence of the white marlin. While white marlin are almost certainly overfished as evidenced by a long history of exploitation that has probably depleted the population below the management target, overfishing, and thus overutilization, does not appear to be occurring today as current ratios of fishing mortality relative to the largest sustainable catch (i.e., F/Fmsy) estimates are reported as both greater and less than one depending on the index. Once overfishing for a species has ended, it may take several years before the stock will no longer be considered overfished. A population can be considered to be overfished without undergoing overfishing (i.e., there is a lag effect as the population recovers from overfishing).

We concur with the BRT that domestic measures by the United States alone will have a negligible impact on the stock status of white marlin. Mandatory measures implemented by ICCAT for all member countries appear to be having some success, as the most recent stock assessment indicates that a slight increase was observed in the 2001–2004 white marlin abundance estimates. It is noteworthy that this increasing trend was observed even though the 67 percent reduction in white marlin landings mandated by ICCAT in 2000 has not yet been achieved (average catch from 2000 -

2004 was 36 percent of the maximum catch in 1996 or 1999). There is most likely not full compliance by all parties with all management measures, and there may be an unknown impact from IUU fishing. Regardless, real catch reductions are apparent in the data, and, under current management regimes, it is likely the white marlin stock will remain stable or continue to increase.

**Population Modeling and Endangerment Assessment**

We believe that the metrics developed by the BRT to determine endangered or threatened status of the white marlin after a review of the quantitative and qualitative guidelines used by other conservation organizations (American Fisheries Society (AFS), World Conservation Union (IUCN), and Convention for the International Trade of Endangered Species (CITES)) were appropriate. Because white marlin had medium productivity, the BRT used logic set forth by AFS to determine that biomass at or less than 1 percent of carrying capacity (i.e., $B/K \leq 1$) combined with other biological benchmarks would be an appropriate status-based listing threshold. At this time we have no reason to disagree with this logic and agree that AFS standards are appropriate as they were developed for marine fishes.

The BRT considered many factors in determining that, for white marlin, the proper application of the ESA criterion ''foreseeable future'' is 10 - 15 years. We have examined the factors identified by the BRT and further considered particular threats, life-history characteristics, and population modeling to determine a projected period by which to consider the species' status and threats. It is consistent with the purpose of the ESA that the time frame for the foreseeable future be adequate to provide for the conservation and recovery of threatened species and the ecosystems upon which they depend. As suggested by IUCN and CITES, the period of time required to replace a spawning individual can be considered to assess risk. The BRT estimated that it would take approximately 3–5 years to replace a spawning white marlin; extrapolating to include three generations (the IUCN forecast period) would be equivalent to about 10 - 15 years. Notably, maximum age of white marlin is unknown and aging techniques are still being developed; a single tagged specimen has been reported at liberty for 18 years. Considering the best available information, we concur with the BRT that the foreseeable future for this species is within 15 years.

The BRT determined that the major threat to the white marlin is fishing mortality. Therefore, it established a two-tiered metric to assess status of white marlin: first establish if B/K was at or less then 0.01, then consider other additive criteria that would be indicative of excessive fishing pressure. If B/K is greater than 0.01, then the white marlin is not in danger of extinction and is not likely to become so in the foreseeable future. The additive criteria included population parameters such as population structure by age class, population size and biomass, depensation; distribution through geographic range; and rate of fishing mortality. The BRT used this tiered approach realizing that B/K was an indicator of the overall viability of the population, but other criteria were also important.

We do not disagree with using biomass relative to carrying capacity as a metric by which to indicate status of a species; by statute we are to use the best available scientific and commercial information available, and we believe the 2006 ICCAT stock assessment presents that information. Carrying capacity (i.e., K) is a metric used in stock assessments to indicate the maximum number of fish that can live in an area; subsequent fishing removes fish, and the biomass (total weight or volume of a species in a given area) is reduced below carrying capacity. In the case of white marlin, stock assessment reference points and models expressed with reference to carrying capacity were widely used and thus made a convenient status metric. We also agree with the BRT's approach of additive metrics: these other status indicators (i.e., decreasing trend in absolute population size or biomass; reduced range; loss of observed size classes or other evidence of recruitment failure; sustained increase in fishing mortality; increasingly rare interactions; or depensation) are sensitive to fishing pressure that complement the overall criterion of B/K with other indices. While this combination of indicators is potentially less conservative than a single population size-based threshold, it is more scientifically rigorous and, we believe, a much sounder basis for this listing decision.

For white marlin, available evidence indicates neither the carrying capacity indicator nor the additive fishing pressure indicators are currently applicable. We used the population modeling requested by the BRT to evaluate the risk of future white marlin population decline based on fishing mortality, as that is considered the major threat to white marlin. These models assessed the probability of population decline to less than 1 percent of carrying capacity at varying fishing mortality levels. Using a fishing mortality rate (i.e., F) of 0.16, which is much greater than the current rate of 0.09, results of the Bayesian Schaefer production model indicated that the probability of the white marlin population falling below a B/K of 0.01 within 15 years, and even the next 30 years was 0.

**Consideration of Other Conservation Efforts**

ESA section 4(b)(1)(A) requires the Secretary, in making listing determinations, to take into account those efforts, if any, being made by any state or foreign nation, or any political subdivision of such, to protect species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas. The ICCAT manages white marlin throughout the Atlantic Ocean. Resolutions and recommendations are in place to reduce and limit landings of white marlin, encourage voluntary release of live billfish in a manner to maximize survival, rebuild white marlin, and conduct periodic stock assessments. Meanwhile, the ICCAT Compliance Committee continues to make official determinations of non-compliance and to report at the annual ICCAT meetings.

ESA section 4(b)(1)(B) requires us to give consideration to species which have been designated as requiring protection from unrestricted commerce by any foreign nation, or pursuant to any international agreement; or identified as in danger of extinction, or likely to become so within the foreseeable future, by any state agency or any agency of a foreign nation that is responsible for the conservation of the species. We are not aware of any such special protections or designations. White marlin are not afforded any protective measures or special status via the CITES or the IUCN).

**Conclusion**

We have reviewed the status of Atlantic white marlin, considering the best scientific and commercial data available. We have given consideration to conservation efforts and special designations for white marlin by states and foreign nations. The biological status of the species and consideration of the ESA section 4(a)(1) factors indicate that the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become so in the foreseeable

future. We believe that Atlantic white marlin does not meet the ESA definition of an endangered or threatened species; therefore, the listing of Atlantic white marlin under the ESA is not warranted.

**References**

White Marlin Biological Review Team. 2007. Atlantic White Marlin Status Review. Report to National Marine Fisheries Service, Southeast Regional Office. December 10, 2007. 88 pp.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: December 28, 2007.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. E7–25643 Filed 1–3–08; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 08–01]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–01 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 27, 2007.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5001–06–M**