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Federal Communications Commission.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 600 and 635

[Docket No. 120627194-3097-01]

RIN 0648-BC31

#### Highly Migratory Species; 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan; Amendment 8

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule to implement Amendment 8 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) addresses North Atlantic swordfish commercial fishery management measures. In recent years, the North Atlantic swordfish stock has experienced significant growth due to ongoing domestic and international conservation measures designed to reduce mortality, protect juvenile swordfish, monitor international trade, reduce bycatch, and improve data collection. The most recent stock assessment, conducted in 2009, indicates that the North Atlantic swordfish population is fully rebuilt ("not overfished") and overfishing is no longer occurring. Despite ongoing efforts to revitalize the U.S. North Atlantic swordfish fishery, domestic catches have remained below the U.S. North Atlantic swordfish quota allocated by the International Commission for the Conservation of Atlantic Tunas (ICCAT). Fishing gears such as rod and reel, handline, harpoon, bandit gear, and green-stick are highly selective when compared to other gears, have low bycatch interaction rates with protected

species and marine mammals, and may have low post-release mortality rates on non-target species and undersized swordfish. However, the current swordfish Handgear permit is a limited access permit, and is often difficult or expensive to obtain. Based upon the rebuilt status of North Atlantic swordfish, renewed interest in commercial handgears that are lower in bycatch and bycatch mortality, and the availability of swordfish quota, through Amendment 8 to the 2006 Consolidated HMS FMP NMFS proposes to provide additional commercial fishing opportunities for persons using swordfish handgears.

**DATES:** Written comments will be accepted until April 23, 2013.

**ADDRESSES:** You may submit comments on this proposed rule to implement Amendment 8 to the 2006 Consolidated Atlantic HMS FMP, identified by NOAA-NMFS-2013-0026, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0026](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0026), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Highly Migratory Species Management Division, NMFS Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910. Please mark on the outside of the envelope "Comments on Amendment 8 to the HMS FMP."

- **Fax:** 301-713-1917; Attn: Michael Clark or Jennifer Cudney

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and generally will be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

NMFS will hold five public hearings on this proposed rule with two being

conducted on March 11, 2013, and the others on March 14, 2013, March 28, 2013, and April 10, 2013. The public hearings will be held in St. Petersburg, FL; Silver Spring, MD; Gloucester, MA; Fort Lauderdale, FL; and via a public conference call and webinar. NMFS will also hold a conference call and webinar on this proposed rule to consult with the HMS Advisory Panel (HMS AP) on April 18, 2013. These public hearings may be combined with public hearings for other relevant highly migratory species management actions. For specific locations, dates and times see the **SUPPLEMENTARY INFORMATION** section of this document.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Michael Clark, Highly Migratory Species Management Division, NMFS Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910, and by email to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) or fax to (202) 395-7285

**FOR FURTHER INFORMATION CONTACT:** Rick Pearson at 727-824-5399; Michael Clark or Jennifer Cudney at 301-427-8503; or Steve Durkee at 202-670-6637.

**SUPPLEMENTARY INFORMATION:** Atlantic tunas and swordfish 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). Under the Magnuson-Stevens Act, NMFS must, consistent with the National Standards, prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from each fishery and rebuild overfished fisheries. Under ATCA, the Secretary of Commerce (Secretary) shall promulgate regulations as may be necessary and appropriate to carry out 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 (AA). On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the 2006 Consolidated Highly Migratory Species (HMS) FMP, which details the management measures for Atlantic HMS fisheries, including the North Atlantic swordfish handgear fishery.

## Background

A brief summary of the background of this proposed action is provided below. A more complete summary of Atlantic HMS management measures can be found in the 2006 Consolidated Atlantic HMS FMP, in the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Reports, and online at <http://www.nmfs.noaa.gov/sfa/hms/>.

On June 1, 2009 (74 FR 26174), NMFS published an Advance Notice of Proposed Rulemaking (ANPR) to inform the public about and request comments concerning actions that NMFS was considering to increase opportunities for U.S. fisheries to more fully harvest the U.S. North Atlantic swordfish quota. One of the items contained in the ANPR was the potential establishment of a new commercial permit to harvest swordfish using handgear. The comment period for the ANPR ended on August 31, 2009. In addition to issuing an ANPR, NMFS publicly discussed a commercial swordfish handgear permit concept during HMS Advisory Panel (AP) meetings from 2009–2012. A pre-draft of Amendment 8, including specific management alternatives, was presented to the HMS AP and made publicly available online in March of 2012. NMFS received numerous comments both in support of, and opposed to, the concept of a new commercial swordfish handgear permit, and many suggestions for how a new permit should be administered. All of the comments received on the 2009 ANPR, the 2009–2012 HMS AP meetings, and the pre-draft to Amendment 8, have been considered in the preparation of this proposed rule. Based upon those comments and discussions, NMFS has decided not to further analyze a swordfish body tagging program that was preliminarily discussed in the pre-draft to Amendment 8 due to concerns about its effectiveness at reliably identifying commercially-harvested swordfish and, in particular, preventing the illegal sale of recreationally-harvested fish.

NMFS anticipates that the proposed action would have a low level of potential environmental impacts due to the relatively low swordfish retention limits (zero to six fish) that are being considered for a new permit and by restricting the authorized gears to traditional handgears. Additionally, the potential impacts on protected and non-target species and essential fish habitat (EFH) are expected to be minimal due to the selective nature and low bycatch associated with the handgears being considered in this proposed rule. Therefore, after considering the

potential environmental effects of the proposed measures and substantive comments received through the ANPR, HMS AP meetings, and the pre-draft for Amendment 8, NMFS has preliminarily determined that an environmental assessment would provide an appropriate level of review for Amendment 8, and that preparing an environmental impact statement is not necessary.

The 1999 FMP established a limited access permit program for vessels in the commercial Atlantic swordfish, shark, and tuna longline fisheries to keep harvesting capacity consistent with the available quotas and to reduce latent effort while preventing overcapitalization. As a result, since 1999, persons interested in entering the commercial swordfish fishery have had to obtain a limited access vessel permit from an existing permit holder leaving the fishery. Two of the three types of swordfish limited access permits (the directed and incidental permits) also require vessel owners to obtain a shark limited access permit and an Atlantic tunas Longline category permit to fish for, or retain, North Atlantic swordfish. In addition to the Directed and Incidental swordfish permits, which allow the use of longline and most handgears, there is also a separate swordfish Handgear limited access permit, which restricts gear use to most handgears (i.e., rod and reel, handline, harpoon, buoy gear, and bandit gear, but not speargun gear). Since 2005, the number of swordfish Handgear limited access permits that have been renewed or transferred has ranged from 75–92 per year. Because no new commercial swordfish vessel permits have been issued since 1999, many of these limited access permits have substantially increased in value and can be difficult to obtain, thereby presenting a barrier to entry into the commercial swordfish handgear fishery.

In recent years, the North Atlantic swordfish stock has experienced significant growth in biomass due largely to ongoing domestic and international conservation measures designed to reduce mortality, protect juvenile swordfish, monitor international trade, reduce bycatch, and improve data collection. Several strong year classes in the late 1990s and an overall reduction in catch since 1987 have supported the recovery of the North Atlantic swordfish stock. The most recent stock assessment for North Atlantic swordfish was conducted in 2009 by ICCAT's Standing Committee on Research and Statistics (SCRS), using data through 2008. The SCRS found that fishing mortality had been below  $F_{MSY}$

(the fishing mortality that produces maximum sustainable yield) since 2005. The trend for estimated relative biomass showed a consistent increase since 2000 and was at or above  $B_{MSY}$  (1.05, range = 0.94–1.24). The SCRS indicated that there was a greater than 50-percent probability that the stock is above  $B_{MSY}$  (sustainable biomass), and thus ICCAT's rebuilding objective had been achieved. In 2009, NMFS declared the North Atlantic swordfish population fully rebuilt ("not overfished") with no overfishing occurring, based upon the SCRS stock assessment.

NMFS believes that there is high interest in providing additional access to the commercial swordfish fishery. Before, and since, the North Atlantic swordfish stock was declared fully rebuilt in 2009, NMFS has made significant efforts to restructure its fisheries and adjust regulatory constraints on its swordfish fishermen while not increasing the incidental catch of sea turtles, marine mammals, or other protected and non-target species. As a result of these "revitalization" efforts and the increased availability of fish due to stock rebuilding, U.S. swordfish catches have increased by nearly 40 percent since 2006. However, domestic catches have continued to remain below the North Atlantic swordfish quota recommended for the United States by ICCAT. There has been a recent re-emergence of interest in using handgear, including rod and reel, handline, harpoon, green-stick, and bandit gear, to fish commercially for swordfish. These gears are tended and, when compared to other gears, are highly selective, have low bycatch interaction rates with protected species and marine mammals, and may have low post-release mortality rates on non-target species and undersized swordfish. The potential expansion of the commercial swordfish handgear fishery is consistent with making steady progress toward fully harvesting the United States' domestic swordfish quota allocation while continuing to minimize the bycatch of protected species, marine mammals, non-target species, and undersized swordfish.

As the swordfish stock has been declared rebuilt and more fish have recruited to larger sizes, rod and reel, handline, harpoon, and bandit gear have increasingly become more economically viable for commercial swordfish fishing over a larger geographic range. Additionally, these gears have the benefit of low bycatch and bycatch mortality rates. Additionally, there is now adequate swordfish quota available to provide additional access to the fishery. From 2007–2011, on average,

the United States caught approximately 70 percent of its baseline quota allocation of North Atlantic swordfish. From 2006–2011, the ICCAT recommendation allowed the United States to carry over up to half of its baseline quota of uncaught swordfish to the following year. This carryover was reduced to a 25-percent rollover allowance starting in 2012. In 2011, the most recent year for which complete data are available, the United States caught approximately 74 percent of its baseline swordfish quota and approximately 50 percent of its adjusted quota. For these reasons, NMFS is proposing increasing commercial access to the swordfish resource by establishing a new commercial swordfish handgear permit, and through modifications to existing permits. NMFS recognizes that newly implemented swordfish management measures and recent fishery behavior in 2012 and beyond could affect the amount of quota available for the new and modified commercial handgear permits. During the first half of 2012, changes to the ICCAT quota rollover allowance, a new minimum size requirement (77 FR 45273; July 31, 2012), and a continuing increase in landings have occurred. Therefore, NMFS will continue to carefully monitor the swordfish fishery to determine if, and how, these recent changes in the fishery could affect the establishment of new and modified commercial swordfish handgear permits.

