

addition, the notification will reduce the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure gag recreational landings do not exceed the recreational target catch level in that following fishing year. The applicable recreational ACLs for gag, in gutted weight, are 2.59 million lb (1.17 million kg) for 2009, 2.64 million lb (1.20 million kg) for 2010, and 2.67 million lb (1.21 million kg) for 2011 and subsequent fishing years. The recreational target catch levels for gag, in gutted weight, are 2.06 million lb (0.93 million kg) for 2009, 2.14 million lb (0.97 million kg) for 2010, and 2.20 million lb (1.00 million kg) for 2011 and subsequent fishing years. Recreational landings will be evaluated relative to the applicable ACL as follows. For 2009, only 2009 recreational landings will be compared to the ACL; in 2010, the average of 2009 and 2010 recreational landings will be compared to the ACL; and in 2011 and subsequent fishing years, the 3-year running average recreational landings will be compared to the ACL.

(5) *Red grouper*—(i) *Commercial fishery*. If red grouper commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(iii)(C), the AA will file a notification with the Office of the **Federal Register** to close the SWG commercial fishery for the remainder of the fishing year. In addition, if despite such closure, red grouper commercial landings exceed the ACL, 5.87 million lb (2.66 million kg) gutted weight, the AA will file a notification with the Office of the **Federal Register**, at or near the beginning of the following fishing year, to maintain the red grouper commercial quota for that following year at the level of the prior year's quota.

(ii) *Recreational fishery*. If red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in this paragraph (a)(5)(ii), the AA will file a notification with the Office of the **Federal Register**, at or near the beginning of the following fishing year, to maintain the red grouper target catch level for that following year at the level of the prior year's target catch. In addition, the notification will reduce the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational target catch level the following fishing year. The recreational ACL for red grouper, in gutted weight, is 1.85 million lb (0.84 million kg). The recreational target catch level for red grouper, in gutted weight,

is 1.82 million lb (0.82 million kg). Recreational landings will be evaluated relative to the applicable ACL as follows. For 2009, only 2009 recreational landings will be compared to the ACL; in 2010, the average of 2009 and 2010 recreational landings will be compared to the ACL; and in 2011 and subsequent fishing years, the 3-year running average recreational landings will be compared to the ACL.

\* \* \* \* \*

[FR Doc. E8-27335 Filed 11-17-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 080404529-81431-01]

RIN 0648-AW61

#### Atlantic Highly Migratory Species; Atlantic Swordfish Quotas

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

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

**SUMMARY:** This proposed rule would adjust the North and South Atlantic swordfish quotas for the 2008 fishing year (January 1, 2008, through December 31, 2008) to account for underharvests, and to transfer 18.8 metric tons (mt) dressed weight (dw) to Canada per the 2006 International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations 06-02 and 06-03. The North Atlantic 2008 directed baseline quotas plus the 2007 underharvest would be divided equally between the semiannual periods of January through May and June through December. In addition, NMFS proposes to modify the vessel chartering regulations to potentially allow Atlantic Highly Migratory Species (HMS) limited access permit (LAP) holders to charter foreign vessels under a chartering arrangement where catches taken would count against U.S. Atlantic HMS quotas or entitlements.

**DATES:** Comments on this proposed rule may be submitted at the public hearing (oral or written), or must be received via mail, or fax by December 18, 2008.

The public hearing dates and times are:

1. Monday, December 8, 4-6 p.m., Silver Spring, MD.

2. Tuesday, December 16, 2:30-4:30 p.m., Gloucester, MA.

**ADDRESSES:** You may submit comments, identified by [0648-AW61], by any one of the following methods:

• **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>

• **Fax:** 301-713-1917, Attn: LeAnn Southward Hogan

• **Mail:** 1315 East-West Highway, Silver Spring, MD 20910

**Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the supporting documents including the 2007 Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) are available from the HMS website at <http://www.nmfs.noaa.gov/sfa/hms/> or by contacting LeAnn Southward Hogan (see **FOR FURTHER INFORMATION CONTACT**).

