

**Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 20, 2012.

**Gregory E. Siekaniec,**

*Acting Director, U.S. Fish and Wildlife Service.*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 120412411-2411-01]

**RIN 0648-BB75**

**Atlantic Highly Migratory Species; North and South Atlantic Swordfish Quotas and Management Measures**

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

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

**SUMMARY:** This proposed rule would implement the International Commission for the Conservation of Atlantic Tunas (ICCAT) Recommendation 11-02, which maintains the U.S. North Atlantic swordfish base quota allocation, limits the annual underharvest carryover to 25 percent of the base quota, and requires an annual quota transfer to Morocco. ICCAT Recommendation 11-02 also includes an alternative swordfish minimum size of 25-inches cleithrum-caudal keel (CK).

This proposed rule also considers changes to swordfish minimum size requirements, including the 25-inch CK alternative swordfish minimum size and whether the bill of a swordfish must be attached when measuring swordfish using the existing lower jaw fork length minimum size requirement. The rule also includes regulatory modifications and clarifications regarding swordfish fishery season closures and the North Atlantic swordfish quota reserve category.

Finally, this proposed rule would also adjust the North and South Atlantic swordfish quotas for the 2012 fishing year to account for 2011 underharvests and landings, as required by ICCAT Recommendations 11-02 and 09-03, and implemented in regulations at 50 CFR 635.27. This proposed rule could

affect commercial and recreational fishing for swordfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This action implements ICCAT recommendations, consistent with the Atlantic Tunas Convention Act (ATCA), and furthers domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Written comments must be received by 5 p.m., local time, on June 5, 2012.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2012-0094 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov). To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2012-0094 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- *Mail:* Submit written comments to Margo Schulze-Haugen, 1315 East West Highway, National Marine Fisheries Service, SSMC3, Silver Spring, MD 20910.
- *Fax:* 301-713-1917, Phone: 301-427-8503; Attn: Margo Schulze-Haugen.

*Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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. 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.) 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 or Excel, WordPerfect, or Adobe PDF file formats only.

NMFS will hold one conference call and three public hearings on this proposed rule on May 22, 23, 25, and 31, 2012. The public hearings will be held in Fort Lauderdale, FL; Silver Spring, Maryland; and Manahawkin,

New Jersey. For specific locations, dates and times see the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of the supporting documents—including the draft Environmental Assessment (EA), Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP)—are available from the HMS Web site at <http://www.nmfs.noaa.gov/sfa/hms/> or by contacting LeAnn Hogan at 301-427-8503.

**FOR FURTHER INFORMATION CONTACT:**

Steve Durkee by phone: 202-670-6637, or LeAnn Hogan or Delisse Ortiz by phone: 301-427-8503 or by fax: 301-713-1917.

**SUPPLEMENTARY INFORMATION:** North and South Atlantic swordfish are managed under the dual authority of the Magnuson-Stevens Act and ATCA, which authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement ICCAT recommendations. 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 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) Fishery Management Plan (FMP), which details management measures for Atlantic HMS fisheries. The implementing regulations for the Consolidated HMS FMP and its amendments are at 50 CFR part 635.

ICCAT is responsible for the conservation of tuna and tuna-like species in the Atlantic Ocean and adjacent seas. ICCAT recommendations are binding on Contracting Parties, non-Contracting Cooperating Parties, Entities and Fishing Entities (CPCs), unless Parties object pursuant to the treaty. All ICCAT recommendations are available on the ICCAT Web site at <http://www.iccat.int/en/>. In November 2011, ICCAT adopted Recommendation 11-02 for North Atlantic swordfish. This recommendation maintains the U.S. baseline quota of 2,937.6 metric tons (mt) dressed weight (dw) for 2012 and 2013. Previous North Atlantic swordfish recommendations included a quota transfer of 18.8 mt dw from the United States to Canada; however, Recommendation 11-02 eliminates this quota transfer and includes a transfer of 112.8 mt dw from the United States to Morocco to support joint scientific

research and Morocco's efforts to eliminate the use of driftnets. Recommendation 11-02 also includes a provision for the submission of annual swordfish management plans and a change to the underharvest carryover provisions. The recommendation limits the amount of underharvested quota that can be carried over by a CPC allocated a baseline quota greater than 500 mt to 25 percent of the baseline quota. All other CPCs are limited to an underharvest carryover limit of 50 percent of their baseline quota. This recommendation also includes an option for countries to use a CK minimum size measurement of 25 inches. This recommendation was adopted by ICCAT based on the most recent North Atlantic swordfish stock assessment.

In this proposed rule, NMFS considers changes to the HMS regulations at 50 CFR part 635 consistent with ICCAT Recommendation 11-02. Specifically, NMFS proposes regulatory changes to the adjusted quotas and minimum sizes that would affect commercial and recreational vessels that catch Atlantic swordfish. Under ATCA, the United States promulgates regulations as may be necessary and appropriate to implement binding recommendations of ICCAT. NMFS prepared a draft Environmental Assessment (EA), Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA), which present and analyze anticipated environmental, social, and economic impacts of each alternative contained in this proposed rule. A summary of the alternatives considered and related analyses are provided below. The complete list of alternatives and related analyses is provided in the draft EA/RIR/IRFA. A copy of the draft EA/RIR/IRFA prepared for this proposed rule is available from NMFS (see **ADDRESSES**).

