

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

[Docket No. 080130104-8560-02]

RIN 0648-AW46

**Atlantic Highly Migratory Species; Renewal of Atlantic Tunas Longline Limited Access Permits; Atlantic Shark Dealer Workshop Attendance Requirements**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations governing the renewal of Atlantic tunas longline limited access permits (LAPs), and amends the workshop attendance requirements for businesses issued Atlantic shark dealer permits. Specifically, these regulatory changes allow for the renewal of Atlantic tunas longline LAPs that have been expired for more than one year by the most recent permit holder of record, provided that the applicant has been issued a swordfish LAP (other than a handgear LAP) and a shark LAP, and all other requirements for permit renewal are met. Also, this rule amends the Atlantic Shark Identification Workshop requirements by: specifying that a workshop certificate be submitted upon permit renewal, and later possessed and available for inspection, for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade (rather than for each location listed on their dealer permit); and requiring that extensions of a dealer's business, such as trucks or other conveyances, must possess a copy of a valid dealer or proxy certificate issued to a place of business listed on the dealer permit.

**DATES:** This final rule is effective August 4, 2008.

**ADDRESSES:** Copies of the final Regulatory Impact Review/Final Regulatory Flexibility Analysis (Final RIR/FRFA); and, related documents including a 2007 Final Environmental Assessment (EA) and final rule (72 FR 31688, June 7, 2007) implementing revised vessel upgrading regulations for vessels issued Atlantic tunas longline, swordfish, and shark LAPs; and the 2006 Final Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) and its final rule (71 FR 58058, October 2, 2006)

implementing Atlantic Shark Identification Workshops are available from the HMS Management Division website at: <http://www.nmfs.noaa.gov/sfa/hms> or by contacting Richard A. Pearson (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:**

Richard A. Pearson, by phone: 727-824-5399; by fax: 727-824-5398.

**SUPPLEMENTARY INFORMATION:****Background**

Atlantic tuna and swordfish fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). Atlantic sharks are managed under the authority of the Magnuson-Stevens Act. The Consolidated HMS FMP is implemented by regulations at 50 CFR part 635.

**Renewal of Atlantic Tunas Longline LAPs**

LAPs were first implemented in HMS fisheries in 1999 primarily to provide a limit on harvesting capacity in Atlantic swordfish and shark fisheries to reduce the likelihood of exceeding the available quota for these species, and to facilitate other fishery management measures implemented at the time. The Atlantic tunas longline LAP was also established at that time because of the potential for encountering swordfish and sharks when fishing with pelagic longline (PLL) gear for Atlantic tunas, and vice-versa. In recognition of the interrelationship between these longline fisheries, the Atlantic tunas longline LAP complemented the management measures that had been developed for Atlantic swordfish and shark.

Since 1999, vessel owners have been required to simultaneously possess three permits (Atlantic tunas longline; swordfish directed or incidental; and, shark directed or incidental) in order to retain Atlantic tunas caught with longline gear, or to retain swordfish caught with any gear other than handgear. An Atlantic tunas longline LAP is only considered valid, or useable, if the vessel has also been issued both a shark LAP and a swordfish LAP (other than handgear). Similarly, a swordfish LAP (other than handgear) is only considered valid, or useable, when a vessel has also been issued both a shark LAP and an Atlantic tunas longline LAP. The current regulations for each of these permits specify that only persons holding non-expired LAPs in the preceding year are eligible to renew those permits.

In 2007, NMFS identified approximately 40 vessel owners that had allowed their Atlantic tunas longline LAPs to lapse for more than one year, thus making them ineligible to renew that permit. In most cases, the vessel owners had maintained their accompanying swordfish and shark LAPs through timely renewal. However, because they are ineligible to renew their Atlantic tunas longline LAP, they are not currently allowed to fish for tunas with PLL gear or to retain swordfish, even though they have been issued a swordfish permit. Currently, the number of available Atlantic tunas longline LAPs is insufficient to match the number of available swordfish and shark incidental or directed permits, thus rendering many swordfish permits invalid, or unusable, because all three permits are required to retain swordfish (with any gear other than handgear).

The scope of this problem was not fully recognized until September 2007, when NMFS was determining which vessels qualified for revised vessel upgrading regulations (72 FR 31688, June 7, 2007), depending upon whether the vessel was concurrently issued a directed or incidental swordfish LAP, a directed or incidental shark LAP, and an Atlantic tunas longline LAP. At that time, NMFS learned that approximately 40 vessel owners had inadvertently failed to renew their Atlantic tunas longline LAP because of operational constraints associated with the Atlantic tunas longline permit issuance system, or because of significant differences in the renewal procedures for swordfish/shark LAPs and the Atlantic tunas longline LAP.

There was confusion within the fishing industry regarding the renewal, issuance, eligibility, and applicability of the one-year renewal requirement for the Atlantic tunas longline LAP because the operational procedures for renewing an Atlantic tunas longline LAP were substantially different than for swordfish and shark LAPs. The Atlantic tunas longline permit renewal system was originally developed as a self-service, web-based electronic system that was administered by a non-NMFS contractor for the primary purpose of issuing open access permits. In contrast, swordfish and shark LAPs are issued and renewed by submitting paper applications to NMFS' Southeast Region permits office. A significant difference between the two permit systems is that the Atlantic tunas longline LAP cannot be held in "no vessel" status, meaning that the permit cannot be renewed without specifying a vessel. An Atlantic tunas longline permit holder must either move the permit to a replacement vessel

or forfeit the permit. Many vessel owners indicated that they were not aware of these options, or misunderstood them, and let their Atlantic tunas longline LAP expire because they no longer owned a vessel but thought they remained eligible to renew the permit.

Another difference between the Atlantic tunas longline LAP and swordfish and shark LAPs is that the Atlantic tunas longline LAP does not have a unique permit number associated with it that stays unchanged if the permit is transferred to another vessel, whereas swordfish and shark permits do. Therefore, "ownership" of the Atlantic tunas longline LAP is more difficult to track over time because the permit number changes with each transfer of the permit to another vessel.

This final rule amends the HMS regulations to remove the one-year renewal timeframe for Atlantic tunas longline LAPs. This modification will better reflect the operational capabilities of the Atlantic tunas longline permit renewal system and reduce the potential for future confusion. It will allow NMFS, upon receipt of a complete permit application, to reissue an Atlantic tunas longline LAP to the most recent permit holder of record even if the permit had not been renewed within one year of expiration, provided that the applicant has already been issued a swordfish LAP (other than a handgear LAP), a shark LAP, and all other current requirements for permit renewal are met. This final rule does not amend the permit renewal regulations for swordfish and shark LAPs which will continue to specify that only persons holding non-expired swordfish and shark LAPs in the preceding year are eligible to renew those permits. Also, the requirement to possess all three valid LAPs (swordfish incidental or directed; shark incidental or directed; and Atlantic tunas longline) in order to fish for tunas with PLL gear and to retain commercially-caught swordfish (other than with a swordfish handgear LAP) remains unchanged. Thus, the final management measures will not increase the number of Atlantic tunas longline LAPs issued to an amount higher than the number of swordfish LAPs (incidental or directed) that are currently issued or are eligible to be renewed.

