

National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective August 8, 2012.

#### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Hazardous waste, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 2, 2012.

**James B. Martin,**

*Regional Administrator, Region 8.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 110208116-2233-02]

RIN 0648-BA75

#### Atlantic Highly Migratory Species; Electronic Dealer Reporting Requirements

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

**ACTION:** Final rule.

**SUMMARY:** This final rule will require that Federal Atlantic swordfish, shark, and tuna dealers report receipt of Atlantic sharks, swordfish, and bigeye, albacore, skipjack, and yellowfin (BAYS) tunas to NMFS through an electronic reporting system on a weekly basis. At this time, Atlantic Highly Migratory Species (HMS) dealers will not be required to report bluefin tuna through this electronic reporting system, as a separate reporting system is currently in place for this species. This final rule changes the current definition of who is considered an Atlantic HMS dealer and will require Atlantic HMS dealers to submit dealer reports to NMFS in a timely manner in order to be able to purchase commercially-harvested Atlantic sharks, swordfish, and BAYS tunas. Any delinquent reports will need to be submitted by the dealer and received by NMFS before a dealer can purchase commercially-harvested Atlantic sharks, swordfish, and BAYS tunas from a fishing vessel. These measures are necessary to ensure timely and accurate reporting, which is critical for quota monitoring and management of these species.

**DATES:** Effective January 1, 2013.

**ADDRESSES:** Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the supporting documents, including a Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and small entity compliance guide, are available online at the HMS Management Division Web site at <http://www.nmfs.noaa.gov/sfa/hms/>. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Delisse Ortiz with the Atlantic Highly Migratory Species Management Division and by email to

[OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to 202-395-7285.

#### FOR FURTHER INFORMATION CONTACT:

Delisse Ortiz or Karyl Brewster-Geisz at 301-427-8541, or Jackie Wilson at 240-338-3936.

#### SUPPLEMENTARY INFORMATION:

Atlantic HMS are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* Under the MSA, NMFS must ensure consistency with the National Standards and manage fisheries to maintain optimum yield, rebuild overfished fisheries, and prevent overfishing. Under the ATCA, the Secretary of Commerce is required to promulgate regulations, as may be necessary and appropriate, to implement the recommendations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under MSA and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). The implementing regulations for Atlantic HMS are at 50 CFR part 635.

#### Background

On June 28, 2011 (76 FR 37750), NMFS published a proposed rule in the **Federal Register** to require that Federal Atlantic swordfish, shark, and tunas dealers report receipts of Atlantic sharks, swordfish, and BAYS tunas to NMFS through an electronic reporting system. The proposed rule also included flexible reporting regimes, which would allow NMFS to collect more frequent dealer reports when key Atlantic shark fisheries are open or as quotas become filled in the Atlantic swordfish and BAYS tunas fisheries, and addressed two additional topics: the definition of an Atlantic HMS dealer and the timely submission of Atlantic HMS dealer reports. The proposed rule contained additional details regarding the impacts of the alternatives considered and a brief summary of the recent management history. Those details are not repeated here.

This final rule implements the requirement of electronic HMS dealer reporting, and is necessary to ensure timely and accurate reporting, which is critical for quota monitoring and management of these species. As described below, based in part on public comment, in this final rule, NMFS is changing several aspects of the proposed rule.

In the proposed rule, NMFS considered and analyzed four

alternatives. In the preferred alternative in the proposed rule, NMFS proposed to increase the frequency of both positive and negative dealer reporting for Atlantic sharks, swordfish, and BAYS tunas to better facilitate timely quota monitoring. Specifically, NMFS proposed to change the reporting frequency depending on the available quota, length of fishing season, and species/species complexes when certain triggers were met by the different fisheries, as described in the proposed rule. In addition, the rule also proposed that all first receivers of Atlantic sharks, swordfish, and BAYS tunas harvested by federally-permitted U.S. vessels, including entities that only shipped HMS product, must obtain a corresponding Federal Atlantic swordfish, shark, and/or tunas dealer permit and report such receipts to NMFS through the electronic reporting system so that NMFS can receive more species- and vessel-specific information. Finally, NMFS proposed that dealers must submit reports by the required deadline in order to be able to receive Atlantic swordfish, sharks, or BAYS tunas. Any delinquent reports would need to be submitted by the dealer and received by NMFS before a Federal Atlantic HMS dealer could purchase commercially-harvested Atlantic swordfish, sharks, and BAYS tunas from a fishing vessel.

In this final rule, NMFS implements a requirement that dealers submit reports on a weekly basis in order to be able to purchase commercially-harvested Atlantic swordfish, sharks, and BAYS tunas from a fishing vessel. NMFS recognizes that daily reporting requirements for sharks, as proposed under alternative A3 in the proposed rule, would not allow dealers sufficient time to gather accurate price information for sharks and could have resulted in a large reporting burden on dealers. At the same time, NMFS acknowledges that unlike some shark fisheries, Atlantic swordfish and BAYS tunas fisheries are currently not quota limited and may not require more frequent reporting than the current biweekly reporting. However, NMFS notes that other Federal dealer permits currently require weekly reporting, including all Northeast Regional Office (NERO)-issued dealer permits. Many HMS dealers also possess NERO-issued permits and, therefore, are already reporting on a weekly basis. Additionally, many fisheries managed by SERO are moving to weekly dealer reporting and many HMS dealers also possess permits for these fisheries. Therefore, NMFS believes that weekly

reporting balances the need for more timely landings data and maintains consistency in reporting requirements for different dealer permits. In addition, NMFS is integrating the HMS electronic reporting requirements into existing electronic reporting programs mainly to ease the overall burden on dealers.

Thus, to better facilitate timely quota monitoring, NMFS will implement weekly reporting requirements for both positive and negative dealer reporting of Atlantic sharks, swordfish, and BAYS tunas. Positive reports of all species on a Federal dealer report through the NMFS-approved electronic reporting systems will fulfill reporting requirements for BAYS tunas, swordfish, and sharks purchased within the required reporting timeframe as required under § 635.5(b)(ii). A negative report by the required deadline indicates no receipt or purchase of any species required to be reported. NMFS may consider changing the reporting frequency in a future rulemaking as needed for management of Atlantic BAYS tunas, sharks, and swordfish fisheries.

In addition, during the comment period, NMFS heard that requiring first receivers to obtain dealer permits for receiving Atlantic swordfish and BAYS tunas would result in major disruptions to HMS dealers, and their business practices, especially in the Northeast. NMFS also heard that transporters of HMS product do not have the knowledge, training, or necessary equipment, such as scales for weighing product, to act as dealers. NMFS heard that Atlantic swordfish and BAYS tunas dealers have fewer species to identify compared to Atlantic shark dealers and price differences between Atlantic swordfish and BAYS tunas are greater so that species-specific reporting is more easily achieved for those fisheries. NMFS also heard that although the current definition of first receiver for Atlantic sharks potentially includes entities taking possession other than by purchasing trading or bartering, that has not been the practice in the industry. Furthermore, because many first receivers receive sharks, BAYS tunas, and swordfish, NMFS believe it is important to have one consistent definition of first receiver across all species. This one definition would simplify the regulations and maintain consistency with respect to who is considered a first receiver across species. Thus, NMFS will change the definition of first receiver with regard to which entity is required to have a dealer permit for receiving Atlantic tunas, sharks, and swordfish to make it more consistent with current industry

practice and to simplify the regulations. That is, a person who takes possession for commercial purposes, any BAYS tunas, swordfish, or shark or parts of those species by purchasing, trading, or bartering once it is offloaded from the vessel owner or operator of a fishing vessel will be required to obtain the corresponding federal HMS dealer permit.

NMFS proposed a range of alternatives for the implementation date of the electronic dealer reporting requirements and associated regulations, ranging from implementation beginning within 30 days of the final rule to a delayed implementation of three months. NMFS received unanimous support for delaying the implementation of the final regulations to allow dealers additional time to adjust their business practices, receive training for the new reporting system, and obtain capital for computer equipment and internet service. As such, this final rule will delay implementation of the new electronic dealer requirements until 2013, when the reporting system will be available and training workshops will have occurred. The purpose of the training workshops and webinars is to introduce and train dealers in using the new system in order to help ease the transition from the paper format to the new electronic reporting system. NMFS intends to hold several training workshops in appropriate locations along the east coast and Gulf of Mexico. During final implementation, NMFS will provide all permitted dealers with instructions on how to access the system, information on the web browser requirements, and instructions on how to obtain login and password information. This information will also be provided for individuals applying for a new dealer permit.

During the comment period, NMFS also received some comments from dealers who were concerned about what would happen if they lost power, such as during a hurricane, or if the system went down. Specifically, these dealers did not want to be penalized for not reporting on time in such a situation. NMFS has designed the regulations to provide some Agency discretion, in responding to reporting delays caused by natural disasters or other non-preventable events. The system itself has backups and is not expected, in the course of normal business operations, to be down for long periods of time.

#### Response to Comments

During the proposed rule stage, NMFS received nine written comments from non-governmental organizations,

fishermen, dealers, and other interested parties. NMFS also heard numerous comments from constituents in attendance at eight public hearings and while conducting outreach during phone calls. A summary of the major comments received for each proposed measure (electronic dealer reporting, frequency of reporting, timely dealer reporting and IRFA Alternatives) on the proposed rule during the public comment period is shown below with NMFS' responses. NMFS also received comments on exempted fishing/display permits, weak hooks, re-opening of closed areas, the size of existing quotas, and the stock status of sharks. However, these comments were not considered in the summary below as they were outside the scope of this rulemaking. All written comments submitted during the comment period can be found at <http://www.regulations.gov/> by searching for RIN 0648-BA75.

#### *Electronic Dealer Reporting*

*Comment 1:* NMFS should set up a workshop to sit down with Agency and industry representatives to design the electronic reporting system so that NMFS can receive feedback on the practical aspects of how a dealer's business works.

*Response:* NMFS agrees. NMFS began designing and building an electronic reporting system when NMFS began working on the proposed rule. The system is based on similar systems such as the Standard Atlantic Fisheries Information System (SAFIS) and the Southeast electronic Trip Ticket reporting system. During this time, NMFS asked some HMS dealers to test the system and provide feedback. This feedback resulted in many changes and improvements to the system. NMFS also had early versions of the system available at the April 2011, September 2011, and March 2012 HMS Advisory Panel meetings for review and comment. In addition, as originally proposed, the Agency will delay implementation of the electronic dealer reporting system until 2013 in order to provide sufficient time for dealers to adjust to implementation of the new system and the additional requirements. During this time, NMFS will conduct outreach with industry representatives and dealers as well as provide additional outreach materials (e.g., System User Guide and Compliance Guides) to improve understanding and use of the new system. These outreach materials will be free and available through the new system and HMS Web site (<http://www.nmfs.noaa.gov/sfa/hms/index.htm>).