The primary purpose of the proposed action is to provide additional opportunities for U.S. fishermen to harvest swordfish using selective gears that result in lower bycatch rates, given the rebuilt status of swordfish and their resulting increased availability. The goal is for the United States to more fully utilize its domestic swordfish quota allocation, which is based upon the ICCAT recommendation. A secondary purpose of the proposed rule is to implement regulatory adjustments to update a telephone number and remove outdated references in the HMS regulations at 50 CFR part 635. Consistent with the 2006 Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other relevant Federal laws, the specific objectives for this action are to:

- Implement conservation and management measures that prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from the U.S. North Atlantic swordfish fishery;
- Provide increased opportunities for the United States to more fully utilize

its ICCAT-recommended domestic swordfish quota allocation;

- Implement a North Atlantic swordfish management system to make fleet capacity commensurate with resource status to improve both economic efficiency and biological conservation, and provide additional access for traditional fishing gears;
- Provide commercial swordfish fishing opportunities for U.S. fishermen within established quota levels using selective fishing gears that have minimal bycatch and maximize the survival of any released species;
- Enact management measures to establish new and modified commercial vessel permits that would allow for a limited number of swordfish to be caught on rod and reel, handline, harpoon, bandit gear, or green-stick gear and sold commercially;
- Examine and implement regionally tailored North Atlantic swordfish management strategies, as appropriate; and
- Improve the Agency's capability to monitor and sustainably manage the North Atlantic swordfish fishery.

The proposed action would implement new and modified commercial vessel permits that allow fishermen to retain and sell a limited number of swordfish caught on rod and reel, handline, harpoon, bandit gear, and green-stick. Specifically this action proposes to implement: (1) New and modified swordfish vessel permits and authorized gears; and, (2) swordfish retention limits associated with the new and modified permits. Current swordfish reporting requirements, including the submission of monthly logbooks if a vessel is selected for reporting, would be applicable to any new or modified vessel permit. The alternatives that have been analyzed represent a range of options that NMFS has considered to allow for a limited number of swordfish (zero to six) caught on handgear (rod & reel, handline, harpoon, bandit gear, and green-stick) to be retained and sold commercially, as well as to provide NMFS with an improved ability to sustainably manage the North Atlantic swordfish fishery.

With respect to vessel permitting and authorized gears, NMFS considered three alternatives and four sub-alternatives, ranging from a no-action alternative, which maintains the current swordfish permit structure, to creating a new and/or modified commercial swordfish handgear permit. Alternative 1.1 would maintain the current swordfish limited access permit structure and would not create a new and/or modified commercial swordfish permit. Alternative 1.2, a preferred

alternative, would establish a new open access commercial swordfish permit and modify existing open access HMS permits to allow for the commercial retention of swordfish. Current swordfish reporting requirements, including the submission of monthly logbooks if a vessel is selected for reporting, would apply to all of the sub-alternatives for Alternative 1.2. Sub-alternative 1.2.1 would modify the existing open access Atlantic Tunas General category permit to allow for the commercial retention of swordfish using handgears. Sub-alternative 1.2.2 would modify the existing open-access Atlantic tunas Harpoon category permit to allow for the commercial retention of swordfish using harpoon. Sub-alternative 1.2.3, a preferred alternative, would modify the existing HMS Charter/Headboat permit holder requirements to allow fishing under open access swordfish commercial regulations (with rod and reel and handline only) when fishing commercially (i.e., not on a for-hire trip with paying passengers). Sub-Alternative 1.2.4, a preferred alternative, would create a new, separate open-access commercial swordfish permit to allow landings of swordfish using handgears. Alternative 1.3 would establish a new limited-access commercial swordfish permit that authorizes using rod and reel, handline, bandit gear, harpoon, and green-stick gear. Current swordfish reporting requirements, including the submission of monthly logbooks if a vessel is selected for reporting, would also apply under Alternative 1.3.

The preferred alternative and sub-alternatives for permitting (1.2, 1.2.3, and 1.2.4) are anticipated to have minor to neutral ecological impacts in the short and long-term. However, these alternatives could result in a minor increase in rod and reel, handline, harpoon, bandit gear, and green-stick gear commercial fishing effort if previously inactive fishermen obtain the new and modified permits and begin fishing. Preferred Alternatives 1.2.3 and 1.2.4 could also cause a minor increase in swordfish discards and discard mortality if fishing effort increases in areas with large concentrations of swordfish. Although the preferred alternative would establish a new open-access commercial swordfish permit, NMFS expects that most new permit applicants would be current recreational swordfish fishery participants with HMS Angling category permits, resulting in a shift of effort from the recreational fishery to the commercial fishery. Some current Atlantic Tunas

General category and Harpoon category permit holders could also obtain the new permit, and current HMS Charter/Headboat permit holders' existing permits would be modified to allow them to fish commercially for swordfish with rod and reel and handline on non for-hire trips. These permit holders would likely participate in the commercial swordfish fishery to supplement their primary fishing activities (i.e., tuna fishing and charter fishing). All new commercial swordfish fishery participants would be restricted to using only authorized handgears and would be required to comply with applicable regional retention limits (ranging from zero to six swordfish per vessel per trip). Thus, NMFS anticipates only a minor increase in overall swordfish fishery effort because of the low proposed retention limits and the authorization of handgears exclusively. Overall, NMFS anticipates that direct and indirect, short- and long-term ecological impacts on swordfish, non-target species, ESA-protected species, essential fish habitat, and marine mammals from handgear and green-stick gear would be minor to neutral, primarily because these gears are closely tended and rarely interact with benthic habitat.

Swordfish handgear is very selective because it is deployed at times, depths, and locations where swordfish, as opposed to other coastal species, are typically encountered. Hooks and bait are designed to target large pelagics exclusively. Thus, bycatch in the fishery is very low and bycatch mortality is presumably low as well, with most non-target species released immediately. Any landings associated with the new or modified permits would be reported through weekly dealer reports to ensure that they remain within the ICCAT-recommended U.S. swordfish quota, which has already been analyzed.

The effects of most handgear fishing on ESA-listed species was most recently analyzed under a Biological Opinion (BiOp) issued on June 14, 2001, entitled "Reinitiation of Consultation on the Atlantic Highly Migratory Species Fishery Management Plan and its Associated Fisheries" (<http://www.nmfs.noaa.gov/sfa/hms/HMS060801.pdf>). In the 2001 BiOp, NMFS indicated that it anticipates that, because the potential for take in these fisheries (i.e., harpoon/handgear fisheries, hook and line, etc.) was low, the continued operation of these fisheries would result in documented takes of no more than three ESA-listed sea turtles, of any species, in combination, per calendar year. Additionally, the Atlantic HMS hook

and line/harpoon fishery and green-stick fishery are classified as Category III under the MMPA (76 FR 73912, November 29, 2011), meaning that these fisheries have a remote likelihood of incidental mortality or serious injury to marine mammals. Also, as described in Amendment 1 to the Consolidated HMS FMP (74 FR 28018, June 12, 2009), minimal impacts on EFH are anticipated because handgears are deployed in the water column and rarely interact with ocean bottom substrate. Some handgears such as rod and reel and bandit gear may have the ability to contact the ocean bottom, depending upon the method selected to fish; however, this contact was determined to not produce significant effects on EFH, including benthic habitats. Overall, the swordfish handgear fishery has negligible adverse physical impacts on mid-water environments, the substrate, and most sensitive benthic habitats. For this reason, Alternative 1.2 is anticipated to have neutral short- and long-term ecological impacts in the Atlantic. Under Alternative 1.2, NMFS considers four sub-alternatives. Ecological impacts on target, non-target, and ESA-protected species, marine mammals, and EFH would be the same as Alternative 1.2 under each of the four sub-alternatives.

The preferred alternatives and sub-alternatives for permitting (1.2, 1.2.3, and 1.2.4) are expected to have direct economic benefits in the short- and long-term through increased opportunities to commercially fish for swordfish, and through increased gross revenues from swordfish sales for fishermen that obtain the new permit, or for HMS Charter/Headboat permit holders that could fish commercially for swordfish on non for-hire trips. Indirect minor beneficial economic impacts are expected in the short- and long-term for seafood dealers, marinas, bait, tackle, and ice suppliers, restaurants, and similar establishments which could experience a minor increase in sales due to increased participation in the commercial swordfish fishery. There may be potential short- and long-term negative economic impacts on existing swordfish limited access permit holders due to a reduction in permit values and ex-vessel swordfish prices, but any such impacts are expected to be minor due to the low retention limits being established for the new and modified permits. Swordfish retention limits for existing limited access permit holders are much higher or, in some cases, unlimited. NMFS has proposed low retention limits for the new and modified permits, in part to help

maintain the value of existing limited access permits.

NMFS considered three main alternatives and five sub-alternatives with respect to swordfish retention limits applicable to the new and modified permits. Alternative 2.1 would establish a fishery-wide zero-to-six swordfish retention limit range for the new and modified permits, and codify a specific fishery-wide retention limit within that range. The upper limit, for this alternative and all others, is equal to the current maximum swordfish retention limit for the open access HMS Charter/Headboat permit with six paying passengers onboard. Alternative 2.2 would establish a fishery-wide zero-to-six swordfish retention limit range for the new and modified permits, and codify a specific fishery-wide retention limit within that range with in-season adjustment authority to change the limit based on pre-established criteria (e.g., dealer reports, landing trends, available quota, variations in seasonal distribution, abundance, or migration patterns, etc.).