This action will help to ensure that an adequate number of complementary Atlantic tunas longline LAPs are available for swordfish and shark commercial LAP holders to fish legally for Atlantic swordfish and tunas with PLL gear. Consistent with the Magnuson-Stevens Act and ATCA, it

will also help provide a reasonable opportunity for U.S. vessels to more fully harvest the domestic swordfish quota, which is derived from the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). This final rule reinforces recent efforts by NMFS to "revitalize" the PLL fishery, recognizing that the North Atlantic stock is almost fully rebuilt ( $B = 0.99B_{msy}$ ) but domestic landings have been well below the U.S. swordfish quota in recent years. In doing so, this action could help the United States retain its historic swordfish quota allocation at ICCAT.

#### **Atlantic Shark Dealer Workshop Requirements**

To improve the identification and reporting of shark species by dealers for accurate quota monitoring and stock assessments, existing HMS regulations at 50 CFR 635.8 require that Atlantic shark dealers attend an Atlantic Shark Identification Workshop and submit a copy of the workshop certificate in order to renew their permit. If a dealer attends and successfully completes a workshop, the dealer will receive a workshop certificate for each location listed on their Atlantic shark dealer permit. If the dealer chooses to send a proxy to a workshop, the existing regulations require them to send a proxy for each location listed on their Atlantic shark dealer permit. Under these regulations, Atlantic shark dealers may not renew their Atlantic shark dealer permit without submitting either a dealer or proxy certificate for each location listed on their Atlantic shark dealer permit. Additionally, Atlantic shark dealers may not act as the "first-receivers" of shark products at any location unless a valid workshop certificate is on the premises of each place of business listed on their shark dealer permit. As described in the final rule for Amendment 2 for the Management of Atlantic Shark Fisheries (73 FR 35778, June 24, 2008), "first-receiver" means any entity, person, or company that takes, for commercial purposes (other than solely for transport), immediate possession of the fish, or any part of the fish, as the fish are offloaded from a fishing vessel of the United States, as defined under § 600.10 of this chapter, whose owner or operator has been issued, or should have been issued, a valid permit under this part.

Since the implementation of these requirements, NMFS has learned that some shark dealers may not be acting as the first receiver of shark products at all of the locations listed on their permit. For example, a dealer may purchase red snapper at one location, and shark at

another location. However, because the shark dealer's permit lists both locations as owned by the dealer, including the snapper-only site, the existing regulations require them to submit an Atlantic Shark Identification Workshop certificate (proxy or dealer) upon permit renewal for both the shark site and the snapper site, and to later possess the certificate at both sites. This is an impractical and unnecessary result. When NMFS recognized that the existing regulations required this practice, the agency decided to correct and amend the process.

For technical and programmatic reasons, it is not feasible for NMFS to modify the permit database to specify only locations on the shark dealer permit that actually receive shark products if the dealer also has other locations where other species are received. To remedy this situation, the final rule amends the HMS regulations by specifying that, when applying for or renewing an Atlantic shark dealer permit, an applicant must submit an Atlantic Shark Identification Workshop certificate (dealer or proxy) for each place of business listed on the shark dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade, rather than for each location listed on the shark dealer permit. This will eliminate the need for a shark dealer to send a proxy to a workshop to obtain a certificate for a location that does not actually receive Atlantic shark products. Similarly, the requirement to possess, and make available for inspection, an Atlantic Shark Identification Workshop certificate will only be required at locations listed on the dealer permit where sharks are first received rather than from each location listed on the shark dealer permit. Finally, this final rule requires that extensions of a dealer's business, such as trucks or other conveyances, must possess a copy of a valid dealer or proxy certificate issued to a place of business covered by the dealer permit. This will immediately identify trucks or other conveyances as extensions of a NMFS-certified place of business which is eligible to receive Atlantic sharks. With these minor amendments, the objective of improved identification and reporting of shark species is expected to continue, while impacts on dealers may be lessened.

#### **Clarification of Buoy Gear Usage**

In this final rule, NMFS also makes a technical clarification in the "gear operation and deployment restrictions" section of the HMS regulations regarding which permit holders are authorized to utilize buoy gear. This

technical clarification does not substantively change the buoy gear usage requirements. It clarifies that only vessels issued a valid directed or handgear swordfish LAP may possess and utilize buoy gear. This clarification addresses questions and comments received from constituents, and ensures consistency with existing HMS regulations at § 635.71(e)(10) which already specify that only these permit holders may possess or utilize buoy gear.

A description of the alternatives for this action was provided in the Classification section of the proposed rule (73 FR 19795, April 11, 2008) and is not repeated here. Additional information can be found in the Final RIR/FRFA prepared for this rule and is available from NMFS (see **ADDRESSES**).

The public comment period for the proposed rule (73 FR 19795, April 11, 2008) was open from April 11, 2008, to May 12, 2008. During that time, NMFS conducted three public hearings in Gloucester, MA (May 1, 2008), St. Petersburg, FL (May 6, 2008), and Silver Spring, MD (May 7, 2008). In addition, the HMS Advisory Panel (HMS AP) received a presentation and was provided with an opportunity to comment on the proposed rule on April 16, 2008. The Agency received six written or electronic comment letters, and several verbal comments from the HMS AP and at public hearings. A summary of the major comments (26 total) received, along with NMFS' response, is provided below.

### Response to Comments

These comments and responses are divided into two major categories: those that discuss the renewal of Atlantic tunas longline LAPs (23 comments) and those that discuss Atlantic shark dealer workshop requirements (3 comments).

#### *Renewal of Atlantic Tunas Longline LAPs*

*Comment 1:* All longlines should be banned. It is time for NMFS to prohibit these forty mile longlines from being used in the ocean and killing everything in their path. The proposed rule is far too lenient.

*Response:* The U.S. PLL fishery provides jobs and income for fishery participants, and wholesome food products for consumers. NMFS continually assesses the PLL fishery and, if necessary, implements management measures to ensure that bycatch and bycatch mortality of protected and nontarget species are minimized to the extent practicable. In addition, based upon the best scientific information available, the agency

develops and implements management measures to prevent overfishing and rebuild overfished stocks. Some of these management measures include the mandatory use of circle hooks in the PLL fishery, bait restrictions, gear requirements, mandatory training at release and disentanglement workshops, mandatory release and disentanglement gear, time/area closures, mandatory vessel monitoring systems, logbook and reporting requirements, observer coverage, minimum size limits, catch limits, annual quotas, target catch requirements, limited access permits, and vessel upgrading restrictions. The implementation of these measures has resulted in a well-managed domestic fishery. This final rule is not expected to have significant adverse environmental impacts because the resultant number of authorized PLL vessels will not exceed the number of vessels that are currently issued, or are eligible to renew, swordfish directed and incidental permits. At most, 40 Atlantic tunas longline LAPs could be reissued as a result of this rule, but all of these permits have been issued before, since LAPs were first required in 1999.

*Comment 2:* The Atlantic tunas longline LAP was established eight or nine years ago. Why is NMFS only finding out now that 40 former permit holders did not renew their permits by the required deadline?

*Response:* The magnitude of this issue came to the forefront during implementation of revised vessel upgrading regulations for vessels which were concurrently issued, or eligible to renew, swordfish, shark and Atlantic tunas longline LAPs in August 2007. Prior to that time, NMFS recognized that some permit holders had failed to renew their Atlantic tunas LAP within one year of expiration, but the agency was not aware that many of these same permit holders had maintained their swordfish and shark LAPs through timely renewal. NMFS found that some permit holders had inadvertently let their Atlantic tunas longline LAP expire because they misunderstood the differences in the permit renewal process for swordfish/shark LAPs and Atlantic tunas longline LAPs (as discussed in detail in the proposed rule (73 FR 19795, April 11, 2008)). NMFS also found that some swordfish and shark permit holders were not able to renew their Atlantic tunas longline LAP because they did not possess a vessel; the tuna permitting system cannot issue a permit without vessel information. For these reasons, the agency is amending the HMS regulations to be more reflective of the operational capabilities

of the Atlantic tunas longline permit issuance system and to reduce confusion regarding the renewal of this permit.