#### **ICCAT North Atlantic Swordfish Quota Implementation**

In this action, NMFS proposes to maintain the U.S. base quota of 2,937.6 mt dw and implement both of the other quota-related measures in ICCAT Recommendation 11-02 for North Atlantic swordfish. The first measure requires an annual quota transfer of 112.8 mt dw from the United States to Morocco to support joint scientific research and Morocco's efforts to eliminate the use of driftnets. The second measure limits the amount of underharvested quota relevant ICCAT parties can carryover to the subsequent fishing year. Previously, the ICCAT allowed underharvests of up to 50

percent of the annual base quota (1,468.8 mt dw for the United States); however, ICCAT Recommendation 11-02 limits this carryover to 25 percent of the base quota (734.4 mt dw for the United States). Due to the quota transfer and reduced underharvest carryover limit, the maximum U.S. North Atlantic swordfish adjusted quota would be reduced to 3,559.2 mt dw (2,937.6 mt dw base quota + 734.4 mt dw underharvest – 112.8 mt dw transfer) compared to 4,406.4 mt dw under previous recommendations. These North Atlantic swordfish quotas would be maintained until the quotas are changed by ICCAT.

This proposed action would likely have neutral ecological and economic impacts in the short-term because the United States is unlikely to achieve 100 percent quota utilization in the short-term. Consequently, minor changes to the adjusted quota through international quota transfers or through reduced underharvest carryover limits are unlikely to impact total annual revenues from the fishery, swordfish catch rates or mortality levels. In the long-term, however, the proposed action could have minor beneficial ecological impacts on the North Atlantic swordfish stock as the U.S. swordfish fishery nears 100 percent quota utilization.

With regard to long-term socioeconomic impacts, a lower adjusted quota could have minor adverse impacts assuming the U.S. swordfish fishery nears 100 percent quota utilization. At that time, an adjusted quota that reflects the annual quota transfer to Morocco and the lower underharvest carryover limit would lead to a lower available quota relative to the current adjusted quota. This lower level of adjusted quota would result in a decrease in total possible fishery-wide annual revenues. If NMFS deducts the 112.8 mt dw quota transfer from the U.S. base quota of 2,937.6 mt dw and limits underharvest carryover to 25 percent, the total U.S. adjusted quota could reach 3,559.2 mt dw (7,846,612 lbs dw). Assuming an average ex-vessel price of \$4.31 per pound and 100 percent quota utilization, total possible gross revenues across the domestic fishery would be estimated to be \$33,818,898 compared to \$41,868,844 under the current adjusted quota of 4,406.4 mt dw. Therefore, this proposed action could result in annual gross revenues that are \$8,049,946 less (\$41,868,844 – \$33,818,898) than the possible annual gross revenues under the current adjusted quota of 4,406.4 mt dw. However, the quota transfer to Morocco and the reduction in the underharvest carryover limit are binding

ICCAT measures and the United States is required to implement these measures as necessary and appropriate to comply with ICCAT Recommendation 11-02 and ATCA.

#### **Swordfish Minimum Size Measures**

In this action, NMFS proposes to implement the swordfish minimum size provision of the 2011 ICCAT North Atlantic swordfish Recommendation 11-02. This alternative minimum size is 25 inches CK and would replace the existing 29-inch CK minimum size that is in place for the U.S. Atlantic swordfish fishery. The 25-inch CK minimum size is equivalent to a greater number of 47-inch LJFL swordfish as opposed to the 29-inch CK minimum size and was calculated to provide a scientifically-based equivalent measurement for dressed swordfish. Since the 25-inch CK minimum size is equivalent to the 47-inch LJFL minimum size, NMFS does not expect any ecological impacts to result from this action. The alternative CK minimum size would simplify and facilitate compliance and enforcement of the minimum size requirements. Simplifying enforcement and compliance could lead to an increase in the number of fish legally retained, but NMFS expects that this increase would be modest and well within the ICCAT SCRS minimum size requirements. Implementing the proposed 25-inch CK minimum size could better address the operational needs of the U.S. swordfish fleet while not leading to negative ecological impacts to swordfish stocks because any retention would still be within the specified quota limits.

Implementing the 25-inch CK minimum size would likely have moderate beneficial socioeconomic impacts in both the short and long-term. Currently, fishermen do not have a minimum size measurement that allows for the retention of dressed swordfish that measure at or slightly above 47 inches LJFL. If a fisherman catches a swordfish that meets the 47-inch LJFL minimum size, but not the current 29-inch CK minimum size, the fisherman must either land the fish with the head naturally attached or discard the fish. Due to storage capacity limitations and uncertainty in minimum size regulations, fishermen sometimes choose to discard legal fish that do not meet the 29-inch CK minimum size. Similarly, dealers sometimes will not accept fish that meet the 47-inch LJFL measurement but not the 29-inch CK minimum size. Even when these swordfish are landed with the head naturally attached, some dealers have expressed concern that, once the head is

removed, the fish could be in violation of minimum size requirements. For these reasons, implementing the ICCAT alternative minimum CK size of 25 inches could lead to increased retention of fish that measure at or slightly above 47 inches LJFL, since this CK minimum size is equivalent to a greater number of 47-inch LJFL fish than the existing 29-inch CK minimum size. The increase in retained catch could lead to increased revenues for both fishermen and dealers. This increase would occur without any corresponding impact to the swordfish stock since all retained catch would continue to measure at least 47 inches LJFL which is the scientifically-determined sustainable minimum size.