*Comment 2:* NMFS received several comments regarding the change to electronic reporting, including: support for the change to electronic reporting; questions about why NMFS is considering electronic reporting; support for NMFS requiring paper or electronic reporting, but not a mixture of both; and concern that more timely and efficient data collection is needed for management as the lack of real-time data is costing jobs. The Atlantic States Marine Fisheries Commission (ASMFC) also commented that electronic reporting does not require specialized equipment and dealers should be able to comply.

*Response:* The current regulations and infrastructure of the Atlantic HMS quota-monitoring systems result in a delay of several weeks to almost a month before NMFS receives dealer data. Once NMFS receives dealer data in a paper format, the data need to be transferred into the data systems and quality checked before it is available for use. This delay in the availability of dealer data affects the management and monitoring of small Atlantic HMS quotas and short fishing seasons, particularly for many of the shark fisheries. As such, NMFS is requiring all Federal Atlantic HMS dealers (except for dealers reporting Atlantic bluefin tuna) to report receipt of Atlantic sharks, swordfish, and BAYS tunas to NMFS through one centralized electronic reporting system. The new electronic reporting system will be integrated within existing SAFIS and Trip Tickets electronic reporting programs, thus reducing the number of places that dealers need to report. Under this new system, dealers will submit HMS data electronically instead of in a paper format and include additional information that is necessary for management of HMS (e.g., vessel and logbook information). The electronic submission of data will eliminate the delay associated with mailing in reports to NMFS and transferring reported data into electronic systems. In this manner, HMS landings data will be submitted on a more real-time basis, allowing for timely and efficient collection and use of data for management of Atlantic HMS. Once the system is fully operating, NMFS could consider altering the 80-percent trigger limit for closing the shark fishery to allow fishermen to more fully utilize the available quota.

*Comment 3:* NMFS received comments in opposition to mandatory electronic dealer reporting as some dealers do not currently own a computer and reporting on paper is easier than getting the electronic system

up and running, which is often time-consuming.

*Response:* While NMFS recognizes that, in the short-term, the implementation of an HMS electronic dealer reporting system will change business practices for dealers and, for some, may result in some additional costs associated with purchasing a computer and internet service. In the short-term, electronic reporting can lead to more efficient fisheries and business practices that could be more economical in the long term (e.g., fishing seasons being open longer, easier negative reporting, etc.). As explained in the response to Comment 2, the existing regulations and infrastructure regarding dealer reporting have created issues for effective management and monitoring of small Atlantic HMS quotas and short fishing seasons. For instance, currently there is a delay of 10 to 25 days in the receipt of landings data received through dealer reports in a paper format. To reduce this delay, the Agency is requiring all federally-permitted HMS dealers to report receipt of swordfish, sharks, and BAYS tunas on a weekly basis to NMFS through the new HMS electronic reporting system. However, as previously mentioned in Comment 1, the Agency will delay the implementation of the new HMS electronic reporting system for all federally-permitted HMS dealers until 2013 to allow dealers more time to adjust their business practices, train in the new reporting system, and obtain necessary equipment (e.g., computer and internet service). NMFS is also holding training workshops to assist dealers in learning to use the new system. Anyone who would like to request a training workshop may contact Delisse Ortiz or Karyl Brewster Geisz at 301-427-8503.

*Comment 4:* NMFS received a comment questioning whether or not the electronic dealer reporting system would require a high-speed internet connection. Some dealers also stated that NMFS will need to help dealers in getting the electronic reporting system set up on their computers as well as conduct outreach to inform dealers how to use the new system.

*Response:* NMFS' new HMS electronic reporting system requires the most basic internet connection to support the new system. The electronic reporting system will be available through SAFIS, which requires data entry through a Web site. The system will also be available through Trip Tickets, which is a program that is downloaded to the dealer's computer. In the Trip Tickets system, dealers can enter data as time allows, and then

connect to the internet and send the data to NMFS, thereby eliminating the need for a constant internet connection during data entry, as is needed for data entry into SAFIS. As mentioned in Comment 1, in order to give sufficient time for dealers to adjust to implementation of the new system and the additional requirements, NMFS will also delay implementation of the new HMS electronic reporting system for all federally-permitted HMS dealers until 2013. In addition, NMFS will conduct workshops to help dealers learn how to use the new system and easily transition from the current paper format to the new HMS electronic reporting system.

*Comment 5:* NMFS needs to streamline and simplify the reporting requirements, especially between state and Federal reporting requirements, and ensure that the new electronic dealer reporting requirements prevent duplicative reporting. It is good that NMFS is incorporating the electronic reporting program into existing systems, such as SAFIS and Trip Tickets; the SAFIS program is a promising model for this single reporting entity to meet Federal and state requirements. NMFS needs to make reporting as easy as possible as the reporting requirements are complex and confusing.

*Response:* NMFS is working with state agencies to streamline data collection to the extent possible to try to avoid duplicative reporting. Such coordination will also make the reporting process as simple and straightforward as possible. In addition, by incorporating electronic HMS dealer reporting requirements within SAFIS and Trip Tickets, NMFS is ensuring that in most cases dealers will only have to report to one system instead of multiple systems to meet their Federal and state reporting requirements. However, as mentioned below in Comment 40, some states require separate reporting as established by state law. NMFS also recognizes that the terms of the Federal permits may result in additional mandatory Federal reporting requirements beyond those required by states. NMFS will continue to coordinate with states to reduce duplicative reporting, to the extent possible.

*Comment 6:* NMFS received a comment questioning how NMFS monitors shark landings from the state of Louisiana as shark fishing from this state is a large problem.

*Response:* NMFS recognizes that Louisiana state fishermen, and state fishermen from other states, are major participants in the shark fisheries. The regulations implemented under this rulemaking will not change how shark

landings are counted for quota monitoring. Currently, NMFS receives landings from all states and compares those landings with the landings reported by Federal dealers. Under the electronic system, this comparison could be easier depending on the extent that state and Federal requirements match, but the general concept for monitoring shark landings from all state and Federal fishermen will not change.

*Comment 7:* Dealers and first receivers should not have to report information where vessels fish as NMFS already receives vessel monitoring system (VMS) reports and daily logbooks from the fishing vessels. NMFS should use logbooks for quota monitoring as they have more detailed information than dealer reports.

*Response:* Logbooks, VMS, and dealer reports provide the Agency with different types of information, which are all necessary for management. The logbooks, which are required by most HMS commercial fishermen, provide information on fishing effort as well as amount of catch and location of fishing. Logbooks are submitted after each trip but, because of the amount of data and number of vessels involved, the data is not available for use on a real-time basis. VMS provides real-time information to inform enforcement on how and where a particular vessel is fishing as well as where it is fishing, but is not required on all HMS commercial vessels. Dealer reports provide information on landings as well as price information, which is not available in the logbook data or through VMS. In addition, under the new HMS electronic reporting system, NMFS will require dealers to provide information on where fish were caught to ensure proper quota management, for example by distinguishing between Atlantic and Gulf of Mexico non-sandbar LCS. In the past, the geographical information used in management of such quotas has been based on the physical location of the dealer, not where the sharks were actually caught. Therefore, the Agency requires different entities to submit different types of reports to NMFS in order to collect the necessary information for management (i.e., information on fishing effort, location of fishing, catch and landings information, and price information).

*Comment 8:* NMFS needs to make sure there is a way dealers can print a copy of their report as dealers need to keep a copy of submitted reports for their files. Dealers need a way to verify they submitted their reports electronically.

*Response:* NMFS agrees. The new HMS electronic reporting system will

allow all Federal HMS dealers to print out a copy of each dealer report that is electronically submitted and received by NMFS. In addition, the new HMS electronic reporting system will provide dealers with a confirmation number once the reports have been submitted and received by NMFS, allowing dealers to verify submission of their dealer reports to NMFS.

*Comment 9:* NMFS should allow dealers to report bluefin tuna through the new electronic dealer reporting system under daily reporting requirements and get rid of the paper and fax reporting system currently in place. This change would allow electronic reporting for all HMS.

*Response:* Due to the complexity of the current Atlantic bluefin tuna reporting system, Federal HMS dealers reporting Atlantic bluefin tuna will continue to follow the current reporting requirements for this species at this time. However, in the future, NMFS could consider including Atlantic bluefin tuna in the HMS electronic dealer reporting system.

*Comment 10:* NMFS needs to develop a backup plan, such as reporting via fax or paper, for when the internet is down so that dealers are not forced to be out of compliance. This may be especially important for dealers in the Caribbean if there is a storm and the internet and power are down for a long period of time.

*Response:* The Agency recognizes that there may be interruptions in electrical power or internet service that are out of the control of Federal HMS dealers, but will impact dealers' abilities to submit reports to NMFS through the new HMS electronic reporting system. Further, given the changes to the reporting timeframe from the proposed to the final rule (i.e., from daily to weekly reporting), NMFS does not expect late reporting due to system disruptions to be as much of an issue. NMFS encourages dealers to contact the system administrator for the HMS electronic dealer reporting system when they experience any type of interruption for an extended period of time, and expects dealers to resume reporting as soon as possible once the disruption ends.

*Comment 11:* Many fishermen and dealers do not encounter sharks and tunas in Puerto Rico, therefore the proposed changes would not affect them. However, many of the dealers speak Spanish and are not familiar with computers, so they would need a second person to help them submit reports.

*Response:* Due to limits on Agency funding at this time, the new electronic dealer reports will be available only in English. The Agency may consider a

Spanish or Vietnamese version in the future. We have, however, translated notices and outreach documents into Spanish and will translate these notices and documents in Vietnamese as well. We have and will continue to conduct workshops in Spanish. In addition, the new electronic reporting system will be tailored to include the landing ports and vessels specific to all regions, including the Caribbean. This tailoring should allow non-English speaking dealers from any region to more easily utilize the new system once they are familiar with it. For those non-English speaking dealers who need additional assistance, NMFS will establish a dedicated phone number (301-427-8590) and email address (*HMS.DealerReports@noaa.gov*) to provide assistance in completing reports. Finally, as previously mentioned in Comment 1, the Agency is delaying the implementation of the new HMS electronic reporting system until 2013 to allow dealers more time to adjust their business practices, obtain the necessary equipment (e.g., computer and internet service), and to allow NMFS to conduct workshops in areas like the Caribbean, which have not experienced electronic reporting to date.

