

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 600 and 635**

[Docket No. 120627194–3657–02]

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:** Final rule.

**SUMMARY:** This final rule implements Amendment 8 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP). Amendment 8 to the 2006 Consolidated HMS FMP provides additional opportunities for U.S. fishermen to harvest swordfish using selective gears that are low in bycatch, given their rebuilt status and increased availability. This final rule creates new and modified commercial fishing vessel permits that allow permit holders to retain and sell a limited number of swordfish caught on rod and reel, handline, harpoon, green-stick, or bandit gear. Specific management measures under this final action include the establishment of a new open access commercial swordfish permit, modification of HMS Charter/Headboat permit regulations to allow for the commercial retention of swordfish on non-for-hire trips, regional swordfish retention limits for the new and modified permits, gear authorizations, and reporting requirements.

**DATES:** This rule is effective on September 20, 2013.

**ADDRESSES:** Copies of the Final Amendment 8 to the 2006 Consolidated HMS FMP, including the Final Environmental Assessment and other documents relevant to this rule are available from the Highly Migratory Species Management Division Web site at <http://www.nmfs.noaa.gov/sfa/hms/> or upon request from the Atlantic HMS Management Division at 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Rick Pearson at 727–824–5399 or Jennifer Cudney at 301–427–8503.

**SUPPLEMENTARY INFORMATION:** Atlantic 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). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary of Commerce to the Assistant Administrator for Fisheries, NOAA (AA). On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) regulations 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) regulations 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. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

**Background**

A brief summary of the background of this final action is provided below. The details of what was proposed and the alternatives considered are described in Draft Amendment 8 to the 2006 Consolidated HMS FMP and its proposed rule (78 FR 12273, February 22, 2013). Those documents are incorporated by reference, and their description of management and conservation measures considered in the Draft Amendment 8 to the 2006 Consolidated HMS FMP and its proposed rule are not repeated here. Additional information regarding Atlantic HMS management can be found in the Final Environmental Assessment (Final EA) for Amendment 8 to the 2006 Consolidated HMS FMP, the 2006 Consolidated HMS FMP and its amendments, the annual HMS Stock Assessment and Fishery Evaluation Reports, and online at <http://www.nmfs.noaa.gov/sfa/hms/>.

The comments received on Draft Amendment 8 and its proposed rule, and our responses to those comments, are summarized below in the section labeled “Response to Comments.”

This rule finalizes some of the management measures, and modifies others, that were contained in the proposed rule for Amendment 8. The purpose of this final rule is to provide additional opportunities for U.S. fishermen to harvest swordfish using selective gears that result in low bycatch, given their rebuilt status and increased availability.

This rule creates a new open access Swordfish General Commercial permit and modifies regulations for HMS Charter/Headboat vessel permit holders to allow commercial fishing for North Atlantic swordfish in the U.S. Exclusive Economic Zone (EEZ). The new

Swordfish General Commercial permit allows fishermen to retain and sell a limited number of swordfish caught using only rod and reel, handline, harpoon, bandit gear, and green-stick gear. HMS Charter/Headboat vessel permit holders are also authorized to fish under open-access swordfish commercial permit regulations with rod and reel and handline only, when fishing commercially on a non-for-hire trip.

The Swordfish General Commercial permit cannot be held on a vessel in combination with any other swordfish permits, an HMS Charter/Headboat permit, an HMS Angling category permit, an HMS Commercial Caribbean Small Boat permit, or any Atlantic Tunas permit except for the Atlantic Tunas General or Harpoon category permits. The Swordfish General Commercial permit can be held on a vessel in combination with a commercial shark permit or an Atlantic Tunas General or Harpoon category permit. All swordfish landed under the new/modified permit(s) must be reported in HMS logbooks, if selected, and all sales of swordfish must only be to federally permitted swordfish dealers. Swordfish General Commercial permit holders may participate in registered HMS tournaments.

This final rule also establishes four separate swordfish management regions for the new and modified permits (Northwest Atlantic, Gulf of Mexico, U.S. Caribbean, and Florida Swordfish Management Area) with a zero to six swordfish retention limit range within each region for the new or modified permit(s). As described in the response to comments below, the Florida Swordfish Management Area and the initial default retention limit for that area have been modified from the proposed rule. Initial default retention limits are set at three swordfish per vessel per trip for Northwest Atlantic and Gulf of Mexico regions; two swordfish per vessel per trip for the U.S. Caribbean; and zero swordfish per vessel per trip limit for the modified Florida Swordfish Management Area. The retention limit within each region may be adjusted in-season based upon pre-established criteria (i.e., dealer reports, landing trends, quota availability, availability of swordfish on fishing grounds, variations in seasonal distribution, abundance, or migration patterns, and other relevant factors) through the framework procedures codified at § 635.34.

**Response to Comments**

During the proposed rule stage, NMFS received approximately 210 written

comments from the public. NMFS also received comments from the Atlantic HMS Advisory Panel and from constituents who attended the five public hearings held in St. Petersburg, FL; Silver Spring, MD; Gloucester, MA; Ft. Lauderdale, FL; and Manahawkin, NJ. Comments were also received during three conference call/webinars held on March 11, 2013; April 18, 2013; and April 30, 2013. A summary of the comments received on the proposed rule during the public comment period is provided below with NMFS's responses. All written comments submitted during the comment period can be found at <http://www.regulations.gov/> by searching for NOAA-NMFS-2013-0026.

*Comment 1:* NMFS received comments both in support of, and opposed to, implementing a new open-access Swordfish General Commercial permit that would authorize the use of rod and reel, handline, harpoon, bandit gear, and green-stick (preferred alternative 1.2.4). Commenters supporting the proposed new permit stated that it would provide additional opportunities to fish for a fully rebuilt species using selective fishing gears which have little bycatch and few dead discards; create new opportunities to catch more of the U.S. swordfish quota; generate economic opportunities for commercial fishermen during difficult economic times; safely increase the number of available handgear permits without threatening the long-term sustainability of the stock; and maintain existing limited access permit valuation by establishing low retention limits.

Opponents of a new commercial swordfish permit said the need to expand harvesting capacity in the U.S. North Atlantic swordfish fishery has steadily diminished and the U.S. swordfish quota is almost fully utilized; a new permit could prompt an early closure of the directed swordfish fishery; swordfish are not sufficiently abundant to open a new fishery or increase catches; commercial swordfish limited access permits are not scarce and the costs of the permits are not a barrier to entering the commercial fishery; a new open access permit would undermine full-time commercial fishermen by allowing quasi-commercial fishermen to harvest swordfish; and an open-access commercial swordfish permit would lower limited access permit values and swordfish ex-vessel prices (due to an increased supply of low quality product). Many of the commenters opposed to the establishment of a new commercial swordfish permit

recommended the No Action alternative.

*Response:* NMFS has determined that establishing and implementing new and modified commercial vessel permits to allow for a limited number (0–6) of swordfish caught on rod and reel, handline, harpoon gear, green-stick, or bandit gear to be retained and sold is warranted. This action will provide additional opportunities for U.S. fishermen to harvest swordfish using selective gears that result in low bycatch, given the rebuilt status of swordfish and their increased availability. The goal of this action is to more fully utilize the U.S. swordfish quota allocation, which is based upon the recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

Based upon the 2009 ICCAT SCRS swordfish stock assessment, the North Atlantic swordfish stock is fully rebuilt. The United States' annual baseline quota for North Atlantic swordfish is derived from ICCAT Recommendation 10–02, and is published each year through rulemaking in the **Federal Register**. ICCAT Recommendation 10–02 also authorizes the United States to carry forward up to 25 percent of the baseline U.S. quota to determine the annual adjusted U.S. quota. Both domestic landings and estimated dead discards are counted against each year's adjusted quota to determine compliance with the quota. Since 1997, domestic landings and estimated dead discards of North Atlantic swordfish have been below both the baseline and adjusted U.S. quotas. Although the margin between landings and available quota has narrowed in recent years, there remains a large amount of unused North Atlantic swordfish quota. In 2011, the United States was 766.6 mt (dw) below its baseline swordfish quota. Implementing a new open-access swordfish handgear permit with low retention limits will provide additional opportunities to harvest this available quota, without exceeding it. Landings derived from the new permit will be closely monitored through dealer reports, and adjustments to regional retention limits could be implemented if necessary to reduce the likelihood of an early closure to the directed fishery.

Swordfish limited access permits (LAPs), while available, can be difficult or expensive to obtain. Because no new swordfish permits have been issued since 1999, many HMS LAPs have increased in value. The cost of a swordfish handgear LAP ranges from \$15,000 to \$30,000, either of which amount constitutes a high percentage of an individual vessel owner's profits in

a given year. They are also governed by restrictions limiting the size and horsepower of the vessel to which the permits can be transferred. Implementing a new open-access swordfish handgear permit with low retention limits will remove barriers to obtaining a limited access permit, and allow other commercial fishermen to participate in the swordfish fishery on a small-scale, seasonal, or supplemental basis.

Implementing a new open-access swordfish handgear permit is not anticipated to undermine the existing commercial swordfish fishery because landings under the new permit will be governed by low retention limits that could be adjusted in-season to reduce the likelihood of a directed fishery closure. The new permit is substantially different from existing swordfish limited access permits: There are very low retention limits (0–6 swordfish) associated with it, and only handgear usage is authorized. Because of these important differences, the values of existing swordfish limited access permits which have either no retention limits (directed and handgear) or a much higher retention limits (incidental), and which allow the use of pelagic longline gear (directed and incidental) and buoy gear (directed and handgear), are not expected to be greatly impacted.

