

granting, denying, withholding, and terminating access of contractor employees to HUD systems. The GTR will notify the contractor immediately when HUD has determined that an employee is unsuitable or unfit to be permitted access to a HUD system. The contractor shall immediately notify such employee that he/she no longer has access to any HUD system, physically retrieve the employee's PIV Card from the employee, and provide a suitable replacement employee in accordance with the requirements of this clause.

(g) *Incident response notification.* An incident is defined as an event, either accidental or deliberate, that results in unauthorized access, loss, disclosure, modification, or destruction of information technology systems, applications, or data. The contractor shall immediately notify the GTR and the Contracting Officer of any known or suspected incident, or any unauthorized disclosure of the information contained in the system(s) to which the contractor has access.

(h) *Nondisclosure of information.* (1) Neither the contractor nor any of its employees shall divulge or release data or information developed or obtained during performance of this contract, except to authorized government personnel with an established need to know, or upon written approval of the Contracting Officer. Information contained in all source documents and other media provided by HUD is the sole property of HUD.

(2) The contractor shall require that all employees who may have access to the system(s)/application(s) identified in paragraph (b) sign a pledge of nondisclosure of information. The employees shall sign these pledges before they are permitted to perform work under this contract. The contractor shall maintain the signed pledges for a period of 3 years after final payment under this contract. The contractor shall provide a copy of these pledges to the GTR.

(i) *Security procedures.* (1) The Contractor shall comply with applicable federal and HUD statutes, regulations, policies, and procedures governing the security of the system(s) to which the contractor's employees have access including, but not limited to:

(i) The Federal Information Security Management Act (FISMA) of 2002;

(ii) OMB Circular A-130, *Management of Federal Information Resources*, Appendix III, Security of Federal Automated Information Resources;

(iii) HUD Handbook 2400.25, *Information Technology Security Policy*;

(iv) HUD Handbook 732.3, *Personnel Security/Suitability*;

(v) Federal Information Processing Standards 201 (FIPS 201), Sections 2.1 and 2.2;

(vi) Homeland Security Presidential Directive 12 (HSPD-12); and

(vii) OMB Memorandum M-05-24, *Implementing Guidance for HSPD-12*.

The HUD Handbooks are available online at: <http://www.hud.gov/offices/adm/hudclips/> or from the GTR.

(2) The contractor shall develop and maintain a compliance matrix that lists each

requirement set forth in paragraphs, (b), (c), (d), (e), (f), (g), (h), (i)(1), and (m) of this clause with specific actions taken, and/or procedures implemented, to satisfy each requirement. The contractor shall identify an accountable person for each requirement, the date upon which actions/procedures were initiated/completed, and certify that information contained in this compliance matrix is correct. The contractor shall ensure that information in this compliance matrix is complete, accurate, and up-to-date at all times for the duration of this contract. Upon request, the contractor shall provide copies of the current matrix to HUD.

(3) The Contractor shall ensure that its employees, in performance of the contract, receive annual training (or once if the contract is for less than one year) in HUD information technology security policies, procedures, computer ethics, and best practices in accordance with HUD Handbook 2400.25.

(j) *Access to contractor's systems.* The Contractor shall afford HUD, including the Office of Inspector General, access to the Contractor's facilities, installations, operations, documentation (including the compliance matrix required under paragraph (i)(2)), databases, and personnel used in performance of the contract. Access shall be provided to the extent required to carry out, but not limited to, any information security program activities, investigation, and audit to safeguard against threats and hazards to the integrity, availability, and confidentiality of HUD data and systems, or to the function of information systems operated on behalf of HUD, and to preserve evidence of computer crime.

(k) *Contractor compliance with this clause.* Failure on the part of the contractor to comply with the terms of this clause may result in termination of this contract for default.

(l) *Physical access to Federal Government facilities.* The contractor and any subcontractor(s) shall also comply with the requirements of HUDAR clause 2452.237 75 when the contractor's or subcontractor's employees will perform any work under this contract on site in a HUD or other Federal Government facility.

(m) *Subcontracts.* The contractor shall incorporate this clause in all subcontracts where the requirements specified in paragraph (b) of this section are applicable to performance of the subcontract.

(End of clause)

Dated: February 10, 2012.