The public hearing locations are:

1. Silver Spring - National Oceanic and Atmospheric Administration, SSMC III, room 1311B, 1301 East-West Highway, Silver Spring, MD 20910; and

2. Gloucester - National Oceanic and Atmospheric Administration, National Marine Fisheries Service Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:**

LeAnn Southward Hogan or Karyl Brewster-Geisz by phone: 301-713-2347 or by fax: 301-713-1917.

**SUPPLEMENTARY INFORMATION:** The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated HMS FMP. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* Regulations issued under the

authority of ATCA carry out the recommendations of ICCAT.

### 1. Swordfish Quota

#### a. North Atlantic

ICCAT recommendation 06–02 established the current north Atlantic swordfish total allowable catch (TAC) of 14,000 metric tons (mt) whole weight (ww), through 2008. Of the 14,000 mt ww, the United States is allocated 3,907 mt ww (2,937.6 mt dw). This allocation is the same the United States received during 2004, 2005, 2006, and 2007. ICCAT recommendation 06–02 also limits the amount of North Atlantic swordfish underharvest that can be carried forward by all Contracting Parties, non-Contracting Cooperating Parties, Entities and Fishing Entities (CPCs) to 50 percent of the baseline quota allocation for 2007 and 2008. Therefore, the United States could carryover a maximum of 1,468.8 mt dw of underharvests from the previous year to be added to the baseline quota.

This proposed rule would adjust the total available quota for the 2008 fishing year to account for the 2007 underharvests. The 2008 North Atlantic swordfish baseline quota is 2,937.6 mt dw. The total North Atlantic swordfish underharvest for 2007 was 3,220 mt dw, which exceeds the maximum carryover cap of 1,468.8 mt dw. Therefore, NMFS is carrying forward the capped amount per the ICCAT recommendation. Thus, the baseline quota plus the underharvest carryover maximum of 1,468.8 mt dw

equals an adjusted quota of 4,406.4 mt dw for the 2008 fishing year. The directed category would be allocated 3,601.9 mt dw that would be split into two seasons in 2008. The incidental category would be allocated 300 mt dw, and the reserve category would be reduced from a quota of 504.5 mt dw to 485.7 due to the transfer of 18.8 mt dw to Canada (Table 1).

#### b. South Atlantic

ICCAT recommendation 06–03 established the South Atlantic swordfish TAC at 17,000 mt ww for 2007, 2008, and 2009. This TAC is slightly higher than that of previous years of 15,631 mt ww in 2003, 15,776 mt ww in 2004, 15,956 mt ww in 2005, and 16,055 mt ww in 2006. Of the 17,000 mt ww TAC, the United States is allocated 100 mt ww (75.2 mt dw). As with the North Atlantic swordfish recommendation, ICCAT recommendation 06–03 establishes a cap on the amount of underharvest that can be carried forward during the defined management period (2007–2009). For South Atlantic swordfish, the United States is limited to carrying forward 100 mt ww (75.2 mt dw). The 2008 South Atlantic swordfish baseline quota is 75.2 mt dw. The total South Atlantic swordfish underharvest for 2007 was 150.4 mt dw, which exceeds the maximum carryover cap of 75.2 mt dw. Therefore, NMFS is carrying forward the capped amount per ICCAT recommendation 06–03. As a result, the

baseline quota plus the underharvest carryover maximum of 75.2 mt dw equals an adjusted quota of 150.4 mt dw for the 2008 fishing year (Table 1).