*Comment 3:* If I have an incidental swordfish permit and a shark permit, is NMFS going to issue me a tuna longline permit as a result of this rule?

*Response:* Not necessarily. This final action only amends the regulations regarding the renewal of expired Atlantic tunas longline LAPs. Only the most recent permit holder of record will be eligible to renew that permit even if it has been expired for more than one year. The Atlantic tunas longline LAP remains a limited access permit. As stated in 50 CFR 635.4(d)(4), the permit may only be obtained through transfer from current owners. This means that the concurrent possession, or issuance, of swordfish and shark directed or incidental LAPs does not automatically entitle a person to an Atlantic tunas longline LAP. It must still be obtained through permit transfer.

*Comment 4:* Will reissuing 40 Atlantic tunas longline LAPs create the complementary balance of permits that NMFS is hoping to achieve, or will the agency have to issue more permits? How many shark and swordfish boats are looking for Atlantic tunas longline LAPs?

*Response:* There are approximately 40 vessels that have been issued, or are eligible to renew, swordfish and shark permits that need an Atlantic tunas longline LAP to complete the three-permit combination that is necessary to retain swordfish (other than with handgear) or to fish for tunas with PLL gear. As of August 6, 2007, there were approximately 288 directed and incidental swordfish permits, 542 directed and incidental shark permits, and 268 Atlantic tunas longline LAPs that were issued or were eligible for renewal. Of these, 245 vessels were concurrently issued, or were eligible to renew, all three permits. The availability of the Atlantic tunas longline LAP has been a limiting factor in the number of vessels that are eligible to retain swordfish or fish for HMS with PLL gear. Renewing approximately 40 Atlantic tunas longline LAPs should help to complement the available number of swordfish permits. Because most of the 40 vessels affected by this final rule have already been issued swordfish and shark LAPs, the number of authorized PLL vessels could potentially increase from approximately 245 to 285. However, it is not known if every former permit holder will apply to renew the Atlantic tunas longline LAP, so the actual increase in the number of PLL vessels could be less.

*Comment 5:* How many inactive PLL vessels are there that have been issued the three necessary permits?

*Response:* There are about 131 vessels out of 245 vessels authorized to fish with PLL gear that did not report any landings in the HMS logbook in 2006. These 131 vessels are considered to be currently inactive in the HMS fishery.

*Comment 6:* I support the proposed rule and other actions to increase U.S. swordfish landings. The U.S. swordfish quota is going to be reduced at ICCAT. When the swordfish quota is reduced, it will adversely affect both recreational and commercial fishermen. There are people that cannot currently fish and contribute to catching the domestic swordfish quota because they do not possess the three necessary permits. There are many reasons why people did not renew their permits. Some people were laid up due to illness or vessel maintenance. There is no reason for these permits to be latent. They should be reissued and put back into circulation so that shark and swordfish permit holders can get back to landing product. The United States needs to have more boats on the water fishing, and the boats must have the proper permits to do that.

*Response:* This final rule could potentially increase the number of vessels authorized to retain swordfish, and fish for tunas with PLL gear, to a level approximately equal to the number of vessels issued a swordfish LAP. However, it is not known if every former Atlantic tunas longline permit holder affected by this rule will apply to renew the permit, so the actual increase in permit numbers and fishing vessels may be less than 40. This rule will remove an administrative barrier to renewing the Atlantic tunas longline LAP, and provide an opportunity for some current swordfish and shark permit holders to reenter the PLL fishery. If they choose not to fish, these permit holders could renew their Atlantic tunas longline LAP to “complete” their HMS permit package and then transfer their permits to another vessel owner. In either case, more HMS three-permit combinations could become available for use in the PLL fishery as a result of this rule.

*Comment 7:* The proposed action will not increase domestic swordfish landings enough to have any impact at ICCAT.

*Response:* This final action is not likely to immediately increase domestic swordfish landings to a level where the United States will meet or exceed its domestic swordfish quota. However, it will reduce an administrative barrier to renewing the Atlantic tunas longline LAP, and provide an opportunity for

some current permit holders with swordfish and shark LAPs to reenter the PLL fishery. It will help to reduce the rate of attrition in the HMS PLL fishery by increasing the overall number of available “complete” PLL permit packages. If all 40 vessel owners affected by this rule immediately obtain their Atlantic tunas longline LAP and begin fishing for swordfish, landings could significantly increase.

*Comment 8:* Why doesn't the Atlantic tunas longline LAP have a “no vessel” status?

*Response:* The Atlantic tunas longline LAP does not have a “no vessel” status because the permit issuance system was originally designed for open access permits, which do not need “no vessel” status, such as the General category tuna permit and the HMS Angling category permit. In order to renew a permit, the online system requires applicants to enter vessel information. After the permit is issued, the permit number remains associated with the vessel and its U.S. Coast Guard documentation or state registration number. This system works well for open access permits, which do not have a “sunset” requirement specifying that the permit must be renewed within one year of expiration. However, if an Atlantic tunas longline permit holder sells their vessel but legally retains the limited access permit, the permit cannot be renewed without entering vessel information. Problems with the “sunset” requirement have arisen when a legally-retained permit was not issued to a vessel within one year of expiration. This final rule will allow Atlantic tunas longline LAPs to be retained, and later renewed, by the most recent permit holder of record even if the permit has not been issued to a vessel for more than one year. In that regard, this final rule accomplishes the same objective as providing “no vessel” status for Atlantic tunas longline LAPs.

*Comment 9:* NMFS should get rid of “no vessel” permit status. Latent permits have no effect on increasing swordfish tonnage.

*Response:* NMFS believes it is important for LAP holders to have the ability to retain their permit(s) without possessing a vessel. It provides flexibility to permit holders who originally qualified for an LAP and it facilitates permit transferability. There are many circumstances where a permit holder might not own a vessel, might not be able to fish, or might choose not to fish. For example their vessel may have sunk, been sold, or fishery conditions might preclude participation. Providing LAP holders with the ability to retain their permits without owning

a vessel provides time for them to find a suitable replacement vessel, or time to make necessary business decisions. Nevertheless, in a future rulemaking, the Agency may consider alternatives to address latent fishing effort.

*Comment 10:* If a legitimate fisherman made a mistake in not renewing their Atlantic tunas longline LAP, they should be allowed to obtain a new permit. To verify this, NMFS should put a specific timeframe or qualification criteria on the 40 vessels with expired permits. In order to obtain a new permit, they must have fished within a certain period of time. If they did not fish within that timeframe, then they should not be reissued the permit. Otherwise, the proposed rule opens a Pandora's box.