In this action, NMFS also proposes to allow the LJFL minimum size to be applied to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw. Due to morphological differences between individual swordfish, fishermen occasionally retain swordfish that meet the 47-inch LJFL minimum size, but not the current 29-inch CK minimum size. In these cases, the fishermen must leave the head of the swordfish naturally attached in order to maintain the carcass in a form that can be measured using the LJFL minimum size measurement. Scenarios such as this could continue even if NMFS implements the new ICCAT minimum CK length of 25 inches, although they would likely become less common. Currently, there is some confusion as to whether the head is still "naturally attached" if the bill is removed. The bill imposes a storage capacity cost, poses some safety concerns, and is not necessary for determining whether a swordfish is undersized. NMFS proposes to explicitly allow fishermen to remove the bill of the swordfish and still consider the head naturally attached, provided the bill is removed forward of the anterior tip of the lower jaw. Consequently, the LJFL minimum size standard could still be used. NMFS expects that this action would not have any ecological impacts on the Atlantic swordfish stock. Keeping the bill of a swordfish attached to the carcass is unnecessary when performing minimum size measurements as long as the lower jaw remains intact. Both the LJFL and CK minimum size measurements use two end points posterior to the bill; therefore, removing the bill would not have any impact on determining compliance with minimum size measurements. The action would not provide any additional impacts to the swordfish stock from increased

catch or effort or contribute to the harvest of undersized individuals.

Allowing the LJFL minimum size to be applied to swordfish without a bill would likely result in short and long-term minor beneficial socioeconomic impacts. Neither the LJFL nor the CK minimum size require the bill of the swordfish to be attached; therefore, the bill is unnecessary in determining if a swordfish is of legal size. However, the bill of a swordfish can complicate fishing operations by presenting safety concerns and imposing storage capacity costs. If NMFS allows fishermen to continue to employ the LJFL measurement in the absence of the bill, commercial vessels could more efficiently pack the swordfish catch, leaving more room for additional product. This proposed action provides increased flexibility for fisherman, increases safety, and allows for more efficient packing while not impacting the ability to determine if the fish meets the LJFL minimum size requirement. While NMFS is proposing to change the CK minimum size and allow for a swordfish to be measured using the LJFL measurement, even with its bill removed, NMFS also considered several other minimum size alternatives. These alternatives include eliminating the LJFL as an authorized size measurement and using only a CK measurement, and reinstating the 33 pound live weight measurement. These alternatives are fully described in the draft EA/RIR/IRFA.

#### Administrative Changes

This proposed rule also makes several modifications to the regulatory text for clarification or management purposes. The current regulatory language found in § 635.27 (c)(2)(i) explicitly authorizes the inseason transfer of North Atlantic swordfish quota among the directed, incidental, and reserve categories. This rule proposes to allow NMFS to transfer quota from the directed category to the incidental or reserve quota categories as well. In this action, NMFS also analyzes the impacts of scientific research and exempted fishing permits on Atlantic swordfish and considers using quota in the reserve category to account for fishery-independent research landings. Therefore, the North Atlantic swordfish reserve category description is simplified and the annual reserve category allocation is explicitly stated to be 50 mt dw in § 635.27(c)(1)(i)(D). Additionally, the regulatory language is modified so that ICCAT-negotiated quota transfers will be removed from the North Atlantic swordfish baseline quota rather than the reserve category.

#### 2012 North and South Atlantic Swordfish Specifications

##### *North Atlantic Swordfish Quota*

At the 2011 ICCAT meeting, Recommendation 11-02 was adopted, maintaining the North Atlantic swordfish total allowable catch (TAC) of 13,700 metric tons (mt) whole weight (ww) (10,301 mt dressed weight (dw)) through 2013. Of this TAC, the United States baseline quota is 2,937.6 mt dw (3,907.0 mt ww) per year. ICCAT Recommendation 11-02 also includes a new 112.8 mt dw annual quota transfer to Morocco and limits the underharvest carryover to 25 percent of the baseline quotas. Therefore, the United States may carry over a maximum of 734.4 mt dw of underharvests from the previous year (2011) to be added to the 2012 baseline quota. This proposed rule would adjust the U.S. baseline quota for the 2012 fishing year to account for the annual quota transfer to Morocco and the 2011 underharvest. The 2012 North Atlantic swordfish baseline quota is 2,937.6 mt dw. The preliminary North Atlantic swordfish underharvest for 2011 was 2,750.1 mt dw, which exceeds the maximum carryover cap of 734.4 mt dw. Therefore, NMFS is proposing to carry forward the maximum amount allowed per ICCAT Recommendation 11-02. The baseline quota reduced by the 112.8 mt dw annual quota transfer to Morocco and increased by the underharvest carryover maximum of 734.4 mt dw equals 3,559.2 mt dw, which is the proposed adjusted quota for the 2012 fishing year. From that proposed adjusted quota, the directed category would be allocated 3,209.2 mt dw and would be split equally into two seasons in 2012 (January through June, and July through December). The reserve category would be allocated 50 mt dw for inseason adjustments and research, and 300 mt dw would be allocated to the incidental category, which includes recreational landings and catch by incidental swordfish permit holders for the 2012 fishing season, per § 635.27(c)(1)(i)(B) (Table 1). These landings are based on preliminary data. As late reports are received and the data undergo quality control processes, some data may change. Any changes will be described in the final rule, as appropriate.