#### *Frequency of Reporting*

*Comment 12:* NMFS received several comments stating that dealers operating small businesses would have difficulty reporting electronically on a more frequent basis because they lack the staff to support the current biweekly reporting requirements; the reporting requirements are complex and confusing; and the increased reporting frequency will result in a larger reporting burden. Small businesses would benefit from less frequent reporting, and more frequent reporting may result in dealers being late in their submission, which could potentially keep their permits from being renewed. The proposed electronic dealer reporting requirements are burdensome, and dealers are becoming frustrated with the increasing number of regulations, which ultimately take time away from ensuring product quality. NMFS also received specific comments regarding the reporting frequency for tunas and swordfish, including: dealers should report as soon as they receive product; dealers should submit weekly reports; dealers feel electronic reporting of BAYS tunas and swordfish on a 21-day to monthly timeframe would suffice; dealers support the status quo or biweekly reporting for BAYS tunas and swordfish; and dealers support biweekly reporting with reporting frequency reflecting the average landing rate when 80 percent of the quota is filled. NMFS

also received comments that dealers were opposed to daily or weekly reporting for pelagic non-porbeagle sharks, BAYS tunas, or swordfish as these fisheries are not in any danger of experiencing overharvests. Daily reporting for swordfish would be a burden.

*Response:* Based on public comment, NMFS will change the reporting frequency that was originally proposed for Atlantic swordfish, BAYS tunas, and shark dealers in the proposed rule published on June 28, 2011 (76 FR 37750) to simplify reporting requirements as well as balance the need for timely landings data while avoiding excessive reporting burdens on dealers. NMFS recognizes that daily reporting requirements for sharks as proposed in the proposed rule would not allow dealers sufficient time to gather accurate price information for sharks and could have resulted in a large reporting burden on dealers. At the same time, NMFS acknowledges that unlike some shark fisheries, Atlantic swordfish and BAYS tunas fisheries are currently not quota limited and may not require more frequent reporting than the currently biweekly reporting. However, NMFS notes that some other Federal dealer permits, such as all NERO-issued dealer permits, require weekly reporting. Many HMS dealers also possess these NERO-issued permits and, therefore, are already reporting on a weekly basis. Additionally, many fisheries managed by the SERO are moving to weekly reporting and many HMS dealers also possess permits for these fisheries. NMFS believes that weekly reporting balances the need for more timely landings data and maintains consistency in reporting requirements for different dealer permits. In addition, NMFS is integrating the HMS electronic reporting requirements into existing electronic reporting programs, easing the overall burden on dealers.

*Comment 13:* NMFS received several comments regarding negative reports, including: dealers do not understand why they have to submit negative reports to NMFS; submitting negative reports should be as simple as replying to an email that reminds the dealer of a reporting deadline; NMFS should not require negative reports to be submitted on a daily basis; negative reports should be done on a biweekly or a monthly basis; submitting negative reports more than once a month is unnecessary busy work; and the submission of negative reports should not be required. NMFS also heard that there should be a way dealers can indicate a block of time when they will not be receiving

product, as some fisheries are seasonal in nature.

*Response:* Negative reports submitted by HMS dealers are an essential part of quota monitoring. By submitting negative reports, dealers inform NMFS that they did not receive HMS product during that reporting time period. These reports allow NMFS to distinguish between dealers who have not received product during a reporting period and dealers who have simply not reported to NMFS during a given reporting period. By being able to identify dealers who have not reported versus those who have not received product, and by knowing the landings data historically reported by particular dealers, NMFS can better determine the potential status of different quotas as well as which dealers may have failed to report. Without negative reports, NMFS runs a greater risk keeping fisheries open when, in fact, they should be closed to prevent overharvest of the quota.

Negative reports must occur with the same frequency as positive reports in order to inform NMFS about which dealers did not receive product during a specific reporting period versus which dealers have not reported. Receiving negative reports on a less frequent reporting basis than positive reports will not allow NMFS to determine which dealers have received product during a given reporting period as described above.

Finally, the electronic reporting system will allow dealers to indicate time periods when they will not be accepting product for up to 90 days. This should lessen the negative reporting burden on dealers.

*Comment 14:* NMFS received a comment stating that because most fish are sold on consignment, with dealers often having to wait 21 days for actual price information, the proposed weekly reporting frequency would result in dealers having to submit and modify every report, creating an unnecessary burden on dealers. Therefore, NMFS should consider a reporting frequency of at least 21 days, so that dealers do not have to enter data in multiple times for a single transaction.

*Response:* Currently, the reporting frequency for all HMS dealers is biweekly. As outlined in the response to Comment 12, based on public comment, NMFS will require weekly reporting for Atlantic swordfish, sharks, and BAYS tunas dealers.

Dealers will be able to update price information on a past submitted report for up to 30 days from the submission of that report in order to provide NMFS with the most accurate price information available. This balances the

need for timely landings data with the need for additional time to provide NMFS with accurate price information.

*Comment 15:* Changing the reporting frequency for swordfish from weekly to daily when the quota reaches 80 percent makes it seem like there is a problem with the swordfish quota when the United States will most likely not fill its swordfish quota.

*Response:* As outlined in the response to Comment 12, in this final rule, NMFS has reconsidered the proposed reporting frequencies for Atlantic HMS dealers to simplify reporting requirements and balance the need for timely landings data while avoiding an excessive reporting burden on dealers. NMFS will require weekly reporting for Atlantic swordfish, sharks, and BAYS tunas dealers. NMFS may consider changing the reporting frequency in a future rulemaking as needed for management of Atlantic BAYS tunas, sharks, and swordfish fisheries. Allowing flexibility in the required reporting frequency for HMS dealers will allow NMFS to require more frequent dealer reporting if the swordfish fishery were to begin achieving its allocated quota in the future. It is not meant to indicate there are any problems with the swordfish fishery, rather, it will allow for more timely reporting and quota monitoring if the fishery were to ever become quota limited in the future.

*Comment 16:* NMFS received several comments regarding the reporting frequency for sharks, including: support for the proposed daily submission of shark dealer reports as sharks are hard to identify and are quota limited; NMFS should require weekly reporting when the shark season is open for non-sandbar LCS, non-blacknose SCS, blacknose sharks, increase the reporting frequency to daily when the quota reaches 50 percent, and then decrease the reporting frequency when the seasons for these fisheries close; NMFS should consider biweekly reporting for sharks when non-sandbar LCS, non-blacknose SCS, and blacknose shark fisheries are closed. NMFS also heard that daily reporting of sharks is not practical; closing the fishing season early is a better alternative to daily reporting; and NMFS should consider keeping the current biweekly reporting for sharks or consider monthly reporting; and NMFS should only consider daily reporting once the shark quota reaches 80-percent.

*Response:* As outlined in the response to Comment 12, based on public comment, NMFS has reconsidered the proposed reporting frequency for Atlantic shark dealers and will require Atlantic shark dealers to report on a

weekly basis. This will simplify reporting requirements, as well as balance the need for timely shark landings with more time for dealers to report shark product unless NMFS determines more frequent reporting is required in the future. NMFS feels monthly reporting of shark landings will not provide timely enough data for monitoring small quotas, and will increase the probability of overharvests. In addition, NMFS considered changing the shark dealer reporting frequency as the shark quotas filled (*i.e.*, increasing the reporting frequency to daily when the quota reaches 50 percent, and then decreasing the reporting frequency when the seasons for these fisheries close), but felt such a reporting regime may be difficult for dealers to keep track of and may hamper compliance with the reporting requirements. Thus, NMFS is trying to simplify the reporting requirements while balancing the need for more frequent data without overburdening dealers or adding additional complexity to the reporting requirements for dealers.

*Comment 17:* NMFS should require weekly electronic reporting of BAYS tunas, swordfish and sharks so that all HMS species have the same reporting frequency; it is overly burdensome for dealers to keep track of different reporting frequencies for different species, especially if those frequencies change over time.

*Response:* NMFS agrees. The Agency appreciates that it may be difficult for dealers to keep track of different reporting requirements for different HMS. Therefore, to minimize the reporting burden on dealers, NMFS changed the proposed flexible reporting requirements in the proposed rule and is requiring Atlantic HMS swordfish, sharks, and BAYS tunas dealers to report on a weekly basis. NMFS believes that weekly reporting balances the need for more timely landings data and maintains consistency in reporting requirements for different dealer permits. In addition, NMFS is integrating the HMS electronic reporting requirements into existing electronic reporting programs, easing the overall burden on dealers. The system will accept reports more frequently if dealers need to report HMS on a more frequent basis.

*Comment 18:* The daily or weekly reporting frequency would be difficult given the time it takes for some dealers to receive product that is being transported from a fishing vessel or the time it takes to process product when a dealer is busy. In addition, some fish are sold to different dealers before the vessel is even offloaded, therefore,

dealers would not be able to report on a daily or weekly basis as the fishing trips are longer than required reporting frequency.

*Response:* The timeframe associated with dealer reporting requirements applies once a dealer first receives HMS product (*i.e.*, it does not apply while the fishing vessel is still at sea before the product is offloaded). As outlined in the response to Comment 12, NMFS will maintain weekly reporting for Atlantic swordfish, sharks, and BAYS tunas dealers as it satisfies the need for more timely landings data while maintaining consistency in reporting requirements for different dealer permits.

*Comment 19:* Dealers in the U.S. Virgin Islands may be able to comply with electronic dealer reporting; however, due to frequent power and internet outages, reporting more frequently (*i.e.*, daily or weekly) would be an issue. Additionally, most fishermen sell their HMS catch directly to the public. If these individuals obtained dealer permits in the future, as most of them currently do not have HMS dealer permits, they most likely would not have access to computers for electronic reporting. Therefore, NMFS should obtain landings information from the territorial trip tickets and not through separate dealer reports.

*Response:* All entities that purchase HMS from federally-permitted HMS vessels are currently required to obtain HMS dealer permits. Federally-permitted HMS dealers located in the Caribbean region are also currently required to submit paper reports to NMFS on a biweekly basis. Based on this final rule, federally-permitted HMS dealers will be required to report electronically via the HMS electronic dealer reporting system. As explained in the response to Comment 10, the Agency recognizes that there may be interruptions in electrical power or internet service that are out of the control of Federal HMS dealers, but will impact how dealers submit reports to NMFS through the new HMS electronic reporting system. Further, given the changes to the reporting timeframe from the proposed to the final rule (*i.e.*, from daily to weekly reporting), NMFS does not expect late reporting due to system disruptions to be as much of an issue. NMFS encourages dealers to contact the system administrator for the HMS electronic dealer reporting system when they experience any type of interruption for an extended period of time, and expects dealers to resume reporting as soon as possible once the disruption ends. Finally, NMFS is currently working on a rulemaking that may consider collecting landings information

associated with any new HMS fishing permits through territorial trip tickets.

#### First Receiver

*Comment 20:* If there are problems with dealers accurately reporting different shark species, then NMFS should find a direct solution for species-specific reporting of sharks and not unnecessarily burden non-shark HMS dealers. NMFS has not provided any discussion of widespread problems with Atlantic HMS reporting and the industry is not aware of misidentification problems in HMS swordfish or tunas dealer reports. First receivers may need to be the dealer for sharks, but species identification is not a problem that the industry recognizes for BAYS tunas or swordfish. First receivers of BAYS tunas and swordfish should not have to get a dealer permit.