**Jemine A. Bryon,**  
Chief Procurement Officer.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 600 and 635

[Docket No. 080603729-8750-01]

RIN 0648-AW83

#### Highly Migratory Species; 2006 Consolidated Highly Migratory Species Fishery Management Plan; Amendment 4

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

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

**SUMMARY:** This fishery management plan (FMP) amendment addresses Atlantic highly migratory species (HMS) fishery management measures in the U.S. Caribbean Region. There are substantial differences between some segments of the HMS fisheries in the Caribbean Region and the HMS fisheries that occur off the mainland of the United States, including: Limited fishing permit and dealer permit possession; smaller vessels; limited availability of processing and cold storage facilities; shorter trips; limited profit margins; and high local consumption of catches. These differences can sometimes create an awkward fit between current Federal HMS fishery regulations applicable to the whole Atlantic HMS fishery and the traditional operation of Caribbean fisheries, which has led to fewer Caribbean Region fishermen and vessels obtaining required permits and reporting data needed for effective fisheries management. NMFS is proposing management measures that would amend the HMS fishery management regulations for the U.S. Caribbean Region to better correspond with the traditional operation of the fishing fleet in the region and to provide NMFS with an improved capability to monitor and sustainably manage those fisheries. With this amendment, NMFS proposes to create an HMS Caribbean Small Boat Commercial Permit (CSBP) allowing fishing for and sales of bigeye, albacore, yellowfin, and skipjack (BAYS) tunas, Atlantic swordfish, and Atlantic sharks within local Caribbean markets. The proposed CSBP management measures include specific authorized species and retention limits, modification of reporting requirements, authorization of specific gears, vessel size restrictions, and consideration of mandatory workshop training.

Additionally, NMFS proposes to stipulate that the CSBP could not be held in combination with any other HMS permit.

This proposed rule modifies regulatory text that is also proposed to be amended by the HMS Electronic Dealer Reporting System (E-dealer) rulemaking (RIN 0648-BA75). The proposed language included in the HMS E-dealer rulemaking is being utilized in the proposed rule for this action.

**DATES:** Written comments will be accepted until June 14, 2012. NMFS will announce the dates and locations of public hearings in a future **Federal Register** notice.

**ADDRESSES:** NMFS will announce the dates and locations of public hearings in a future **Federal Register** notice.

You may submit comments on this document, identified by NOAA-NMFS-2012-0053, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov). To submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter NOAA-NMFS-2012-0053 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.

- *Mail:* Submit written comments to Margo Schulze-Haugen, 1315 East-West Highway, Silver Spring, MD 20910.

- *Fax:* 301-713-1917; *Attn:* Margo Schulze-Haugen.

*Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Greg Fairclough or Randy Blankinship at 727-824-5399.

**SUPPLEMENTARY INFORMATION:** Atlantic tunas and swordfish are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tuna Conventions Act (ATCA), which authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement recommendations of ICCAT. Federal Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the 2006 Consolidated HMS FMP, which details the management measures for Atlantic HMS fisheries, including the HMS handgear fishery.

### Background

A brief summary of the background of this proposed action is provided below. A more complete summary of Atlantic HMS management can be found in the 2006 Consolidated HMS FMP, in the annual HMS SAFE Reports, and online at <http://www.nmfs.noaa.gov/sfa/hms/>.

In 2007, NMFS initiated a potential amendment to the 2006 Consolidated HMS FMP (Amendment 4) to develop and implement management measures for HMS in the Caribbean Region. Pre-scoping for the amendment commenced in the winter of 2007/2008. National Environmental Policy Act (NEPA) scoping was initiated by publishing a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) in the **Federal Register** on May 27, 2008 (73 FR 30381). The NOI indicated that the EIS would address issues regarding authorized fishing gear and fishing vessel and dealer permitting in the Caribbean Region, as well as examine management alternatives to improve vessel and dealer reporting, data collection, and Agency outreach. On July 14, 2008, NMFS announced the availability in the **Federal Register** (73 FR 40301) of an "issues and options" paper describing measures that could be