*Response:* The establishment of restrictive qualification criteria to become eligible for newly reissued permits runs counter to the primary intent of this rulemaking, which is to help ensure that the number of available Atlantic tunas longline LAPs is sufficient to match the number of available swordfish and shark LAPs. There are restrictions associated with this final rule, however. NMFS will reissue Atlantic tunas longline LAPs that have been expired for more than one year only upon receipt of a complete permit renewal application from the most recent permit holder of record, provided that they have also been issued valid swordfish and shark LAPs and all other permit renewal requirements are met. Former permit holders must apply for the Atlantic tunas longline LAP, as NMFS will not automatically reissue the permit to all former permit holders. This action will not increase the number of PLL vessels above the number of vessels that are currently issued, or eligible to renew, swordfish directed and incidental permits. At most, approximately 40 permits could be reissued as a result of this rule but all of these permits have been issued before, since LAPs were first implemented in 1999. In a future rulemaking, the Agency may consider alternatives to address latent fishing effort.

*Comment 11:* I support the preferred alternative which would remove the one year renewal timeframe on Atlantic tunas longline LAPs and allow the agency to reissue this permit to the most recent permit holder of record. This would allow me to renew my permit and make my incidental swordfish permit valid again. It provides an opportunity for me to retain the incidental swordfish possession limit that may be caught while fishing for *Illex* squid. This is a significant benefit

to my business and it will not have a negative impact on the swordfish stock. There are between 50 - 70 LAPs issued for *Illex* squid, and about 20 active *Illex* squid vessels. Four to five of these vessel owners would seek to renew their expired Atlantic tunas longline LAP.

*Response:* NMFS recognizes that some *Illex* squid trawl vessel owners indicated that they misunderstood the requirement which specifies that, in order to retain incidentally-caught swordfish, it is necessary to be issued an Atlantic tunas longline LAP, a shark LAP, and a swordfish LAP (other than handgear). This final rule will allow some squid trawl vessel owners to renew their expired Atlantic tunas longline LAP, thereby allowing them to retain incidentally-caught swordfish, reduce or eliminate regulatory swordfish discards, and obtain economic benefits.

*Comment 12:* NMFS should consider allowing squid trawlers to obtain an incidental swordfish LAP without requiring them to also obtain a corresponding Atlantic tunas longline LAP and a shark LAP. These vessels fish in approximately 150 - 200 fathoms on the edge of the continental shelf and rarely, if ever, catch tunas or sharks. They do not direct fishing effort on swordfish because it is unfeasible. This modification would allow only for the retention of incidentally-caught swordfish.

*Response:* This comment is beyond the scope of this rulemaking, however NMFS may consider the recommendation in a future rulemaking.

*Comment 13:* I am concerned about the language which requires that the swordfish and shark LAPs must have "been maintained through timely renewal" in order to be eligible for a reissued Atlantic tunas longline LAP. My vessel lost its Atlantic tunas longline LAP because of non-renewal. I then transferred its swordfish and shark permits to another vessel. If the swordfish and shark permits are transferred back to the original vessel (the one that lost its tuna permit), will that vessel still be eligible for a reissued Atlantic tunas longline LAP as a result of this rule?

*Response:* To clarify, upon receipt of a complete permit renewal application, NMFS will reissue Atlantic tunas longline LAPs that have been expired for more than one year to the most recent permit holder of record, but only if the vessel has also been issued both a shark LAP and a swordfish LAP (other than handgear), and all other requirements for permit renewal are met. Because the shark and swordfish LAPs must already be issued, those

permits would have been maintained through timely renewal. In the situation described in this comment, the vessel would be eligible for a newly reissued Atlantic tunas longline LAP if it was previously issued the tuna permit, and was currently issued both swordfish and shark LAPs, regardless of whether those swordfish and shark LAPs were transferred from another vessel.

*Comment 14:* NMFS should require that permit recipients have a boat as a qualification criterion before reissuing a new Atlantic tunas longline LAP. If a fisherman invests in building or buying a boat, it demonstrates their commitment to the fishery and they should be reissued the permit. This requirement would also prevent permits from being sold from one area to another area.

*Response:* Under this final rule, the eligibility to be issued an Atlantic tunas longline LAP will not be dependent upon possessing a vessel. The most recent permit holder of record for an Atlantic tunas longline LAP will be eligible to renew that permit with no "sunset" date. However, the permit cannot actually be reissued until the most recent permit holder of record possesses a vessel for which the permit can be issued. NMFS believes that the establishment of more restrictive qualification criteria, such as owning a vessel to become eligible for a newly reissued permit, would run counter to the intent of this rulemaking which is to ensure that the available number of Atlantic tunas longline LAPs is sufficient to match the number of available swordfish and shark LAPs.

*Comment 15:* NMFS should not require that newly reissued permits be linked to a vessel. Vessels can sink or be taken out of service for many reasons. Therefore, people need to have the flexibility to keep their permits separate from vessels so that the permit can be used later. Some people might not be able to get back into the fishery because they are sick or incapacitated. However, they should be allowed to keep their permit in "no vessel" status and to sell it later so that it can actually be used to fish.

*Response:* As described above in the response to Comment 14, it is necessary for a person to possess a vessel in order to be issued, or reissued, an Atlantic tunas longline LAP. This is a function of the permit renewal system. However, the eligibility to be issued an Atlantic tunas longline LAP will not be dependent upon possessing a vessel. Therefore, if a person was previously issued an Atlantic tunas longline LAP and they remain the most recent permit holder of record, they would be eligible

to renew the permit with no "sunset" date, but the permit could not actually be issued until there is a vessel to which the permit may be issued. They would not lose their eligibility to renew their permit if they do not have a vessel, or if they become sick or incapacitated.

*Comment 16:* I oppose the proposed rule. The proposed regulations will allow people who didn't follow the law regarding permit renewals to obtain an Atlantic tunas longline LAP. Some fishermen paid a lot of money to buy that permit. The proposed rule would allow people who are reissued the permit to obtain an economic benefit. Why is NMFS rewarding these 40 individuals? This rule makes a difference to people who had to buy a permit for a lot of money. The 40 affected individuals have not been fishing. They parked their permit, and now they will be able to renew it. NMFS should be more forthright about why it is allowing these people to renew their permit if it has been expired for more than one year.

*Response:* NMFS is implementing this final rule primarily to ensure that an adequate number of Atlantic tunas longline LAPs are available to match the available number of swordfish and shark LAPs because all three permits are needed to retain swordfish (other than with the swordfish handgear LAP) and to fish for tunas with PLL gear. This rule is also being implemented so that the HMS regulations better reflect the operational constraints associated with the Atlantic tunas longline permit issuance system. For example, because the tuna permit issuance system lacks a "no vessel" status, some people without a vessel were unable to renew their Atlantic tunas longline LAP within one year and they lost their eligibility for the permit. Also, some squid trawl vessel owners issued incidental swordfish permits indicated that they misunderstood the requirement, which specifies that they must also be issued an Atlantic tunas longline LAP and a shark LAP in order to retain swordfish. These vessel owners inadvertently failed to renew their tuna permit within one year of expiration, lost their eligibility, and have since had to discard incidentally-caught swordfish. NMFS is aware that this rule could potentially provide an economic benefit to former permit holders who are reissued the permit. However, all of the individuals affected by this rule originally qualified for the permit, or obtained it through transfer. NMFS will not be issuing new permits to everyone who submits an application. The Atlantic tunas longline permit remains a limited access permit. Unless a person is the most recent

Atlantic tunas longline permit holder of record, the permit can still only be obtained through transfer.

*Comment 17:* I oppose the proposed rule. It would reward individuals that have not helped the swordfish fishery at all. Their permits are being carried solely as an investment. Anyone who owns a permit knows that people are looking to buy permits. This proposed rule offers an opportunity for these individuals to sell their newly reissued permits. Many former permit holders will sell the Atlantic tunas longline LAP for economic benefit to south Florida vessel owners that want to fish with buoy gear.