The new open access Swordfish General Commercial permit could affect swordfish ex-vessel prices in either direction, up or down; however, comments received from fishing industry participants regarding this issue were mixed. Some commenters stated that the additional volume and poor quality of product would result in lower ex-vessel prices. Other commenters indicated that prices would stabilize due to less fluctuation in domestic landings, or potentially increase due to the introduction of reliably high quality product into the U.S. market. NMFS does not anticipate that the projected low level of landings derived from new and modified swordfish permits will be large enough to greatly impact prices, either higher or lower, because ex-vessel prices are impacted by a number of factors, most notably the large volume of fresh and frozen swordfish imported into the U.S. market.

*Comment 2:* NMFS should create a new limited access permit, not an open access permit. NMFS should require a minimum amount of income from commercial fishing in order to qualify for the new limited access permit. The number of new limited access permits should be very low, and there should be

a sunset date for the new permits where they would be valid only for a pre-specified number of years.

*Response:* The open access commercial permit being implemented is substantially different from existing swordfish limited access permits. Very low retention limits (0–6 swordfish) are being implemented and only handgear usage is authorized. Pelagic longline gear and buoy gear are not authorized for the new Swordfish General Commercial permit. In contrast, there are no retention limits for current swordfish directed and handgear limited access permit holders, and swordfish incidental limited access permit holders have a 30-fish per trip retention limit. Pelagic longline gear is authorized for swordfish directed and incidental limited access permits, and buoy gear is authorized for swordfish directed and handgear limited access permits. Because of the large potential harvesting capacity associated with these permits, swordfish limited access permits are restricted in number and are also governed by transfer, renewal, training, and vessel upgrading regulations. These regulations have impacted the ability of some vessel owners to participate in the commercial swordfish fishery using handgears only. Because this rule implements a small-scale handgear fishery that is primarily governed by low retention limits and in-season adjustment criteria, a new swordfish limited access permit is not needed.

*Comment 3:* NMFS should allow HMS Charter/Headboat permit holders to fish commercially for swordfish on non-for-hire trips under the applicable regional retention limit. A charter boat operator is already a commercial fisherman whose income is derived principally from charter and commercial fishing.

*Response:* NMFS agrees that HMS Charter/Headboat permit holders should be allowed to fish commercially for swordfish under the applicable commercial regional retention limits when they are not on a for-hire trip due to the dual commercial and recreational nature of the charter/headboat fishery. A similar allowance for charter/headboat vessels exists in the commercial Atlantic tunas fishery. This rule also specifies that swordfish captured on a for-hire trip may not be sold. NMFS defines a “for-hire” trip as a trip carrying a fee-paying passenger; having more than three persons for a vessel licensed to carry six or fewer; or having more persons aboard than the number of crew specified on the vessel’s Certificate of Inspection for U.S. Coast Guard inspected vessels. The number of

persons aboard includes the captain and crew.

*Comment 4:* NMFS should implement a three-fish retention limit in the Florida Swordfish Management Area for HMS Charter/Headboat permit holders only. A percentage of income as a charter boat (□ 50 percent) should be required to qualify for the higher retention limit so that only full-time charter operators could participate as commercial vessels. Part-time charter operators should only be allowed to obtain an HMS Angling category permit.

*Response:* NMFS is not implementing a separate swordfish commercial permit or a higher retention limit for HMS Charter/Headboat permit holders meeting certain income requirements and operating in the Florida Swordfish Management Area. As described in the response to Comment 2 above, a limited access permit or the establishment of new permit qualification criteria (including an income threshold) are not needed due to the comparatively low swordfish retention limits being established. At this time, in order to facilitate public understanding and enforcement of the new regulations, NMFS is implementing a single regional swordfish retention limit to govern all handgear vessels fishing under the new open-access commercial swordfish regulations.

*Comment 5:* NMFS should not establish a Florida Swordfish Management Area to include the East Florida Coast Pelagic Longline Closed Area through the northwestern boundary of Monroe County, FL, in the Gulf of Mexico. Instead, NMFS should establish the boundary to only include the Florida counties of St. Lucie, Martin, Palm Beach, Broward, Dade, and Monroe. These counties require specific management due to the limited area for swordfish fishing and the number of fishers using the area. There could be some flexibility for the Florida Swordfish Management Area/Northwest Atlantic area boundary so that there could be more fishing effort in areas north of Palm Beach, FL. Under the proposed alternative, persons fishing beyond the Florida Swordfish Management Area and east of Ft. Pierce, FL, in the Northwest Atlantic region would have to transit to north of the Georgia border to land their three swordfish because they could not come straight into Ft. Pierce, FL, which would create a burden for some fishermen and also pose a potential safety issue.

*Response:* In response to public comment, NMFS has modified the proposed Florida Swordfish Management Area by removing that portion of the area north of 28°17’10” N.

The new northern boundary line now intersects the U.S. mainland near Rockledge, FL, and the coastline between Cape Canaveral, FL, and Melbourne, FL, near Cocoa Beach, FL. The modified area is smaller in geographic area than the proposed area, but larger than the alternative that only included six counties. As described in the proposed rule and draft environmental assessment, the area off the southeastern coast of Florida, particularly the Florida Straits, contains oceanographic features that make the area biologically unique. It provides important juvenile swordfish habitat, and is essentially a narrow migratory corridor containing high concentrations of swordfish located in close proximity to high concentrations of people who may fish for them. The modified Florida Swordfish Management Area being implemented more closely encompasses the Florida Straits and the oceanographic features that make this area biologically unique, yet is large enough to provide an enforceable buffer area. Public comment indicated a concern about increased catches of juvenile swordfish, the potential for larger numbers of fishermen in the area, and the potential for crowding of fishermen, which could lead to potential fishing gear and user conflicts. Modifying the area to more closely correspond to the actual oceanographic features that make the area unique will improve future conservation and management of swordfish, while minimizing impacts on fishermen operating both in the relatively narrow area of the Florida Straits and fishermen operating north of this area where swordfish are less concentrated, consistent with the objectives of this action. This modification is within the range of alternatives considered for the Florida Swordfish Management Area in Draft Amendment 8 and is a logical outgrowth of further consideration of impacts of the Area boundary and public comment.

*Comment 6:* NMFS received various comments indicating that the initial default retention limit within the Florida Swordfish Management Area should be set at a number ranging from zero to six fish. Comments in favor of increasing the proposed initial default limit of one swordfish indicated that a one-swordfish limit in the Area would not provide enough revenue to make a commercial fishing trip economically feasible, so there would be little incentive for people to obtain the new permit. Commenters in favor of a lower limit (i.e., zero fish) for the Area stated that there is not enough open water

available in South Florida to handle the added fishing pressure that the new commercial fishing effort would bring; that the very small area is already extremely congested with commercially-permitted vessels and recreational fishermen; that a balance between recreational and commercial fishermen has developed in the Florida Straits where everybody is able to fish together; and that a large number of new entrants commercially targeting swordfish in the area would unsettle that balance and inevitably cause user conflicts that would negatively affect Southeast Florida's recreational and commercial fishing industry. Several commenters also indicated that NMFS should not increase commercial fishing effort in an important swordfish spawning and juvenile habitat area.

*Response:* Because this final rule establishes a new open-access commercial swordfish permit, NMFS will issue these permits in an orderly and cautious manner from the outset. This is particularly important off the southeast coast of Florida, due to the area's unique oceanographic and biological characteristics that provide important juvenile swordfish habitat and swordfish fishing grounds within easy access to a large number of fishers. In consideration of public comments, including a comment from the Florida Fish and Wildlife Conservation Commission, indicating a high potential for the rapid growth of a commercial fishery in the Florida Swordfish Management Area under the proposed retention limit of one swordfish per vessel per trip, NMFS has determined that an initial default retention limit of zero swordfish is appropriate in the modified Florida Swordfish Management Area for vessel owners issued a Swordfish General Commercial permit. A commercial retention limit of zero swordfish in the Florida Swordfish Management Area will also apply to HMS Charter/Headboat permitted vessels in the Area when they are not on a for-hire trip. Unless this commercial retention limit is modified in the future, HMS Charter/Headboat permitted vessels in the Florida Swordfish Management Area will not be allowed to sell swordfish unless the vessel also has a Swordfish Handgear limited access permit. HMS Charter/Headboat permitted vessels may retain, but not sell swordfish, under recreational retention limits. HMS Charter/Headboat permitted vessels, when not on a for-hire trip and located outside the Florida Swordfish Management Area, may retain and sell swordfish within the applicable regional

retention limit. NMFS will continue to collect information to evaluate the appropriateness of this and other regional retention limits in the future using in-season adjustment authority.

*Comment 7:* NMFS received various comments indicating that the initial default retention limits within the northwest Atlantic region and the Gulf of Mexico should be set at a level that is either higher or lower than the proposed limit of three swordfish per vessel per trip. Comments in favor of increasing the initial default limit indicated that a higher limit is needed to make commercial fishing trips economically feasible because of the long distance to swordfish fishing grounds in these areas. A higher retention limit of six to an unlimited number of fish would provide additional revenue and allow for profits while covering the high costs (fuel, crew, food, bait, etc.) associated with such trips. Comments in favor of decreasing the proposed initial default retention limit indicated that lower limits are needed to preserve the value of existing limited access permits, to conserve swordfish, to ensure that the U.S. swordfish quota is not exceeded, or to prevent an early closure of the directed fishery.

*Response:* NMFS has determined that most Swordfish General Commercial permit holders will likely participate in the commercial swordfish fishery to supplement their primary fishing activities (i.e., tuna fishing and charter fishing). The three-fish initial default retention limit being implemented for the Northwest Atlantic and Gulf of Mexico areas is in the middle of the range of limits being considered, and is appropriate for the initial establishment of a new supplemental or seasonal open-access swordfish fishery. As additional fishery information becomes available—including the number of new permits issued, changes in landings, and impacts on the attainment of the U.S. North Atlantic swordfish quota—NMFS will continue to evaluate the appropriateness of modifying these limits using in-season adjustment authority.