#### c. Impacts

In recent years, the PLL fleet has not caught its entire swordfish quota, and as a result, underharvest carryovers have grown significantly from year to year (3,528.8 mt dw, 4,806.1 mt dw, and 6,905.9 mt dw for 2004–2006, respectively). The proposed adjusted quota for the North and South Atlantic swordfish, after accounting for the 2007 underharvests and annual transfer to Canada, would be the same in 2008 as the 2007 adjusted quota specifically examined in the Environmental Assessment (EA) that was prepared for the 2007 Swordfish Quota Specification Final Rule published on October 5, 2007 (72 FR 56929). The quota adjustments would not increase overall quotas and is not expected to increase fishing effort or protected species interactions beyond those considered in the EA mentioned above. Therefore, because there would be no changes to the swordfish management measures in this proposed rule, or the affected environment or any environmental consequences that have not been previously analyzed, NMFS has determined that the proposed rule and impacts to the human environment as a result of the quota adjustments are not significant and would not require additional NEPA analysis.

TABLE 1—LANDINGS AND QUOTAS FOR THE ATLANTIC SWORDFISH FISHERIES (2005 – 2008) APPLYING THE PREFERRED ALTERNATIVES

North Atlantic Swordfish Quota (mt dw)		2005	2006	2007 preliminary	2008 to date
Baseline Quota		2,937.6	2,937.6	2,937.6	2,937.6
Quota Carried Over		3,359.1	4,691.2	1,468.8	1,468.8
<b>Adjusted quota</b>		<b>6,296.7</b>	<b>7,628.8</b>	<b>4,406.4</b>	<b>4,406.4</b>
Quota Allocation	Directed Category	5,895.2	7,246.1	3,601.9	3,601.9
	Incidental Category	300.0	300.0	300.0	300.0
	Reserve Category	101.5	82.7	504.5	485.7
Utilized Quota	Landings	1,471.8	1,291.5	1,167.5	962.7 to date
	Reserve Transfer to Canada	18.8	18.8	18.8	18.8
Total Underharvest		4,806.1	6,318.5	3,220.1	TBD
Dead Discards		114.9	154.9	149.2	TBD
Carryover Available+		4,691.2	1,468.8	1,468.8	TBD
South Atlantic Swordfish Quota (mt dw)		2005	2006	2007 preliminary	2008 to date

TABLE 1—LANDINGS AND QUOTAS FOR THE ATLANTIC SWORDFISH FISHERIES (2005 – 2008) APPLYING THE PREFERRED ALTERNATIVES—Continued

Baseline Quota	75.2	90.2	75.2	75.2
Quota Carried Over	319.3	394.5	75.2	75.2
<b>Adjusted quota</b>	<b>394.5</b>	<b>484.7</b>	<b>150.4</b>	<b>150.4</b>
Landings	0.0	0.0	0.0	0.0 to date
Carryover Available+	394.5	75.2	75.2	75.2

## 2. Vessel Chartering

This proposed rule would also modify regulations regarding vessel chartering. At its 2002 annual meeting, ICCAT adopted a chartering recommendation (ICCAT Recommendation 02–21) allowing Contracting Parties to the ICCAT Convention to charter fishing vessels registered to responsible CPCs that explicitly agree to apply ICCAT conservation and management measures and enforce them on their vessels. Under such chartering arrangements, the chartered fishing vessels do not change their flag, but catches taken under the arrangement count against the quota or fishing possibilities of the chartering ICCAT Contracting Party.

Pursuant to this recommendation, NMFS implemented regulations on December 6, 2004 (69 FR 70396). These regulations took a limited approach to chartering by allowing entities from ICCAT Contracting Parties to charter U.S. fishing vessels but not allowing U.S. entities to charter foreign vessels in the same way. Current regulations allow chartering arrangements between U.S. fishing vessel owners and foreign entities under which a U.S. fishing vessel can fish in waters beyond national jurisdiction without reflagging the vessel, and the U.S. fishing vessel's catch counts against the ICCAT quota of the Contracting Party of the chartering foreign entity. These regulations require the owner of a U.S. fishing vessel to apply for and obtain a chartering permit from NMFS before fishing under such a chartering arrangement. In addition, under these regulations, U.S. fishing vessels owners issued a chartering permit may not fish against U.S. Atlantic HMS quota or entitlements until the chartering permit expires or is terminated.