*Response:* The final rule will allow former Atlantic tunas longline permit holders to renew this permit if it has been expired for more than one year. They will then become legally eligible to retain swordfish, provided that they have also been issued a shark and swordfish LAP (other than handgear) and are compliant with all other regulations. Because these former permit holders were previously not allowed to renew their expired Atlantic tunas longline LAPs, they were not able to retain swordfish or "help" the swordfish fishery. It is unlikely that these former permit holders allowed their Atlantic tunas longline permit to expire for more than one year if they were holding onto it for investment purposes, as the permits would no longer be renewable. Many former permit holders have indicated that they misunderstood the requirement which specifies that an Atlantic tunas longline LAP is necessary to retain swordfish (except with a swordfish handgear LAP), or that they were not able to be issued a tunas longline LAP because they did not possess a vessel, or were confused by the permit renewal procedures. Under this final rule, if a person whose Atlantic tunas longline LAP has been expired for more than one year possesses a vessel, applies for the permit, has been issued both swordfish and shark LAPs (other than swordfish handgear), and meets all other permit renewal requirements, they will be reissued a new permit. The permit could then be used to fish, or it could be sold and transferred. Transferability is an important feature of all HMS LAPs. If some of the newly reissued permits are transferred to people who are then able to fish for swordfish as a result of this final rule, it would be beneficial to the United States for achieving the domestic swordfish quota. It is possible that some transferred permits could be used to participate in the buoy gear fishery in south Florida. The buoy gear fishery is currently authorized and

managed under the Consolidated HMS Fishery Management Plan (Consolidated HMS FMP). NMFS monitors, and will continue to monitor, the buoy gear fishery to determine if changes to the regulations governing this fishery are warranted.

*Comment 18:* The United States will not catch its swordfish quota if the newly reissued permits are not actually used to catch fish. The final rule should contain a "sunset clause" which specifies that if a newly reissued permit is not used to fish by a certain date, then it would be revoked. The United States needs to put boats on the water. Therefore, the recipients must either use the permit or lose the permit.

*Response:* NMFS is not imposing any additional restrictions, such as a "use or lose" date, upon newly reissued Atlantic tunas longline LAPs. The establishment of restrictive criteria to retain the permit, or to retain eligibility for the permit, would run counter to the intent of this rulemaking, which is primarily to ensure that the number of available Atlantic tunas longline LAPs is sufficient to match the number of available swordfish and shark LAPs. There are many instances when a person may not be able to fish. Requiring a person to fish with a newly reissued permit within a certain period of time, or else risk losing the permit, could compromise their safety at sea and would limit their business's planning and decision-making flexibility. As stated in the responses to comments 9 and 10, the Agency may consider alternatives to address latent fishing effort in a future rulemaking.

*Comment 19:* NMFS should not allow any newly reissued permits to be sold or transferred.

*Response:* NMFS believes that the regulations governing the sale and transfer of all HMS LAPs should be consistent for administrative purposes and to minimize confusion, especially because swordfish, shark, and Atlantic tunas longline LAPs are often transferred together as a three-permit package. It would be confusing for the public and difficult for NMFS to administer if only certain Atlantic tunas longline LAPs were transferrable, while others were not. Furthermore, permit transferability is an important feature of HMS LAPs because it allows permit buyers and sellers to determine how permits are utilized, rather than the federal government. Finally, the establishment of restrictive criteria applying only to the transfer of certain Atlantic tunas longline LAPs would run counter to the intent of this rulemaking, which is primarily to ensure that the number of available Atlantic tunas

longline LAPs is sufficient to match the number of available swordfish and shark LAPs.

*Comment 20:* NMFS should create a "pool" of unused or revoked permits that could be issued to people who want to fish. There needs to be more HMS permits available so that people who want to buy a boat and fish can more easily obtain a permit.

*Response:* NMFS does not currently intend to revoke latent HMS LAPs, or to serve as a broker for revoked or latent permits. As discussed in the response to Comment 5, there are currently a large number of latent or inactive permits in the HMS PLL fishery. All of these permits are transferrable, so NMFS encourages anyone interested in participating in an HMS limited access fishery to make the appropriate contacts and obtain the needed permits.

*Comment 21:* NMFS should allow for the leasing and chartering of HMS permits to foreign vessels. This would allow the newly reissued Atlantic tunas longline LAPs permits to be used for fishing on the high seas.

*Response:* This comment is beyond the scope of this rulemaking, however NMFS may consider the recommendation in a future rulemaking.

*Comment 22:* I support the proposed action, but it should only be considered a first step. Is this the entire extent of the permit revisions that NMFS is considering? NMFS should allow all lapsed swordfish, shark, and tuna permits to be reinstated. The United States needs more boats on the water catching fish. Many people lost their permits either through attrition, or because they were confused by the renewal process. NMFS should address the entire issue by reissuing all expired shark and swordfish permits. Does NMFS plan to reinstate other lapsed HMS permits?

*Response:* NMFS does not presently intend to reinstate other lapsed HMS permits. This final rule only affects lapsed Atlantic tunas longline LAPs because the situation regarding these permits is unique. The operational constraints of the online renewal system for this permit prevented some otherwise qualified permit holders from renewing their permit because they did not own a vessel. Also, several squid trawl vessel owners indicated that they misunderstood they needed an Atlantic tunas longline LAP and a shark LAP to retain incidentally-caught swordfish, even though they were issued an incidental swordfish permit. Finally, the renewal reminder and permit application process for Atlantic tunas longline LAPs is different from other HMS LAPs. NMFS recognizes these

differences and realizes that some former permit holders may not have been able to renew their permit, or were confused by the regulations or renewal process. This final rule provides an immediate remedy to these readily identifiable problems. NMFS may also consider other, more comprehensive, permit-related issues in a future rulemaking.

*Comment 23:* I oppose the proposed action. There are already enough HMS permits available now.

*Response:* There are many latent HMS permits, including approximately 131 complete three-permit PLL "packages." However, some people are issued only one or two of the three required permits needed to retain swordfish (other than with handgear), or to fish for tunas with PLL gear. If these people were to complete their three-permit package by obtaining an Atlantic tunas longline LAP through transfer, the transferor could then have an incomplete permit package. This is the permit imbalance that NMFS is seeking to address. This final rule is less focused on reissuing more Atlantic tunas longline LAPs, and more focused on ensuring that currently issued swordfish permits are valid (because they are held in conjunction with the other two permits). It will help to slow the rate of attrition in the PLL fishery without increasing the number of PLL vessels above the number of permit holders issued swordfish LAPs.

#### *Shark Dealer Workshops*

*Comment 24:* Are shark dealer permits issued to individuals or to entities?

*Response:* Shark dealer permits may be issued to both individuals and corporate entities.

*Comment 25:* Does the final rule change the HMS regulations at § 635.28(b)(3) which state that, when the fishery for a shark species group in a particular region is closed, shark dealers in that region may not purchase or receive sharks of that species group from a vessel issued an Atlantic shark LAP?

*Response:* No. This final rule primarily modifies Atlantic Shark Identification Workshop requirements at § 635.8(b) for Atlantic shark dealers that have more than one place of business listed on their shark dealer permit. Also, this final rule implements a requirement which specifies that trucks or other conveyances of a dealer's place of business must possess a copy of a valid Atlantic Shark Identification Workshop certificate (dealer or proxy) issued to a place of business covered by the dealer permit.