*Comment 8:* Establishing in-season adjustment criteria to quickly modify the regional retention limits would effectively control the proposed open-access swordfish fishery, and provide NMFS with the ability to make timely adjustments to restrict or increase harvest as necessary. Conversely, in-season adjustment authority might discourage people from obtaining the proposed permit because they would be unsure of future retention limits.

*Response:* NMFS agrees that establishing in-season adjustment authority to quickly modify the regional retention limits based upon pre-established criteria, in conjunction with effective monitoring of swordfish landings through the HMS e-Dealer system, provides the ability to effectively control the new open-access swordfish fishery. For example, if swordfish landings from newly permitted vessels are higher than projected, NMFS could reduce the retention limits to minimize the likelihood of an early closure of the directed fishery or to ensure that the U.S. swordfish quota is not exceeded. Conversely, if participation in the new fishery and resultant swordfish landings are low, limits could be increased. NMFS' current projections indicate that adequate swordfish quota is available to accommodate the anticipated level of landings derived from the new permit. NMFS will publish in-season adjustments to retention limits in the **Federal Register**, as needed.

*Comment 9:* The Gulf of Mexico region should be broken into two regions separated by the 29° N. lat. line (a line slightly north of a latitudinal line extending from Freeport, TX, to Crystal River, FL) because of differing transit times to productive grounds, and the need for differing retention limits to facilitate profitable trips.

*Response:* Transit times to productive swordfish grounds in the Gulf of Mexico vary not only from the north and south, but also from the east and west. Implementing multiple fishing regions for the swordfish fishery in the Gulf of Mexico may potentially cause confusion among fishermen and complicate quota monitoring and enforcement. In addition, the Gulf of Mexico is managed as one large area for current swordfish limited access permit holders, thus NMFS prefers to implement a single regional commercial swordfish retention limit to govern all Swordfish General Commercial and HMS Charter/Headboat permitted vessels fishing in the Gulf of Mexico. Retention limits within the Gulf of Mexico could be adjusted in the future using in-season authority based upon the attainment of pre-specified criteria (i.e., dealer reports, landing trends, quota availability, availability of swordfish on fishing grounds, variations in seasonal distribution, abundance, or migration patterns, and other relevant factors). NMFS will continue to consider other management measures to increase domestic swordfish landings and revenues, while minimizing bycatch, and may consider separating the Gulf of Mexico region into sub-regions in the future.

*Comment 10:* The proposed allowance for Swordfish General Commercial permit holders to participate in registered HMS fishing tournaments might increase recreational HMS Angling category permit holder interest in obtaining the proposed permit.

*Response:* NMFS agrees. NMFS expects that most new permit applicants will be current recreational swordfish fishermen with HMS Angling category permits or current commercial tuna fishermen with Atlantic Tunas General or Harpoon category permits resulting in a shift of effort from these fisheries to the commercial swordfish handgear fishery, but not a large increase in overall fishing effort. The allowance for fishing in registered HMS fishing tournaments is consistent with current Atlantic Tunas General category regulations, which allow permit holders to participate in registered HMS tournaments.

*Comment 11:* NMFS received contrasting comments regarding the authorization of buoy gear for the proposed Swordfish General Commercial permit. Commenters opposed to the concept indicated that buoy gear should not be authorized for use with the proposed Swordfish General Commercial permit, and should remain authorized only for swordfish directed and handgear limited access permit holders. Other commenters said that NMFS should authorize buoy gear for the proposed Swordfish General Commercial permit and also for the Atlantic Tunas General category permit, except in the Florida Swordfish Management Area.

*Response:* Authorization of buoy gear for the proposed Swordfish General Commercial permit is not within the range of alternatives analyzed in Amendment 8. Buoy gear is only authorized for persons with valid swordfish directed or handgear limited access permits. Comments from the HMS Advisory Panel in recent years have reflected public concern about user conflicts with buoy gear within the narrow geographic range of the current buoy gear fishery off the southeast coast of Florida. With this in mind, a potentially large number of applicants for a new Swordfish General Commercial permit could represent a potentially large increase in the amount of buoy gear fished, and might increase the potential for gear conflicts. Under Amendment 8, NMFS is authorizing fishing gears under the new Swordfish General Commercial permit that are consistent with the fishing gears authorized for the Atlantic Tunas General category permit. There is very little catch and bycatch information

available regarding buoy gear used to target swordfish outside of the Florida Straits, and there is no information available regarding buoy gear used to target tunas in the Atlantic Ocean and Gulf of Mexico. Because of the potential for large increases in the amount of buoy gear fished, the potential for fishing gear conflicts, and the absence of information regarding buoy gear fishing to target tunas which limits the Agency's ability to analyze the impacts of additional buoy gear usage under open access commercial permits on incidentally caught or bycatch species (such as billfish and bluefin tuna), NMFS is not authorizing additional buoy gear usage in this final rule.

*Comment 12:* NMFS should implement an open-access swordfish harpoon category permit similar to the existing Atlantic Tunas Harpoon category permit and allow at least 15 swordfish per trip to be landed. Swordfish caught with harpoons are generally greater in size than swordfish caught by other methods, and there is no bycatch. A three-fish limit is not economically feasible because swordfish are not abundant in near-shore waters, and it often takes days or weeks to make a full trip.

*Response:* The open access Swordfish General Commercial permit being implemented is intended to facilitate a small-scale supplemental or seasonal swordfish fishery that includes the harvest of swordfish with harpoons. NMFS anticipates that commercial fishermen may be interested in fishing with this new permit to supplement their primary commercial fishing activities. There is already a commercial Swordfish handgear limited access permit with unlimited swordfish retention that authorizes the use of harpoon gear. Under the new Swordfish General Commercial permit, the initial three-fish retention limit is purposefully conservative for the implementation of a new open-access swordfish permit. In the future, as additional fishery information becomes available, NMFS could consider increasing the retention limit based upon the in-season adjustment criteria.

*Comment 13:* NMFS did not consider a reasonable range of alternatives in analyzing Amendment 8 to the 2006 Consolidated HMS FMP, and did not provide an explanation of why other reasonable alternatives, such as opening areas currently closed to pelagic longline gear, were not considered.

*Response:* To provide additional opportunities for U.S. fishermen to harvest swordfish using selective gears that are low in bycatch, given their rebuilt status and increased availability,

NMFS prepared a Draft EA that analyzed a wide range of reasonable options. Specifically, the alternatives considered two main issues: (1) The implementation of new and modified commercial swordfish vessel permits and authorized gears to allow for a limited number of swordfish to be retained and sold; and, (2) the establishment of retention limits associated with the new and modified permits.

With respect to vessel permitting and authorized gears, NMFS considered three alternatives and four sub-alternatives. These ranged from a no-action alternative, which maintains the current swordfish limited access permit structure, to creating a new or modified commercial swordfish permit(s) to allow for a limited number of swordfish caught on rod and reel, handline, harpoon gear, green-stick, or bandit gear to be retained and sold. With respect to swordfish retention limits, NMFS considered three main alternatives and five sub-alternatives. These ranged from establishing a fishery-wide zero-to-six fish retention limit range for the new or modified permit(s), and codifying a single limit within that range, to establishing separate regions with regional retention limits that could be adjusted in-season based upon pre-established criteria (i.e., dealer reports, landing trends, quota availability, availability of swordfish on the fishing grounds, variations in seasonal distribution, abundance, or migration patterns, and other relevant factors).

Based upon the analysis in the Draft EA, NMFS determined that the preferred alternatives were unlikely to have any significant adverse environmental impacts, primarily because the authorized handgears are low in bycatch and bycatch mortality of protected and non-target species, and because of the rebuilt status of the North Atlantic swordfish stock.

In the Draft EA, NMFS also considered several alternatives that were not further analyzed, such as implementing a swordfish tagging program to provide a higher level of reporting and to facilitate the enforcement of swordfish regulations. After consulting with the HMS Advisory Panel and other interested constituents, NMFS decided not to further analyze these alternatives due to concerns about the effectiveness of a tagging program to reliably identify swordfish bound for commerce. Furthermore, establishing an open-access commercial swordfish permit is expected to reduce the incentive for recreational anglers to illegally sell or transfer swordfish to commercial fishermen for later sale; the

response to Comment 34 has more information regarding swordfish tagging alternatives. The Draft EA analyzed a reasonable range of alternatives to meet the objectives of the action. Other alternatives such as re-opening pelagic longline closed areas do not meet the purpose of the proposed action due to the relatively higher bycatch of several species that are either overfished and/or subject to overfishing (e.g., bluefin tuna, marlins) or are listed under the Endangered Species Act (e.g., sea turtles); therefore, those alternatives were not considered in this action.

*Comment 14:* NMFS should consider minor adjustments to the time/area closures of the East Florida Coast and Charleston Bump pelagic longline closures. A slight adjustment to the size, shape and duration of those closures could allow the United States to fill its North Atlantic swordfish quota. Experimental longline fishing conducted there has proven the viability of swordfish landings with minimum bycatch of small swordfish or billfish. NMFS could increase observer coverage on pelagic longline vessels in these areas to better monitor catch and bycatch. Any benefits of the north Atlantic swordfish recovery should be aimed at the current directed fisheries, because the recovery was realized by the sacrifice of these fishermen.

*Response:* The scope of Amendment 8 is to create additional opportunities for the commercial harvest of swordfish using selective gears (rod and reel, handline, harpoon, bandit gear, and greenstick) that are low in bycatch, based upon the fact that the North Atlantic swordfish stock is fully rebuilt and the U.S. quota has been underutilized for over a decade. Since 2007, NMFS has implemented numerous other management measures to increase domestic swordfish landings, which are almost entirely by pelagic longline gear, and revenues while minimizing bycatch. As part of these regulations, NMFS increased the retention limit for pelagic longline vessels issued incidental swordfish limited access permits from two fish to 30 fish per vessel per trip; streamlined limited access permit issuance; implemented a change to the swordfish minimum size requirements from 29 inches to 25 inches cleithrum to caudal keel; and implemented a new HMS Commercial Caribbean Small Boat permit with a two swordfish per vessel per trip limit.