When NMFS developed and implemented the current chartering regulations, interest was expressed in allowing U.S. fishing vessels to be chartered by foreign entities of an ICCAT Contracting Party and to allow the catch taken to count against the ICCAT Contracting Party's quota. However, due to legal and policy

concerns related to foreign vessels and foreign fishing in the U.S. exclusive economic zone (EEZ) and little public interest in chartering arrangements where a foreign vessel's catch would count against U.S. Atlantic HMS quotas or entitlements, NMFS did not implement regulations that would allow U.S. entities to charter foreign vessels to catch ICCAT-managed species that would count against U.S. quotas.

Since implementing the chartering regulations, there has been increased public interest in allowing U.S. entities to charter foreign vessels of ICCAT CPCs where the catch taken would count against the Atlantic HMS quotas or entitlements of the United States, possibly as a step toward revitalizing certain HMS fisheries. This type of chartering arrangement could also help utilize Atlantic HMS quotas and facilitate flexibility within the vessel chartering program, which would in turn enhance quota management within the Atlantic HMS fisheries. Thus, NMFS is proposing changes to the current chartering regulations that would allow U.S. chartering of foreign vessels of ICCAT CPCs to fish on the high seas against U.S. Atlantic HMS quota or entitlements.

The proposed chartering regulations would establish a process and criteria for NMFS's evaluation of proposed chartering arrangements and certain limitations on such chartering arrangements. Under the proposed regulations, only Atlantic HMS LAP holders would be allowed to enter these types of chartering arrangements with foreign entities of ICCAT CPCs. NMFS is proposing to limit these chartering arrangements to Atlantic HMS LAP holders, who are allowed to harvest Atlantic HMS from the U.S. EEZ and on the high seas. As noted earlier, with regard to U.S. chartering of foreign vessels, this proposed rule would only allow such activities on the high seas. Under the rule as proposed, only those Atlantic HMS LAP holders who are currently authorized to harvest HMS on the high seas would be chartering vessels to, essentially, exercise that

harvesting privilege on their behalf. This approach should, generally, keep any resulting chartering arrangements within the scope of existing analyzed effects of utilizing Atlantic HMS quotas on the high seas. For the duration of the chartering arrangement, the Atlantic HMS LAP holder would not be permitted to fish under U.S. Atlantic HMS quotas or otherwise utilize the LAPs themselves. In addition, under the proposed regulations, foreign vessel owners who enter into a chartering arrangement with an Atlantic HMS LAP holder would be required to follow all U.S. regulations that would have otherwise applied to the Atlantic HMS LAP holder. Lastly, the proposed regulations would establish data reporting requirements consistent with the ICCAT recommendation.

Since implementing the chartering regulations in 2004, NMFS has only received three requests for chartering permits, only one of which was issued. NMFS has not received a specific chartering request in 2008. Upon receipt of any such request, NMFS would conduct the necessary ecological, economic, and social analysis, including any necessary NEPA analysis, to consider the impacts of the specific chartering request on the HMS fishery and its participants. NMFS does not expect this regulatory modification to result in many additional requests, and NMFS does not expect these potential chartering arrangements to increase fishing mortality or increase fishing effort significantly.

For the chartering portion of this proposed rule, NMFS has determined that the proposed regulatory modification is administrative in nature and is consistent with the 2006 Consolidated HMS FMP and its related Environmental Impact Statement and the ICCAT Chartering Recommendation. As defined in Sections 5.05 and Section 6.03c.3(i) of NAO 216–6, the proposed action is an amendment of existing chartering regulations that are administrative and technical in nature that would not have significant environmental impacts and for which

any cumulative effects are negligible. As such, it is categorically excluded from the need to prepare an Environmental Assessment.

### 3. Request for Comments

Comments on this proposed rule may be submitted at public hearings (see **DATES** and **ADDRESSES**), or via mail, or fax by December 18, 2008. NMFS will hold two public hearings to receive comments from fishery participants and other members of the public regarding this proposed rule. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to LeAnn Southward Hogan at (301) 713-2347 at least 5 days prior to the hearing date.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each meeting, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they register to speak; the attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending member of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the meeting. For individuals unable to attend a hearing, NMFS also solicits written comments on this proposed rule (see **DATES** and **ADDRESSES**).