included in a potential amendment. In the same announcement, NMFS provided details for scoping meetings and requested comments on the issues and options document. The comment period was open until October 31, 2008. NMFS presented the issues and options paper to the Caribbean, Gulf of Mexico, South Atlantic, Mid-Atlantic, and New England Fishery Management Councils. Additionally, NMFS presented the issues and options presentation and a summary of the comments received during scoping to the HMS Advisory Panel (AP) at its September 2008 meeting. A summary of the scoping comments was released on January 15, 2009. A predraft of the proposed amendment, including specific management alternatives, was made available to the public on August 21, 2009. On July 13, 2011 (76 FR 41216), NMFS published a NOI to prepare an Environmental Assessment (EA) for Amendment 4. After considering potential environmental effects of the measure and substantive comments received through formal scoping and other means, NMFS preliminarily determined that an EA would provide an appropriate level of NEPA review for Amendment 4 and that preparing an EIS is not necessary. NMFS anticipates that this proposed action will have a low level of potential adverse environmental impacts due to the limited geographic area of the small-scale Caribbean HMS fishery, small size of the vessels involved, the relatively low number of known participants, and the use of traditional handgears. Additionally, any potential impacts to protected species are expected to be minimal.

Currently, no HMS limited access fishing permits (LAPs) and only a small number of HMS open access fishing permits and dealer permits are held in the U.S. Caribbean Region. This is likely due to numerous factors, including the high costs typically associated with obtaining HMS LAPs and owning/operating a commercial vessel, relatively low catch volume and revenue, the low number of HMS LAPs that were initially issued to residents of the U.S. Caribbean, language barriers, and a general lack of awareness of HMS fishing regulations, among other factors. The low number of LAPs initially issued to fishermen in the U.S. Caribbean Region may have also been due to local fishermen not meeting previous qualification requirements or because they failed to apply for LAPs during the issuance process. The small number of HMS dealer permits in the region may be a result of limited processing and cold storage facilities, and the

customary sales and distribution system for seafood in the U.S. Caribbean Region, among other reasons. The low number of HMS fishing and dealer permits has resulted in limited catch and landings data from the U.S. HMS fisheries in the U.S. Caribbean Region, even though there are small-scale commercial fishermen targeting HMS, particularly yellowfin tuna. The lack of catch and landings data complicates fishery management efforts in the region. In some cases, traditionally utilized fishing gears and economically necessary practices, such as targeting both pelagic and reef fish species with multiple gear types during a single trip, may diverge from existing regulations and fishing norms in U.S. mainland fisheries.

NMFS has benefited from receiving various recommendations to improve management of the HMS permitting program and HMS fisheries in the U.S. Caribbean Region from the HMS AP, Caribbean Fishery Management Council (CFMC), territorial governments, local fishermen, and Non-Governmental Organizations (NGOs). Some suggested improvements to management of HMS fisheries in the U.S. Caribbean Region received to date include: creating a new commercial Caribbean HMS permit; combining Caribbean vessel and dealer permits (thereby allowing small-scale vessels to retail/wholesale catch); authorizing specific gears; limiting small-scale vessel size; and providing additional training and outreach for compliance with regulations, species identification, and proper reporting.

Based on discussions with the HMS AP, CFMC, and the territorial governments, NMFS believes that the depletion of continental shelf fishery resources may be increasing local interest in exploiting HMS resources in some areas. As local fishermen become more dependent on offshore fishery resources and increase fishing effort on HMS, there is an increased need for NMFS to consider ways of including small-scale Caribbean fishing vessels into the HMS permitting and reporting regime in order to collect better catch and effort data and provide for sustainably managed fisheries.

This amendment is needed to implement management measures specific to the unique characteristics of the U.S. Caribbean Region. The purpose of this amendment is to enact HMS management measures that better correspond with the traditional operation of the fishing fleet in the U.S. Caribbean Region and to provide NMFS with an improved capability to monitor and sustainably manage those fisheries.

The specific objectives for this action are to:

- Increase participation in the HMS Federal fishery management program in the U.S. Caribbean Region;
- Expand regional HMS permit availability and increase permitting program awareness, participation, and compliance in the U.S. Caribbean region;
- Improve regional HMS catch and fishing effort data;
- Examine and implement regionally tailored HMS management strategies, as appropriate;
- Provide targeted training and outreach to HMS fishery participants; and
- Improve NMFS' capability to monitor and sustainably manage U.S. Caribbean HMS fisheries.