Alternative 2.3, a preferred alternative, would establish a zero-to-six swordfish retention limit range for the new and modified permits, and establish swordfish management regions with specific retention limits with authority to adjust the regional retention limits in-season based on pre-established criteria (e.g., dealer reports, landing trends, available quota, variations in seasonal distribution, abundance, or migration patterns, etc.). For all of the sub-alternatives under Alternative 2.3, NMFS is proposing to require that vessels may not possess, retain, or land any more swordfish than is specified for the region in which the vessel is located. For swordfish captured outside of the regions, vessels may not land any more swordfish than is specified for the region in which the swordfish are landed. This restriction will aid in the effectiveness and enforcement of the proposed retention limits by ensuring that vessels comply with the retention limits associated with the region in which they are located and in which the fish are landed.

Alternative 2.3 has five sub-alternatives, which consider different geographic options for the swordfish management regions.

Sub-alternative 2.3.1 would base the regions upon existing major United States domestic HMS fishing areas as reported to ICCAT (Northeast Distant area (NED), Northeast Coastal area (NEC), Mid-Atlantic Bight area (MAB), South Atlantic Bight (SAB), Florida East Coast (FEC), Gulf of Mexico (GOM),

Caribbean (CAR), and the Sargasso Sea (SAR)).

Sub-alternative 2.3.2, a preferred alternative, would establish larger regions by merging the major domestic regions discussed in Alternative 2.3.1 into three larger regions (Northwest Atlantic, Gulf of Mexico, and Caribbean) and then adding a separate Florida Swordfish Management Area. NMFS is proposing to codify a retention limit of one swordfish per vessel per trip in the Florida Swordfish Management Area, two swordfish per vessel per trip in the Caribbean region (consistent with the swordfish retention limit for the U.S. Caribbean established in Amendment 4 to the 2006 Consolidated HMS FMP), and three swordfish per vessel per trip in the Northwest Atlantic and Gulf of Mexico regions. These regional retention limits fall within the range of zero to six swordfish discussed for all of the alternatives and, if selected, could be adjusted, either upward or downward, in the future through in-season adjustment procedures similar to those currently codified for bluefin tuna at § 635.27 (a)(8).

A one-fish initial default limit is proposed for the Florida Swordfish Management Area to provide for the orderly establishment of a small-scale commercial swordfish handgear fishery off Florida's east coast while potentially limiting the number of vessels participating and any associated ecological impacts. A two-fish initial default limit is proposed for the Caribbean region to be consistent with the limit recently implemented for the Caribbean Commercial Small Boat permit. The small-scale commercial HMS fishery in the Caribbean consists primarily of small vessels that are limited by hold capacity, crew size, trip length, fishing gears, and market infrastructure. A higher initial default limit of three swordfish per vessel per trip is being proposed for the Northwest Atlantic and the Gulf of Mexico to compensate for higher operating costs in these regions because a greater distance is required to travel to productive fishing grounds. A three-fish retention limit is in the middle of the range being considered for all of the alternatives. NMFS believes it is an appropriate default limit for these regions, based upon the size and hold capacity of most vessels participating in the swordfish handgear fishery. For many small- to medium-sized vessels, three swordfish would be considered a successful trip. It could become difficult to properly handle and store more than three large swordfish aboard a smaller vessel to ensure that the product maintains its quality and safety. The initial proposed

default retention limits are purposefully conservative for the proposed implementation of a new open-access swordfish permit. As additional fishery information becomes available, they could be reconsidered in the future. For these reasons, NMFS proposes initial default limits of one, two, and three swordfish for the Florida Swordfish Management Area, Caribbean region, and the Northwest Atlantic and Gulf of Mexico regions, respectively. There are three different sub-alternatives that consider a potential Florida Swordfish Management Area (under sub-alternative 2.3.2).

Sub-alternative 2.3.2.1, a preferred sub-alternative, would establish a Florida Swordfish Management Area in the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 31°00' N. lat. near Jekyll Island, GA, and proceeding due east to connect by straight lines the following coordinates in the order stated: 31°00' N. lat., 78°00' W. long.; 28°17'10" N. lat., 79°11'24" W. long.; then proceeding along the outer boundary of the EEZ to the intersection of the EEZ with 24°00' N. lat.; then proceeding due west to 24°00' N. lat., 82°0' W. long, then proceeding due north to intersect the inner boundary of the U.S. EEZ at 82°0' W. long. near Key West, FL. This management area also includes the area west of Monroe County, Florida, from 82°0' W. long., 25°48' N. lat.; then proceeding clockwise east along the inner boundary of the U.S. EEZ to a point located at 82°0' W. long., 24°46' N. lat.; and then proceeding due north to 82°0' W. long., 25°48' N. lat.

Sub-alternative 2.3.2.2 would establish a Florida Swordfish Management Area in Federal waters extending from the Georgia-Florida border to Federal waters off the westernmost tip of Key West, FL (81°48' W longitude).

Sub-alternative 2.3.2.3 would establish a Florida Swordfish Management Area in Federal waters adjacent to the Florida counties of St. Lucie, Martin, Palm Beach, Broward, Dade and Monroe (including the Federal waters of Florida Bay).

The creation of a special swordfish management area off Florida is expected to have positive ecological impacts. The east coast of Florida, and in particular the Florida Straits, contains one of the richest concentrations of marine life in the Atlantic Ocean. A 2003 United Nations Food and Agriculture Organization study stated that the Florida Straits had the highest biodiversity in the Atlantic Ocean, and is home to 25 endemic species. A

special swordfish management area with a lower retention limit is being considered due to its unique importance as juvenile swordfish habitat and as a migratory corridor. This area was closed to pelagic longline gear in 2001 to reduce the bycatch of several species. It provides important habitat for many highly migratory species and protected species, including swordfish, marlin, sailfish, sea turtles and marine mammals. A separate Florida Swordfish Management Area would help to conserve juvenile and adult swordfish in and near the Florida Straits and help to reduce gear conflicts that could potentially occur due to the large number of fishermen in, and in proximity to, the area. Comments received from the public and the HMS Advisory Panel indicated a concern about increased fishing mortality in this area. For these reasons, NMFS is proposing a low default initial retention limit of one swordfish per vessel per trip in this area. This low retention limit would provide for the orderly establishment of a small-scale commercial swordfish handgear fishery off Florida's east coast while potentially limiting the number of vessels participating and any associated ecological impacts, including swordfish discards, discard mortality, and the incidental catch of non-target and protected species.

Preferred sub-alternative 2.3.2.1 would establish swordfish management regions in the Northwest Atlantic, Gulf of Mexico, Caribbean, and a Florida Swordfish Management Area encompassing the East Florida Coast Pelagic Longline Closed Area and Federal waters adjacent to Monroe County, FL (including Florida Bay). This preferred sub-alternative would also establish a zero-to-six swordfish retention limit range within each region for the new and modified permits and codify specific regional retention limits with authority to adjust the regional limits in-season based on pre-established criteria. Establishing unique swordfish regions would allow NMFS to tailor management practices geographically to the specific biological and other factors affecting a particular region, and would likely have positive direct and indirect ecological benefits. Providing authority to adjust the regional swordfish retention limits in-season (from zero to six fish) using regulatory procedures similar to those codified for bluefin tuna at § 635.27 (a)(8) would provide NMFS with the ability to quickly modify the retention limit, so any potential adverse ecological impacts (e.g., higher than

anticipated landings) that are detected could be addressed expeditiously, as necessary.

The six-fish limit is equivalent to the current maximum swordfish retention limit for the open-access HMS Charter/Headboat permit with six paying passengers onboard. If the regional retention limit is set at zero, no change in fishing effort or ecological impacts is anticipated. If the regional limit is set at any level above zero, sub-alternative 2.3.2.1 could provide for the additional harvest of swordfish—a species that is fully rebuilt and of which the U.S. quota has not been fully caught in recent years. It could cause a minor increase in rod and reel, handline, harpoon, bandit gear, and green-stick commercial fishing effort if previously inactive fishermen obtain the new and modified permits and begin fishing. Also, this sub-alternative could cause a minor increase in swordfish discards and discard mortality if fishing effort increases substantially in areas with large concentrations of juvenile swordfish. For these reasons, NMFS is proposing low initial default swordfish retention limits for the new and modified permits, including a one-fish limit in the Florida Swordfish Management Area.

Overall, NMFS anticipates only neutral to minor ecological impacts on ESA-listed species, non-target species, marine mammals, and undersized swordfish associated with all of the preferred alternatives and sub-alternatives. As indicated in the June 14, 2001 BiOp issued for the Atlantic HMS handgear fishery, since the potential for takes in these fisheries (i.e., harpoon/handgear fisheries, hook and line, etc.) is low, NMFS anticipates that the continued operation of these fisheries would result in documented takes of no more than three ESA-listed sea turtles, of any species, in combination, per calendar year. Additionally, the Atlantic swordfish and pelagic hook and line/harpoon fisheries are classified as Category III under the Marine Mammal Protection Act (MMPA), meaning that these fisheries have a remote likelihood of incidental mortality or serious injury to marine mammals (see MMPA List of Fisheries for 2012, 76 FR 73912, November 29, 2011). Finally, minimal impacts on EFH are anticipated from the preferred alternatives because handgears rarely interact with the ocean bottom substrate or benthic habitat.

Establishing regions under preferred alternative 2.3.2 would allow NMFS to address region-specific management concerns. Providing NMFS with in-season adjustment authority would allow for timely adjustments to regional retention limits; however, it could

provide less certainty than Alternative 2.1 to fishermen and law enforcement regarding changes to the swordfish retention limit. Conversely, positive economic benefits could occur if the retention limit were adjusted upward based upon information indicating that ample quota was available, or upon other pre-established criteria. Generally, the impacts associated with a region would depend upon its size, the number of fishery participants in the region, and the swordfish retention limits established for the region.