### 4. Classification

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

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

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The certification reads:

#### Swordfish Quotas

The final 2007 and 2008 North and South Atlantic swordfish baseline quotas were published in the **Federal Register** on October

5, 2007 (72 FR 56929). This proposed rule would adjust the 2008 baseline quotas for the North and South Atlantic swordfish fisheries for the 2008 fishing year (January 1, 2008, through December 31, 2008) to account for 2007 underharvests per 50 part 635.27(c) and transfer 18.8 metric tons (mt) dressed weight (dw) to Canada from the reserve category. Consistent with Federal regulations (50 CFR part 635.27(c)(1)), the 2008 North Atlantic swordfish directed baseline quotas plus the 2007 underharvests would be divided equally between the semiannual periods of January through May and June through December, 2008. The 2007 total underharvest for North Atlantic swordfish was 3,220.1 mt dw and 150.4 mt dw for South Atlantic swordfish. However, since the underharvest carryover amount has been capped (for the North Atlantic swordfish at 1468.8 mt dw, and 75.2 mt dw for South Atlantic swordfish), the proposed 2008 adjusted quotas for the North and South Atlantic swordfish would be 4,406.4 mt dw and 150.4 mt dw, respectively. These 2008 adjusted quotas are the same as the adjusted quotas for the 2007 fishing year which were analyzed in the Final Regulatory Flexibility Analysis (EA) prepared for the 2007 Swordfish Specifications Final Rule published on October 5, 2007 (FR 72 56929).

The commercial swordfish fishery is comprised of fishermen who hold a swordfish directed, incidental, or handgear limited access permits (LAP) and the related industries including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities according to the size standards set by the Small Business Administration. As of May 2007, there were approximately 180 fishermen with a directed swordfish LAP, 78 fishermen with an incidental swordfish (LAP), and 88 fishermen with a handgear (LAP) for swordfish. Based on the 2006 swordfish ex-vessel price per pound of \$3.58, the 2008 North Atlantic swordfish baseline quota could result in revenues of \$23,184, 913 (6,476,232 lbs dw \* \$3.58) and \$593,513 (165,785 lbs dw \* 3.58) for South Atlantic quota if the quota was fully utilized. As proposed in this action, the 2008 baseline quotas would be adjusted to account for the 2007 underharvest which could result in additional revenues for the North and South Atlantic swordfish fisheries of \$34,777,370 and \$1,187,027, respectively, for fully utilized quotas. Potential revenues on a per vessel basis, considering a total of 346 swordfish permit holders, could be \$100,512 for the North Atlantic swordfish fishery and \$3,431 for the South Atlantic swordfish fishery. However, in both the North and South Atlantic swordfish fisheries, the pelagic longline fleet has not caught the entire U.S. swordfish quota for many years. For example, the total 2007 North Atlantic swordfish landings were 1,167.5 mt dw and the current 2008 landings for North Atlantic swordfish, as of April 30, 2008, are 443.3 mt dw. Therefore, because the United States is not expected to catch its entire quota, and the quotas adjustments are the same in 2008 as in 2007, NMFS does not expect these quota adjustments to have a significant economic impact on a large number of small entities.

### Chartering Regulations

This proposed rule would also modify regulations regarding vessel chartering. At its 2002 annual meeting, ICCAT adopted a chartering recommendation (ICCAT Recommendation 02-21) allowing Contracting Parties to the ICCAT Convention to charter fishing vessels registered to responsible Contracting Parties, Cooperating non-Contracting Parties, Entities or Fishing Entities (CPCs) that explicitly agree to apply ICCAT conservation and management measures and enforce them on their vessels.