##### *South Atlantic Swordfish Quota*

ICCAT Recommendation 06-03 established the South Atlantic swordfish TAC at 17,000 mt ww for 2007, 2008, and 2009. Of this, the United States received 75.2 mt dw (100 mt ww). As with the North Atlantic swordfish recommendation, ICCAT

Recommendation 06–03 established a cap on the amount of underharvest that can be carried forward. For South Atlantic swordfish, the United States is limited to carrying forward 100 percent (75.2 mt dw). The most recent South Atlantic swordfish measure,

Recommendation 09–03, is a 3-year measure that reduced the TAC to 15,000 mt dw but maintains the previous years' U.S. quota share of 75.2 mt dw (100 mt ww) and underharvest carryover limit through 2012.

ICCAT Recommendation 09–03 also transfers a total of 75.2 mt dw (100 mt ww) of the U.S. South Atlantic swordfish quota to other countries. These transfers are 37.6 mt dw (50 mt ww) to Namibia, 18.8 mt dw (25 mt ww) to Cote d'Ivoire, and 18.8 mt dw (25 mt ww) to Belize. In 2011, U.S. fishermen

did not land any South Atlantic swordfish, therefore, 75.2 mt dw of underharvest is available to carry over to 2012 and can cover the entire 75.2 mt dw of annual international quota transfers outlined above. Therefore, the 2012 adjusted quota for South Atlantic swordfish is 75.2 mt dw (Table 1).

Impacts resulting from the 2012 North Atlantic swordfish specifications are analyzed in the Environmental Assessment (EA) accompanying this rule. The impacts are summarized above in the ICCAT North Atlantic Swordfish Quota Implementation section. The impacts resulting from the 2012 South Atlantic swordfish specifications were analyzed in the EA that was prepared for the 2007 Swordfish Quota Specification Final Rule published on October 5, 2007 (72 FR 56929). The

quota adjustments would not increase overall quotas and are not expected to increase fishing effort, protected species interactions, or environmental effects beyond those considered in the 2007 EA. Therefore, because there would be no changes to the South Atlantic swordfish management measures in this proposed rule, or the affected environment or any environmental effects that have not been previously analyzed, NMFS has determined that the South Atlantic swordfish specifications portion of this proposed rule and impacts to the human environment as a result of the quota adjustments do not require additional NEPA analysis beyond that discussed in the 2007 EA.

TABLE 1—2012 NORTH AND SOUTH ATLANTIC SWORDFISH QUOTAS

North Atlantic swordfish quota (mt dw)		2012
Baseline Quota .....		2,937.6
Quota Transfer to Morocco .....		(–)112.8
Total Underharvest from Previous Year <sup>+</sup> .....		2,750.1
Underharvest Carryover from Previous Year <sup>+</sup> .....		734.4
Adjusted Quota .....		3,559.2
Quota Allocation .....		
	Directed Category .....	3,209.2
	Incidental Category .....	300
	Reserve Category .....	50
South Atlantic swordfish quota (mt dw)		2012
Baseline Quota .....		75.2
International Quota Transfers <sup>*</sup> .....		(–)75.2
Total Underharvest from Previous Year <sup>+</sup> .....		75.2
Underharvest Carryover from Previous Year <sup>+</sup> .....		75.2
Adjusted quota .....		75.2

<sup>+</sup> Underharvest is capped at 25 percent of the baseline quota allocation for the North Atlantic and 75.2 dw (100 mt ww) for the South Atlantic.

<sup>\*</sup> Under 09–03, 100 mt ww of the U.S. underharvest and base quota, as necessary, was transferred to Namibia (37.6 mt dw, 50 mt ww), Cote d'Ivoire (18.8 mt dw, 25 mt ww), and Belize (18.8 mt dw, 25 mt ww).

## Public Hearings

Comments on this proposed rule may be submitted via <http://www.regulations.gov>, mail, or fax and comments may also be submitted at a

public hearing. NMFS solicits comments on this proposed rule by May 31, 2012. During the comment period, NMFS will hold 3 public hearings and one conference call for this proposed rule. The hearing locations will be

physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Steve Durkee at 202–670–6637, at least 7 days prior to the meeting.

Location	Date	Time	Address
Conference call .....	May 22, 2012 .....	2:30–5:30 p.m. .....	Conference line: 888–957–9840, Passcode: 3094714.
Ft. Lauderdale, FL .....	May 23, 2012 .....	5:00–8:00 p.m. .....	Broward County Main Library, 100 S. Andrews Avenue, Fort Lauderdale, FL 33301.
Silver Spring, MD .....	May 25, 2012 .....	2:00–5:00 p.m. .....	NMFS Science Center, 1301 East-West Highway, Silver Spring, MD 20910.
Manahawkin, NJ .....	May 31, 2012 .....	5:00–8:00 p.m. .....	Stafford Branch Library, 129 N. Main Street, Manahawkin, NJ 08050.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of

NMFS will explain the ground rules (e.g., alcohol is prohibited from the hearing 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; and attendees should not interrupt one another). The NMFS representative will attempt to 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, if they do not, they will be asked to leave the hearing.

### Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

NMFS prepared a draft EA for this rule that discusses the impact on the environment that would occur as a result of this proposed action. In this proposed action, NMFS is considering implementation of ICCAT

Recommendation 11-02 including quota allocation, international quota transfers, and modifications to minimum size requirements per the alternative ICCAT minimum size and requests from commercial fishery participants. This draft EA also analyzes the impacts of deducting fishery independent research landings of swordfish from the reserve category quota. A copy of the EA 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 RFA (RFA). The IRFA describes the economic impact this proposed rule would have on small entities if adopted. 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**).

In compliance with section 603(b)(1) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking 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.

In compliance with section 603(b)(2) of the Regulatory Flexibility Act, the objectives of this proposed rulemaking are to consider changes to the HMS regulations at 50 CFR part 635 consistent with ICCAT

recommendations. In this action, NMFS proposes to adjust the 2012 Atlantic swordfish quotas and implement ICCAT Recommendation 11-02, which includes quota allocation, underharvest carryover provisions, international quota transfer requirements, and a new alternative minimum size measurement for Atlantic swordfish, consistent with ATCA, the 2006 Consolidated HMS FMP and other applicable laws. The regulatory changes would affect vessels that catch Atlantic swordfish, including commercial vessels that deploy PLL gear or hold HMS Angling and Charter/Headboat permits. In compliance with ATCA, NMFS is required to implement domestic regulations consistent with recommendations adopted by ICCAT as may be necessary and appropriate.

Section 603(b)(3) requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. In accordance with the Small Business Administration (SBA) size standards, NMFS used the following thresholds 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. Using these thresholds, NMFS determined that all HMS permit holders are small entities. Specifically, this proposed action would apply to all participants in the Atlantic HMS commercial and recreational fisheries that retain Atlantic swordfish. As of October 2011, 245 vessels held a directed or incidental commercial swordfish permit and are reasonably expected to use PLL gear, 78 held a commercial handgear permit, 23,138 held an Atlantic HMS Angling permit, and 4,194 vessels held an Atlantic HMS Charter/Headboat permit. Vessels holding these permits could be affected by this action.

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603(b)(4)). Similarly, this proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and other participants 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, ATCA, 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 would duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

Under section 603(c), agencies are required to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in the draft EA for the proposed action. Additionally, the Regulatory Flexibility Act (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. These categories of alternatives are: (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 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, second, 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. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationale for identifying the preferred alternatives to achieve the desired objective.

NMFS has prepared this IRFA to analyze the impacts on small entities of the alternatives for implementing ICCAT Recommendation 11-02 for all domestic fishing categories that fish for Atlantic swordfish. The IRFA assesses the impacts of the various alternatives on the vessels that participate in the Atlantic HMS commercial and recreational fisheries that retain Atlantic swordfish, all of which are considered small entities. Six alternatives were considered and analyzed and include: (1) No Action; (2) Implement the 2011 ICCAT North Atlantic swordfish Recommendation 11-02, which

includes an annual quota transfer of 112.8 mt dw from the United States to Morocco and an annual underharvest carryover limit of 25 percent of the base quota (annual carryover limit of 734.4 mt dw); maintain status quo for North Atlantic quotas—Preferred Alternative; (3) Implement the alternative swordfish CK minimum size measurement of 25 inches per the 2011 ICCAT North Atlantic swordfish Recommendation 11–02—Preferred Alternative; (4) Use the CK measurement as the sole minimum size and discontinue the use of the LJFL minimum length standard in U.S. domestic fisheries; (5) Allow the LJFL minimum size to be applied to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw—Preferred Alternative; and (6) Reintroduce the 33 pound minimum weight standard.

Under Alternative 1, NMFS would not implement any of the measures contained in the 2011 ICCAT North Atlantic swordfish Recommendation 11–02, including the quota allocation, underharvest carryover limit, international quota transfer, or CK minimum size measurement.

Alternative 1 would likely have net direct minor adverse socioeconomic impacts in the short-term. No impacts would be expected if NMFS does not implement the quota portion of ICCAT Recommendation 11–02; however, direct, minor, adverse socioeconomic short-term impacts could result if NMFS does not implement the alternative CK minimum size. The U.S. quota specified in ICCAT Recommendation 11–02 is unchanged from previous years; therefore, the base quota would not be affected. The only effect of non-action would be that the transferred quota would not be deducted from the U.S. base quota. Since the United States has not harvested the entire allocated swordfish quota and is unlikely to do so in the short-term, deducting the transferred quota from the domestic base quota is unlikely to result in changes to annual revenue or revenue to individual vessels. Similarly, if NMFS does not reduce the annual carryover limit from 50 percent to 25 percent, the higher annual adjusted quota is unlikely to be utilized and is unlikely to result in changes in landings or revenue to individual vessels. However, if NMFS does not implement the alternative CK minimum size, there could be direct, minor, adverse socioeconomic short-term impacts. The 25-inch CK minimum size is equivalent to the existing 47-inch LJFL minimum size. Currently, fishermen do not have a minimum size measurement that allows for the