Establishing a retention limit range of zero to six swordfish is anticipated to provide a seasonal, or secondary, fishery for most participants. For example, current Atlantic tunas General category permit holders could fish for swordfish overnight while targeting bluefin tuna at other times. Similarly, they could harpoon a swordfish if one were spotted during a tuna trip. A zero-to-six fish retention limit range is not likely to facilitate a full-time, year-round fishery, with the possible exception of some fishery participants in south Florida, where swordfish can be available on a year-round basis. However, it would provide some fishermen with the ability to commercially land swordfish, thereby resulting in positive economic benefits if the limit were set above zero. If a regional retention limit is set at zero, no change in socio-economic impacts is anticipated. The Agency received some comments, particularly in response to the 2009 ANPR, raising concerns about the potential for over-capitalization to occur in the swordfish fishery, potentially leading to depressed market prices and other adverse socio-economic impacts. Increasing the number of swordfish permits and the amount of swordfish in the market could potentially reduce the value of existing swordfish limited access permits and ex-vessel swordfish prices. However, any potential negative impacts on current swordfish limited access permit holders are expected to be mitigated by establishing lower retention limits for the new open-access permit than those that exist for swordfish limited access permits.

For preferred sub-alternative 2.3.2.1, NMFS proposes an initial swordfish retention limit of one per vessel per trip for the Florida Swordfish Management Area, two swordfish per vessel per trip for the U.S. Caribbean, and three swordfish per vessel per trip for the Northwest Atlantic and Gulf of Mexico. These limits fall within the range discussed under Alternative 2.3 above, and could be modified in the future using in-season adjustment procedures similar to those codified at

§ 635.27(a)(8). Under all of the retention limit alternatives, NMFS anticipates direct and indirect positive economic benefits if the limits are set above zero.

### Administrative Adjustments

There are two regulatory administrative adjustments in this proposed rule. NMFS is proposing to remove a portion of the last sentence in § 635.4(j)(3), which contains outdated language referencing dates in 2008. Also, NMFS proposes to update a telephone number for the HMS Division Chief in the definitions at § 635.2. These administrative adjustments would have no impact on the public or the environment.

### Request for Comments

Comments on this proposed rule may be submitted via <http://www.regulations.gov>, mail, or fax. Comments may also be submitted at a public hearing (see Public Hearings and Special Accommodations below). These comments will be used to assist in the development and finalization of Amendment 8 to the Consolidated HMS FMP. NMFS solicits comments on this proposed rule by April 23, 2013 (see **DATES** and **ADDRESSES**).

NMFS requests specific public comment on the following issues:

- (1) What are the appropriate boundaries for the regions and for the Florida Swordfish Management Area?
- (2) What are appropriate swordfish retention limits under the new and modified permits? For all vessels issued the new and modified permits under preferred sub-alternative 2.3.2, should NMFS implement initial retention limits of one swordfish per vessel per trip for the Florida Swordfish Management Area, two swordfish per vessel per trip for the U.S. Caribbean, and three swordfish per vessel per trip limit for the Northwest Atlantic and Gulf of Mexico regions?
- (3) Are the criteria for inseason adjustment of the regional retention limits proposed at § 635.24 (b)(4)(iv) sufficiently inclusive?
- (4) Is the proposed requirement to comply with the regional swordfish retention limits both at sea and upon landing at § 635.24(b)(4)(ii) clear and sufficient for the purposes of this rulemaking?

### Public Hearings and Special Accommodations

NMFS will hold public hearings in Massachusetts, Florida (2), Maryland, and hold a public conference call and webinar to provide the public with an opportunity to comment on the proposed management measures. NMFS

will also hold a public conference call and webinar to consult with the HMS AP. NMFS expects to consult with the HMS AP on April 18, 2013, as the

scheduled public comment period does not overlap with an HMS Advisory Panel meeting. These public hearings may be combined with public hearings

for other relevant highly migratory species management actions. These public hearings will be physically accessible to people with disabilities.

TABLE 1—TIME AND LOCATIONS OF UPCOMING PUBLIC HEARINGS AND PHONE CONFERENCES

Date	Time	Meeting locations	Address
March 11, 2013 .....	1:00–3:00 p.m. ....	Public Conference Call & Webinar.	To participate in conference call, call: (800) 369–8439 Passcode: 69854. To participate in webinar, RSVP at: <a href="https://www1.gotomeeting.com/register/958913664">https://www1.gotomeeting.com/register/958913664</a> A confirmation email with webinar log-in information will be sent after RSVP is registered.
March 11, 2013 .....	5:00–7:00 p.m. ....	NMFS Southeast Regional Office (SERO) 1st Floor Conference Room.	263 13th Avenue South, St. Petersburg, FL 33701. Phone: 727–824–5301.
March 14, 2013 .....	1:00–4:00 p.m. ....	NMFS Headquarters Science Center Auditorium.	1301 East-West Highway, Silver Spring, MD 20910.
March 28, 2013 .....	5:30–7:30 p.m. ....	NMFS Northeast Regional Office (NERO) 1st Floor Conference Room.	55 Great Republic Drive Gloucester, MA 01930. Phone: 978–281–9300.
April 10, 2013 .....	5:00–7:00 p.m. ....	Broward County Main Library Auditorium.	100 South Andrews Ave., Fort Lauderdale, Florida 33301. Phone: 954–357–7544.
April 18, 2013 .....	2:30–4:30 p.m. ....	HMS Advisory Panel Consultation Call.	To participate in conference call, call: (800) 369–8439, Passcode: 69854 To participate in webinar, RSVP at: <a href="https://www1.gotomeeting.com/register/592965928">https://www1.gotomeeting.com/register/592965928</a> A confirmation email with webinar log-in information will be sent after RSVP is registered.

Requests for sign language interpretation or other auxiliary aids should be directed to Rick Pearson at (727) 824–5399 at least 7 days prior to the workshop date. The public is reminded that NMFS expects participants at public hearings, council meetings, and phone conferences to conduct themselves appropriately. At the beginning of each meeting, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the meeting room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; attendees may not interrupt one another; etc.). The NMFS representative will structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and those that do not will be asked to leave the meeting.

#### Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated Atlantic HMS FMP, Amendment 8 and other amendments to that FMP, the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

NMFS prepared an environmental assessment that discusses the impact on the environment as a result of this rule.

In this proposed action, NMFS is considering options to provide additional commercial swordfish fishing opportunities using selective fishing gears that have minimal bycatch and few discards to allow the United States to more fully utilize its domestic swordfish quota allocation. A copy of the environmental assessment is available from NMFS (see **ADDRESSES**).

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

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

The proposed action is being considered to provide additional opportunities to harvest swordfish using selective gears that have low rates of bycatch, given the rebuilt status of the swordfish stock and resulting increased availability of swordfish and availability of U.S. quota. The goal is for the United States to more fully utilize its domestic swordfish quota allocation, which is based upon the recommendation of

ICCAT, and provide economic benefits to U.S. fishermen with minimal adverse environmental impacts.

Section 603(b)(2) of the RFA requires that we describe the action's objectives. This proposed rulemaking is intended to implement conservation and management measures that prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from the U.S. North Atlantic swordfish fishery; provide increased opportunities to more fully utilize the ICCAT-recommended domestic North Atlantic swordfish quota allocation; implement North Atlantic swordfish management measures to make fleet capacity commensurate with resource status; provide additional commercial fishing opportunities for U.S. fishermen using selective fishing gears that have minimal bycatch rates and maximize the survival of any released species; provide additional access for traditional swordfish fishing gears; implement regionally-tailored North Atlantic swordfish management strategies, as appropriate; and, improve the Agency's ability to monitor and sustainably manage the North Atlantic swordfish fishery. The proposed action is consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments to implement recommendations of ICCAT pursuant to ATCA and to achieve domestic management objectives under the Magnuson-Stevens Act.



Section 603(b)(3) of the RFA requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. The current U.S. North Atlantic commercial swordfish fishery is comprised of 334 fishing vessel owners who hold either a limited access swordfish Handgear permit, or a limited access directed or incidental swordfish permit, and the related industries of seafood dealers and processors, fishing gear manufacturers and distributors, marinas, bait houses, restaurants, and other equipment suppliers. Specifically, the proposed rule would apply to small-scale handgear vessel owners that fish in the Atlantic Ocean, including the Gulf of Mexico and the U.S. Caribbean, that do not currently hold a commercial swordfish limited access permit. Using the number of current Atlantic tunas General category permit holders as a proxy, NMFS estimates that the universe of fishermen who might purchase and fish under a new commercial swordfish permit would be approximately 4,084 individuals, with some potential shift of fishermen currently permitted in the recreational HMS Angling category. These calculations are explained in greater detail below. This estimate is based upon the number of persons currently issued an Atlantic tunas General category permit, which is the commercial permit most similar to the ones being considered in the proposed action. NMFS used the following thresholds from the Small Business Administration (SBA) size standards to determine if an entity regulated under this action would be considered a small entity: average annual receipts less than \$4.0 million for fish-harvesting, average annual receipts less than \$6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. Based on these thresholds, NMFS determined that all HMS permit holders are small entities.

This proposed rule contains new reporting, recordkeeping, or other compliance requirements. The proposed Federal open-access commercial swordfish handgear permit would allow NMFS to collect additional data regarding participants in the swordfish fishery and landings through Federal dealer reports. The new permit would require an application similar to some other current HMS permits. The information collected on the application would include vessel information and owner identification and contact information. A modest fee to process the application and annual renewal fee of

approximately \$25 may be required. The proposed rule also would also adopt standard commercial HMS permit reporting requirements for this permit. Currently, in Atlantic HMS fisheries, all commercial fishing vessels and Charter/Headboat vessels are required to submit logbooks for all HMS trips if they are selected for reporting. Selected permit holders are required to submit logbooks to NMFS postmarked no later than seven days after unloading a trip. If no fishing activity occurred during a calendar month, a "no fishing" report must be submitted to NMFS, and be postmarked within seven days after the end of the month. Currently, the permits most similar to the ones being considered in this action (HMS Charter/Headboat, Atlantic tunas General category, and Atlantic tunas Harpoon category permit) are not selected for submitting logbooks, although they are eligible for selection.

This proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. NMFS does not believe that the proposed regulations duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

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

In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, NMFS cannot

exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. 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. Thus, there are no alternatives considered under the third category. All of the permit alternatives being considered, except for the no-action alternative, could result in additional reporting requirements (category two above) due to the issuance of new permits if new permit holders are selected for reporting. These are standard reporting requirements required of all HMS commercial permit holders. Thus, there are no alternatives discussed that fall under the second category described above. This proposed action would improve information collection by allowing NMFS to collect important fishery dependent data, if necessary, that could be used for quota monitoring and stock assessments.

In this rulemaking, NMFS considered two different categories of issues to address swordfish management measures where each issue had its own range of alternatives and sub-alternatives that would meet the objectives of the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP. The first category of alternatives (Alternatives 1.1–1.3 and sub-alternatives) addresses swordfish permitting alternatives. The second category of alternatives (Alternatives 2.1–2.3 and sub-alternatives) addresses swordfish retention limits. The expected economic impacts these alternatives and sub-alternatives may have on small entities are summarized below. The full IRFA and all its analyses can be found in draft Amendment 8. In total, NMFS analyzed 15 different alternatives and sub-alternatives, and provided rationales for identifying the preferred alternatives. The seven permit alternatives range from maintaining the status quo for U.S. North Atlantic swordfish fisheries to creating a new commercial swordfish handgear permit and modifying the HMS Charter/Headboat permit to allow fishing for and sales of swordfish under specific limitations. NMFS analyzed eight alternatives that would allow NMFS to implement swordfish retention limits applicable to the new permit in a range from zero-to-six fish. Seven of these alternatives would allow NMFS to modify daily trip limits using in-season



adjustment procedures similar to those codified for bluefin tuna at § 635.27(a)(8). NMFS assessed the impacts of the retention limit alternatives on both a fishery-wide basis and utilizing an approach which could be tailored on a regional basis.

Alternative 1.1, the no action alternative, maintains the existing swordfish limited access permit program and would not establish a new swordfish permit. Under Alternative 1.1, NMFS does not anticipate any substantive change in economic impacts as the U.S. swordfish fishery is already operating under the current regulations. Entry into the commercial swordfish fishery would remain difficult due to high limited access permit costs and the current scarcity of available permits. In terms of available and unutilized swordfish quota, this alternative could contribute to a loss of potential income for fishermen who would like to fish commercially for swordfish, but are not able to obtain limited access permits. Under ATCA (16 U.S.C. 971 *et. seq.*) and the Magnuson-Stevens Act, NMFS is required to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota. Although there is sufficient quota to allow U.S. fishermen to catch more swordfish and remain within the ICCAT-recommended quota, current difficulties associated with obtaining a limited access permit may be a constraining factor. For this reason, the "no action" alternative is not preferred at this time.

Alternative 1.2, a preferred alternative, would establish a new open-access commercial swordfish permit and modify existing open access HMS permits to allow for the commercial retention of swordfish using handgears. NMFS anticipates positive economic impacts for some U.S. fishermen under alternative 1.2. It would allow small-scale U.S. fishermen to use handgear (rod and reel, handline, harpoon, bandit gear, and green-stick), to fish for and commercially sell a limited amount of swordfish (zero to six fish per vessel per trip) to permitted swordfish dealers. This alternative would reduce economic barriers to the commercial swordfish fishery, provide more opportunities to fish commercially for swordfish, and potentially provide economic benefits to some fishermen. For example, if a new entrant landed 10 swordfish per year under this alternative, they could realize an increase in annual gross revenues of approximately \$4,329.60. One trip landing six swordfish could yield \$2,598 in gross revenues.

NMFS received comments from some current swordfish limited access permit

holders during public meetings to discuss the 2009 ANPR (74 FR 26174, June 1, 2009) expressing concern that establishing a new swordfish permit could reduce ex-vessel swordfish prices and the value of existing limited access swordfish permits. It is not possible to precisely predict the number of new applicants for open access commercial swordfish permits, but NMFS expects that some current recreational fishermen with HMS Angling permits will remain recreational, rather than shift to commercial fishing. There are numerous commercial fishing vessel safety requirements and management regulations to comply with when operating a commercial fishing business that may discourage some recreational fishermen from obtaining a commercial permit. Under the proposed regulations, similar to the regulations that apply to the Atlantic tunas General category permit, fishermen issued a new Swordfish General Commercial permit would not be able to obtain an HMS Angling category permit. Therefore, a recreational fisherman who obtains a Swordfish General Commercial permit would forfeit the ability to fish for Atlantic billfishes, unless they are fishing in a registered HMS tournament, because fishing for these species is permissible only when issued an HMS Angling or Charter/Headboat permit. Additionally, the ability to fish recreationally for Atlantic tunas and sharks would be forfeited unless they are fishing in a registered HMS tournament or hold appropriate commercial tuna and/or shark permits. Negative impacts on current swordfish limited access permit holders could be mitigated by establishing lower retention limits for the new open access permit than the limits that currently exist for limited access permits. NMFS prefers Alternative 1.2 at this time, because it would increase access to the commercial swordfish fishery, would have positive socio-economic impacts for fishermen who are currently unable to obtain a swordfish limited access permit, and would have neutral to minor ecological impacts. Additionally, this alternative would provide increased opportunities to more fully utilize the ICCAT-recommended domestic North Atlantic swordfish quota allocation and thus could have long-term benefits to all swordfish fisherman by improving the United States' position with regard to maintaining its quota share at ICCAT.

Sub-alternative 1.2.1 would modify the existing open-access Atlantic tunas General category permit to allow for the commercial retention of swordfish using handgears (rod and reel, handline,

harpoon, bandit gear, and green-stick) and rename the modified permit as, potentially, the Atlantic tunas and swordfish General category permit. It would result in many of the same socio-economic impacts as Alternative 1.2. In addition, sub-alternative 1.2.1 would minimize the costs associated with obtaining the new swordfish permit for persons that have already been issued the Atlantic Tunas General category permit because they would only need to obtain one permit rather than two.

Sub-alternative 1.2.2 would modify the existing open-access Atlantic tunas Harpoon category permit to allow for the commercial retention of swordfish using harpoon gear. This alternative would result in many of the same impacts as Alternative 1.2. Additionally, it would minimize the costs associated with obtaining the new permit for persons that have already been issued the Atlantic Tunas Harpoon category permit because they would only need to obtain one permit rather than two. Specifically, it would provide economic benefits to current Atlantic tunas Harpoon category permit holders that want to both harpoon swordfish and also fish for tunas under Atlantic tunas Harpoon category regulations.

Sub-alternative 1.2.3, a preferred alternative, would allow HMS Charter/Headboat permit holders to fish under open access swordfish commercial regulations using rod and reel and handlines when fishing commercially (*i.e.*, not on a for-hire trip with paying passengers). It would result in many of the same impacts as Alternative 1.2 and provide economic benefits to CHB permit holders when fishing commercially (*i.e.*, not on a for-hire trip). It could also streamline permit issuance because CHB vessels would not need to obtain another permit.

Sub-alternative 1.2.4, a preferred alternative, would create a separate open access commercial swordfish permit to allow landings using handgear. This alternative would have similar impacts as Alternative 1.2, above. However, it would increase the costs associated with obtaining the permit for persons that have already been issued an Atlantic Tunas General or Harpoon category permit. This alternative would not streamline permit issuance for persons that want to commercially fish for both tunas and swordfish, because they would need to obtain two different permits to conduct these activities. NMFS prefers sub-alternative 1.2.4 at this time, because it would increase access to the commercial swordfish fishery, would have positive socio-economic impacts for fishermen who are currently unable

to obtain a swordfish limited access permit, and would have neutral to minor ecological impacts. Additionally, sub-alternative 1.2.4 would better enable NMFS to differentiate between tuna and swordfish handgear fishermen in order to better monitor and assess these fisheries.

Alternative 1.3 would allow for an unspecified number of new swordfish limited access permits to be issued. Depending upon the qualification criteria, this alternative could improve access to the fishery and provide economic benefits to some fishermen that qualify for the new limited access permit. However, it could also adversely affect some fishermen who do not qualify for a limited access permit. This alternative could limit any negative economic and social impacts on current commercial swordfish limited access permit holders by limiting the number of new swordfish permits issued. Selection of this alternative may require, among other things, the establishment of qualification criteria, control dates, application deadlines, application procedures, and grievance/appeals procedures for persons who have initially been determined as not eligible to qualify for a limited access permit. These aspects could increase administrative costs for NMFS and increase the reporting burden for the public to demonstrate that they meet qualifying criteria.

Alternative 2.1 would establish a fishery-wide zero to six swordfish retention limit range for the new and modified permits, and codify a specific retention limit within that range. This alternative could provide some fishermen with the ability to commercially land swordfish, thereby resulting in positive economic benefits if the limit were set above zero. Additionally, economic benefits are anticipated for swordfish dealers and processors, fishing tackle manufacturers and suppliers, bait suppliers, restaurants, marinas, and fuel providers. NMFS anticipates a retention limit range of zero-to-six swordfish would provide a seasonal, or secondary, fishery for most participants. This alternative is not expected to facilitate a year-round fishery in most areas, with the possible exception of south Florida, where swordfish can be available year-round. There is a notable difference in the ex-vessel revenue produced by a one swordfish/trip limit versus a six swordfish/trip limit. A single swordfish is estimated to be worth \$432.96 ex-vessel, on average, whereas six swordfish would produce \$2,597.76 ex-vessel. For a vessel making 10 trips per year and retaining the maximum

allowable number of swordfish on each trip, annual gross revenue derived from swordfish would range from \$4,329.60 under a one-fish limit to \$25,977.60 under a six-fish limit. Codifying a single coast-wide swordfish retention limit would provide certainty to both fishermen and law enforcement regarding the swordfish retention limit for the new open access permit. However, this alternative would not provide in-season adjustment authority to quickly modify the swordfish retention limit regionally by using pre-established criteria and thus would limit NMFS' management flexibility.