Pursuant to this recommendation, NMFS implemented regulations on December 6, 2004 (69 FR 70396). These regulations took a limited approach to chartering by allowing entities from ICCAT Contracting Parties to charter U.S. fishing vessels but not allowing U.S. entities to charter foreign vessels in the same way. Current regulations allow chartering arrangements between U.S. fishing vessel owners and foreign entities under which a U.S. fishing vessel can fish in waters beyond national jurisdiction without reflagging the vessel, and the U.S. fishing vessel's catch counts against the ICCAT quota of the Contracting Party of the chartering foreign entity. These regulations require the owner of a U.S. fishing vessel to apply for and obtain a chartering permit from NMFS before fishing under such a chartering arrangement.

When NMFS developed and implemented the current chartering regulations, interest was expressed in allowing U.S. fishing vessels to be chartered by foreign entities of an ICCAT Contracting Party and to allow the catch taken to count against the ICCAT Contracting Party's quota. However, due to legal and policy concerns related to foreign vessels and foreign fishing in the U.S. exclusive economic zone (EEZ) and little public interest in chartering arrangements where a foreign vessel's catch would count against U.S. Atlantic HMS quotas or entitlements, NMFS did not implement regulations that would allow U.S. entities to charter foreign vessels to catch ICCAT-managed species that would count against U.S. quotas or entitlements.

Since implementing the chartering regulations, there has been increased public interest in allowing U.S. entities to charter foreign vessels of ICCAT CPCs where the catch taken would count against the U.S. Atlantic HMS quotas or entitlements, possibly as a step toward revitalizing certain HMS fisheries. This type of chartering arrangement could also help utilize Atlantic HMS quotas and facilitate flexibility within the vessel chartering program, which would in turn enhance quota management within the Atlantic HMS fisheries. Thus, NMFS is proposing changes to the current chartering regulations that would allow chartering of foreign vessels of ICCAT CPCs to fish on the high seas against U.S. Atlantic HMS quota or entitlements.

The proposed chartering regulations would establish a process and criteria for NMFS's evaluation of proposed chartering arrangements and certain limitations on such chartering arrangements. Under the proposed regulations, only Atlantic HMS LAP holders would be allowed to enter these types of

chartering arrangements with foreign entities of ICCAT CPCs. NMFS is proposing to limit these chartering arrangements to Atlantic HMS LAP holders because, by having been issued an Atlantic HMS LAP, these permittees are allowed to harvest Atlantic HMS from the U.S. EEZ and on the high seas. Under the rule as proposed, only those Atlantic HMS LAP holders who currently are authorized to harvest HMS on the high seas would be chartering vessels to, essentially, exercise that harvesting privilege on their behalf. This approach should, generally, keep any resulting chartering arrangements within the scope of existing analyzed effects of utilizing Atlantic HMS quotas on the high seas. During the length of the chartering arrangement, the Atlantic HMS LAP holder would not be permitted to fish under Atlantic HMS quotas or otherwise utilize the LAPs themselves. In addition, under the proposed regulations, foreign vessel owners who enter into a chartering arrangement with an Atlantic HMS LAP holder would be required to follow all U.S. regulations that would have otherwise applied to the Atlantic HMS LAP holder.

Since implementing the chartering regulations in 2004, NMFS has only received three requests for chartering permits, only one of which was issued. NMFS has not received a specific chartering request in 2008. Upon receipt of any such request, NMFS would conduct the necessary ecological, economic, and social analysis, including any necessary NEPA analysis, to consider the impacts of the specific chartering request on the HMS fishery and its participants. NMFS does not expect this regulatory modification to result in many additional requests, and NMFS does not expect these potential chartering arrangements to increase fishing mortality or increase fishing effort significantly. It is unlikely that activities conducted by foreign vessels under a chartering agreement would result in any economic impacts on domestic small businesses. Therefore, NMFS does not expect this regulatory modification to result in significant impacts on a substantial number of small entities.

#### Conclusion

This proposed rule would not result in any increase in fishing mortality, change basic fishing practices, or pose any significant impacts to the human environment. Therefore, NMFS does not expect the minor regulatory modifications to the vessel chartering regulations or the carryover of underharvests to have significant economic impacts on small entities.