*Response:* NMFS realizes that swordfish and tuna fisheries operate differently than shark fisheries, in part due to the difference in prices associated with swordfish and BAYS tunas, and in part due to difficulties in identifying sharks. Thus, because species identification and species-specific reporting tend to be issues related to HMS shark dealers, NMFS will keep the status quo with regard to which entity is required to have a dealer permit for Atlantic tunas and swordfish. That is, a person who takes possession for commercial purposes, of any BAYS tunas, swordfish, or shark or any parts of those species by purchasing, trading, or bartering for it from the fishing vessel or owner of a fishing vessel, once it is offloaded, will be required to obtain the corresponding Federal HMS dealer permit.

*Comment 21:* Since non-U.S. citizens cannot obtain U.S. permits, the proposed first receiver requirement would not work for product that is offloaded in Canada or other foreign countries by first receivers who are not U.S. citizens, and NMFS has no jurisdiction to require reporting by docks, shipping companies, and transporters that are not U.S. companies.

*Response:* Due, in part, to the complexity of dealer transactions, including fish being brought in from foreign ports, and the importance of having one consistent definition of first receiver across all species, NMFS is changing the definition of first receiver with regard to which entity is required to have a dealer permit for Atlantic tunas, swordfish, and sharks to make it more consistent with current industry practice and to simplify regulations. As such, a person who takes possession, for commercial purposes, of any BAYS

tunas, swordfish, or shark or any parts of those species by purchasing, trading, or bartering for it from the fishing vessel or owner of a fishing vessel, once it is offloaded, will be required to obtain the corresponding Federal HMS dealer permit.

*Comment 22:* Requiring the first receiver to obtain a dealer permit will result in duplicative reporting, especially in the Northeast, as the person who receives the product will be required to have a dealer permit and report to NMFS, and then the dealer who ultimately purchases that product from the fishing vessel will also be required to report his entire purchase through SAFIS. Identifying duplicate reports will be difficult as most HMS product is offloaded at a dock and goes to multiple fish houses/dealers.

*Response:* As explained above, NMFS will change the definition with regard to which entity is required to have a dealer permit in order to make it more consistent with current industry practice and to simplify the regulations. This should reduce the possibility for duplicative reporting and should not interrupt business practices as it will not change the universe of permitted dealers. In addition, dealers will be able to report HMS through existing SAFIS and Trip Tickets electronic systems, which will keep dealers from having to report in multiple systems.

*Comment 23:* In the Gulf of Mexico, many dealers are the first receivers, and fish are offloaded at a fish house that weighs, packs, pays the vessel, and reports the landings to NMFS. In addition, dealers usually own their own trucks, so the truck drivers would be covered by the dealers' permits. Pack houses who receive fish also have the dealer permits and report to NMFS. NMFS needs to simplify it so that the person who has product come across the dock needs to report it to NMFS. However, NMFS also heard that a first receiver should be able to purchase product from a fishing vessel without necessarily owning the dock facility where the product is landed as long as they possess the proper permits, and the first receiver should not need a dealer permit unless they purchase product from the fishing vessel.

*Response:* In the proposed rule, NMFS proposed to have first receivers, such as pack houses, be required to obtain HMS dealer permits and report to NMFS. However, based on public comment that indicated this would create a major disruption in business practices, given that current regulations appear to work for dealers in both the Gulf of Mexico and Atlantic regions, and the importance of having one

consistent definition of first receiver across all species, NMFS is changing the definition of first receiver with regard to which entity is required to have a dealer permit for Atlantic tunas, swordfish, and sharks to make it more consistent with current industry practice and to simplify the regulations. As such, a person who takes possession, for commercial purposes of any BAYS tunas, swordfish, or shark or any parts of those species by purchasing, trading, or bartering for it from the fishing vessel or owner of a fishing vessel, once it is offloaded, will be required to obtain the corresponding Federal HMS dealer permit.

*Comment 24:* NMFS received several comments regarding first receivers of HMS product having to obtain a dealer permit, including: NMFS should keep the current definition of dealer for swordfish and BAYS tunas (i.e., the entity that purchases the product from the vessel should be considered the dealer); the facilities where fish are unloaded and packed in vats for shipment do not know final weights or prices; when fish are packed by a dock for shipment, packing/saltwater ice is not removed from fish in order to keep fish cold, and tails are not cut to preserve freshness of the fish; dealers remove ice, cut tails, weigh the fish, determine prices, and then repack the fish in ice, which is a labor intensive and costly process; the dealers' weights are more accurate than the shipping weights and recording accurate weight information is important not only for economic reasons and domestic quota management, but also for reporting to ICCAT; and if a dealer pays a dockage fee to have fish cross a remote dock, the catch and vessel information is forwarded to the dealer via fax or the transporter so that the current dealers have vessel-specific information that can be reported to NMFS. NMFS also heard that entities purchasing product from fishing vessels are not going to share price information with transporters; therefore, NMFS will lose price information by requiring first receivers, such as transporters, to obtain dealer permits and report to NMFS.

*Response:* Based on public comment, NMFS understands that many entities responsible for packing and shipping fish do not have vessel or price information that is required on dealer reports. NMFS proposed that first receivers, including transporters, of non-BFT HMS product obtain an HMS dealer permit to ensure species-specific and vessel-specific information is received from dealers and reported to NMFS for quota monitoring. NMFS has learned that many of these facilities and

transporters that first receive Atlantic BAYS tunas and swordfish products do not have final fish weights or price information and lack the resources and incentive to function as proper HMS dealers. In addition, since requiring transporters to obtain an HMS dealer permit may disrupt business practices, result in vessels not being able to land in safe harbors/docks, or result in vessels being unable to unload at reliable dealers, NMFS will not require transporters to obtain HMS dealer permits at this time. If the current universe of dealers has access to the information required by NMFS for reporting, including vessel-specific information, NMFS agrees that requiring first receivers of Atlantic BAYS tunas and swordfish product to have dealer permits and report to NMFS would not be an efficient process. In addition, having accurate price information is critical for management and the analysis of economic impacts. Thus, NMFS will maintain the status quo with regard to which entity is required to have a dealer permit for Atlantic BAYS tunas and swordfish.

*Comment 25:* NMFS heard that in certain areas, such as in the Gulf of Mexico region, the trucks used to transport fish typically belong to the dealer who is purchasing the product; and individuals who transport fish should be an extension of the dealers' place of business to ensure that product is properly stored and handled.

*Response:* Requiring transportation companies to be owned by dealers is outside the scope of this rulemaking. The Food and Drug Administration (FDA) published regulations (December 18, 1995; 60 FR 65197) mandating the application of the Hazardous Analysis of Critical Control Point (HACCP) principles to ensure the safe and sanitary processing of seafood products. Dealers are responsible for ensuring product they purchase and sell is in compliance with FDA HACCP regulations.

*Comment 26:* NMFS received a comment asking if a dealer located in a region closed for a particular shark fishery could accept shark product from an area that is open for that fishery if the dealer does not have a facility in that open area.

*Response:* This final rule does not change the regulations at 50 CFR § 635.28(b)(4). Under those regulations, except for under certain conditions, sharks dealers located in a region closed to a specific species or complex are not able to accept that species or complex from an area that is open unless the dealer has a facility in the open area and can receive sharks at that facility.

*Comment 27:* NMFS should consider requiring fishermen to offload HMS product to designated ports/fish houses as is currently required in the reef fish Individual Fishing Quota (IFQ) Program in the Gulf of Mexico.

*Response:* NMFS may consider this requirement in future rulemakings, especially for any HMS fisheries that might be considering catch share programs in the future, such as the shark fishery.

*Comment 28:* Dealers in the U.S.V.I. and Puerto Rico are usually the first receivers.

*Response:* Given the current definition of an HMS "dealer" under § 635.4, this should not change any business practices of dealers in the U.S. Caribbean as this action will change the current definitions of a dealer to make it more consistent with current industry practice.

#### **Timely Dealer Reporting**

*Comment 29:* NMFS received several comments regarding the proposed regulations to encourage timely reporting, including: support for the proposed changes where dealers would not be able to accept HMS product unless they had submitted their reports on time; NMFS should not punish all dealers because of a small universe of dealers that are not reporting on time; and NMFS should have enforcement actions against dealers who are not reporting on time instead of implementing new regulations.

*Response:* There have been several issues of late reporting by Federal Atlantic HMS dealers, particularly for a number of the Atlantic shark dealers. Efforts by the Agency to follow up on dealer reports (i.e., phone calls; certified correspondence regarding late reporting; visits from local port agents and/or agents with the NOAA Office of Law Enforcement) drain scarce staff resources. In addition, late reporting negatively affects NMFS' ability to monitor the quota in a timely manner. NMFS feels the actions taken in this final rule, in regard to late reporting, strengthens the Agency's ability to take enforcement action when appropriate while not imposing any additional requirements on dealers. As such, in order to ensure timely reporting by all Atlantic HMS dealers, the Agency will require that a Federal Atlantic HMS dealer will only be authorized to purchase Atlantic swordfish, sharks, and BAYS tunas if the dealers have submitted all required reports to NMFS by the required reporting deadline. Any delinquent reports will need to be submitted and received by NMFS before a dealer could purchase commercially-

harvested Atlantic swordfish, sharks, and BAYS tunas from a fishing vessel. Failure to report Atlantic sharks, swordfish, and BAYS tunas to NMFS within the required reporting frequency will result in dealers being ineligible to purchase Atlantic sharks, swordfish, and BAYS tunas. Although submission of delinquent reports will allow a dealer to legally purchase commercially-harvested Atlantic swordfish, sharks, and BAYS tunas from a fishing vessel, late reporting will still be a violation of the regulations and could result in enforcement action.

*Comment 30:* Larger dealers may accept product even if a report has not been submitted on time due to different people submitting reports and accepting product. The scenario would not be intentional, but it could happen. NMFS should not deny a business the ability to accept fish strictly on the basis of late paperwork, and such a measure should be seen as a last resort. NMFS needs to be reasonable concerning penalties for inadvertent paperwork omissions. We have seen times when NMFS computers go down, sometimes over an entire weekend. NMFS should not apply penalties if they cannot receive information from dealers; therefore, NMFS should drop the idea of penalties for late reporting unless it becomes a persistent problem. NMFS should allow dealers to purchase product even if they are late in reporting, as it is important to revitalize HMS fisheries.