Other alternatives, such as opening or modifying pelagic longline closed areas, do not meet the objectives of the action. Pelagic longline gear has higher bycatch levels of several species that are either

overfished and/or subject to overfishing (e.g., bluefin tuna, marlins) or are listed under the Endangered Species Act (e.g., sea turtles). Therefore, those alternatives were not considered in this action. NMFS will continue to consider additional measures that could be taken to increase swordfish landings and that would benefit the pelagic longline fishery, while also minimizing bycatch and bycatch mortality.

*Comment 15:* NMFS should allow more buoys to be deployed for permit holders that are authorized to fish with buoy gear. This regulatory change would produce more swordfish.

*Response:* Currently, vessels fishing with buoy gear are limited to possessing or deploying no more than 35 floatation devices. In the 2006 Consolidated HMS FMP, NMFS determined that 35 buoys was the maximum amount of buoy gear that a vessel could effectively deploy at one time without losing excessive amounts of unattended floating gear and increasing interactions with sea turtles or other protected resources. The authorization of additional buoy gear was not considered in Draft Amendment 8, and therefore is outside the scope of this final rule. NMFS will continue to consider additional measures that could be taken to increase swordfish landings as needed, while minimizing bycatch and bycatch mortality.

*Comment 16:* NMFS should remove all of the restrictions requiring multiple permits aboard vessels that only intend to fish for swordfish with handgear, or otherwise have no longline gear on board. All directed or incidental swordfish limited access permits should be available for handgear usage, without needing to obtain shark and tuna longline limited access permits. There are many latent limited access permits in these categories that are restricted by an unnecessary link to pelagic longline gear usage.

*Response:* NMFS recognizes that current HMS permit regulations have impacted the ability of some vessel owners to participate in the commercial swordfish fishery using handgear only. The regulations governing swordfish directed and incidental limited access permits and authorized gears were developed primarily to provide fishing opportunities for multiple fisheries, including tunas, swordfish, and sharks, because of the potential to catch any of these species groups when deploying pelagic longline gear. The possession of pelagic longline gear onboard a vessel also triggers several restrictions and requirements that are unique to that gear because of protected species and other bycatch concerns. Modification of these limited access permit requirements and

fishing gear authorizations could indirectly affect HMS directed and incidental fisheries and bycatch species in myriad ways, and were not considered in this rulemaking. The existing regulatory structure of these permits facilitates reporting requirements and data collection, while still providing the flexibility to target several species using a variety of gears. In contrast, the existing Swordfish Handgear limited access permit is available for use without the need to be issued other limited access permits, and there is no swordfish retention limit associated with it. The new open-access Swordfish General Commercial permit will provide additional opportunities for U.S. fishermen to harvest swordfish using handgear as a supplemental or seasonal fishery. NMFS has previously considered modifications to, and streamlining of, the HMS limited access permit structure and will continue to do so; however, this subject was not analyzed in Draft Amendment 8 and is outside the scope of the final rule.

*Comment 17:* NMFS should reactivate a small number of limited access swordfish permits that have been terminated.

*Response:* Under current regulations, swordfish and shark limited access permits must be renewed annually, and are terminated if they are not renewed within 1 year of expiration. The purpose of permit termination is to remove unused, latent commercial permits from the swordfish and shark fisheries. In recent years, NMFS has implemented several management measures to increase domestic swordfish landings while minimizing bycatch, and may consider additional management measures in the future. Other alternatives, such as reactivating terminated limited access permits, do not meet the objectives of this action. Swordfish limited access permits authorize the use of pelagic longline gear and/or buoy gear. Pelagic longline gear has higher bycatch levels of several species that are either overfished and/or subject to overfishing (e.g., bluefin tuna, marlins) or are listed under the Endangered Species Act (e.g., sea turtles). With regard to buoy gear, as discussed in the response to comment 11, there is very little catch and bycatch information available to analyze the impacts of additional buoy gear usage outside of the Florida Straits, and there is no information available regarding buoy gear used to target tunas in the Atlantic Ocean and Gulf of Mexico. Because of the potential for large increases in the amount of buoy gear fished, the potential for fishing gear conflicts, and the absence of other

critical catch and bycatch information, NMFS did not analyze any alternatives to authorize additional buoy gear usage. Amendment 8 specifically creates additional opportunities for the commercial harvest of swordfish using selective gears (rod and reel, handline, harpoon, bandit gear, and greenstick) that have minimal bycatch and result in few discards.

*Comment 18:* NMFS should increase access to the swordfish stock by providing more fishing opportunities for the recreational sector.

*Response:* Access to the recreational swordfish fishery is currently provided through HMS Angling and HMS Charter/Headboat permits, which are both open-access permits. The retention limit under the HMS Angling permit is one swordfish per person up to four swordfish per vessel per trip. The retention limit for HMS Charter vessels is one swordfish per paying passenger up to six swordfish per vessel per trip. The retention limit for HMS Headboat vessels is one swordfish per paying passenger and up to 15 swordfish per vessel per trip. In this action, NMFS focused on increasing access for commercial handgear fishermen to the rebuilt swordfish stock due to the low bycatch associated with handgear and because the ICCAT-recommended U.S. swordfish quota allocation has been underutilized for over a decade. Therefore, since recreational access is already open access and subject to similar retention levels, Draft Amendment 8 did not analyze alternatives to modify HMS Angling category limits. Since this topic was not considered in Draft Amendment 8, this request is outside the scope of the final rule.

*Comment 19:* NMFS should require all vessels issued a swordfish General Commercial Permit to abide by all of the same requirements that apply to pelagic longline vessels, including commercial fishing vessel safety requirements, logbook reporting, observers, bycatch mitigation, workshops, and vessel monitoring systems (VMS). The new commercial fishermen should be required to go to protected species workshops and to carry protected species safe handling and release gear. All new permit holders should also be required to comply with the protected species Careful Handling and Release Protocols.

*Response:* All vessels that obtain the new Swordfish General Commercial permit will be required to comply with U.S. Coast Guard commercial fishing vessel safety requirements. Authorized fishing gears under the new Swordfish General Commercial permit include rod

and reel, handline, harpoon, bandit gear, and green-stick gear. On June 14, 2001, NMFS released a Biological Opinion (BiOp) under the Endangered Species Act, which stated that the continued operation of HMS handgear fisheries may adversely affect, but are not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. This BiOp indicated that the potential for takes in handgear fisheries is low, and anticipated that the continued operation of Atlantic HMS handgear fisheries would result in documented takes of no more than three ESA-listed sea turtles, of any species, in combination, per calendar year. In addition, Atlantic HMS handgear fisheries are classified as Category III under the Marine Mammal Protection Act (MMPA) (76 FR 73912, November 29, 2011), meaning that these fisheries have a remote likelihood of incidental mortality or serious injury to marine mammals.

In June 2004, NMFS released a BiOp for the Atlantic pelagic longline fishery. That BiOp concluded that the pelagic longline fishery was not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. The 2004 BiOp established a reasonable and prudent measure and alternative, which subjected the Atlantic HMS pelagic longline fishery to time/area closures, VMS, observers, hook and bait restrictions, compliance with safe handling and release protocols, and mandatory protected species safe handling and release workshops. Additionally, the pelagic longline fishery has been designated as a Category I fishery under the MMPA because it has frequent incidental mortality and serious injury of marine mammals.

Thus, many of the management measures required under the Endangered Species Act and Marine Mammal Protection Act for the Atlantic HMS pelagic longline fishery do not apply to the new Swordfish General Commercial permit, because the potential for protected species interactions with the gears authorized under this permit is low. The suggested requirements for protected species bycatch mitigation measures, protected species release and disentanglement training workshops and VMS requirements are not warranted for the gears authorized in this final rule. These requirements were not analyzed in the Draft EA because they are outside the scope of this rulemaking.

*Comment 20:* Any interactions with protected species by new permit holders would be considered "takes," and these would increase. NMFS also needs to consider the interactions with dusky sharks when there could potentially be 4,100 boats deploying J-hooks.

*Response:* ESA-listed species taken with handgear would be counted against the Incidental Take Statement (ITS) established in the 2001 BiOp. NMFS expects that most new permit applicants will be current recreational swordfish fishermen with HMS Angling category permits or current commercial tuna fishermen with Atlantic Tunas General or Harpoon category permits, resulting in a shift of effort from these fisheries to the commercial swordfish handgear fishery, but not a large increase in overall fishing effort. In addition, the initial implementation of a zero-fish default retention limit in the Florida Swordfish Management Area will not change current fishing effort in an area with high concentrations of recreational anglers and commercial buoy gear fishermen. For these reasons, and because handgear has a remote likelihood of interactions with protected species, NMFS does not anticipate that interactions with protected species will increase in any way that has not been previously analyzed in the 2001 BiOp as a result of implementation of the new permit. Similarly, NMFS does not expect a large increase in interactions with other species, including dusky sharks. NMFS will consider conservation and management measures for dusky sharks separately in Amendment 5b to the 2006 Consolidated Atlantic HMS FMP.

*Comment 21:* Landings from the proposed new permit should not be deducted from the directed swordfish quota. NMFS should establish a separate quota category (two to five percent of the overall quota) for these landings to protect the pelagic longline fishery quota from a closure of the directed fishery.