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

Fisheries, Fishing, Management, Reporting and recordkeeping requirements, Treaties.

Dated: November 12, 2008.

#### Samuel D. Rauch III

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

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

#### PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

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

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

2. In § 635.5, paragraph (a)(5) is revised to read as follows:

#### § 635.5 Recordkeeping and reporting.

\* \* \* \* \*

(a) \* \* \*

(5) *Chartering arrangements.* (i)

Where a U.S. vessel is chartered by a foreign entity (e.g., government, company, person) of an ICCAT Contracting Party.

(A) For the purposes of paragraph (a)(5)(i) of this section, a chartering arrangement means any contract, agreement, or commitment between a U.S. fishing vessel owner and a foreign entity of an ICCAT Contracting Party by which the control, use, possession, or services of a U.S. fishing vessel are secured, for a period of time for fishing targeting Atlantic HMS against the ICCAT quota of the chartering foreign entity's Contracting Party. Chartering arrangements under this part do not include bareboat charters under which a vessel enters into a fishing agreement with a foreign entity, changes registration to fish under another country's registration then, once the agreed-upon fishing is completed, reverts back to the vessel's original registration.

(B) If a foreign entity of an ICCAT Contracting Party wants to enter into a chartering arrangement with a U.S. fishing vessel owner, the ICCAT Contracting Party and the U.S. vessel owner must be in full compliance with ICCAT conservation and management measures.

(C) Before fishing under a chartering arrangement under paragraph (a)(5)(i) of this section, the owner of a U.S. fishing vessel must apply for, and obtain, a chartering permit as specified in § 635.32(e). If a chartering permit is obtained, the U.S. fishing vessel owner must submit catch information as specified in the terms and conditions of that permit. All catches will be recorded and counted against the applicable ICCAT quota of the chartering foreign entity's Contracting Party and, unless

otherwise provided in the chartering permit, must be offloaded in the ports of the chartering foreign entity's ICCAT Contracting Party or offloaded under the direct supervision of the chartering foreign entity's ICCAT Contracting Party.

(D) If the chartering arrangement terminates before the expiration of the chartering permit, the U.S. fishing vessel owner must notify NMFS immediately and in writing. Such notification requirements shall also apply to situations where the chartering arrangement is temporarily suspended and during intermittent periods where the vessel may be fishing under Atlantic HMS quotas.

(ii) Where a foreign vessel is chartered by an Atlantic HMS LAP holder.

(A) For the purposes of paragraph (a)(5)(ii) of this section, a chartering arrangement means any contract, agreement, or commitment between an Atlantic HMS LAP holder and a foreign vessel owner of an ICCAT CPC by which the control, use, possession, or services of a foreign vessel are secured, for a period of time for fishing targeting Atlantic HMS on the high seas against the Atlantic HMS quota or entitlements of the United States. Atlantic HMS LAP holders shall not fish using their LAP permit(s) during the duration of the chartering arrangement.

(B) NMFS will consider on a case-by-case basis and must approve in writing, any proposed chartering arrangement under paragraph (a)(5)(ii) of this section. Both the ICCAT CPC and a foreign vessel owner of an ICCAT CPC wishing to enter into a chartering arrangement with an Atlantic HMS LAP holder must be in full compliance with ICCAT conservation and management measures. Vessels on the ICCAT IUU vessel list may not be chartered.

(C) Atlantic HMS LAP holders who are interested in chartering foreign vessels of an ICCAT CPC under a chartering arrangement should include the following information in their request to NMFS:

(1) Information regarding the proposed chartering operation, including the ICCAT CPC's vessel name, vessel registration, and flag of the vessel;

(2) A copy of the proposed chartering arrangement between the Atlantic HMS LAP holder and the ICCAT CPC's vessel owner;

(3) The species to be fished, amount of fishing expected, and gear types to be used;

(4) The general geographic areas to be fished;

(5) A letter of consent from the government of the ICCAT CPC vessel's flag state;

(6) The timeframe of the chartering arrangement; and

(7) Anticipated benefits to the United States, including, but not limited to, the use of U.S. processing facilities/personnel, and specific positive effects on U.S. employment.