*Response:* As previously mentioned in the response to Comment 29, late reports from Federal HMS dealers effect timely quota monitoring and require staff resources to resolve. Under the new HMS electronic reporting system, all delinquent reports will need to be submitted and received by NMFS before a dealer could purchase commercially-harvested Atlantic swordfish, sharks, and BAYS tunas. A Federal Atlantic HMS dealer who is receiving, and/or purchasing HMS product without having submitted all required report to NMFS will be in violation and subject to enforcement action for failing to submit reports on time as well as accepting non-BFT HMS product during the time the dealer reports were delinquent. This may require additional coordination between persons who receive fish and person who report to NMFS to ensure all the necessary reports have been submitted to NMFS before new non-BFT HMS product is accepted. In the event of a reporting disruption due to a loss of power or internet service, as with any instance of regulatory non-compliance, the Agency would exercise its enforcement discretion in determining whether or

not to take enforcement action considering all the circumstances, for example, whether the outage or loss was verified, and whether the dealer submitted the report as soon as possible once the outage ended. Further, given the changes to the reporting timeframe from the proposed to the final rule (i.e., from daily to weekly reporting), NMFS does not expect late reporting due to system disruptions to be as much of an issue. NMFS encourages dealers to contact the system administrator for the HMS electronic dealer reporting system when they experience any type of interruption for an extended period of time.

*Comment 31:* NMFS should have a way to remind dealers of when their reports are due to NMFS. NMFS should provide adequate warning and opportunity to provide reports before having their livelihoods damaged just for the convenience of NMFS.

*Response:* The Agency expects federal HMS dealers to comply with all applicable regulations without prompting from the Agency. It is the dealer's responsibility to keep track of reporting deadlines. In the final rule, NMFS will require a weekly reporting deadline for Atlantic swordfish, sharks, and BAYS tunas dealers. NMFS expects that the consistent reporting frequency for all HMS dealer permits should make it easier to remember when HMS reports are due to NMFS. Additionally, the new HMS electronic reporting system will track the timing and submission of Federal Atlantic HMS dealer reports and automatically notify dealers and NMFS (the HMS Management Division and NOAA Office of Law Enforcement) via email if reports are delinquent. The new HMS electronic reporting system will also notify dealers of the current reporting deadlines.

*Comment 32:* NMFS needs to provide incentives to dealers so they comply with all of the dealer requirements (e.g., valid dealer permit, reporting deadline).

*Response:* The Agency limits the sale of HMS product harvested from federally permitted vessels to federally-permitted HMS dealers. This should provide some incentive for federally-permitted HMS dealers to comply with all applicable regulations. Federal HMS dealers are required to submit dealer data in a timely manner to NMFS. Such timely submission is critical for accurate quota monitoring and management of HMS. Failure to comply with timely submission will affect the dealer's ability to accept new HMS product and will also make them subject to enforcement action. In addition, failure to submit timely dealer reports can lead to overharvests of allocated quotas,

which can decrease quotas and shorten fishing seasons in subsequent fishing years, which can negatively affect both fishermen and dealers.

#### **IRFA Alternatives**

*Comment 33:* NMFS received a comment supporting the delayed implementation date of February 1, 2012. NMFS should give sufficient time for dealers to prepare for the new system's implementation and learn how to use it.

*Response:* NMFS agrees with this comment and will delay implementation of proposed electronic weekly reporting requirements for all federally-permitted HMS dealers for Atlantic swordfish, BAYS tunas, and shark dealers until January 2013.

#### **Economic Concerns**

*Comment 34:* NMFS has grossly underestimated the time it will take dealers to submit dealer reports and the cost associated with hiring additional personnel to be in compliance with the additional paperwork.

*Response:* Based on public comments, NMFS has reconsidered the proposed reporting frequencies for Atlantic HMS dealers to simplify reporting requirements and satisfy the need for timely landings data while avoiding an excessive reporting burden on dealers. NMFS recognizes that daily reporting requirements for sharks as proposed under alternative A3 in the proposed rule would not allow dealers sufficient time to gather accurate price information for sharks and could have resulted in a large reporting burden on dealers. At the same time, NMFS acknowledges that unlike some shark fisheries, Atlantic swordfish and BAYS tunas fisheries are currently not quota limited and may not require more frequent reporting than the current biweekly reporting. However, NMFS notes that other Federal dealer permits, such as all NERO-issued dealer permits, require weekly reporting. Many HMS dealers also possess these NERO-issued permits and, therefore, are already reporting on a weekly basis. Additionally, many fisheries managed by the SERO are moving to weekly reporting and many HMS dealers also possess permits for these fisheries. Therefore, NMFS believes that weekly reporting balances the need for more timely landings data and maintains consistency in reporting requirements for different dealer permits. In addition, NMFS is integrating the HMS electronic reporting requirements into existing electronic reporting programs in large part to ease the overall burden on dealers.

*Comment 35:* NMFS's average cost of internet service is incorrect and flawed. My monthly high-speed internet service is higher, around \$110 a month.

*Response:* Based on public comment, NMFS has revised the cost of internet service from \$50 per month used in the analyses for the proposed rule to \$110 per month. This \$110 estimate was the average cost for internet service presented in the IRFA, based on public comment, more accurately reflects the cost of having monthly internet service. Therefore, assuming dealers will need the most basic internet connection to support NMFS' electronic reporting system at a cost of \$110 per month for internet services, the average annual cost to dealers will be \$1,320 for internet services ( $\$110 \times 12 \text{ months} = \$1,320/\text{year}$ ).

#### **General**

*Comment 36:* NMFS should have a dedicated email for submitting comments instead of having comments submitted through the regulations.gov Web site. The Councils provide an email address for submission of comments.

*Response:* Current NMFS guidance requires all public comments on rulemakings to be submitted through <http://www.regulations.gov>. Regulations.gov is continually updating its Web page based on public feedback. Additionally, users can establish news feeds for any Federal agency that regularly publishes proposed and final rules.

*Comment 37:* The ASMFC and others commented that NMFS currently closes the Atlantic shark fisheries when landings in each fishery reach 80 percent of quota to avoid overages. NMFS should consider increasing this threshold with the implementation of electronic dealer reporting as the Agency will be receiving more timely data.

*Response:* NMFS will consider increasing the 80-percent threshold used to close the shark fisheries in the future based on timely receipt of state data and timely reporting by dealers.

*Comment 38:* Currently, the Gulf reef fish fishery requires fishing vessels to get a confirmation number for their catch before a vessel can offload. This ensures that the Agency can account for all landings under the IFQ system for Gulf reef fish. NMFS should consider a similar system for HMS so that product can be tracked and reported to NMFS.

*Response:* NMFS did not analyze the impact of requiring a confirmation code upon landing of HMS product in this rulemaking. However, NMFS may consider this requirement in a future rulemaking, as appropriate.

*Comment 39:* NMFS should require all state dealers to get Federal dealer permits in the Gulf of Mexico. It would make the collection of data more coordinated between state and Federal agencies.

*Response:* NMFS agrees that the coordination of data collection between state and Federal agencies would make data collection more efficient and timely. To that end, NMFS is appreciative of the efforts of ASMFC in implementing such a requirement in the Atlantic states under its jurisdiction. However, NMFS cannot require all states to implement such regulations. Rather, NMFS is working with state agencies in the Gulf of Mexico and Caribbean to streamline data collection, to the extent possible.

*Comment 40:* NMFS should ensure that dealers and brokers are not subjected to duplicative reporting and out of state dealer licensing requirement that presently occurs in South Carolina.

*Response:* As mentioned in the response to Comment 41, NMFS tries to streamline data collection, to the extent possible. However, NMFS does not have jurisdiction over what states can request for reporting under state law. While NMFS continues to coordinate with states to reduce duplicative reporting to the extent possible, because NMFS mandates reporting of HMS for federally-permitted dealers in all states from Maine through Texas and the Caribbean, there will be cases where NMFS requests data that is duplicative of some state requirements. NMFS feels that implementation of this electronic dealer system, because of the efforts to coordinate with states, ACCSP, SAFIS, and other electronic reporting systems, should remove some, but not all, of these duplicative requirements.

*Comment 41:* NMFS should consider electronic logbooks for commercial fishing, and NMFS should specify the collections methods being considered for recreational data.

*Response:* NMFS is currently working on electronic logbooks in some fisheries. For instance, in the Northeast region, fishermen can submit electronic vessel trip reports (VTRs). HMS fisheries may consider electronic logbooks in the future, and the Agency is continually working towards more timely data collection from both fishermen and dealers. In terms of recreational fishing data, NMFS collects recreational catch and effort information through the Marine Recreational Information Program (MRIP). MRIP is a new way NMFS is counting and reporting marine recreational catch and effort and replaces the Marine Recreational Fisheries Statistics Survey, or MRFSS,

which had been in place since the 1970s. More information on MRIP can be found at <http://www.countmyfish.noaa.gov/index.html>.

#### **Changes From the Proposed Rule (76 FR 37750, June 28, 2011)**

In addition to minor corrections throughout, NMFS has made several changes to the proposed rule. These changes are outlined below.

1. In § 635.2, the definitions of “first receiver” was removed and “first receive” was clarified and revised to mean “to take possession for commercial purpose of any fish or any part thereof by purchasing, trading or bartering for it from the fish vessel owner or operator or operator once it is offloaded from the vessel, where the owner or operator has been issued, or should have been issued, a valid permit under this part. First receive does not mean to take possession solely for transport.” In addition, the definition of “reporting week” was added to mean “the period of time beginning at 0001 local time on Sunday and ending at 2400 hours local time the following Saturday.”

2. Modifications made to § 635.4(g) under the proposed rule were removed in the final rule. Specifically, § 635.4(g)(1)(i), which stipulated different permitting requirements for Atlantic tunas dealers that received Atlantic bluefin, was removed. In addition, § 635.4(g)(1)(ii), which would have required first receivers of Atlantic BAYS tunas to obtain a dealer permits, was removed. Changes to sections § 635.4(g)(1)–(3), which stipulated different dealer permit requirements for BAYS tunas, sharks, and swordfish in the current regulations, respectively, were modified based on public comment. In addition, changes were made to maintain consistency with the “dealer” definition under § 600.10 and changes to the “first receive” definition under § 635.2 in this final rule.

3. In § 635.5(b)(1)(i)–(iii), NMFS made various modifications and clarifications based, in part, on public comment. Specifically, as described above, the reporting frequencies that apply to Atlantic swordfish, BAYS tunas, and shark dealers were modified based on public comment to satisfy the need for timely landings data while avoiding an excessive reporting burden on dealers. In addition, it was clarified that dealers must report through a NMFS-approved electronic reporting system no later than midnight, local time, of the first Tuesday following the end of the reporting week unless the dealer is otherwise notified by NMFS, and can make modifications to their dealer

reports not more than 30 days from when the report is submitted and received by NMFS.