Alternative 2.2 would establish a coast-wide zero-to-six swordfish retention limit range for the new and modified permits and codify a specific retention limit within that range. In addition, it would provide in-season adjustment authority for NMFS to modify the swordfish retention limit within the range (zero to six) using in-season adjustment procedures similar to those codified at § 635.27 (a)(8). This alternative would have the same social and economic impacts as Alternative 2.1, but would provide less certainty to fishermen and law enforcement regarding possible in-season changes to the swordfish retention limit. Positive economic benefits could occur if the retention limit was increased during the fishing season based upon information indicating that sufficient quota was available, or upon other pre-established criteria.

Alternative 2.3, a preferred alternative, would establish swordfish management regions and a zero-to-six swordfish retention limit range within each region for the new and modified permits and codify specific regional limits within that range with authority to adjust the regional limits in-season based on pre-established criteria. This alternative would have similar social and economic impacts as Alternative 2.1. If a regional retention limit is set at zero, NMFS expects no change in socio-economic impacts. If a regional limit is set at any level above zero, this alternative could provide economic benefits to some commercial handgear fishermen if they were previously inactive and obtain the new and modified permits and begin fishing. NMFS prefers Alternative 2.3 at this time, because it would allow swordfish retention limits to be quickly modified using in-season adjustment authority and provide additional flexibility to manage swordfish regionally.

Sub-Alternative 2.3.1 would establish regions based upon existing major U.S. domestic fishing areas as reported to ICCAT (Northeast Distant area,

Northeast Coastal area, Mid-Atlantic Bight area, South Atlantic Bight area, Florida East Coast area, Gulf of Mexico area, Caribbean area, and the Sargasso Sea area). Socio-economic impacts would be the same as Alternative 2.3 above. If this sub-alternative were implemented, NMFS is considering an initial swordfish retention limit of one swordfish per vessel per trip for the Florida East Coast area, two swordfish per vessel per trip for the Caribbean area, and a limit of three swordfish per vessel per trip for the Northwest Atlantic and Gulf of Mexico regions. For vessels making 10 trips per year and retaining the maximum allowable limit on each trip, annual gross revenue derived from swordfish would range from \$4,329.60 under a one-fish limit, \$8,659.20 under a two-fish limit, and \$12,988.80 under a three-fish limit.

Sub-Alternative 2.3.2, a preferred alternative, would establish larger regions than sub-alternative 2.3.1, with the addition of a separate Florida Swordfish Management Area (Northwest Atlantic, Gulf of Mexico, Caribbean, and a Florida Swordfish Management Area as defined below). Under this sub-alternative, swordfish management measures could still be tailored geographically to the biological factors affecting a particular region; however, the regions would be larger (with the possible exception of the separate Florida Swordfish Management Area). Under this alternative, NMFS would propose an initial swordfish retention limit of one swordfish per vessel per trip for the Florida Swordfish Management Area, two swordfish per vessel per trip for the Caribbean area, and a limit of three swordfish per vessel per trip for the Northwest Atlantic and Gulf of Mexico regions. These retention limits fall within the range discussed under Alternative 2.3 above, and could be modified in the future using in-season adjustment procedures similar to those codified at § 635.27(a)(8). For a vessel making 10 trips per year and retaining the maximum allowable limit on each trip, annual gross revenue derived from swordfish would range from \$4,329.60 under a one-fish limit, \$8,659.20 under a two-fish limit, and \$12,988.80 under a three-fish limit.

To estimate the number of entities affected by a special Florida Swordfish Management Area, NMFS first determined the number of Atlantic tunas General category permits issued. In 2011, there were 4,084 Atlantic tunas General category permits issued. This number was used as a proxy to estimate the total number of new Swordfish General Commercial permits that could be issued fishery-wide. In 2011, 44

percent of all Directed and Incidental swordfish limited access permits were issued in Florida. Additionally, in 2011, 63 percent of all swordfish handgear limited access permits were issued in Florida. Taking the average of these two numbers provided an estimate of 53.5 percent, which is used as an estimate of the percent of new swordfish permits that could be issued in Florida. Using an estimated rate of 53.5 percent of 4,084 potential new permits provides an estimate of 2,185 potential new commercial swordfish handgear permits that could be issued in Florida. Assuming that two-thirds of these permits are issued to vessels on the east coast of Florida, potentially 1,455 new open-access swordfish permits could be issued on the east coast of Florida ( $0.666 \times 2,185 = 1,455$ ).

Sub-Alternative 2.3.2.1, a preferred alternative, would establish a Florida Swordfish Management Area that includes the East Florida Coast pelagic longline closed area through the northwestern boundary of Monroe County, FL, in the Gulf of Mexico (see § 635.2 for bounding coordinates). Approximately 1,455 new permit holders could derive up to \$4,329.60 annually under a one-fish limit, assuming they each took 10 trips per year and landed one fish on each trip. NMFS prefers sub-alternative 2.3.2.1 at this time, because it provides flexibility to manage the Florida commercial handgear swordfish fishery using boundaries that are already established and which correspond to an area that provides important habitat for many HMS and protected species, including swordfish, marlin, sailfish, sea turtles, and marine mammals. This area is also very accessible for large numbers of commercial and recreational fishing vessels.

Sub-Alternative 2.3.2.2 would establish a Florida Swordfish Management Area that extends from the Georgia/Florida border to Key West, FL. This area is larger than, and includes, the East Florida Coast pelagic longline closed area. Therefore, the economic impacts described for sub-alternative 2.3.2.1 would also occur within this area. Additionally, because this special management area would be larger than sub-alternative 2.3.2.1, slightly more than 1,455 vessels could potentially be affected by a one-fish retention limit.

Sub-Alternative 2.3.2.3 would establish a Florida Swordfish Management Area that includes the Florida counties of St. Lucie, Martin, Palm Beach, Broward, Dade, and Monroe. This area is smaller than the previous two sub-alternatives, but specifically includes oceanic areas with

concentrations of swordfish that are readily accessible to many anglers. Because this special management area would be smaller than the areas in sub-alternative 2.3.2.1, slightly fewer than 1,455 vessels would potentially be affected by the one-swordfish per vessel per trip retention limit.

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. This collection-of-information requirement would modify an existing (0648–0327) collection subject to review and approval by OMB under the Paperwork Reduction Act (PRA). Public reporting burden for a new Swordfish General Commercial permit is estimated to average 30 minutes per application. This burden estimate includes the time for reviewing instructions, gathering and maintaining the data needed, submitting the permit application, and completing and reviewing the collection information. On an annual basis, the new Swordfish General Commercial permit would increase the existing collection by 4,084 respondents/responses, 2,042 hours, and costs by \$81,706. In total, 0648–0327 would include 41,261 responses/respondents, 11,843 hours, and cost \$738,917 per year. Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of NMFS, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Michael Clark, the Highly Migratory Species Management Division, at the ADDRESSES above, and by email to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) or fax to (202) 395–7285. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

## List of Subjects

### 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

### 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Penalties, Reporting and recordkeeping requirements, Retention limits.

Dated: February 14, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 600 and 635 are proposed to be amended as follows:

## PART 600—MAGNUSON–STEVENS ACT PROVISIONS

- 1. The authority citation for part 600 is revised to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

- 2. In § 600.725, paragraph (v), under the heading “IX. Secretary of Commerce,” entry 1, revise A to read as follows:

### § 600.725 General prohibitions.

\* \* \* \* \*

(v) \* \* \*

## IX—SECRETARY OF COMMERCE

* * * * *				
A. Swordfish handgear fishery.		A. Rod and reel, harpoon, handline, bandit gear, buoy gear, green-stick gear.		
* * * * *				
* * * * *				

## PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

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

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

- 4. In § 635.2, revise the definition for “Division Chief” and add the definition for “Florida Swordfish Management Area” in alphabetical order to read as follows:

**§ 635.2 Definitions.**

\* \* \* \* \*

*Division Chief* means the Chief, Highly Migratory Species Management Division, NMFS (F/SF1), 1315 East-West Highway, Silver Spring, MD, 20910; (301) 427-8503.

\* \* \* \* \*

*Florida Swordfish Management Area* means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 31°00' N. lat. near Jekyll Island, GA, and proceeding due east to connect by straight lines the following coordinates in the order stated: 31°00' N. lat., 78°00' W. long.; 28°17'10" N. lat., 79°11'24" W. long.; then proceeding along the outer boundary of the EEZ to the intersection of the EEZ with 24°00' N. lat.; then proceeding due west to 24°00' N. lat., 82°0' W. long, then proceeding due north to intersect the inner boundary of the U.S. EEZ at 82° 0' W. long. near Key West, FL. This management area also includes the area west of Monroe County, Florida, from 82° 0' W. long., 25°48' N. lat.; then proceeding clockwise east along the inner boundary of the U.S. EEZ to a point located at 82°0' W. long., 24°46' N. lat.; and then proceeding due north to 82°0' W. long., 25°48' N. lat. For purposes of § 635.24(b)(4)(ii), the area in which the retention limit applies extends from the inner boundary of the U.S. EEZ to the shore between 31°00' N. lat. (southward of Jekyll Island, GA) through the Florida Keys and northward along the Florida west coast to 25°48' N. lat. (southward of the northwest boundary of Monroe County, FL near Chokoloskee, FL).

\* \* \* \* \*

■ 5. In § 635.4, paragraphs (b)(1), (c)(1), (c)(2), revise introductory paragraph (f), (f)(1), (f)(2), (f)(4), introductory paragraph (h)(1), (j)(3), and (m)(2), and add paragraphs (c)(4) and (f)(5) to read as follows:

**§ 635.4 Permits and fees.**

\* \* \* \* \*

(b) \* \* \*

(1) The owner of a charter boat or headboat used to fish for, take, retain, or possess any Atlantic HMS must obtain an HMS Charter/Headboat permit. A vessel issued an HMS Charter/Headboat permit for a fishing year shall not be issued an HMS Angling permit, a Swordfish General Commercial permit, or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership.