*Response:* The new swordfish general commercial permit is a directed swordfish permit; therefore, it is appropriate for landings from this new permit to be counted against the directed swordfish quota. Under ATCA and the Magnuson-Stevens Act, NMFS is required to provide U.S. fishing vessels with a reasonable opportunity to harvest the U.S. ICCAT quota. However, the directed swordfish quota has been under-harvested for over a decade. NMFS has determined that additional swordfish landings derived from this new permit could be counted against the directed quota without fully reaching the U.S. ICCAT-recommended

quota. The ability to quickly adjust the regional swordfish retention limits using in-season authority and pre-established criteria gives NMFS the flexibility to manage the directed swordfish quota as necessary.

*Comment 22:* A Finding of No Significant Impact (FONSI) is not justified. NMFS must provide a full Environmental Impact Statement (EIS) on this proposed action, which has the potential to significantly increase the number of permit holders, alter traditional landing patterns, negatively impact current limited access permit holders in this fishery, and have significant economic and social impacts.

*Response:* NMFS has determined that the new Swordfish General Commercial permit is not expected to result in cumulative effects that could have a significant effect on target species or non-target species or the human environment. The cumulative impacts of ongoing swordfish fishery management actions, including those in this proposed action, are expected to be positive from both an ecological and socio-economic perspective. If the United States is successful at increasing its North Atlantic swordfish landings and maintaining its international swordfish quota, it will realize increased gross revenues to U.S. fishermen who are participating in a well-managed, sustainable fishery. NMFS has determined that there would not be a significant increase in fishing effort under any of the proposed measures because most new Swordfish General Commercial permit holders are likely already participating in the recreational swordfish fishery, the Atlantic Tunas General or Harpoon category fisheries, or the HMS Charter/Headboat fishery. 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 will be restricted to using only authorized handgear (rod and reel, handline, harpoon, bandit gear, and green-stick), and must comply with the applicable regional swordfish retention limits. These traditional handgears are closely tended by fishermen. So while the likelihood of interactions with non-target or bycatch species is low, any incidentally-caught non-target species can usually be quickly and safely released. Under the proposed action, NMFS anticipates that fishermen using handgear will have no adverse impacts on ESA-listed species beyond those analyzed in the 2001 BiOp, which concluded that the HMS

handgear fishery will not jeopardize any ESA-listed species.

Having solicited and reviewed public comment on the Draft EA, and in view of the information presented in the Final EA that was prepared to address proposed changes to the U.S. North Atlantic swordfish fishery, particularly the small-scale handgear fishery, NMFS has determined that this action will have no significant impact on the quality of the human environment as described above and in the proposed EA. In addition, all impacts to potentially affected areas, including national, regional, and local, have been mitigated to reach the conclusion of no significant impact. Accordingly, NMFS determined that preparation of an EIS for this action was not necessary.

*Comment 23:* NMFS has not adequately assessed the potential ecological impacts on protected species and juvenile swordfish. Current guidance from the Council on Environmental Quality (CEQ) requires that agencies consider greenhouse gas emissions associated with any proposed actions and evaluate the carbon footprint associated with this new permit.

*Response:* NMFS expects that most new permit applicants will be current recreational swordfish fishermen with HMS Angling category permits, current commercial tuna fishermen with Atlantic Tunas General or Harpoon category permits, or current HMS Charter/Headboat permit holders, resulting in a shift of effort from these fisheries to the commercial swordfish handgear fishery, but not a large increase in overall fishing effort. NMFS also determined that the new Swordfish General Commercial permit could cause a minor increase in rod and reel, handline, bandit gear, green-stick, and harpoon commercial fishing effort if previously inactive fishermen obtain the new and modified permit(s) and began fishing. This could result in a minor increase in swordfish discards and discard mortality if fishing effort increases substantially in areas with large concentrations of juvenile swordfish. However, the establishment of a zero-fish retention limit in the Florida Swordfish Management Area, where there are large concentrations of juvenile and adult swordfish, will decrease the likelihood that there are negative impacts to the swordfish stock due to the new permit. Moreover, because NMFS does not expect a large increase in overall fishing effort resulting from the new Swordfish General Commercial permit, a significant increase in greenhouse gas emissions is not anticipated.

*Comment 24:* NMFS received contrasting comments about potential impacts on swordfish ex-vessel prices resulting from changes in landings volume and product quality due to implementation of the proposed permit. Some commenters stated that the proposed action would greatly increase the number of vessels commercially fishing for swordfish, so the ex-vessel price would decrease due to an increased supply. Also, because newly-permitted handgear fishermen would not be familiar with proper seafood handling methods, commenters stated that swordfish quality and prices would decrease across the entire fishery. Other commenters stated that the proposed permit would help to achieve price stability by introducing a limited amount of high-quality, dayboat swordfish into the domestic market. This is the type of small-scale fishery that the seafood industry is looking to promote.

*Response:* NMFS determined that establishing the new Swordfish General Commercial permit could have minor costs for U.S. fishermen associated with obtaining the new permit and complying with additional commercial fishing vessel safety requirements and fishery management regulations. NMFS also recognizes that the new and modified permits could affect ex-vessel swordfish prices and the values of existing swordfish limited access permits. However, the projected low level of landings derived from the new and modified swordfish permits is not expected to be large enough to greatly impact swordfish prices, either higher or lower, because ex-vessel prices are impacted by a number of factors, most notably the large volume of fresh and frozen swordfish imported into the U.S. market. Any other negative socio-economic impacts on current swordfish limited access permit holders are expected to be mitigated by the establishment of low swordfish retention limits for the new and modified permits, including a zero-fish retention limit in the modified Florida Swordfish Management Area. A retention limit range of zero to six swordfish is anticipated to provide a seasonal, or supplementary, fishery for most participants. It is not likely to facilitate a full-time, year-round fishery. In contrast, there are no retention limits for swordfish directed and handgear limited access permit holders, and there is a 30-fish limit for incidental swordfish limited access permit holders.

Positive economic benefits are expected if U.S. fishermen obtain this open-access swordfish permit. If a new entrant lands 10 swordfish per year with

the new permit, they could realize an increase in annual gross revenues of approximately \$4,320. If all the estimated 4,084 new entrants land 10 swordfish per year, total annual gross revenues from swordfish could increase by \$ 17.6 million, but quota limitations would reduce this revenue to approximately \$ 15.2 million. Economic benefits are also anticipated for fishing tackle manufacturers and suppliers, bait suppliers, fuel providers and swordfish dealers. In addition, this new permit would have long-term socio-economic benefits if it creates a situation where the U.S. swordfish quota is no longer at risk for being reallocated to other ICCAT Parties due to low U.S. swordfish landings. If the United States maintains its allocation of the total ICCAT-recommended North Atlantic swordfish quota, then socio-economic benefits would be realized by all swordfish fishery participants. For these reasons, NMFS has determined that the net economic benefits of the establishment of the new swordfish general commercial permit outweigh the net economic costs to fishermen.

*Comment 25:* Commenters stated that NMFS had both underestimated and overestimated the number of new permits that might be issued as a result of the proposed action. Commenters also stated that NMFS had both underestimated and overestimated the amount of additional landings that might occur as a result of the proposed action. Therefore, the potential environmental impacts associated with the proposed permit are misrepresented.

*Response:* In developing the Final EA and final management measures, NMFS considered public comments received in response to the Draft EA and determined that the socio-economic and environmental analyses contained in the Final EA are based upon the best available information, and appropriately consider the potential impacts of this action. It is not possible to predict the exact number of applicants for a new open-access commercial fishing permit, because there are few eligibility requirements for the new permit. Therefore, NMFS used the total number of Atlantic Tunas General category permit holders (4,084) as a proxy for the total number of new swordfish permit applicants, because the Atlantic Tunas General category permit is most similar to the permit being implemented in this action. NMFS then calculated the number of successful Atlantic Tunas General category vessels (i.e., landed at least one bluefin tuna) in 2011 (583 successful vessels) and multiplied that number by 10 swordfish per vessel/year to derive an estimated catch of 5,830

swordfish a year. The selection of 10 swordfish per year is an estimate and some fishermen could land more swordfish, while others could land less. The selection of 10 swordfish per year is a reasonable proxy, particularly if many new permit holders fish for swordfish on a part-time basis, similar to the practices of many Atlantic Tunas General and Harpoon category permit holders when fishing for bluefin tuna. With an average swordfish weight of 96 lb. dressed weight (dw) in 2011, this is estimated to yield 254 mt dw of additional swordfish landings. NMFS also multiplied the number of Atlantic Tunas Harpoon category vessels (24) by 10 swordfish per vessel/year to produce an estimated 240 additional swordfish caught per year. With an average swordfish weight of 96 lb. dw in 2011, harpoon landings are estimated to yield an additional 10.5 mt dw of U.S. swordfish landings. In total, by combining these two estimates, the new permit is predicted to yield 265 mt dw of additional U.S. swordfish landings. Under the new Swordfish General Commercial permit, NMFS estimated that total U.S. landings plus discards could approach 2,436 mt dw ((2,171 mt dw (2011 total U.S. landings reported to ICCAT) + 265 mt dw = 2,436 mt dw)) if current fishing practices remain constant.

As described in the response to Comment 24, NMFS recognizes that there may be minor socio-economic impacts to fishermen due to the establishment of the new Swordfish General Commercial permit. However, most negative socio-economic impacts on current swordfish limited access permit holders are expected to be mitigated by the establishment of low retention limits for the new Swordfish General Commercial permit, including a zero retention limit in the Florida Swordfish Management Area. A retention limit range of zero to six swordfish is anticipated to provide a seasonal, or supplemental, fishery for most participants. It is not likely to facilitate a full-time, year-round fishery.

*Comment 26:* NMFS must consider the potential that ICCAT could reduce the U.S. quota allocation or the overall North Atlantic swordfish Total Allowable Catch (TAC). Recent swordfish landing trends indicate that the United States is moving closer towards full utilization of its swordfish quota by existing permit holders. The proposed new permit could lead to a large increase in landings, fill the quota quickly and, as a result, close the directed swordfish fishery. There is not enough swordfish quota available for the new permit.