*Comment 26:* The Atlantic Shark Identification Workshops use shark "logs" and the second dorsal and anal fins to identify sharks. NMFS should allow the workshop instructor to have access to prohibited species, different life history stages, and different product forms to further improve dealer identification skills.

*Response:* NMFS will examine the feasibility and necessity of providing these items at future workshops.

#### **Changes from the Proposed Rule**

There are no changes from the proposed rule.

#### **Classification**

The Assistant Administrator, NMFS, has determined that this final rule is necessary for the conservation and management of the HMS fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

A Final Regulatory Flexibility Analysis (FRFA) was prepared. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses. The full FRFA is available from NMFS (see **ADDRESSES**). A summary of the information presented in the FRFA follows.

Section 604(a)(1) of the Regulatory Flexibility Act (RFA) requires the Agency to state the objective and need for the rule. As stated in the proposed rule, the objective of this final rule regarding the renewal of expired Atlantic tunas longline LAPs is to help ensure that an adequate number of complementary Atlantic tunas longline LAPs are available for swordfish and shark LAP holders to fish legally for Atlantic swordfish and tunas with PLL gear. Consistent with the Magnuson-Stevens Act and ATCA, this action is also intended to help provide a reasonable opportunity for U.S. vessels to harvest quota allocations recommended by ICCAT, in recognition of the improved stock status of North Atlantic swordfish (B = 0.99Bmsy).

The amendment regarding attendance requirements at Atlantic Shark Identification Workshops is necessary because some shark dealers do not receive shark products at all of the locations listed on their permit, thus making it unnecessary to require workshop certification for those locations where sharks are not received.

For technical and administrative reasons, it is not currently feasible for NMFS to list only locations on the shark dealer permit where sharks are first received, if a dealer also has other locations where other species are received. This final rule requires dealers to submit an Atlantic Shark Identification Workshop certificate (dealer or proxy) for each place of business listed on the shark dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade, rather than from each location listed on their dealer permit. This will eliminate the need for a dealer to send a proxy to a workshop to obtain a certificate for a business location that does not first receive Atlantic shark products for the sole purpose of renewing their Atlantic shark dealer permit. The requirement to possess, and make available for inspection, an Atlantic Shark Identification Workshop certificate is similarly only required at locations listed on the dealer permit where sharks are first received. Additionally, this final rule requires that extensions of a dealer's business, such as trucks or other conveyances, must possess a copy of a valid dealer or proxy certificate issued to a place of business covered by the dealer permit. This will allow trucks or other conveyances of a NMFS-certified place of business to be immediately identified as being eligible to first receive Atlantic sharks.

Section 604(a)(2) of the RFA requires the Agency to summarize significant issues raised by the public comments in response to the IRFA, summarize the assessment of the Agency of such issues, and state any changes made in the rule as a result of such comments. NMFS received several comments on the proposed rule during the public comment period. A summary of the comments and the Agency's responses are included in the preamble of this final rule. NMFS did not receive any comments specific to the IRFA, but did receive a limited number of comments related to economic issues and concerns. These comments are responded to with the other comments (see Comments 11, 16, and 17). The comments on economic concerns are also summarized here.

A comment was received indicating that the preferred alternative for the renewal of Atlantic tunas longline LAPs would allow some *Illex* squid trawlers to renew their Atlantic tunas longline permit again, thus making their incidental swordfish permit valid. This would allow them to retain incidentally-caught swordfish and provide a significant economic benefit to their

business. NMFS concurs with this assessment that the final action could provide an economic benefit to some former permit holders, and reduce or eliminate swordfish regulatory discards by allowing squid trawlers to retain incidentally-caught swordfish.

Another commenter stated that the preferred alternative would allow people who did not follow the regulations regarding permit renewal to obtain a new Atlantic tunas longline LAP, whereas some fishermen had to pay for the permit. In response, NMFS stated that the intent of the final rule is to help ensure that the number of available Atlantic tunas longline LAPs is sufficient to match the number of available swordfish and shark LAPs. Furthermore, all of the individuals affected by this rule either originally qualified for an Atlantic tunas longline LAP, or obtained it through transfer. NMFS will not be issuing new permits to everyone who submits an application. The Atlantic tunas longline permit remains a limited access permit. Unless a person is the most recent Atlantic tunas longline permit holder of record, the permit can only be obtained through transfer.

Finally, NMFS received a comment stating that the preferred alternative provides an opportunity for individuals to sell their newly reissued Atlantic tunas longline LAP for their own economic benefit, possibly to south Florida vessel owners that want to fish with buoy gear. In response, NMFS believes it would be beneficial for achieving the domestic north Atlantic swordfish quota if some people who want to fish for swordfish are able to do so legally. Some of the transferred permits could be used to participate in the buoy gear fishery in south Florida. NMFS will continue to monitor the buoy gear fishery to determine if additional regulations are needed.

No changes to the final rule were made as a result of these comments.

Section 604(a)(3) of the RFA requires the Agency to describe and estimate the number of small entities to which the final rule will apply. NMFS considers all commercial permit holders to be small entities as reflected in the Small Business Administration's (SBA) size standards for defining a small business entity (gross receipts less than \$4.0 million). The final action to modify permit renewal requirements for Atlantic tunas longline LAPs would most immediately impact approximately 40 vessel owners that are the most recent permit holders of record, but are not eligible to renew that permit because it has been expired for more than one year. Potentially, 245 vessel

owners that are concurrently issued Atlantic tunas longline, swordfish, and shark LAPs could be affected by this action if, in the future, they fail to renew their Atlantic tunas longline LAP within one year of expiration.

Based upon information obtained from the Southeast Regional Office permits shop, as of May 19, 2008, NMFS had issued 142 Atlantic shark dealer permits (not counting Atlantic shark dealers located in Pacific states (5 in CA, and 2 in HI)). Of these, 41 individual dealers had multiple locations (ranging from two to eight locations) listed on their permit. Eighty-four of these shark dealers had been issued a workshop certificate for at least one location, and 58 shark dealers had not been issued any workshop certificates for any locations. Approximately 8 of the 41 dealers with multiple locations had been issued at least one certificate, but not certificates for all of the locations listed on their permit. Thus, under the current regulations, these 8 dealers would not be eligible to renew their shark dealer permit. The 8 Atlantic shark dealers who have not been issued proxy certificates for all of their locations are most immediately affected by this final rule because, as a result of this rule, they would be eligible to renew their shark dealer permit by submitting workshop certificates only for locations that actually receive shark products. Potentially, any of the 41 Atlantic shark dealers with multiple locations listed on their permit could also be impacted by this action. All of the aforementioned businesses are considered small business entities according to the Small Business Administration's standard for defining a small entity.

Section 604(a)(4) of the RFA requires NMFS to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities that will be subject to the requirements of the report or record. This final rule does not contain any new reporting, recordkeeping, or other compliance requirements that will require new Paperwork Reduction Act filings. Atlantic shark dealers will need to comply with a new requirement to possess a copy of their Atlantic Shark Identification Workshop certificate (dealer or proxy) in their trucks or other conveyances which serve as extensions of a dealer's place of business. This will help to facilitate the identification of trucks or other conveyances as extensions of a NMFS-certified place of business which is eligible to receive Atlantic sharks.

Section 604(a)(5) of the RFA requires the Agency to describe the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives of the applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. Additionally, the RFA (5 U.S.C. 603(c)(1) through (4)) lists four general categories of "significant" alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. Use of performance rather than design standards; and
4. Exemptions from coverage of the rule for small entities.