retention of dressed swordfish that measure at or slightly above 47 inches LJFL. If a fisherman catches a swordfish that meets the 47-inch LJFL minimum size but not the current 29-inch CK minimum size, the fisherman must either land the fish with the head naturally attached or discard the fish. Due to storage capacity limitations and uncertainty in minimum size regulations, fishermen sometimes choose to discard fish that legally meet the 47-inch LJFL measurement but do not meet the 29-inch CK minimum size. Similarly, dealers sometimes will not accept fish that meet the 47-inch LJFL measurement but not the 29-inch CK minimum size. These fish are landed with the head naturally attached, but once removed, some dealers have expressed concern that they may be found out of compliance with minimum size regulations in the absence of proof that the fish was landed with the head and met the 47-inch LJFL measurement. For these reasons, if NMFS does not implement the alternative CK minimum size, fishermen would continue to discard (and not land) some fish that meet the LJFL minimum size but not the current CK minimum size, resulting in direct short-term minor adverse socioeconomic impacts. Quantifying the economic impact to individual vessels is difficult without estimates of the number of legal fish that are discarded; however, fish in this size range are often encountered by pelagic longline, handgear, and incidental (including squid trawl) swordfish permit holders. These permit holders would likely experience minor adverse economic impacts if the CK minimum size was not changed to 25 inches.

In the long-term, Alternative 1 could have net, direct, minor beneficial socioeconomic impacts. Due to a variety of swordfish revitalization efforts within and outside of the Agency, NMFS expects that U.S. fishermen could achieve near 100 percent quota utilization. If NMFS does not take action to reduce the base quota due to the annual quota transfer to Morocco nor reduce the adjusted quota by limiting underharvest carryover, the domestic fishery could land more swordfish resulting in higher annual revenues. The United States is allocated 2,937.6 mt dw of North Atlantic swordfish. If 112.8 mt dw of quota is not transferred to Morocco, and if up to 50 percent of the base quota can be carried over, the total U.S. adjusted quota could reach 4406.4 mt dw (9,714,349 lb dw). Assuming an average ex-vessel price of \$4.31 per pound and 100 percent quota utilization, the total possible annual

gross revenues across the domestic fishery would be estimated to be \$41,868,844 under Alternative 1. In 2011, there were 178 directed swordfish permit holders, 67 incidental swordfish permit holders, and 78 swordfish handgear permit holders. The Incidental HMS Squid Trawl Permit, which allows for limited retention of swordfish caught in the *Illex* squid trawl fishery, became effective toward the end of 2011; therefore, NMFS does not yet have a reliable estimate of the number of vessels that have or will avail themselves of this permit. Due to quota tracking complexities, NMFS does not have a proportional breakdown of the total landings by permit type; however, the average annual ex-vessel revenue across all swordfish permit types is \$129,625 per vessel (\$41,868,844/(178 directed swordfish permit holders, 67 incidental swordfish permit holders, and 78 swordfish handgear permit holders)). Since retention limits are higher for directed permit holders than incidental permit holders, actual per vessel revenue would likely be higher for directed permit holders and lower for incidental permit holders. Handgear permit holders do not have a retention limit; however, the gear used by these permit holders is less efficient, therefore, actual per vessel revenue is somewhere in between directed and incidental permit holders. As in the short-term, fishermen might still discard fish that meet the LJFL minimum size but not the current minimum size, precluding ex-vessel revenue from these landings; however, the larger quota would likely offset this impact. Under ATCA, the United States shall promulgate regulations as may be necessary and appropriate to implement binding recommendations of ICCAT and because this alternative would not implement ICCAT Recommendation 11–02, NMFS does not prefer this alternative at this time.

Alternative 2 would implement the ICCAT Recommendation 11–02 provisions pertaining to quota allocation, the underharvest carryover limit, and the quota transfer to Morocco. Alternative 2 would likely have direct neutral socioeconomic impacts in the short-term. As noted in the ecological impact discussion for Alternative 1, the United States is unlikely to achieve 100 percent quota utilization in the short-term. Consequently, minor changes to the base quota through international quota transfers or to the adjusted quota through reduced underharvest carryover limits are unlikely to impact swordfish fishing effort levels or annual revenues. In the long-term, however, Alternative 2