4. NMFS made various changes throughout § 635.31(a) and (c). Most were minor changes to the language in order to be consistent with the language in other sections of the final rule. Regarding § 635.31(a)(1)(i), NMFS determined that the proposed change was not needed and decided to keep the existing regulatory text. Regarding § 635.31(c)(6), this regulatory text was not proposed in the proposed rule as it has been implemented in a recent final rule (August 29, 2011, 76 FR 53652), which was implemented after the publication of the proposed rule of this action (June 28, 2011, 76 FR 37550). In this final rule, NMFS replaces the word “purchase” with “first receive” to be consistent with the other changes made in this final rule. Regarding § 635.31(d)(1), the proposed rule stipulated that fishermen could only offload Atlantic swordfish to dealers as all entities that first received Atlantic swordfish (i.e., not just entities which bought fish from fishermen) would have needed a dealer permit under the proposed rule. As a result of public comments, NMFS is not making that a requirement in this final rule. As such, NMFS is maintaining the existing language in § 635.31(d)(1).

5. In § 635.71, NMFS simplified paragraph (a)(3). NMFS also decided that due, in part, to the changes made as a result of public comments, the changes proposed in paragraphs (a)(4), (a)(55), and (e)(1) were not needed at this time. Therefore, NMFS kept the existing language for paragraphs (a)(4) and (e)(1) and moved the proposed paragraph (a)(56) to paragraph (a)(55).

#### **Classification**

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

This final rule modifies a collection-of-information requirement associated with dealer reporting for Atlantic HMS dealers subject to the Paperwork Reduction Act (PRA) which has been approved by the Office of Management and Budget (OMB) under control number 0648–0040. The modifications were approved by OMB on July 31, 2012. The public reporting burden is associated with Atlantic HMS dealers having to report receipt of Atlantic swordfish, sharks, and BAYS tunas to NMFS electronically (15 minutes per positive report and 5 minutes per

negative report). NMFS will establish a weekly reporting frequency and may increase the reporting frequency via another regulatory action in the future for all HMS species if more frequent reporting is necessary to monitor the available quota. NMFS does not expect to do so in the near future for BAYS tunas, sharks, or swordfish.

Public reporting burden for Atlantic swordfish, sharks, and BAYS tunas will be one hour per month (15 minutes per report each week 7×4 weeks/month) or 12 hours per year. Based on the number of Atlantic swordfish, sharks, and tunas dealer permits (that deal with BAYS tunas) in 2011 (or 916 total permits), this will result in an estimated total annual burden of 10,992 hours.

Negative reports will require less of a reporting burden as negative reports are estimated to only take 5 minutes to complete and send to NMFS. Finally, all 916 permit holders affected by this final rule are considered respondents.

Send comments on this or any other aspects of the collection-of-information to NMFS (see **ADDRESSES**) and by email to *OIRA\_Submission@omb.eop.gov* or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

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

Ecological impacts, outside of those that have been previously analyzed for Atlantic shark dealer reporting requirements in Amendment 2 to the 2006 Consolidated HMS FMP and categorically excluded for Atlantic swordfish and BAYS tunas, are not expected as a result of this final rule. This action will not directly affect fishing effort, quotas, fishing gear, authorized species, interactions with threatened or endangered species, or other relevant parameters. This final rule is exempt from the requirement to prepare an Environmental Assessment in accordance with NAO 216-6 because it will not have significant, additional impacts on the human environment, or any environmental consequences that have not been previously analyzed or are categorically excluded in accordance with Sections 5.05b and Section 6.03.c.3(i) of NOAA's Administrative Order (NAO) 216-6. However, social and economic impacts are expected as a result of this final action.

A FRFA was prepared, as required by 5 U.S.C. Section 604 of the Regulatory

Flexibility Act (RFA). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the action. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Section 604(a)(1) of the Regulatory Flexibility Act requires that the Agency describe the need for, and objectives of, the final rule. The purpose of this final rule is, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to aid NMFS in monitoring and enforcing fisheries regulations, including those implemented at 50 CFR part 635. Specifically, this final action will change the current regulations and infrastructure of the Atlantic HMS quota-monitoring system by requiring all federally-permitted Atlantic HMS dealers to report receipt of Atlantic swordfish, sharks, and BAYS tunas to NMFS through an electronic dealer reporting system on a weekly basis and, delinquent reports to be submitted by dealers and received by NMFS before a dealer could purchase commercially-harvested Atlantic swordfish, sharks, and BAYS tunas. These actions are necessary to ensure timely and accurate reporting, which is critical for quota monitoring and management of these species.

Section 604(a)(2) requires a summary of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA) and a statement of any changes made in the proposed rule as a result of such comments. The Agency received comments concerning the Initial Regulatory Flexibility Analysis stating that the Agency's estimate of monthly internet service of \$50 per month was not appropriate (see comment 35 above). As a result, the estimate of monthly internet costs associated with this final action has increased to \$110 per month, based on public comment. Estimates of the economic impacts of compliance with the final regulations have been updated in the FRFA and final rule.

Comments were also received on the delayed implementation date discussed in the IRFA and proposed rule (see comment 33 above). The Agency proposed a delayed implementation date of 3 months, and the public was in support of such a delay. Therefore, NMFS plans to delay the implementation of the final action for this rule to provide dealers with approximately four to five months to learn about the electronic dealer

reporting system before its use is required.

Finally, comments also indicated that it would take dealers additional time to submit more frequent dealer reports and that there would be additional costs associated with hiring personnel to be in compliance with the proposed reporting frequencies (see comments 12, 16, and 34 above). Based on public comments, NMFS has reconsidered the proposed reporting frequencies for Atlantic HMS dealers to simplify reporting requirements and satisfy the need for timely landings data while avoiding an excessive reporting burden on dealers. NMFS recognizes that daily reporting requirements for sharks as preferred in the proposed rule would not allow dealers sufficient time to gather accurate price information for sharks and could have resulted in a large reporting burden on dealers. At the same time, NMFS acknowledges that unlike some shark fisheries, Atlantic swordfish and BAYS tunas fisheries are currently not quota limited and may not require more frequent reporting than the current biweekly reporting. However, NMFS notes that other Federal dealer permits currently require weekly reporting, including all Northeast Regional Office (NERO)-issued dealer permits. Many HMS dealers also possess NERO-issued permits and, therefore, are already reporting on a weekly basis. Additionally, many fisheries managed by SERO are moving to weekly dealer reporting and many HMS dealers also possess permits for these fisheries. Therefore, NMFS believes that weekly reporting balances the need for more timely landings data and maintains consistency in reporting requirements for different dealer permits. In addition, NMFS is integrating the HMS electronic reporting requirements into existing electronic reporting programs, in part to ease the overall burden on dealers. Thus, NMFS feels the final action satisfies the need for timely reporting and avoids being overly burdensome on dealers with regard to reporting.

Under Section 604(a)(3), Federal agencies must provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) standards for a "small" versus "large" business entity are entities that have average annual receipts less than \$4.0 million for fish-harvesting; average annual receipts less than \$6.5 million for charter/party boats; 100 or fewer employees for wholesale dealers; or 500 or fewer employees for seafood processors. Under these standards, NMFS considers all HMS permit holders subject to this rulemaking to be small entities. This

action would apply to all 916 Federal Atlantic HMS dealer permit holders (in 2011), of which 183 had Atlantic shark, 350 had Atlantic swordfish, and 383 had Atlantic tunas (bigeye, albacore, yellowfin, and skipjack) dealer permits.

Under Section 604(a)(4), Federal agencies must provide a description of the projected reporting, recordkeeping, and other compliance requirements of the rule. The final action requires Federal Atlantic HMS dealers to report receipt of Atlantic sharks, swordfish, and BAYS tunas to NMFS through an electronic reporting system on a weekly basis. Under the final rule, the HMS dealer permit will continue to require the same application and fees (i.e., \$50 to \$75) that are currently in place. The information collected through the electronic dealer system will include additional data fields, including vessel and location of catch information; however, many new fields will be auto-populated or selected from data fields in a drop down menu in the electronic system. In addition, failure to report Atlantic sharks, swordfish, and BAYS tunas to NMFS within the required reporting frequency will result in dealers being ineligible to first receive Atlantic sharks, swordfish, and BAYS tunas. This final rule will not conflict, duplicate, or overlap with other relevant Federal rules. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the MSA, the ATCA, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, and the Paperwork Reduction Act. NMFS does not believe that the new regulations proposed to be implemented will duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

Under section 604(a)(5), agencies are required to describe any alternatives to the rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below. Additionally, the RFA (5 U.S.C. 603(c)(1)–(4)) lists four general categories of “significant” alternatives that will assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

3. Use of performance rather than design standards; and

4. Exemptions from coverage of the rule for small entities.

In order to meet the objectives of this final rule, consistent with the MSA, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all of the participants in Atlantic HMS fisheries are considered small entities. All federally-permitted HMS dealers will submit weekly reports of all HMS received. Similarly, the application process for the dealer permit will be the same as the process that is required under the current regulations. The majority of the information required to report in the new reporting system will be the same as what is currently required. However, the final rule will require federally-permitted dealers to report information to NMFS weekly about Atlantic sharks, swordfish, and BAYS tunas received, in an electronic format rather than on paper.

NMFS considered and analyzed four alternatives to ensure more timely, efficient, and accurate dealer reporting and subsequent quota monitoring of Atlantic HMS. NMFS considered the following alternatives: Alternative A1—Status quo; Alternative A2—Establish new flexible reporting requirements for all federally-permitted HMS dealers effective 30 days after publication of the final rule; Alternative A3—Establish new flexible reporting requirements for all federally-permitted HMS dealers and delay implementation; and Alternative A4—Establish new weekly reporting requirements for all federally-permitted HMS dealers and delay implementation.

Alternative A1, the no action alternative, would maintain existing reporting requirements for federally-permitted HMS dealers. There is no monetary cost associated with the required reporting as NMFS provides pre-paid envelopes for dealers to mail in their reports to the SEFSC. However, HMS dealers must renew their open-access dealer permit each year, and the total cost associated with obtaining a dealer permit, on an annual basis, is between \$50 to \$75 per dealer, depending on their participation in each of the HMS fisheries. With 916 dealers in the HMS fishery (as specified in section 2.3), the total annual cost for maintaining the dealer permits under the current paper format is from \$45,800 (916 dealers \* \$50 for dealer permits) to \$68,700 (916 dealers \* \$75 for dealer permits).