(D) After reviewing the information submitted, NMFS will evaluate whether the proposed chartering arrangement provides adequate benefit to the United States and will consider the implications of the arrangement for Atlantic HMS quota management. Atlantic HMS LAP holders who submit chartering arrangement requests to NMFS will be contacted if the chartering arrangement is authorized and will be notified of the requirements and terms of approval, including data submission requirements. NMFS may decide to deny a chartering arrangement request.

\* \* \* \* \*

3. In § 635.32, paragraphs (e) (1) through (4) and (e)(6) are revised to read as follows:

**§ 635.32 Specifically authorized activities.**

\* \* \* \* \*

(e) \* \* \*

(1) For activities consistent with the purposes of this section, § 635.5(a)(5)(i), and § 600.745(b)(1) of this chapter, NMFS may issue chartering permits to a U.S. fishing vessel owner. An application for a chartering permit must include all information required under § 600.745(b)(2) of this chapter and, in addition, written notification of: the species of fish covered by the chartering arrangement and quota allocated to the chartering foreign entity's ICCAT Contracting Party; duration of the arrangement; measures adopted by the chartering foreign entity's ICCAT Contracting Party to implement ICCAT

chartering provisions; copies of fishing licenses, permits, and/or other authorizations issued by the chartering foreign entity for the U.S. fishing vessel to fish under the arrangement; a copy of the High Seas Fishing Compliance Act Permit pursuant to § 300.10 of this title; documentation regarding interactions with protected resources; and documentation regarding the legal establishment of the chartering entity. To be considered complete, an application for a chartering permit from a U.S. fishing vessel owner must include all information specified in § 600.745(b)(2) of this chapter and in this paragraph (e).

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid chartering permit is required to fish for, take, retain, or possess ICCAT-regulated species under chartering arrangements as specified in § 635.5(a)(5)(i). A valid chartering permit must be on board the U.S. fishing vessel, must be available when ICCAT-regulated species are landed, and must be presented for inspection upon request of an authorized officer. A chartering permit is valid for the duration of the chartering arrangement or until the expiration date specified on the permit, whichever comes first. U.S. fishing vessel owners issued a chartering permit shall not be authorized to fish under applicable U.S. Atlantic HMS quotas or entitlements until the chartering permit expires or is terminated.

(3) Chartering permit holders must submit logbooks and comply with reporting requirements as specified in § 635.5. NMFS will provide specific conditions and requirements in the chartering permit, so as to ensure consistency, to the extent possible, with laws of the ICCAT Contracting Party, the Consolidated HMS FMP, as well as ICCAT recommendations.

(4) Observers may be placed on board U.S. fishing vessels issued chartering permits as specified under § 635.7.

\* \* \* \* \*

(6) A U.S. fishing vessel shall be authorized to fish under only one chartering arrangement at a time.

\* \* \* \* \*

4. In § 635.71:

A. Paragraphs (a)(42), (43), and (44) are revised.

B. Paragraphs (a)(45) through (a)(53) are redesignated as paragraphs (a)(46) through (a)(54), respectively.

C. A new paragraph (a)(45) is added.

The revisions and addition read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(42) Count chartering arrangement catches against quotas other than those defined in § 635.5(a)(5).

(43) Fail to submit catch information regarding fishing activities conducted under a chartering arrangement with a foreign vessel owner, as specified in § 635.5(a)(5).

(44) Offload catch taken under a chartering arrangement in ports other than the ports of the chartering foreign entity's ICCAT Contracting Party or offload catch without the direct supervision of the chartering foreign entity's ICCAT Contracting Party as specified in § 635.5(a)(5).

(45) Fish for, take, retain, or possess ICCAT-regulated species under a chartering arrangement as specified in § 635.5(a)(5)(i) without a valid chartering permit on board the vessel and available upon the request of an authorized officer.

\* \* \* \* \*

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