could have direct minor adverse socioeconomic impacts assuming the U.S. swordfish fishery nears 100 percent quota utilization. At that time, an adjusted quota that reflects the annual international quota transfer to Morocco and the lower underharvest carryover limit could lead to a lower available quota than the level possible under Alternative 1. This lower level of adjusted quota would result in a decrease in the total possible fishery-wide annual revenue. If NMFS deducts the 112.8 mt dw quota transfer from the U.S. base quota of 2,937.6 mt dw and limits underharvest carryover to 25 percent, the total U.S. adjusted quota could reach 3,559.2 mt dw (7,846,612 lbs dw). Assuming an average ex-vessel price of \$4.31 per pound and 100 percent quota utilization, total possible gross revenues across the domestic fishery would be estimated to be \$33,818,898 under Alternative 2. Therefore, Alternative 2 could result in annual gross revenues that are \$8,049,946 less (\$41,868,844—\$33,818,898) than the possible annual gross revenues under Alternative 1. This potential decrease in average annual ex-vessel revenue across all swordfish permit types is \$24,922 per vessel (\$8,049,946/(178 directed swordfish permit holders, 67 incidental swordfish permit holders, and 78 swordfish handgear permit holders)). Since retention limits are higher for directed permit holders than incidental permit holders, actual per vessel revenue loss would likely be higher for directed permit holders and lower for incidental permit holders. Handgear permit holders do not have a retention limit; however, the gear used by these permit holders is less efficient, therefore, actual per vessel revenue loss is somewhere in between directed and incidental permit holders. The United States, however, is required to implement these measures in order to be in compliance with ICCAT recommendation 11-02 under ATCA; therefore, NMFS prefers this alternative at this time.

Under Alternative 3, NMFS would implement the swordfish minimum size portion of the 2011 ICCAT swordfish Recommendation 11-02, which allows a 25-inch CK measurement. This alternative would likely have direct, moderate, beneficial socioeconomic impacts in both the short- and long-term. The 25-inch CK minimum size is equivalent to the existing 47-inch LJFL minimum size. Currently, fishermen do not have a minimum size measurement that allows for the retention of dressed swordfish that measure at or slightly above 47 inches LJFL. If a fisherman

catches a swordfish that meets the 47-inch LJFL minimum size but not the current 29-inch CK minimum size, the fisherman must either land the fish with the head naturally attached or discard the fish. Due to storage capacity limitations and uncertainty in minimum size regulations, fishermen sometimes choose to discard fish that legally meet the 47-inch LJFL measurement but do not meet the 29-inch CK minimum size. Similarly, dealers sometimes will not accept fish that meet the 47-inch LJFL measurement but not the 29-inch CK minimum size. These fish are landed with the head naturally attached, but once removed, some dealers have expressed concern that a minimum size violation could occur in the absence of proof that the fish was landed with the head and met the 47-inch LJFL measurement. For these reasons, implementing the ICCAT alternative minimum CK size of 25 inches could lead to increased retention of previously discarded legal fish that measure at or slightly above 47 inches LJFL, since this CK minimum size is equivalent to a greater number of 47-inch LJFL fish. Fish in this size range are the most frequently encountered fish; therefore, increased landings of fish in this size range are not trivial. The increase in retained catch could lead to increased annual revenues for both fishermen and dealers, resulting in direct, moderate, beneficial socioeconomic impacts in both the short- and long-term. Quantifying the economic impact to individual vessels is difficult without estimates on the number of legal fish that are discarded; however, fish in this size range are often encountered by pelagic longline, handgear, and incidental (including squid trawl) swordfish permit holders. These permit holders would likely experience minor beneficial economic impacts if the CK minimum size is changed to 25 inches. Because this alternative provides these benefits to fishermen but does not lead to increased mortality of undersized swordfish, NMFS prefers this alternative at this time.

Under Alternative 4, NMFS would use the CK measurement as the sole minimum size and discontinue the use of the LJFL minimum size in U.S. domestic fisheries. This alternative would be unlikely to have any direct socioeconomic impacts in the short- or long-term, provided that the new ICCAT alternative CK minimum size of 25 inches is implemented under Alternative 4. The current LJFL minimum size of 47 inches and the proposed CK minimum size of 25 inches equate to the same size fish in the

majority of instances. Therefore, the LJFL minimum size could be redundant with the CK minimum size. Removal of the LJFL minimum size and use of only the CK measurement could simplify enforcement and compliance with minimum size requirements.

Additionally, since the two minimum sizes refer to the same size fish, removal of the LJFL minimum size is unlikely to result in increased landings for individual vessels. However, removing one of the minimum size measurements could reduce flexibility for fishermen in how they choose to measure and land swordfish; therefore NMFS does not prefer this alternative at this time.

Under Alternative 5, NMFS would allow the LJFL minimum size to be applied to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw. Adoption of Alternative 5 would likely result in short- and long-term direct, minor, beneficial socioeconomic impacts. Swordfish are currently measured using either the lower jaw and fork of the tail (in the case of LJFL) or the cleithrum and caudal keel (in the case of CK) as endpoints. Neither of these measurement methods require the bill of the swordfish to be attached; therefore, the bill is unnecessary in determining if a swordfish is of legal size. The bill of a swordfish can complicate fishing operations by presenting safety concerns and imposing storage capacity costs. If NMFS allows fishermen to continue to employ the LJFL measurement in the absence of the bill, commercial vessels could more efficiently pack the swordfish catch, leaving more room for additional product. This additional product could increase revenues for both fishermen and dealers, although quantifying the economic benefits on a per-vessel basis is not possible. Because this alternative would simplify fishing operations and provide additional economic benefits for both fishermen and dealers without affecting compliance of minimum size requirements or impacting the sustainability of the stock, NMFS prefers Alternative 5 at this time.