\* \* \* \* \*

(c) \* \* \*

(1) The owner of any vessel used to fish recreationally for Atlantic HMS or on which Atlantic HMS are retained or possessed recreationally, must obtain an HMS Angling permit, except as provided in § 635.4(c)(2). Atlantic HMS caught, retained, possessed, or landed by persons on board vessels with an HMS Angling permit may not be sold or transferred to any person for a commercial purpose. A vessel issued an HMS Angling permit for a fishing year shall not be issued an HMS Charter/Headboat permit, a Swordfish General Commercial permit, or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership.

(2) A vessel with a valid Atlantic Tunas General category permit issued under paragraph (d) of this section or with a valid Swordfish General Commercial permit issued under paragraph (f) of this section, may fish in a recreational HMS fishing tournament if the vessel has registered for, paid an entry fee to, and is fishing under the rules of a tournament that has registered with NMFS' HMS Management Division as required under § 635.5(d). When a vessel issued a valid Atlantic Tunas General category permit or a valid Swordfish General Commercial permit is fishing in such a tournament, such vessel must comply with HMS Angling category regulations, except as provided in paragraphs (c)(3) and (c)(4) of this section.

\* \* \* \* \*

(4) A vessel issued a Swordfish General Commercial permit fishing in a tournament, as authorized under § 635.4(c)(2), shall comply with Swordfish General Commercial permit regulations when fishing for, retaining, possessing, or landing Atlantic swordfish.

\* \* \* \* \*

(f) *Swordfish vessel permits.* —(1) Except as specified in paragraphs (n) and (o) of this section, the owner of a vessel of the United States used to fish for or take swordfish commercially from the management unit, or on which swordfish from the management unit are retained, possessed with an intention to sell, or sold must obtain, an HMS Charter/Headboat permit issued under paragraph (b) of this section, or one of the following swordfish permits: A swordfish directed limited access permit, swordfish incidental limited access permit, swordfish handgear limited access permit, or Swordfish General Commercial permit. These permits cannot be held in combination with each other on the same vessel, except that an HMS Charter/Headboat

permit may be held in combination with a swordfish handgear limited access permit on the same vessel. It is a rebuttable presumption that the owner or operator of a vessel on which swordfish are possessed in excess of the recreational retention limits intends to sell the swordfish.

(2) The only valid commercial Federal vessel permits for swordfish are the HMS Charter/Headboat permit issued under paragraph (b) of this section (and only when on a non for-hire trip), the Swordfish General Commercial permit issued under paragraph (f), a swordfish limited access permit issued consistent with paragraphs (l) and (m), or permits issued under paragraphs (n) and (o).

\* \* \* \* \*

(4) A directed or incidental limited access permit for swordfish is valid only when the vessel has on board a valid limited access permit for shark and a valid Atlantic Tunas Longline category permit issued for such vessel.

(5) A Swordfish General Commercial permit may not be held on a vessel in conjunction with an HMS Charter/Headboat permit issued under paragraph (b) of this section, an HMS Angling category permit issued under paragraph (c), a swordfish limited access permit issued consistent with paragraphs (l) and (m), an Incidental HMS Squid Trawl permit issued under paragraph (n), or an HMS Commercial Caribbean Small Boat permit issued under paragraph (o). Except for the 2013 fishing year, a vessel issued a Swordfish General Commercial open access permit for a fishing year shall not be issued an HMS Angling permit or an HMS Charter/Headboat permit for that same fishing year, regardless of a change in the vessel's ownership. During the 2013 fishing year, vessel owners applying for a Swordfish General Commercial permit must abandon their HMS Angling or HMS Charter/Headboat permit if their vessel has been issued either of these permits.

\* \* \* \* \*

(h) \* \* \*

(1) Atlantic Tunas, HMS Angling, HMS Charter/Headboat, Swordfish General Commercial, Incidental HMS Squid Trawl, and HMS Commercial Caribbean Small Boat vessel permits.

\* \* \* \* \*

(j) \* \* \*

(3) A vessel owner issued an Atlantic tunas permit in the General, Harpoon, or Trap category or an Atlantic HMS permit in the Angling or Charter/Headboat category under paragraph (b), (c), or (d) of this section may change the category of the vessel permit once within 10 calendar days of the date of

issuance of the permit. After 10 calendar days from the date of issuance of the permit, the vessel owner may not change the permit category until the following fishing season.

\* \* \* \* \*

(m) \* \* \*

(2) *Shark and swordfish permits.* The owner of a vessel of the United States used to fish for or take sharks commercially from the management unit, or on which sharks from the management unit are retained, possessed with an intention to sell, or from which sharks from the management unit are sold must obtain the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section, or an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section. The owner of a vessel of the United States used to fish for or take swordfish commercially from the management unit, or on which swordfish from the management unit are retained, possessed with an intention to sell, or from which swordfish from the management unit are sold must obtain the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section, a Swordfish General Commercial permit issued under paragraph (f) of this section, an Incidental HMS Squid Trawl permit issued under paragraph (n) of this section, an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, or an HMS Charter/Headboat permit issued under paragraph (b) of this section which authorizes a Charter/Headboat to fish commercially for swordfish on a non for-hire trip subject to the retention limits at § 635.24(b)(4). The commercial retention and sale of swordfish for vessels issued an HMS Charter/Headboat permit is permissible only when the vessel is on a non for-hire trip. Only persons holding non-expired shark and swordfish limited access permit(s) in the preceding year are eligible to renew those limited access permit(s). Transferors may not renew limited access permits that have been transferred according to the procedures in paragraph (l) of this section.

\* \* \* \* \*

■ 6. In § 635.21, revise paragraphs (e)(2)(i), (e)(2)(ii), (e)(4)(i), (e)(4)(iv), and (g) and add paragraph (e)(4)(v) to read as follows:

**§ 635.21 Gear operation and deployment restrictions.**

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(i) Only persons who have been issued a valid HMS Angling or valid Charter/Headboat permit, or who have been issued a valid Atlantic Tunas General category or Swordfish General Commercial permit and are participating in a tournament as provided in 635.4 (c) of this part, may possess a blue marlin, white marlin, or roundscale spearfish in, or take a blue marlin, white marlin, or roundscale spearfish from, its management unit. Blue marlin, white marlin, or roundscale spearfish may only be harvested by rod and reel.

(ii) Only persons who have been issued a valid HMS Angling or valid Charter/Headboat permit, or who have been issued a valid Atlantic Tunas General category or Swordfish General Commercial permit and are participating in a tournament as provided in § 635.4(c) of this part, may possess or take a sailfish shoreward of the outer boundary of the Atlantic EEZ. Sailfish may only be harvested by rod and reel.

\* \* \* \* \*

(4) \* \* \*

(i) No person may possess north Atlantic swordfish taken from its management unit by any gear other than handgear, green-stick, or longline, except that such swordfish taken incidentally while fishing with a squid trawl may be retained by a vessel issued a valid Incidental HMS squid trawl permit, subject to restrictions specified in § 635.24(b)(2). No person may possess south Atlantic swordfish taken from its management unit by any gear other than longline.

\* \* \* \* \*

(iv) Except for persons aboard a vessel that has been issued a directed, incidental, or handgear limited access swordfish permit, a Swordfish General Commercial permit, an Incidental HMS squid trawl permit, or an HMS Commercial Caribbean Small Boat permit under § 635.4, no person may fish for North Atlantic swordfish with, or possess a North Atlantic swordfish taken by, any gear other than handline or rod and reel.

(v) A person aboard a vessel issued or required to be issued a valid Swordfish General Commercial permit may only possess North Atlantic swordfish taken from its management unit by rod and reel, handline, bandit gear, green-stick, or harpoon gear.

\* \* \* \* \*

(g) *Green-stick gear.* Green-stick gear may only be utilized when fishing from vessels issued a valid Atlantic Tunas General, Swordfish General Commercial, HMS Charter/Headboat, or

Atlantic Tunas Longline category permit. The gear must be attached to the vessel, actively trolled with the mainline at or above the water's surface, and may not be deployed with more than 10 hooks or gangions attached.

\* \* \* \* \*

■ 7. In § 635.22, paragraphs (f), (f)(1) and (f)(2) are revised to read as follows:

**§ 635.22 Recreational retention limits.**

\* \* \* \* \*

(f) *North Atlantic swordfish.* The recreational retention limits for North Atlantic swordfish apply to persons who fish in any manner, except to persons aboard a vessel that has been issued an HMS Charter/Headboat permit under § 635.4(b) and only when on a non for-hire trip, a directed, incidental or handgear limited access swordfish permit under § 635.4(e) and (f), a Swordfish General Commercial permit under § 635.4(f), an Incidental HMS Squid Trawl permit under § 635.4(n), or an HMS Commercial Caribbean Small boat permit under § 635.4(o).

(1) When on a for-hire trip as defined at § 635.2, vessels issued an HMS Charter/Headboat permit under § 635.4(b), that are charter boats as defined under § 600.10 of this chapter, may retain, possess, or land no more than one North Atlantic swordfish per paying passenger and up to six North Atlantic swordfish per vessel per trip. When such vessels are on a non for-hire trip, they must comply with the commercial retention limits for swordfish specified at § 635.24(b)(4).

(2) When on a for-hire trip as defined at § 635.2, vessels issued an HMS Charter/Headboat permit under § 635.4(b), that are headboats as defined under § 600.10 of this chapter, may retain, possess, or land no more than one North Atlantic swordfish per paying passenger and up to 15 North Atlantic swordfish per vessel per trip. When such vessels are on a non for-hire trip, they may land no more than the commercial retention limits for swordfish specified at § 635.24(b)(4).