*Response:* While NMFS recognizes that quota changes are possible at ICCAT, the ability to monitor swordfish landings in near real-time with the HMS e-Dealer system and to quickly adjust the regional swordfish retention limits using in-season authority and pre-established criteria gives NMFS the flexibility to manage the directed swordfish quota, regardless of what the U.S. allocation of the ICCAT-recommended quota may be.

NMFS estimates that the new permit will yield approximately 265 mt dw of additional U.S. swordfish landings. Under the new Swordfish General Commercial permit, NMFS estimates that total U.S. landings plus discards could approach 2,436 mt dw ((2,171 mt dw (2011 total U.S. landings reported to ICCAT) + 265 mt dw = 2,436 mt dw)) if current fishing practices remain constant. In terms of available and unutilized swordfish quota, there is a loss of potential income by fishermen that would like to fish commercially for swordfish, but who are not able to obtain limited access permits. Currently, these limited access swordfish handgear permits can cost upwards of \$30,000. Because the North Atlantic swordfish stock is fully rebuilt and the United States has not attained its full ICCAT-recommended swordfish quota for over a decade, overall gross revenues are lower than they could be if the U.S. quota was fully harvested. For example, the total U.S. adjusted swordfish quota for 2012 was 3,559.2 mt dw (7,846,612 lbs. dw). Assuming an average ex-vessel price of \$4.51 per pound dw and 100 percent quota utilization, total possible gross revenue across the domestic fishery could be \$35.4 million, versus actual gross revenues of \$20.2 million (2011), or a difference of \$15.2 million in unrealized gross revenue due to the United States not fully attaining its adjusted North Atlantic swordfish quota. 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. Therefore, the new Swordfish General Commercial permit with low retention limits and in-season adjustment authority to modify limits as needed is warranted.

*Comment 27:* When NMFS is considering the impact of this new permit on the swordfish quota, the

Agency should reference the baseline quota.

*Response:* The baseline quota is the amount of swordfish that is allocated to the United States by ICCAT without adjusting for quota transfers to other countries (if applicable) or previous year under- or over-harvest. The adjusted quota is the baseline quota as adjusted by transfers and previous year over- or under-harvest. If under-harvest of the previous year's adjusted quota occurs, the United States may carry-forward its total under-harvest or 25% of the baseline quota, whichever is less. Both the baseline and adjusted quotas are important when considering the potential effects of swordfish landings under the new Swordfish General Commercial permit and commercial retention by HMS Charter/Headboat permitted vessels when not on a for-hire trip. Both were considered in developing the Draft and Final EA for Amendment 8. The adjusted quota is important because this number is what U.S. fishermen are limited to, on an annual basis, and what the United States must consider for long-term compliance with recommendations from ICCAT and consistency with ATCA. If the U.S. baseline or adjusted quota is repeatedly under-harvested, other countries wanting increased access to the North Atlantic swordfish stock may look to the United States as a source of quota that could be temporarily or permanently transferred. If the adjusted quota is exceeded in one year, the overage must be deducted from the following year's baseline quota.

In 2011, U.S. landings reported to ICCAT were 2,171 mt (dw). NMFS anticipates additional landings from the new permit of 265 mt (dw), which in 2011 would have produced 2,436 mt (dw) total landings plus discards. Therefore in 2011, under the new Swordfish General Commercial permit and modified HMS Charter/Headboat permit, U.S. landings (without discards) would have been 501.6 mt (dw) below the baseline quota of 2,937.6 mt (dw), and 1,970.4 mt (dw) below the adjusted quota of 4,406.4 mt (dw). In the future, potential additional landings under Amendment 8 could result in a directed swordfish semi-annual seasons closure. However, NMFS has the authority and ability to monitor landings and adjust retention limits in-season to slow or close the harvest of swordfish by Swordfish General Commercial and HMS Charter/Headboat permitted vessels, and thereby reduce the need to close the directed swordfish season early.

*Comment 28:* Green stick and bandit gear should not be authorized because

of their potential ability to catch bluefin tuna. These gears are not traditional swordfish fishing gears. Green-stick gear was developed to catch tunas, particularly bluefin tuna, and it does not catch swordfish very well.

*Response:* Greenstick and bandit gear are authorized under the Swordfish General Commercial permit to be consistent with the Atlantic Tunas General category permit under which these same gears are currently authorized for the harvest of bigeye, albacore, yellowfin and skipjack (BAYS) tunas and bluefin tunas. Under current regulations, swordfish may not be retained if unauthorized fishing gears are onboard the vessel. Atlantic Tunas General category permitted vessels that are fishing for tunas may want to fish for tunas with greenstick or bandit gear and may also have a Swordfish General Commercial permit and want to fish for swordfish on the same trip. NMFS does not anticipate that greenstick will be frequently used to harvest swordfish. However, by allowing the harvest of swordfish with greenstick, NMFS is facilitating the targeting of tunas and swordfish on the same trip. Under current regulations, bandit gear is authorized to harvest swordfish under Swordfish Handgear, Swordfish Directed, or Swordfish Incidental permits.

*Comment 29:* NMFS must consider bluefin tuna catches by these handgears in the Gulf of Mexico bluefin tuna spawning area. Estimated discards must be deducted from the Atlantic Tunas General category bluefin tuna quota. This reinforces the need for mandatory logbooks and some level of observer coverage to provide statistically valid bluefin tuna estimates in the Gulf of Mexico and the Atlantic Ocean. Bluefin tuna catches are not allowed because directed bluefin tuna fishing in the Gulf of Mexico is not allowed, but there will be catches.

*Response:* Greenstick and bandit gear are currently authorized for the harvest of BAYS and bluefin tunas under the Atlantic Tunas General category and HMS Charter/Headboat open access permits and the Atlantic Tunas Longline limited access permits. The authorization of these gears under these permits is not affected by Amendment 8. In the Gulf of Mexico, it is illegal to target bluefin tuna. Available greenstick and bandit gear catch and bycatch data indicate that fish released from these gears, including bluefin tuna, have a high likelihood of survival because the gears are tended and fish may be retrieved relatively quickly and released. Bluefin tuna landings must be accounted for under the appropriate

bluefin tuna sub-quota and dead discards must be accounted for against the overall U.S. quota. Atlantic Tunas General category and HMS Charter/Headboat permitted vessels must report on logbooks if selected for reporting. At this time, NMFS does not select these vessels for reporting in order to obtain bluefin tuna dead discard data because these authorized fishing gears have a low bluefin tuna mortality rate.

*Comment 30:* The preferred alternatives in Amendment 8 will make it easier for recreationally-caught swordfish to be illegally sold by increasing the number of commercial permit holders through which fish could be transferred and sold, especially in south Florida. NMFS will have no way to regulate the landings of all these swordfish in south Florida.

*Response:* The establishment of an open-access commercial swordfish permit that is easy to apply for and obtain is expected to reduce the incentive for recreational anglers to illegally sell or transfer swordfish to commercial fishermen for later sale. Recreational HMS fishermen in Federal waters must possess an HMS Angling permit, may not sell their HMS, and must report all swordfish landings either online or by phone within 24-hours of landing. In addition, commercially-caught swordfish may only be sold to a federally permitted swordfish dealer. In response to public comment and for other reasons explained above, at this time, NMFS is implementing a zero-fish retention limit in the Florida Swordfish Management Area for Swordfish General Commercial permit holders and prohibiting the sale of fish by vessels with HMS Charter/Headboat permits in this area, even when they are not on a for hire trip. In south Florida, this zero-fish retention limit will not provide additional incentive for recreational fishermen to illegally sell or transfer swordfish to commercial fishermen for later sale. The retention limit in south Florida and other regions may be adjusted in-season, based upon the attainment of pre-established criteria contained in the final rule implementing Amendment 8.

*Comment 31:* NMFS received comments opposed to the proposed regulation, which would allow a person to obtain an Angling category permit, and then relinquish that permit to obtain the Swordfish General Commercial permit during the 2013 fishing year. If a person relinquishes their Angling category permit to obtain the new commercial permit, the commenter stated that they should be prohibited from obtaining another

Atlantic Tunas permit during the same fishing year.

*Response:* NMFS agrees. A person may not change bluefin tuna quota categories within the same fishing year under current regulations. While this final rule will be effective prior to the issuance of 2014 Atlantic open access HMS and tunas permits, NMFS will not issue Swordfish General Commercial permits prior to the issuance of 2014 permits.

*Comment 32:* NMFS received contrasting comments regarding the effective date of the final rule implementing Amendment 8 to the 2006 Consolidated HMS FMP. Some commenters requested implementation as quickly as possible so they could benefit from increased commercial fishing opportunities for swordfish. Other commenters requested for NMFS to wait until ICCAT stock assessment results and quota recommendations are publicly available in the fall of 2013 before making any significant changes to current swordfish management measures.

*Response:* The effective date of this final rule is 30 days after the date of its publication in the **Federal Register**; however, the new Swordfish General Commercial Permit and the allowance for HMS Charter/Headboat permitted vessels to sell swordfish on non-for hire trips will first become effective upon issuance of the 2014 fishing permit. NMFS is implementing this rule as quickly as possible in order to provide additional opportunities to more fully utilize the U.S. swordfish quota, while considering available information about North Atlantic swordfish stock status. Regardless of the U.S. quota allocation issued by ICCAT, NMFS has the ability to monitor swordfish landings in real-time and will also have the ability under Amendment 8 to adjust regional swordfish retention limits according to the in-season adjustment authority criteria established in this final rule.

*Comment 33:* An open-access commercial swordfish permit will enable many people who have not been able to qualify, based on fishing income, for a Restricted Species Endorsement on the Florida Saltwater Products License to more easily qualify. Therefore, the proposed commercial swordfish permit will also create more fishing pressure on other species, including Spanish mackerel, pompano, and king mackerel.