Under Alternative 6, NMFS would reintroduce the 33-pound minimum weight standard. This alternative would be unlikely to have any net direct socioeconomic in the short- or long-term, provided that the new ICCAT alternative CK minimum size of 25 inches is implemented under Alternative 4. NMFS employed the 33-pound minimum weight, in combination with two minimum lengths, until 2009. At that time, NMFS removed the 33-pound minimum weight

and specified landing condition-specific minimum sizes. The impetus for this change was twofold. First, the use of three minimum sizes (weight, LJFL, and CK) complicated minimum size enforcement because all three measurements had to be taken to prove that a fish was undersized. This can require substantial time investments, particularly in cases with thousands of pounds of swordfish. Second, neither enforcement agents nor fishermen could definitively determine the accurate weight and subsequent legality of fish while at sea, presenting both compliance and enforcement problems. To address these enforcement and compliance complexities, NMFS simplified the swordfish minimum size requirements by removing the 33-pound minimum weight and specified landing condition-specific minimum lengths. Reintroducing the minimum dressed weight could provide some benefits and some disadvantages. The 33-pound minimum weight and the proposed 25-inch CK minimum size equate to the same size fish in the majority of instances. The primary benefit is that fishermen might be able to retain more swordfish because some fish meet the minimum weight but not the minimum length. Reintroducing the minimum weight could provide the opportunity to retain these fish. Disadvantages include those discussed above, including the enforcement and compliance difficulties. Since a definitive weight cannot be taken at sea, fishermen are unlikely to be able to determine the legality of swordfish weighing near 33 pounds. This presents uncertainties and compliance difficulties. The possible benefits and possible disadvantages, when taken together, result in neutral socioeconomic impacts across the fishery and to individual vessels. Additionally, since the 33-pound minimum weight and the proposed 25-inch CK minimum size equate to the same size fish in the majority of instances, reintroducing the minimum weight standard could be unnecessary. Since Alternative 7 poses enforcement and compliance concerns, and because the socioeconomic impacts may be neutral compared to the beneficial socioeconomic impacts under Alternatives 4 and 6, NMFS does not prefer this alternative at this time. However, should the enforcement and compliance issues be resolved in the future, NMFS may reconsider reintroduction of the 33-pound minimum weight standard.

#### List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties,

Reporting and recordkeeping requirements, Treaties.

Dated: April 26, 2012.

**Alan D. Risenhoover,**

*Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

#### PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. 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.*

2. In § 635.2, revise the definitions for “LJFL” and “Naturally attached” to read as follows:

#### § 635.2 Definitions.

\* \* \* \* \*

*LJFL* (lower jaw-fork length) means the straight-line measurement of a fish from the anterior tip of the lower jaw to the fork of the caudal fin. The measurement is not made along the curve of the body.

\* \* \* \* \*

*Naturally attached*, as it is used to describe shark fins refers to shark fins that remain attached to the shark carcass via at least some portion of uncut skin. As used to describe the head of a swordfish, naturally attached refers to the whole head remaining fully attached to the carcass except for the bill, which may be removed provided it has been removed forward of the anterior tip of the lower jaw.

\* \* \* \* \*

3. In § 635.20, paragraph (f)(2) is revised to read as follows:

#### § 635.20 Size limits.

\* \* \* \* \*

(f) \* \* \*

(2) If the head of a swordfish is no longer naturally attached, the CK measurement is the sole criterion for determining the size of a swordfish. No person shall take, retain, possess, or land a dressed North or South Atlantic swordfish taken from its management unit that is not equal to or greater than 25 inches (63 cm) CK length. A swordfish that is damaged by shark bites may be retained only if the length of the remainder of the carcass is equal to or greater than 25 inches (63 cm) CK length.

\* \* \* \* \*

4. In § 635.27, paragraphs (c)(1)(i)(A), (c)(1)(i)(D), (c)(2)(ii), and (c)(3)(ii) 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 fishery permit, or a handgear permit for swordfish, has been issued or is required to be 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: one for January 1 through June 30, and the other for July 1 through December 31.

\* \* \* \* \*

(D) 50 mt of the annual fishery quota of North Atlantic swordfish may be held in reserve for inseason adjustments to fishing categories, to compensate for projected or actual overharvest in any category, for fishery research, or for other purposes consistent with management objectives.

\* \* \* \* \*

(2) \* \* \*

(ii) If NMFS determines that the annual incidental catch quota will not be taken before the end of the fishing year, excess quota may be allocated to the directed fishery quota or to the reserve, as necessary. If NMFS determines that the annual directed catch quota will not be taken before the end of the fishing year, some of the excess quota may be allocated to the incidental fishery quota or to the reserve, as necessary.

\* \* \* \* \*

(3) \* \* \*

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota will be subtracted from, or added to, the following year's quota for that area. As necessary to meet management objectives, such carryover adjustments may be apportioned to fishing categories and/or to the reserve. Carryover adjustments for the North Atlantic shall be limited to 25 percent of the baseline quota allocation for that year. Carryover adjustments for the

South Atlantic shall be limited to 100 mt ww (75.2 mt dw) for that year. Any adjustments to the 12-month directed fishery quota will be apportioned

equally between the two semiannual fishing seasons. NMFS will file with the Office of the Federal Register for publication any adjustment or

apportionment made under this paragraph.

\* \* \* \* \*

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