\* \* \* \* \*

■ 8. In § 635.24, paragraph (b)(4) is added to read as follows:

**§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.**

\* \* \* \* \*

(b) \* \* \*

(4) Persons aboard a vessel that has been issued a Swordfish General Commercial permit or an HMS Charter/Headboat permit (and only when on a non for-hire trip) are subject to the regional swordfish retention limits specified at paragraph (b)(4)(iii), which may be adjusted during the fishing year

based upon the inseason regional retention limit adjustment criteria identified in paragraph (b)(4)(iv) below.

(i) *Regions.* Persons aboard a vessel that has been issued a Swordfish General Commercial permit or an HMS Charter/Headboat permit (and only when on a non for-hire trip) may fish for or retain swordfish in the management unit. Regional retention limits for swordfish apply in four regions. For purposes of this section, these regions are: The Florida Swordfish Management Area as defined in § 635.2; the Northwest Atlantic region (federal waters along the entire Atlantic coast of the United States north of 28°17' N. latitude, but not inclusive of any water located in the Florida Swordfish Management Area as defined in § 635.2); the Gulf of Mexico region (any water located in the EEZ in the entire Gulf of Mexico west of 82° W. longitude, but not inclusive of any water located in the Florida Swordfish Management Area as defined in § 635.2); and the Caribbean region (the U.S. territorial waters within the Caribbean as defined in § 622.2 of this chapter).

(ii) *Possession, retention, and landing restrictions.* Vessels that have been issued a Swordfish General Commercial permit or an HMS Charter/Headboat permit (and only when on a non for-hire trip), as a condition of these permits, may not possess, retain, or land any more swordfish than is specified for the region in which the vessel is located.

(iii) *Regional retention limits.* The swordfish regional retention limits for each region will range between zero to six swordfish per vessel per trip. At the start of each fishing year, the default regional retention limits will apply. During the fishing year, NMFS may adjust the default retention limits per the inseason regional retention limit adjustment criteria listed in § 635.24(b)(4)(iv), if necessary. The default retention limits for the regions set forth under paragraph (b)(4)(i) are:

(A) one swordfish per vessel per trip for the Florida Swordfish Management Area.

(B) two swordfish per vessel per trip for the Caribbean region.

(C) three swordfish per vessel per trip for the Northwest Atlantic region.

(D) three swordfish per vessel per trip for the Gulf of Mexico region.

(iv) *Inseason regional retention limit adjustment criteria.* NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustments to the regional retention limits. Before making any inseason adjustments to regional retention limits, NMFS will consider the following criteria and other relevant factors:

(A) The usefulness of information obtained from biological sampling and monitoring of the North Atlantic swordfish stock;

(B) The estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end of the fishing year;

(C) The estimated amounts by which quotas for other categories of the fishery might be exceeded;

(D) Effects of the adjustment on accomplishing the objectives of the fishery management plan and its amendments;

(E) Variations in seasonal distribution, abundance, or migration patterns of swordfish;

(F) Effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota; and

(G) Review of dealer reports, landing trends, and the availability of swordfish on the fishing grounds.

\* \* \* \* \*

■ 9. In § 635.27, paragraphs (c)(1)(i)(A) and (c)(1)(i)(B) are revised to read as follows:

#### § 635.27 Quotas.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) A swordfish from the North Atlantic stock caught prior to the directed fishery closure by a vessel for which a directed swordfish limited access permit, a swordfish handgear limited access permit, a HMS Commercial Caribbean Small Boat permit, a Swordfish General Commercial open access permit, or an HMS Charter/Headboat permit (and only when on a non for-hire trip) has been issued or is required to have been issued is counted against the directed fishery quota. The total baseline annual fishery quota, before any adjustments, is 2,937.6 mt dw for each fishing year. Consistent with applicable ICCAT recommendations, a portion of the total baseline annual fishery quota may be used for transfers to another ICCAT contracting party. The annual directed category quota is calculated by adjusting for over- or underharvests, dead discards, any applicable transfers, the incidental category quota, the reserve quota and other adjustments as needed, and is subdivided into two equal semi-annual periods: One for January 1 through June 30, and the other for July 1 through December 31.

(B) A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental swordfish

limited access permit, an incidental HMS Squid Trawl permit, an HMS Angling permit, or an HMS Charter/Headboat permit (and only when on a for-hire trip) has been issued, or a swordfish from the North Atlantic stock caught after the effective date of a closure of the directed fishery from a vessel for which a swordfish directed limited access permit, a swordfish handgear limited access permit, a HMS Commercial Caribbean Small Boat permit, a Swordfish General Commercial open access permit, or an HMS Charter/Headboat permit (when on a non for-hire trip) has been issued, is counted against the incidental category quota. The annual incidental category quota is 300 mt dw for each fishing year.

\* \* \* \* \*

■ 10. In § 635.28, paragraphs (c)(1)(i)(C) and (c)(1)(i)(D) are added to read as follows:

#### § 635.28 Closures.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) \* \* \*

(C) No swordfish may be possessed, landed, or sold by vessels issued a Swordfish General Commercial open access permit.

(D) No swordfish may be sold by vessels issued an HMS Charter/Headboat permit.

\* \* \* \* \*

■ 11. In § 635.34, paragraph (a) is revised to read as follows:

#### § 635.34 Adjustment of management measures.

(a) NMFS may adjust the catch limits for BFT, as specified in § 635.23; the quotas for BFT, shark and swordfish, as specified in § 635.27; the regional retention limits for Swordfish General Commercial permit holders, as specified at § 635.23; the marlin landing limit, as specified in § 635.27(d); and the minimum sizes for Atlantic blue marlin, white marlin, and roundscale spearfish as specified in § 635.20.

\* \* \* \* \*

■ 12. In § 635.71, paragraphs (e)(8) and (e)(15) are revised, and paragraph (e)(18) is added to read as follows:

#### § 635.71 Prohibitions.

\* \* \* \* \*

(e) \* \* \*

(8) Fish for North Atlantic swordfish from, possess North Atlantic swordfish on board, or land North Atlantic swordfish from a vessel using or having on board gear other than longline, greenstick gear, or handgear, except as specified at § 635.21(e)(4)(i).

\* \* \* \* \*

(15) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or the Atlantic HMS Charter/Headboat category (and only when on a for-hire trip), fail to report a North Atlantic swordfish, as specified in § 635.5(c)(2) or (c)(3).

\* \* \* \* \*

(18) As the owner of a vessel permitted, or required to be permitted, in the Swordfish General Commercial permit category, possess North Atlantic swordfish taken from its management unit by any gear other than rod and reel, handline, bandit gear, green-stick, or harpoon gear.

\* \* \* \* \*

[FR Doc. 2013-03990 Filed 2-21-13; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 300 and 679

RIN 0648-BB94

#### Amendment 94 to the Fishery Management Plan for Groundfish of the Gulf of Alaska

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

**ACTION:** Notice of availability of a proposed fishery management plan amendment; request for comments.

**SUMMARY:** The National Marine Fisheries Service (NMFS) announces that the North Pacific Fishery Management Council (Council) has submitted Amendment 94 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) for review by the Secretary of Commerce (Secretary). Amendment 94 would revise the sablefish individual fishing quota program (IFQ Program) to align the annual harvest, or use caps that apply to vessels fishing IFQ leased from a community quota entity (CQE) with vessel use caps applicable to non-CQE participants in the IFQ Program. The proposed amendment would not change the sablefish vessel use cap applicable to the overall IFQ Program. Amendment 94 is necessary to increase the flexibility of the CQE and CQE community residents to participate in the IFQ Program. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act

(Magnuson-Stevens Act), the GOA FMP, and other applicable laws.

**DATES:** Written comments on Amendment 94 must be received no later than 5:00 p.m., Alaska local time (A.l.t.), on April 23, 2013.

**ADDRESSES:** You may submit comments on this document, identified by FDMS Docket Number NOAA-NMFS-2012-0040, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/](http://www.regulations.gov/) #!docketDetail;D=NOAA-NMFS-2012-0040, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- **Mail:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.
- **Fax:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Fax comments to (907) 586-7557.
- **Hand delivery to the Federal Building:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Regulatory Impact Review (RIR) for Amendment 94 and the RIRs for the regulatory amendments are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information

requirements contained in this rule may be submitted to NMFS at the above address or by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395-7285.

#### FOR FURTHER INFORMATION CONTACT:

Peggy Murphy, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP or FMP amendment it prepares to the Secretary for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires the Secretary, upon receiving an FMP, to immediately publish a notice in the **Federal Register** that the FMP or amendment is available for public review and comment.

Amendment 94 to the GOA FMP would revise the individual fishing quota program (IFQ Program) for sablefish fisheries. The IFQ program for the fixed-gear commercial fisheries for halibut and sablefish in waters in and off Alaska is a limited access privilege program implemented in 1995 (58 FR 59375, November 9, 1993). The IFQ Program limits access to the GOA halibut and sablefish fisheries to those persons holding quota share (QS) in specific management areas. The amount of halibut and sablefish that each QS holder may harvest is calculated annually and issued as IFQ in pounds.

In 2002, the North Pacific Fishery Management Council (Council) recommended revisions to IFQ Program regulations and policy to explicitly allow a non-profit entity to hold QS on behalf of residents of specific rural communities located adjacent to the coast of the GOA. NMFS implemented the Council's recommendations as Amendment 66 to the GOA FMP in 2004 (69 FR 23681, April 30, 2004). Amendment 66 implemented the community quota entity program (CQE Program) to allow these specific communities to form non-profit corporations called CQEs to purchase catcher vessel QS under the IFQ Program. CQEs that purchase QS on behalf of an eligible community may lease the resulting annual IFQ to fishermen who are residents of the community. The CQE Program was developed to allow a distinct set of small, remote coastal communities to benefit from CQE purchase of QS through sustained community participation in the IFQ fisheries.

The Council reviewed the IFQ Program and the CQE Program beginning in February 2010 and considered proposed changes to both programs. The Council adopted Amendment 94 on October 2, 2011.