*Response:* The Restricted Species Endorsement is a Florida state requirement that may be modified by the State of Florida based on their determination of need. If the State of Florida maintains the status quo regarding the Florida Restricted Species

list, which does not currently include swordfish, then some fishermen that obtain the new Swordfish General Commercial permit could potentially land and sell swordfish which could allow them to qualify more easily for entry into restricted entry commercial fisheries in Florida. If the State of Florida adds swordfish to the Restricted Species list, then it would not become any easier for fishermen to qualify for entry into restricted commercial fisheries in Florida.

*Comment 34:* NMFS should implement a swordfish tagging system to promote more swordfish quota usage. Commenters stated that some swordfish are being unreported and that the United States must ensure that all swordfish that are being caught are accounted for.

*Response:* In the Draft EA for Amendment 8, NMFS thoroughly considered an alternative that would implement a swordfish tagging program to provide a higher level of reporting and to facilitate the enforcement of swordfish regulations. Four sub-alternatives were considered, including tagging: (1) Only swordfish landed by vessels issued the new or modified permit(s); (2) all swordfish landed by any gear other than PLL (i.e., rod and reel, handline, harpoon, bandit gear, green-stick, trawl gear, and buoy gear; (3) all commercially landed swordfish; and (4) all commercially-landed swordfish within, or from, specified region(s). Additionally, NMFS considered whether to provide tags to dealers and require that vessel operators tag swordfish prior to offloading, or whether to provide tags to swordfish vessel permit holders and require that swordfish be tagged immediately upon being brought onboard a vessel. NMFS extensively investigated different types of tags, program administration and costs, tag manufacturers, reporting requirements, and enforcement considerations.

After consulting with the HMS Advisory Panel and other interested constituents, NMFS decided not to further analyze the alternative to implement a swordfish tagging program due to concerns about the effectiveness of a tagging program to reliably identify swordfish that are bound for commerce. Unless all commercial swordfish (both domestic and imported) are tagged, it would remain difficult to differentiate between legitimate commercial landings that needed to be tagged, commercial landings that did not need to be tagged, imported swordfish, and recreational landings illegally entering commerce. Furthermore, establishing an open-access commercial swordfish permit is

expected to significantly reduce the incentive for recreational anglers to illegally sell or transfer swordfish to commercial fishermen for later sale, thereby reducing the need for a tagging program.

#### **Changes From the Proposed Rule (78 FR 12273, February 22, 2013)**

In this final rule and in response to public comment, NMFS has modified the definition of the "Florida Swordfish Management Area" at § 635.2 by removing that portion of the area north of 28°17'10" N. lat. The new northern boundary line now intersects the U.S. mainland near Rockledge, FL, and the coastline between Cape Canaveral, FL, and Melbourne, FL, near Cocoa Beach, FL. The modified area is smaller in geographic size than the proposed area. The area off the southeastern coast of Florida, particularly the Florida Straits, contains oceanographic features that make the area biologically unique. It provides important juvenile swordfish habitat, and is essentially a narrow migratory corridor containing high concentrations of swordfish located in close proximity to high concentrations of people who may fish for them. The modified Florida Swordfish Management Area more closely encompasses the Florida Straits and the oceanographic features that make this area biologically unique. Public comment indicated a concern about increased catches of juvenile swordfish, the potential for larger numbers of fishermen in the area, and the potential for crowding of fishermen, which could lead to potential fishing gear and user conflicts. Modifying the area to more closely correspond to the actual oceanographic features that make the area unique will improve future conservation and management of swordfish, while minimizing impacts on fishermen operating both in the relatively narrow area of the Florida Straits and fishermen operating north of this area where swordfish are less concentrated. This modification is within the range of alternatives considered for the Florida Swordfish Management Area in Amendment 8. To account for the reduction in size of the Florida Swordfish Management Area, the Northwest Atlantic region has been increased in size by extending its southern boundary to 28°17'10" N. lat.

Also in response to public comment, NMFS has modified the initial default retention limit of the Florida Swordfish Management Area. In § 635.24(b)(4)(iii), the initial default swordfish retention limit for the modified Florida Swordfish Management Area has been changed from one swordfish per vessel per trip

to zero swordfish per vessel per trip. An initial default retention limit of zero swordfish per vessel per trip in the modified Florida Swordfish Management Area better corresponds with NMFS' intent to take a precautionary approach during the initial establishment of a new open access commercial swordfish permit in an area that is biologically unique and within the proximity of a large number of fishermen, while still providing increased opportunities for commercial swordfish handgear fisheries in other regions.

Paragraphs § 635.4(f)(1) and (f)(2) have been changed to indicate that the provision allowing HMS Charter/Headboat permitted vessels to commercially fish for swordfish under the new regulations will become effective on January 1, 2014. Similarly, in § 635.4(f)(5), a sentence has been removed that described how the new permit would have been issued during the 2013 fishing year. The new permit will be made available for the 2014 fishing year, so that sentence is no longer needed.

Paragraph § 635.4(m)(2) has been reworded to improve clarity, but no substantive change to this paragraph has been made.

A minor change has been made to § 635.24(b)(4)(i) to improve clarity and to reflect the changes made to the definition of the Florida Swordfish Management Area.

A correction has been made at § 635.34(a) to indicate the proper cross-reference to § 635.24 instead of § 635.23. There is no substantive change as a result of this correction.

Lastly, a change has been made at § 635.71(e)(18) to improve clarity by incorporating a cross-reference to § 635.21(e)(4)(v).

#### Classification

The NMFS Assistant Administrator (AA) has determined that this final rule is consistent with the 2006 Consolidated Atlantic HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law.

NMFS prepared an environmental assessment for this final rule that discusses the impact on the environment that would result from this rule. In this final action, we 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 final rule has been determined to be not significant for purposes of Executive Order 12866.

The Agency has consulted, to the extent practicable, with appropriate state and local officials to address the principles, criteria, and requirements of Executive Order 13132.

A final regulatory flexibility analysis (FRFA) was prepared for this rule. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, our responses to those comments, and a summary of the analyses completed to support the action. The full FRFA and analysis of economic and ecological impacts are available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The purpose of this final rulemaking, consistent with the Magnuson-Stevens Act, and the 2006 Consolidated HMS FMP and its amendments, is to enact HMS management measures that 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 604(a)(2) of the RFA requires a summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the Agency of such issues, and a statement of any changes made in the rule as a result of such comments. NMFS received many comments on the proposed rule and IRFA. A summary of these comments and the Agency's responses, including changes as a result of public comment, are included above. In particular, comments 1, 5, 6, and 7 address the rule's economic impacts. For the reasons discussed in the response to comments 5 and 6, NMFS has reduced the size of the Florida Swordfish Management Area in this final rule, increased the size of the Northwest Atlantic region, implemented a zero swordfish per vessel per trip initial default retention limit in the smaller modified Florida Swordfish Management Area, and implemented a three swordfish per vessel per trip initial default retention limit in the area north of Cocoa Beach, FL, to Jekyll Island, GA, that was originally proposed to be subject to a one swordfish per vessel per trip limit. Otherwise, there

are no substantive changes from the proposed rule as a result of these economic comments.

Section 604(a)(3) of the RFA requires a description and estimate of the number of small entities to which the final rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Previously, a business involved in fish harvesting was classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. In addition, SBA has defined a small charter/party boat entity (NAICS code 713990, recreational industries) as one with average annual receipts of less than \$7.0 million. On June 20, 2013, SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013. 78 FR 37398 (June 20, 2013). The rule increased the size standard for Finfish Fishing from \$4.0 to 19.0 million, Shellfish Fishing from \$4.0 to 5.0 million, and Other Marine Fishing from \$4.0 to 7.0 million. *Id.* at 37400 (Table 1).

NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards.

This final 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. 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. 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 permit being implemented in this final action. This final action could also indirectly apply to current U.S. North Atlantic commercial swordfish fishery participants and the related industries of seafood dealers and processors, fishing gear manufacturers and distributors, marinas, bait houses, restaurants, and other equipment suppliers. The current U.S. North

Atlantic commercial swordfish fishery is comprised of 334 fishing vessel owners who are issued either a limited access swordfish Handgear permit, or a limited access directed or incidental swordfish permit.

Section 604(a)(4) of the RFA requires a description of the projected reporting, record-keeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record.

This action contains new reporting, recordkeeping, or other compliance requirements. The new Federal open-access Swordfish General Commercial permit allows NMFS to collect additional data regarding participants in the swordfish handgear fishery and landings through Federal dealer reports. The new permit requires an application similar to other current open-access HMS permits. The information collected on the application includes 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 final rule also adopts 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 implemented in this final action (HMS Charter/Headboat, Atlantic tunas General category, and Atlantic tunas Harpoon category permit) are not selected for submitting logbooks, although they may be selected in the future.

Section 604(a)(5) of the RFA requires a description of the steps NMFS has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and the reason that each one of the other significant alternatives to the rule considered by the Agency which affect small entities was rejected. These impacts are discussed below and in the final environmental assessment for Amendment 8 to the 2006 Consolidated

HMS FMP. Additionally, the RFA (5 U.S.C. 603(c)(1)–(4)) lists four general categories of "significant" alternatives that could 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 rule, consistent with the Magnuson-Stevens Act and ESA, 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. We do not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while also 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. The action will improve information collection by allowing NMFS to collect important fishery dependent data, if necessary, that could be used for quota monitoring and stock assessments. As described below, NMFS analyzed several different alternatives for this final rulemaking and provides rationale for selecting the alternatives adopted in the final rule and the reason that each one of the other significant alternatives to the rule considered by the Agency which affect small entities was rejected.