As noted earlier, NMFS considers all commercial permit holders to be small entities. In order to meet the objectives of this final rule, consistent with the Magnuson-Stevens Act, ATCA, and the ESA, NMFS cannot exempt small entities or change the compliance requirements only for small entities. Thus, there are no alternatives that fall under the first and fourth categories described above.

With regards to category two, none of the alternatives considered would result in additional reporting requirements. The selected alternative for Atlantic Shark Identification Workshops requires shark dealers to possess a copy of their workshop certificate (dealer or proxy) in trucks or other conveyances which serve as extensions of a dealers' place of business. The only compliance requirement involves making a photocopy of the workshop certificate, and possessing that copy inside dealer's trucks or conveyances. This requirement will facilitate the identification of vehicles which serve as extensions of a NMFS-certified place of business that is eligible to receive Atlantic sharks.

Category three emphasizes the use of performance standards rather than design standards in the development of alternatives. None of the alternatives require compliance with standards, so there are no alternatives that fall under this category.

NMFS considered two alternatives to address the renewal of Atlantic tunas

longline LAPs that have been expired for more than one year, and two alternatives to address Atlantic Shark Identification Workshop attendance requirements. As described below, NMFS has provided justification for the selection of the preferred alternatives to achieve the desired objectives of this rulemaking.

Alternative 1 for the renewal of Atlantic tunas longline LAPs (alternative 2.1.1 in the FRFA) is the no action, or status quo, alternative. Current HMS regulations at 50 CFR 635.4(m)(2) specify that only persons holding a non-expired Atlantic tunas longline LAP in the preceding year are eligible to renew that permit. Under alternative 1, there would be no change in the existing regulations and, as such, no change in the current baseline economic impacts. However, the situation regarding the renewal of Atlantic tunas longline LAPs is unique. Until September 2007, the procedures for renewing Atlantic tunas longline LAPs were implemented differently than for swordfish and shark LAPs. Since September 2007, the permit renewal regulations have been administered similarly. Thus, the no action alternative would continue any existing economic impacts, but those impacts have only been in existence since September 2007.

The no action alternative was not selected because it has the largest associated adverse economic impacts. Without an Atlantic tunas longline LAP, a permit holder is prohibited from fishing for tunas with PLL gear and from retaining swordfish, even if the vessel has been issued a directed or incidental swordfish permit. As many as 40 commercial fishing vessels that previously qualified for LAPs to participate in the PLL fishery would continue to be prohibited from participating in the fishery, harvesting the U.S. swordfish quota, and creating jobs. Thus a failure to take action would prevent the realization of economic gains associated with increased swordfish fishing.

Under the selected alternative (preferred alternative 2.1.2 in the FRFA), NMFS would remove the one-year renewal timeframe for Atlantic tunas longline LAPs. This would allow the Agency to reissue the permit to the most recent permit holder of record, even if the Atlantic tunas longline LAP had not been renewed within one year of expiration, provided that they were issued swordfish and shark LAPs and all other requirements for permit renewal were met. The requirement to possess swordfish and shark LAPs in order to obtain an Atlantic tunas

longline LAP would remain in effect. Also, current regulations which specify that only persons holding non-expired swordfish and shark LAPs in the preceding year are eligible to renew those permits would remain in effect.

Relative to the no action alternative, removing the one-year renewal timeframe for Atlantic tunas longline LAPs is projected to potentially increase net and gross revenues for approximately 40 vessel owners who are otherwise qualified to fish for swordfish and tunas with PLL gear, except that they are currently ineligible to renew their Atlantic tunas longline LAP. Overall fleet-wide gross economic benefits could potentially increase as much as \$7,842,280 under this alternative, relative to the baseline. Also, an overall fleet-wide increase in net revenues (profits) of approximately \$200,000 to \$721,839 could occur, distributed among the 40 vessels potentially impacted by this alternative. Under this alternative, each individual vessel owner could see an increase in annual net revenues ranging from \$0 to potentially over \$100,000, depending upon the profitability of their business.

Another important benefit associated with the selected alternative is that it could help to maintain the domestic swordfish and tuna PLL fishery at historical levels by allowing 35 – 40 vessels to participate in the fishery that, since September 2007, have not been permitted to do so. All of the potentially affected vessels/permit holders originally qualified for the longline fishery in 1999, or received the necessary permits through transfer. Thus, relative to August 2007 and years prior, there would be no change in historical fishing practices, fishing effort, or economic impact. However, relative to September 2007 and beyond, potential economic benefits to the affected permit holders would result. The selected alternative could also help the United States retain its historic swordfish quota allocation at ICCAT and sustain employment opportunities in the domestic PLL fleet. Maintaining a viable domestic PLL fishery is important because it could help to demonstrate that a well-managed, environmentally-sound fishery can also be profitable. This could eventually provide an incentive for other nations to adopt similar management measures that are currently required of the U.S. PLL fleet such as circle hooks, careful release gears, and other measures described in the response to Comment 1 above.

A related potential impact associated with both alternatives is that changes to the value of an Atlantic tunas longline

LAP could occur by changing the supply of available permits. The no action alternative would likely reduce the supply of available permits over time, thereby increasing the value of the permit. The selected alternative could initially increase the supply relative to the period since September 2007, and thereby reduce the value. These impacts would be either positive or negative for small business entities, depending upon whether the Atlantic tunas longline LAP was being bought or sold.

There are no other significant alternatives for the renewal of Atlantic tunas longline permits, except for the two aforementioned alternatives. The selected alternative achieves the objectives of this rulemaking, provides benefits to small entities, and has few associated impacts because the regulatory changes will be more representative of the actual operational capabilities of the Atlantic tunas longline LAP renewal system. The selected alternative will help to ensure that an adequate number of Atlantic tunas longline LAPs are available to match the available number of swordfish and shark LAPs, which is important because all three permits are needed to retain swordfish (other than with the swordfish handgear LAP) and to fish for tunas with PLL gear.

Alternative 1 for attendance requirements at Atlantic Shark Identification Workshops (alternative 2.2.1 in the FRFA) is the no action alternative. All dealers intending to renew their Atlantic shark dealer permit would continue to be required to become certified at an Atlantic Shark Identification Workshop, or to have their proxies certified. Dealers with multiple locations listed on their permit would receive certificates for each location listed on their permit. Dealers opting not to become certified and to send a proxy would continue to be required to send a proxy for each location listed on their Atlantic shark dealer permit. Atlantic shark dealers would not be allowed to renew their permit without submitting either a dealer or proxy certificate for each location listed on their Atlantic shark dealer permit. Additionally, Atlantic shark dealers could not receive shark products at a location that does not have a valid workshop certificate for that address on the premises.

There are approximately 41 Atlantic shark dealers with more than one location listed on their permit. These dealers have the choice of becoming certified themselves, or sending a proxy to the workshops for each location listed on a permit. As described in the Consolidated HMS FMP and its final

rule (71 FR 58058, October 2, 2006), on an individual basis the costs incurred by dealers and/or proxies are those related to travel and the time required to attend the workshops, which result in out of pocket expenses and lost opportunity costs. Travel costs to attend these workshops vary, depending upon the distance that must be traveled. Daily opportunity costs for dealers are not currently known. Therefore, it is not possible to precisely quantify the costs associated with the no action alternative. At a minimum, the costs for a dealer attending a workshop include travel expenses and at least one day of lost opportunity costs. At a maximum, for dealers opting to send proxies for each location listed on their permit, the costs could include travel expenses for several proxies and several days of lost opportunity costs.