With this amendment, NMFS proposes to create a U.S. Caribbean-Region-specific permit allowing fishing for and sales of BAYS tunas, swordfish, and sharks in that region; collect HMS landings data through NMFS' cooperation with existing territorial government programs; authorize the use of rod and reel, handline, harpoon, bandit gear, green-stick gear, and buoy gear; restrict the size of vessels eligible to be issued a CSBP to those 45 feet or less in length overall (LOA); limit the Caribbean permit to be valid only for fishing and sales in the U.S. Caribbean Region; and stipulate that the Caribbean permit may not be held in combination with any other HMS vessel permit.

NMFS considered four alternatives ranging from maintaining the status quo to creating a new permit valid only in the Caribbean Region (as defined at 50 CFR 622.2), which could allow fishing for and sales of BAYS tunas, swordfish, and sharks (excluding sandbar) under specific limitations. NMFS assessed the impacts of the alternatives, which are composed of seven key topics: permitting/workshop certification; authorized species; retention limit ranges; reporting; authorized gears; vessel size restrictions; and regions. Instead of analyzing a range of alternatives under each individual topic, NMFS analyzed four alternatives that are composed of various suites of measures under the seven key topics.

Alternative 1 would, among other things, maintain the current Atlantic HMS vessel and dealer permits structure, current upgrading restrictions, current authorized species and gear structure, current retention limits, and current observer and reporting requirements. Alternative 2 would create a new permit allowing fishing for and sales of BAYS tunas and swordfish under specific limitations. Alternative 3

would create a new permit allowing fishing for and sales of BAYS tunas, swordfish, and sharks, under specific limitations. Alternative 3 differs from Alternative 2 in that it could also allow for the retention of sharks. Alternative 4 would create a new permit allowing fishing for and sales of BAYS tunas, swordfish, and sharks, under specific limitations. Alternative 4 differs from Alternative 3 in that it could allow for higher retention limits of BAYS tunas, SWO, and Atlantic sharks, and would not limit vessel size.

The preferred alternative (Alternative 3) would create an open access commercial vessel permit, the Caribbean Small Boat Commercial Permit (CSBP), which would authorize fishing for and sales of BAYS tunas, swordfish, and sharks in the U.S. Caribbean Region. CSBP holders would not be required to sell catches only to HMS permitted dealers and could retail their HMS catch, provided that specified reporting requirements are met. CSBP holders would be required to physically possess their permit, or a copy of their permit, at any point of HMS sale. The CSBP would not be valid for fishing for or sales of HMS outside of the U.S. Caribbean Region; nor could it be held on a vessel in combination with any other HMS vessel permit. The CSBP would be a commercial-only permit and, as such, would not allow the retention of billfish. Vessels issued a CSBP would be authorized to possess rod and reel, handline, harpoon, bandit gear, green-stick gear, and buoy gear. Under this alternative, rod and reel, handline, harpoon, bandit gear, green-stick gear, and buoy gear would be authorized for the harvest of BAYS tunas. Rod and reel, handline, harpoon, bandit gear, and buoy gear would be authorized for the harvest of SWO, and rod and reel, handline, and bandit gear would be authorized for the harvest of Atlantic sharks.

Under the preferred alternative, retention limits could be set between 0 and 24 BAYS per vessel per trip, 0 to 6 swordfish per vessel per trip, and 0 to 3 non-sandbar LCS per vessel per trip, and 0 to 16 SCS and pelagic sharks (combined) per vessel per trip. For both BAYS and swordfish, the current size limits and landing restrictions at §§ 635.20 and 635.30 would apply. For sharks, there would be no size limits, as there is no current Federal commercial shark size limit; however, current landing restrictions at § 635.30, such as "fins attached" requirements, would apply.

Although under the preferred alternative, NMFS intends to set the shark trip limits at 0, NMFS proposes to

require applicants for a CSBP to complete a NMFS Atlantic Shark Identification Workshop and submit a copy of a valid workshop certificate with their permit application package if shark trip limits are set above 0 in future rulemaking. Additionally, NMFS is considering requiring CSBP holders to possess a valid NMFS Atlantic Shark Identification Workshop certificate (or a copy) at any point of shark sale. NMFS would conduct rulemaking to implement these requirements through the framework procedures at § 635.34(b) at the time that the shark trip limits are adjusted.

Landings data for vessels issued CSBPs would be collected through cooperation between NMFS and territorial government fisheries data collection programs, as specified by those programs. The individual territorial governments would be responsible for supplying these data to the NMFS Southeast Fisheries Science Center (SEFSC) and meeting requirements determined to be appropriate by NMFS.