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 FRFA and all its analyses can be found in the final environmental assessment for Amendment 8. In total, NMFS analyzed 16 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 nine alternatives that would allow NMFS to implement swordfish retention limits applicable to the new permit in a range from zero-to-six fish. Eight of these alternatives would allow NMFS to modify daily trip limits using in-season adjustment procedures. 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.

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 are

expected to 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 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 vessels using handgears (rod and reel, handline, harpoon, bandit gear, and green-stick) to retain swordfish commercially, 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 1.2.1 is not preferred because it would not provide the ability to differentiate between the numbers of commercial fishermen issued an Atlantic Tunas General category permit and those issued an open-access commercial swordfish permit. This distinction helps to analyze the socio-economic impacts of potential management measures for both tunas and swordfish.

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 fish for tunas under Atlantic tunas Harpoon category regulations. Sub-Alternative 1.2.2 is not preferred

because it would not provide the ability to differentiate between the numbers of commercial fishermen issued an Atlantic Tunas Harpoon category permit and those issued an open-access commercial swordfish permit.

Sub-alternative 1.2.3, a preferred alternative, would allow HMS Charter/Headboat permit holders to fish under open access commercial swordfish regulations, using only rod and reel and handlines, when 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 would also streamline permit issuance because CHB vessels would not need to obtain another permit. Sub-Alternative 1.2.3 is preferred because it achieves the goal of providing additional opportunities to commercially harvest the U.S. swordfish quota using handgears that are low in bycatch. A similar regulatory provision exists which allows HMS Charter/Headboat permit holders to sell Atlantic tunas under certain conditions because of the quasi-commercial nature of the HMS Charter/Headboat 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 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 only 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, establishing 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 1.3 is not preferred because a new commercial swordfish limited-access permit is not needed at this time. Under the preferred alternatives, fishing effort in the open-access commercial swordfish fishery will be managed using low regional retention limits that can be adjusted using in-season authority to ensure that landings remain within the U.S. quota.

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 2.1 is not preferred because it does not provide the flexibility to manage the new swordfish open access permit on a regional basis or to adjust regional retention limits using in-season authority.

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 2.2 is not preferred because it does not provide the flexibility to manage the new swordfish open access permit on a regional basis.

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 considered 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. 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. 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 2.3.1 is not preferred because the small-scale handgear fishery is somewhat similar across the entire Northwest Atlantic area and Gulf of Mexico, so establishing several smaller areas is not needed at this time.

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 (the 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). In the draft EA and proposed rule, NMFS considered 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 fell within the range discussed under Alternative 2.3 above, and could be

modified in the future using in-season adjustment procedures. In this action, NMFS establishes an initial default retention limit of zero swordfish per vessel per trip for the Florida Swordfish Management Area due to concerns about the rapid growth of a commercial fishery in an important swordfish habitat area that is in close proximity to many fishermen. Under a regional retention limit set at zero for the Florida Swordfish Management Area, no change in socio-economic impacts is anticipated. In other regions, vessels making 10 trips per year and retaining the maximum allowable limit on each trip would derive annual gross revenue from swordfish ranging 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 is preferred because it establishes larger regions which can be consistently and effectively managed, yet it still provides for the ability to manage the unique swordfish habitat area off southeastern Florida.

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 NMFS used to estimate 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, as is the case currently, then potentially 1,455 new open-access swordfish permits could be issued on the east coast of Florida ( $0.666 * 2,185 = 1,455$ ).

Sub-Alternative 2.3.2.1 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). Under a regional retention limit set at zero for the Florida

Swordfish Management Area, no change in socio-economic impacts is anticipated. 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. Sub-Alternative 2.3.2.1 was preferred in the draft EA and proposed rule because it corresponded to the well-known boundaries of the existing East Florida Coast pelagic longline closed area, and also provided an enforceable buffer by including areas where there is not as much swordfishing activity. It is no longer preferred because a new hybrid alternative has been developed that better corresponds to the unique biological and oceanographic features that make the area a migratory corridor containing a high concentration of swordfish and providing important juvenile swordfish habitat. The hybrid area also closely corresponds to locations containing large numbers of fishermen, while still providing an enforceable buffer area to the north and south of the prime swordfishing areas off St. Lucie, Martin, Palm Beach, Broward, Dade, and Monroe counties in Florida.

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. Under a regional retention limit set at zero for the Florida Swordfish Management Area, no change in socio-economic impacts is anticipated. 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 2.3.2.2 is not preferred because a new hybrid alternative has been developed that better corresponds to the unique biological and oceanographic features that make the area a migratory corridor containing a high concentration of swordfish and providing important juvenile swordfish habitat.

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. Under a regional retention limit set at

zero for the Florida Swordfish Management Area, no change in socio-economic impacts is anticipated. 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. Sub-Alternative 2.3.2.3 is not preferred because this management area would provide a smaller, and less enforceable, buffer area around the prime swordfishing areas. A new hybrid alternative has been developed that better corresponds to the unique biological and oceanographic features that make the area a migratory corridor containing a high concentration of swordfish and providing important juvenile swordfish habitat.

Sub-Alternative 2.3.2.4, a preferred alternative, would establish a Florida Swordfish Management Area extending shoreward from near Rockledge, FL, and Cocoa Beach, FL, to the outer boundary of the EEZ through the northwestern boundary of Monroe County, FL, in the Gulf of Mexico. This area is geographically smaller than Sub-Alternatives 2.3.2.1 and 2.3.2.2, but larger than Sub-Alternative 2.3.2.3. This sub-alternative, in combination with a zero-fish retention limit, balances the need to prevent the rapid growth of a commercial fishery in a biologically unique area with the objective of providing additional opportunities to harvest swordfish. The preferred alternative in the draft EA (Sub-Alternative 2.3.2.1) would have implemented a one-fish retention limit in a larger area. This alternative would implement a zero-fish retention limit in a smaller area, and a three-fish retention limit in the area north of Cocoa Beach, FL, that was previously proposed to be subject to a one-fish retention limit. Thus, in the smaller, modified Florida Swordfish Management Area (Sub-Alternative 2.3.2.4) with an initial default retention limit of zero, no change in socio-economic impacts is anticipated. In the larger Northwest Atlantic region, annual gross revenue derived from swordfish would be approximately \$12,988.80 under a three-fish limit for a vessel making ten trips per year and retaining the maximum allowable limit on each trip. Sub-Alternative 2.3.2.4 is preferred because it more closely corresponds to the unique biological and oceanographic features that make the area a migratory corridor containing a high concentration of swordfish and providing important juvenile swordfish habitat. This area also more closely corresponds to locations containing large numbers of

fishermen with comparatively easy access to the swordfish resource, while still providing an enforceable buffer area to the north and south of the prime swordfishing areas off St. Lucie, Martin, Palm Beach, Broward, Dade, and Monroe counties in Florida.

This final rule does not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). 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 ACTA, 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. We do not believe that the new regulations duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0327. 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. Send comments on these burden estimated or any other aspects of this data collection, including suggestions for reducing the burden or any other aspects of the collection of information to NMFS (see ADDRESSES) and by email to *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.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of this final rule and the compliance guide are available upon request from NMFS (see ADDRESSES). Copies of the compliance guide will also be available from the Highly Migratory Species Management Division Web site at <http://www.nmfs.noaa.gov/sfa/hms/>.

**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: August 13, 2013.

**Samuel D. Rauch III,**

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

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

**PART 600—MAGNUSON-STEVENS ACT PROVISIONS**

■ 1. The authority citation for part 600 continues to read as follows:

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

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

**§ 600.725 General prohibitions.**

\* \* \* \* \*  
(v) \* \* \*

Fishery	Authorized gear types
* * * * *	* * * * *
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 shoreward of the outer boundary of the U.S. EEZ from a point where latitude 28°17'10" N. lat. intersects the U.S. mainland near Rockledge, Florida and proceeding due east across the barrier island near Cocoa Beach, Florida to

connect by straight lines the following coordinates in the order stated:

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 25°48' N. lat., 82°0' W. long., then proceeding due east to the shore near Chokoloskee, Florida).

\* \* \* \* \*

■ 5. In § 635.4:

- a. Revise paragraphs (b)(1), (c)(1), and (c)(2);
- b. Add paragraph (c)(4);

- c. Revise paragraphs (f) introductory text, (f)(1), (f)(2), and (f)(4);
- d. Add paragraph (f)(5); and
- e. Revise paragraphs (h)(1) introductory text, (j)(3), and (m)(2).

The revisions and additions 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.* The Swordfish General Commercial permit and the HMS Charter/Headboat permit provisions in paragraphs (f)(1) and (2) of this section will first become effective beginning with issuance of the 2014 fishing permit.

(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 or 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 a 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) of this section, a swordfish limited access permit issued consistent with paragraphs (l) and (m) of this section, or permits issued under paragraphs (n) and (o) of this section.

\* \* \* \* \*

(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). 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.

\* \* \* \* \*

(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.* A vessel owner 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 if: the vessel is used to fish for or take sharks commercially from the management unit; sharks from the management unit are retained or possessed on the vessel with an intention to sell; or sharks from the management unit are sold from the vessel. A vessel owner 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) if: the vessel is used to fish for or take swordfish commercially from the management unit; swordfish from the management unit are retained or possessed on the

vessel with an intention to sell; or swordfish from the management unit are sold from the vessel. The commercial retention and sale of swordfish from 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) and (ii) and (e)(4)(i) and (iv), add paragraph (e)(4)(v), and revise paragraph (g) 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) introductory text and (f)(1) and (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.* 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°17'10" N. latitude); the Gulf of Mexico region (any water located in the EEZ in the entire Gulf of Mexico west of 82° W. longitude); 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) of this section are:

(A) Zero 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 (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 under harvests, 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 (D) are added to read as follows:

**§ 635.28 Fishery 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 § 635.24; 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 (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 pelagic longline, green-stick 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, as specified in § 635.21(e)(4)(v).

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