The selected alternative for Atlantic Shark Identification Workshop attendance requirements (preferred alternative 2.2.2 in the FRFA) specifies that, upon permit renewal, a dealer must submit an Atlantic Shark Identification Workshop certificate (dealer or proxy) for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade, rather than from each location listed on their dealer permit. The requirement to possess, and make available for inspection, an Atlantic Shark Identification Workshop certificate is similarly only required at locations listed on the dealer permit where sharks are first received. This eliminates the need for a dealer to send a proxy to a workshop to obtain a certificate for a business location that does not first receive Atlantic shark products.

As mentioned above, there are currently 41 shark dealers with multiple locations listed on their permit which could be impacted by the proposed action. Of these, 8 Atlantic shark dealers have not currently been issued Atlantic Shark Identification Workshop certificates for all of the locations listed on their permit.

NMFS estimates that the total costs (travel costs and opportunity costs) associated with the selected alternative for Atlantic Shark Identification Workshop attendance requirements will be lower than those associated with the no action alternative, but only for Atlantic shark dealers that: (1) opt to send a proxy (or proxies) to the workshop; (2) have multiple locations listed on their permit; and, (3) only first receive shark products at some of the locations listed on their Atlantic shark dealer permit. Costs will remain unchanged for shark dealers that do not

meet these three criteria. For dealers that meet these criteria, the costs will be reduced by an amount equivalent to sending proxies for each location listed on the permit that do not first receive shark products. For example, if a dealer chooses to send proxies and has four locations listed on the permit, but only two of those locations first receive shark products, the costs would be reduced by the amount equivalent to sending two proxies to an Atlantic Shark Identification Workshop.

The selected alternative also requires that extensions of a dealer's business, such as trucks or other conveyances, must possess a copy of a valid dealer or proxy certificate issued to a place of business covered by the dealer permit. This requirement allows trucks or other conveyances to be immediately identified as extensions of a NMFS-certified place of business which is eligible to receive Atlantic sharks. NMFS anticipates that this requirement will have minimal costs but will improve the enforceability of existing Atlantic shark regulations.

There are no other significant alternatives for Atlantic Shark Identification Workshop attendance requirements except for these two alternatives. Administratively it is not currently feasible, for both technical and programmatic reasons, to modify the NMFS permits database to accommodate dealers having different locations where they receive different species. The selected alternative requires dealers to display an Atlantic Shark Identification Workshop certificate at all locations where sharks are first received. Therefore, it achieves the objective of improving the identification and reporting of shark species, while simultaneously lessening impacts on dealers. The selected alternative will also improve the enforceability of existing Atlantic shark regulations by requiring extensions of a dealer's business, such as trucks or other conveyances, to possess a copy of a valid dealer or proxy certificate issued to a place of business covered by the dealer permit.

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

Fisheries, Fishing, Fishing vessels, Management, Penalties, Reporting and recordkeeping requirements.

Dated: June 27, 2008.

**John Oliver**

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

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

#### PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

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

■ 2. In § 635.4, paragraph (m)(2) is revised to read as follows:

#### § 635.4 Permits and fees.

\* \* \* \* \*

(m) \* \* \*  
(2) *Shark and swordfish LAPs.* The owner of a vessel of the U.S. that fishes for, possesses, lands or sells shark or swordfish from the management unit, or that takes or possesses such shark or swordfish as incidental catch, must have the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section. 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.

■ 3. In § 635.8, paragraphs (b)(4), (b)(5), and (c)(4) are revised to read as follows:

#### § 635.8 Workshops.

\* \* \* \* \*

(b) \* \* \*  
(4) Dealers may send a proxy to the Atlantic shark identification workshops. If a dealer opts to send a proxy, the dealer must designate at least one proxy from each place of business listed on the dealer permit, issued pursuant to § 635.4(g)(2), which first receives Atlantic shark by way of purchase, barter, or trade. The proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports as required under § 635.5. Only one certificate will be issued to each proxy. If a proxy is no longer employed by a place of business covered by the dealer's permit, the dealer or another proxy must be certified as having completed a workshop pursuant to this section. At least one individual from each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade must possess a valid Atlantic shark identification workshop certificate.

(5) A Federal Atlantic shark dealer issued or required to be issued a shark dealer permit pursuant to § 635.4(g)(2) must possess and make available for

inspection a valid Atlantic shark identification workshop certificate at each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade. For the purposes of this part, trucks or other conveyances of a dealer's place of business are considered to be extensions of a dealer's place of business and must possess a copy of a valid dealer or proxy certificate issued to a place of business covered by the dealer permit. A copy of this certificate issued to the dealer or proxy must be included in the dealer's application package to obtain or renew a shark dealer permit. If multiple businesses are authorized to receive Atlantic sharks under the dealer's permit, a copy of the workshop certificate for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade must be included in the shark dealer permit renewal application package.

(c) \* \* \*

(4) An Atlantic shark dealer may not first receive, purchase, trade, or barter for Atlantic shark without a valid Atlantic shark identification workshop certificate. A valid Atlantic shark identification workshop certificate must be maintained on the premises of each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade. An Atlantic shark dealer may not renew a Federal dealer permit issued pursuant to § 635.4(g)(2) unless a valid Atlantic shark identification workshop certificate has been submitted with the permit renewal application. If the dealer is not certified, the dealer must submit

a copy of a proxy certificate for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade.

\* \* \* \* \*

■ 4. In § 635.21, paragraph (e)(4)(iii) is revised to read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(4) \* \* \*

(iii) A person aboard a vessel issued or required to be issued a valid directed handgear LAP for Atlantic swordfish may not fish for swordfish with any gear other than handgear. A swordfish will be deemed to have been harvested by longline when the fish is on board or offloaded from a vessel using or having on board longline gear. Only vessels that have been issued, or that are required to have been issued, a valid directed or handgear swordfish LAP under this part may utilize or possess buoy gear.

Vessels utilizing buoy gear may not possess or deploy more than 35 floatation devices, and may not deploy more than 35 individual buoy gears per vessel. Buoy gear must be constructed and deployed so that the hooks and/or gangions are attached to the vertical portion of the mainline. Floatation devices may be attached to one but not both ends of the mainline, and no hooks or gangions may be attached to any floatation device or horizontal portion of the mainline. If more than one floatation device is attached to a buoy gear, no hook or gangion may be attached to the mainline between them.

Individual buoy gears may not be linked, clipped, or connected together in any way. Buoy gears must be released and retrieved by hand. All deployed buoy gear must have some type of monitoring equipment affixed to it including, but not limited to, radar reflectors, beeper devices, lights, or reflective tape. If only reflective tape is affixed, the vessel deploying the buoy gear must possess on board an operable spotlight capable of illuminating deployed floatation devices. If a gear monitoring device is positively buoyant, and rigged to be attached to a fishing gear, it is included in the 35 floatation device vessel limit and must be marked appropriately.

\* \* \* \* \*

■ 5. In § 635.71, paragraph (d)(14) is revised to read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(d) \* \* \*

(14) Receive, purchase, trade, or barter for Atlantic shark without making available for inspection, at each of the dealer's places of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade, a valid Atlantic shark identification workshop certificate issued by NMFS in violation of § 635.8(b), except that trucks or other conveyances of the business must possess a copy of such certificate.

\* \* \* \* \*

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