Alternative A2, A3, and A4 would require all federally-permitted Atlantic HMS dealers to report receipt of Atlantic sharks, swordfish, and BAYS

tunas to NMFS through an electronic dealer reporting system. As such, all of these alternatives would have similar direct economic impacts to dealers in terms of purchasing a computer and/or internet service (if they have not already done so) to comply with the final electronic reporting measures under alternative A2, A3, and A4. According to the Small Business Administration, Office of Advocacy (2010) approximately 94 percent of businesses own computers. Therefore, NMFS estimates that 861 dealers ( $916 * 0.94$ ) already have a computer. Of businesses with computers, 95 percent or 817 dealers ( $861 \text{ dealers} * 0.95$ ) have Internet service. Using these estimates, approximately between 44 ( $861 - 817 = 44$  dealers with computers, but without Internet) to 55 ( $916 - 861 = 55$  without computer and Internet) dealers would have to purchase computer and/or Internet services under this alternative. The total amount of costs associated with dealers reporting through the new dealer electronic system is estimated to be \$58,080 (44 dealers \* \$1,320 for Internet service) for those dealers with a computer, but without Internet service and \$106,425 (55 dealers \* \$1,935 for computer and Internet service) for those dealers without a computer and Internet service. Therefore, the additional aggregate cost for electronic reporting under any of the alternatives is approximately \$164,505 ( $\$58,080 + \$106,425$ ) in the first year. The cumulative cost for electronic reporting and permitting would be approximately \$210,305 ( $\$164,505 + \$45,800$ ) to \$233,205 ( $\$164,505 + \$68,700$ ) in the first year, depending on the number of dealer permits obtained by each dealer.

Alternative A2 and A3 would have increased social and economic impacts based on reporting frequency and the requirement that all first receivers of Atlantic swordfish, sharks, and BAYS tunas, including transporters, obtain dealer permits. The increase in the reporting frequency could result in dealers having to hire additional personnel to comply with the increase number of dealer reports. The annual burden of reporting through the new system would depend on the species under alternative A2 and A3. For Atlantic swordfish and BAYS tunas, this would be an extra 0.5 hours per month (15 minutes per report each week \* 4 weeks; dealers are currently required to report to NMFS twice a month) or 12 hours per year. Based on the number of Atlantic swordfish and tunas dealer permits (that deal with BAYS tunas) in 2011 (or 733 total permits), this would

result in an estimated total annual burden of 8,796 hours. If these fisheries reached 80 percent of any codified quotas, then the reporting burden would increase from weekly to daily reporting for positive or negative reports for any of the associated fisheries, however, NMFS does not anticipate that this would occur at this time.

Atlantic sharks dealers would have to report more often while the non-sandbar LCS, blacknose sharks, and non-blacknose SCS fishing seasons were open. Atlantic shark dealers would spend approximately 7.5 hours/month reporting to NMFS (15 minutes per report each day  $\times$  30 days; currently dealers spend 0.5 hours reporting each month) while the non-sandbar LCS, blacknose sharks, and non-blacknose SCS fishing seasons were open, and approximately 1 hour per month (15 minutes per report each week  $\times$  4 weeks/month) when the fishing seasons for these fisheries were closed. In 2010, the non-sandbar LCS, blacknose, or non-blacknose SCS fisheries were open for 33 weeks. In 2011, however, the blacknose and non-blacknose SCS were open all year round or for 52 weeks. A similar range of season lengths in subsequent years would result in 57.75 to 91.00 hours of reporting by the federal shark dealer to NMFS while these fisheries were open. However, the non-sandbar LCS, blacknose, or non-blacknose SCS fisheries were closed for 20 weeks during 2010, which would result in 5 hours of reporting by the federal shark dealer to NMFS under similar fishing seasons. Based on the number of Atlantic shark dealer permits in 2011 (or 183 total permits), this would result in an estimated total annual burden of 11,483 hours.

In addition, during the comment period on the proposed rule, NMFS heard that requiring all first receivers of Atlantic swordfish, sharks, and BAYS tunas, including transporters, to obtain dealer permits would result in changes to dealer business practices. While the absolute number of entities that would be affected by this alternative was not quantified, the information provided through public comment indicated that there would be negative social and economic impacts by requiring all first receivers, including transporters, of Atlantic swordfish, sharks, and BAYS tunas product to obtain dealers permits.

Alternative A4, the final action, will simplify dealer reporting on dealers compared to the proposed alternative (*i.e.*, alternative A3), and will change the current definition of who is considered an Atlantic HMS dealer in order to simplify the regulations and maintain consistency with respect to who is

considered a first receiver across species. In addition, alternative A4 will only allow Atlantic HMS dealer to purchase commercially-harvested Atlantic swordfish, sharks, and BAYS tunas if the dealer has submitted timely reports to NMFS.

Under the final action, the cost associated with alternative A4 would be the additional reporting burden on dealers by requiring weekly reporting frequency for Atlantic swordfish, sharks, and BAYS tunas dealers. The amount of time it would take dealers to report through the electronic system is estimated to be the same amount of time HMS dealers currently take to report in a paper format (*i.e.*, 15 minutes per report); however, dealers would be reporting twice as frequently as they do under the current regulations (*i.e.*, they will be required to report weekly instead of twice a month). Thus, for Atlantic swordfish, sharks, and BAYS tunas, dealers would spend one hour per month (15 minutes per report each week  $\times$  4 weeks/month) or 12 hours per year reporting to NMFS. Based on the number of Atlantic swordfish, shark, and tuna dealer permits (that deal with BAYS tunas) in 2011 (or 916 total permits), this would result in an estimated total annual burden of 10,992 hours. Negative reports would require less of a reporting burden as negative reports are estimated to only take 5 minutes to complete and submit to NMFS. NMFS assumes that this reduction in the proposed reporting frequency should balance the need for timely data in quota limited fisheries while minimizing reporting burdens on HMS dealers.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of the final rule are available from the HMS Management Division, and the guide (*i.e.*, permit holder letter) will be sent to all HMS dealers. The guide and this final rule will be available upon request.

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

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

Reporting and recordkeeping requirements, Treaties.

Dated: August 3, 2012.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, Performing the Functions and Duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For 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 § 635.2, the definition for "First receiver" is removed and the definitions for "First receive" and "Reporting week" are added in alphabetical order to read as follows:

#### **§ 635.2 Definitions.**

\* \* \* \* \*

*First receive* means to take possession for commercial purposes of any fish or any part thereof by purchasing, trading or bartering for it from the fishing vessel owner or operator once it is offloaded, where the vessel has been issued, or should have been issued, a valid permit under this part. First receive does not mean to take possession solely for transport.

\* \* \* \* \*

*Reporting week* means the period of time beginning at 0001 local time on Sunday and ending at 2400 hours local time the following Saturday.

\* \* \* \* \*

■ 3. In § 635.4, paragraph (g)(1), (g)(2) and (g)(3) are revised to read as follows:

#### **§ 635.4 Permit and fees.**

\* \* \* \* \*

(g) \* \* \*

(1) *Atlantic tunas.* A dealer, as defined under § 600.10 of this chapter, must possess a valid federal Atlantic tunas dealer permit to purchase, trade, or barter any Atlantic tunas.

(2) *Shark.* A dealer, as defined in § 600.10 of this chapter, must possess a valid federal Atlantic shark dealer permit to purchase, trade, or barter any Atlantic shark listed in Table 1 of Appendix A of this part.

(3) *Swordfish.* A dealer, as defined under § 600.10 of this chapter, must possess a valid federal Atlantic swordfish dealer permit to purchase, trade, or barter any Atlantic swordfish.

\* \* \* \* \*

■ 4. In § 635.5, paragraph (b)(1)(iv) is removed and paragraphs (b)(1)(i)

through (iii) are revised to read as follows:

**§ 635.5 Recordkeeping and reporting.**

\* \* \* \* \*  
 (b) \* \* \*  
 (1) \* \* \*

(i) Dealers that have been issued or should have been issued a Federal Atlantic BAYS tunas, swordfish, and/or shark dealer permit under § 635.4 must submit to NMFS all reports required under this section within the timeframe specified under paragraph (b)(1)(ii) of this section. BAYS tunas, swordfish, and sharks commercially-harvested by a vessel can only be first received by dealers that have been issued or should have been issued an Atlantic tunas, swordfish, and/or shark dealer permit under § 635.4. All federal Atlantic HMS dealers must provide a detailed report of all fish first received to NMFS within the period specified under paragraph (b)(1)(ii) of this section. All reports must be species-specific and must include the required information about all, swordfish, and sharks received by the dealer, including the required vessel information, regardless of where the fish were harvested or whether the harvesting vessel is permitted under § 635.4. For sharks, each report must specify the total weight of the carcass(es) without the fins for each species, and the total fin weight by grade for all sharks combined. Dealers are also required to submit “negative” reports, indicating no receipt of any species, within the timeframe specified under paragraph (b)(1)(ii) of this section if they did not first receive any fish during the reporting period. As stated in § 635.4(a)(6), failure to comply with these recordkeeping and reporting requirements may result in existing dealer permit(s) being revoked, suspended, or modified, and in the denial of any permit applications.

(ii) Reports of any Atlantic BAYS tunas, sharks, and/or swordfish first received by dealers from a vessel must be submitted electronically on a weekly basis through a NMFS-approved electronic reporting system by the dealer and received by NMFS no later than midnight, local time, of the first Tuesday following the end of the reporting week unless the dealer is otherwise notified by NMFS. Reports of BAYS tunas, sharks, and/or swordfish may be modified for not more than 30 days from when the dealer report is submitted to NMFS. NMFS will require BAYS tunas, swordfish, and shark dealers to submit dealer reports to NMFS on a weekly basis. Atlantic BAYS tunas, sharks, and swordfish dealers must submit electronic negative reports

stating that no BAYS tunas, sharks, and/or swordfish were first received when they received no fish of these species, and no parts thereof, during the reporting period. Reporting requirements for bluefin tuna are specified in paragraph (b)(2) of this section. The negative reporting requirement does not apply for bluefin tuna.

(iii) Atlantic HMS dealers are not authorized to first receive Atlantic swordfish, sharks, and/or BAYS tunas if the required reports have not been submitted and received by NMFS according to reporting requirements under this section. Delinquent reports automatically result in an Atlantic HMS dealer becoming ineligible to first receive Atlantic swordfish, sharks, and/or BAYS tunas. Atlantic HMS dealers who become ineligible to first receive Atlantic swordfish, sharks, and/or BAYS tunas due to delinquent reports are authorized to first receive Atlantic swordfish, sharks, and/or BAYS tunas only once all required and delinquent reports have been completed, submitted by the dealer, and received by NMFS.

\* \* \* \* \*

■ 5. In § 635.8, paragraphs (b)(4) through (6), and paragraph (c)(4) are revised to read as follows:

**§ 635.8 Workshops.**

\* \* \* \* \*  
 (b) \* \* \*

(4) Only dealers issued a valid shark dealer permit 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. 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 received; 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 must possess a valid Atlantic shark identification workshop certificate.

(5) An 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 dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy at each place of business listed on the dealer permit which first receives Atlantic sharks. 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 Atlantic shark identification workshop certificate issued to a place of business covered by the dealer permit. A copy of a valid Atlantic shark identification workshop certificate must be included in the dealer’s application package to obtain or renew an Atlantic shark dealer permit. If multiple businesses are authorized to first receive Atlantic sharks under the Atlantic shark dealer’s permit, a copy of the Atlantic shark identification workshop certificate for each place of business listed on the Atlantic shark dealer permit which first receives Atlantic sharks must be included in the Atlantic shark dealer permit renewal application package.

(6) Persons holding an expired Atlantic shark dealer permit and persons who intend to apply for a new Atlantic shark dealer permit will be issued a participant certificate in their name upon successful completion of the Atlantic shark identification workshop. A participant certificate issued to such persons may be used only to apply for an Atlantic shark dealer permit. Pursuant to § 635.8(c)(4), an Atlantic shark dealer may not first receive Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. After an Atlantic shark dealer permit is issued to a person using an Atlantic shark identification workshop participant certificate, such person may obtain an Atlantic shark identification workshop dealer certificate for each location which first receives Atlantic sharks by contacting NMFS at an address designated by NMFS.

\* \* \* \* \*

(c) \* \* \*

(4) An Atlantic shark dealer may not first receive Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. A valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy must be maintained on the premises of each place of business listed on the dealer permit which first receives Atlantic sharks. An Atlantic shark dealer may not renew a Federal dealer permit issued pursuant to § 635.4(g)(2) unless a

copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy has been submitted with the permit renewal application. If the dealer is not certified and opts to send a proxy or proxies to a workshop, the dealer must submit a copy of a valid proxy certificate for each place of business listed on the dealer permit which first receives Atlantic sharks.

\* \* \* \* \*

■ 6. In § 635.27, paragraph (b)(1)(iv)(C) is revised to read as follows:

**§ 635.27 Quotas.**

\* \* \* \* \*

- (b) \* \* \*  
(1) \* \* \*  
(iv) \* \* \*

(C) Except for non-sandbar LCS landed by vessels issued a valid shark research permit with a NMFS-approved observer onboard, any non-sandbar LCS reported as harvested in the Florida Keys areas or in the Gulf of Mexico will be counted against the non-sandbar LCS Gulf of Mexico regional quota. Except for non-sandbar LCS landed by vessels issued a valid shark research permit with a NMFS-approved observer onboard, any non-sandbar LCS reported as harvested in the Atlantic region will be counted against the non-sandbar LCS Atlantic regional quota. Non-sandbar LCS landed by a vessel issued a valid shark research permit with a NMFS-approved observer onboard will be counted against the non-sandbar LCS research fishery quota using scientific observer reports.

\* \* \* \* \*

■ 7. In § 635.28, paragraph (b)(4) is revised to read as follows:

**§ 635.28 Closures.**

\* \* \* \* \*

- (b) \* \* \*

(4) When the fishery for a shark species group and/or region is closed, a fishing vessel, issued a Federal Atlantic commercial shark permit pursuant to § 635.4, may not possess or sell a shark of that species group and/or region, except under the conditions specified in § 635.22(a) and (c) or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is on board. During the closure period, an Atlantic shark dealer, issued a permit pursuant to § 635.4, may not first receive a shark of that species group and/or region from a vessel issued a Federal Atlantic commercial shark permit, except that a permitted Atlantic shark dealer or processor may possess sharks that were harvested, offloaded, and sold, traded, or bartered, prior to

the effective date of the closure and were held in storage. Under a closure for a shark species group, an Atlantic shark dealer, issued a permit pursuant to § 635.4 may, in accordance with State regulations, purchase, trade for, barter for, or receive a shark of that species group if the sharks were harvested, offloaded, and sold, traded, or bartered from a vessel that fishes only in State waters and that has not been issued a federal Atlantic commercial shark permit, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4. Additionally, under a closure for a shark species group and/or regional closure, an Atlantic shark dealer, issued a permit pursuant to § 635.4, may first receive a shark of that species group if the sharks were harvested, offloaded, and sold, traded, or bartered from a vessel issued a valid shark research permit (per § 635.32) that had a NMFS-approved observer on board during the trip sharks were collected.

\* \* \* \* \*

■ 8. In § 635.31, paragraphs (a)(2)(i) and (a)(2)(ii) are added and paragraphs (c)(2), (c)(4), (c)(5), (c)(6), (d)(1), and (d)(2) are revised to read as follows:

**§ 635.31 Restrictions on sale and purchase.**

- (a) \* \* \*  
(2) \* \* \*

(i) Dealers may purchase Atlantic bluefin tuna only from a vessel that has a valid Federal commercial permit for Atlantic tunas issued under this part in the appropriate category.

(ii) Dealers may first receive BAYS tunas only if they have submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii) and only from a vessel that has a valid Federal commercial permit for Atlantic tunas issued under this part in the appropriate category.

\* \* \* \* \*

- (c) \* \* \*

(2) Persons that own or operate a vessel for which a valid Federal Atlantic commercial shark permit has been issued and on which a shark from the management unit is possessed, may sell, barter or trade such shark only to a dealer that has a valid permit for shark issued under this part.

\* \* \* \* \*

(4) Only dealers that have a valid a Federal Atlantic shark dealer permit and who have submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii) may first receive a shark from an owner or operator of a vessel that has, or is required to have, a valid federal Atlantic commercial shark

permit issued under this part, except that Atlantic shark dealers may purchase, trade for, barter for, or receive a shark from an owner or operator of a vessel that does not have a federal Atlantic commercial shark permit if that vessel fishes exclusively in state waters. Atlantic shark dealers may first receive a sandbar shark only from an owner or operator of a vessel who has a valid shark research permit and who had a NMFS-approved observer on board the vessel for the trip in which the sandbar shark was collected. Atlantic shark dealers may first receive a shark from an owner or operator of a fishing vessel that has a permit issued under this part only when the fishery for that species group and/or region has not been closed, as specified in § 635.28(b).

(5) An Atlantic shark dealer issued a permit under this part may first receive shark fins from an owner or operator of a fishing vessel only if the shark fins were harvested in accordance with the regulations found at part 600, subpart N, of this chapter and in § 635.30(c).

(6) A dealer issued a permit under this part may not first receive oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks from an owner or operator of a fishing vessel with pelagic longline gear on board, or from the owner of a fishing vessel issued both a HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

(d) \* \* \*

(1) Persons that own or operate a vessel on which a swordfish in or from the Atlantic Ocean is possessed may sell or trade such swordfish only if the vessel has a valid commercial permit for swordfish issued under this part. Persons may offload such swordfish only to a dealer who has a valid permit for swordfish issued under this part.

(2) Atlantic swordfish dealers may first receive a swordfish harvested from the Atlantic Ocean only from an owner or operator of a fishing vessel that has a valid commercial permit for swordfish issued under this part and only if the dealer has submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii).

■ 9. In § 635.71, paragraph (a)(55) is added and paragraphs (a)(3), (d)(11), (d)(14), and (d)(16) are revised to read as follows:

**§ 635.71 Prohibitions.**

(a) \* \* \*

(3) Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, Atlantic

bluefin tuna landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer Atlantic bluefin tuna without the appropriate valid Federal Atlantic tunas dealer permit issued under § 635.4. Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, other than solely for transport, any BAYS tunas, swordfish, or sharks landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer, for commercial purposes, other than solely for transport, any BAYS tunas, swordfish, or sharks without the appropriate valid dealer permit issued under § 635.4 or submission of reports by dealers to NMFS according to reporting requirements specified in § 635.5. This prohibition does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

\* \* \* \* \*

(55) Fail to electronically submit an Atlantic HMS dealer report through the HMS electronic dealer reporting system to report BAYS tunas, swordfish, and sharks to NMFS in accordance with § 635.5, if issued, or required to be issued, a Federal Atlantic HMS dealer permit pursuant to § 635.4.

\* \* \* \* \*

(d) \* \* \*

(11) First receive or attempt to first receive Atlantic sharks without a valid Federal Atlantic shark dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy or fail to be certified for completion of a NMFS Atlantic shark identification workshop in violation of § 635.8.

\* \* \* \* \*

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

\* \* \* \* \*

(16) First receive or attempt to first receive a shark or sharks or part of a shark or sharks landed in excess of the retention limits specified in § 635.24(a).

\* \* \* \* \*

[FR Doc. 2012-19457 Filed 8-7-12; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 120312182-2239-02]

RIN 0648-XA882

**Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement the annual catch limit (ACL), harvest guideline (HG), and associated annual reference points for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2012, through December 31, 2012. These specifications were determined according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The 2012 maximum HG for Pacific sardine is 109,409 metric tons (mt). The initial overall commercial fishing HG, that is to be allocated across the three allocation periods for sardine management, is 97,409 mt. This amount has been divided across the three seasonal allocation periods for the directed fishery the following way: January 1–June 30—33,093 mt; July 1–September 14—37,964 mt; and September 15–December 31—23,352 mt with an incidental set-aside of 1,000 mt for each of the three periods. This rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

**DATES:** Effective August 8, 2012 through December 31, 2012.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** During the Pacific Fishery Management Council's (Council) annual public meetings, the NMFS Southwest Fisheries Science Center presents the estimated biomass for Pacific sardine to the Council's CPS Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel), the Council's Scientific and Statistical Committee (SSC) and the Council. After the biomass and the status of the fisheries are reviewed and discussed, the SSC and other advisory bodies then provide the calculated overfishing limit (OFL), available biological catch (ABC), ACL and ACT

(and/or HG) recommendations. Following review by the Council and after considering public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS.

After review of the Council's recommendations from the November 2011 Council meeting, NMFS implements in this rule the 2012 ACL, HG and other annual catch reference points, including an OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass for Pacific sardine in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific sardine fishery based on the annual specification framework in the FMP. This framework includes a harvest control rule that determines the maximum HG, the primary management target for the fishery, for the current fishing season. This level is reduced from the Maximum Sustainable Yield/OFL level for economic and ecological considerations. The HG is based, in large part, on the current estimate of stock biomass for the northern subpopulation of Pacific sardine. The harvest control rule in the CPS FMP is  $HG = [(Biomass - Cutoff) * Fraction * Distribution]$  with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific sardine age one and above for the 2012 management season is 988,385 mt.

2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.

3. *Distribution.* The portion of the northern subpopulation of the Pacific sardine biomass estimated in the EEZ off the Pacific coast is 87 percent. This parameter is used to prorate the biomass used to calculate the target harvest level to account for the transboundary nature of the resource.

4. *Fraction.* The harvest fraction is the percentage of the biomass above 150,000 mt that may be harvested.

At the November 2011 Council meeting, the Council adopted the 2012 assessment of the Pacific sardine resource and a Pacific sardine biomass estimate of 988,385 mt. Based on recommendations from its SSC and other advisory bodies, the Council recommended, and NMFS is implementing, an overfishing limit of 154,781 mt, an acceptable biological catch (ABC) of 141,289 mt, an annual catch limit of 141,289 mt (equal to the ABC) and a maximum harvest guideline (HG) (HGs under the CPS FMP are