Under the preferred alternative, NMFS requests specific comment on an initial retention limit of 10 BAYS tunas, 2 swordfish, and 0 sharks per vessel per trip. These limits were identified due to comments received during NEPA scoping and public comment on the Amendment 4 Pre-Draft. The trip limits fall within the ranges discussed above, and could be adjusted in the future through the framework procedures codified at § 635.34(b).

NMFS is proposing Alternative 3 because it accomplishes the objectives and best addresses public input. Additionally, this alternative provides an increased capability for fisheries data collection and flexibility to modify trip limits for BAYS, swordfish, and sharks as appropriate and necessary.

#### Request for Comments

Comments on this proposed rule may be submitted via <http://www.regulations.gov>, mail, or fax. Comments may also be submitted at a public hearing (see Public Hearings and Special Accommodations below). NMFS solicits comments on this proposed rule by June 14, 2012 (see **DATES** and **ADDRESSES**).

NMFS will announce the dates and locations of public hearings in a future **Federal Register** notice.

#### Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other

provisions of the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

NMFS prepared an environmental assessment (EA) for this rule that discusses the impact on the environment that would result from this rule. In this proposed action, NMFS is considering options to increase the participation of small-scale Caribbean fishing vessels within the HMS permitting and reporting regime in order to better collect catch and effort data and provide for sustainably managed fisheries. A copy of the EA is available from NMFS (see **ADDRESSES**).

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

#### Purpose and Objectives of the Action

NMFS proposes this rule consistent with the requirements of the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to enact HMS management measures that better correspond with the traditional operation of the fishing fleet in the U.S. Caribbean Region and to provide NMFS with improved capability to monitor and sustainably manage those fisheries.

Consistent with the 2006 Consolidated HMS FMP, the Magnuson-Stevens Act, and other relevant federal laws, this rule is intended to increase participation in the HMS Federal fishery management program in the U.S. Caribbean Region; expand regional HMS permit availability and increase permitting program awareness, participation, and compliance in the U.S. Caribbean Region; improve regional HMS catch and fishing effort data; examine and implement regionally tailored HMS management strategies, as appropriate; provide targeted training and outreach to HMS fishery participants; and improve NMFS' capability to monitor and sustainably manage U.S. Caribbean HMS fisheries.

#### Number of Small Entities Affected

If implemented, this rule would affect owners of vessels fishing for and selling HMS in the U.S. Caribbean Region. Under the Regulatory Flexibility Act, 5 U.S.C. 603(b)(3), NMFS must estimate the number of small entities to which the rule would apply. The Small Business Administration, which implements the RFA, defines a small fishing entity as one that has average annual receipts less than \$4.0 million; charter/headboats are small entities if they have average annual receipts of less than \$6.5 million. Additionally, wholesale fish dealers with 100 or fewer employees are considered small entities, as are seafood processors with 500 or fewer employees.

This proposed rule would apply to small-scale HMS handgear vessels that fish in the Caribbean Region. The current Caribbean HMS handgear fishery is comprised of fishermen who are currently required to hold an Atlantic General category or a HMS Charter/Headboat category permit and the related industries including processors, bait houses, and equipment suppliers. There may also be a few unknown entrants to the Caribbean small-scale HMS fishery; however, this number is expected to be low due to the isolated area, small vessels in the region, limited fishing area, and limited profit margins. In 2010, there were 92 vessels permitted in the Atlantic tunas General category in Puerto Rico and 10 in the USVI; also, there were 23 vessels permitted in the Charter/Headboat category in Puerto Rico and 21 in the USVI. NMFS anticipates that the universe of fishermen who might purchase and fish under a CSBP would likely be approximately 100 individuals in the U.S. Caribbean Region, with some potential shift of fishermen currently permitted in the HMS Angling and Charter/Headboat categories. All of these vessels are considered "small entities" under the RFA for the purposes of this analysis.

This proposed rule does not contain any new reporting requirements, but would require fishermen to apply for a CSBP in a manner similar to the way NMFS currently requires permit holders to apply for open access HMS permits. Fishermen, dealers, and managers in these fisheries must comply with a number laws, including, but not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the

Coastal Zone Management Act. However, NMFS does not believe that the proposed regulations would duplicate, overlap, or conflict with any relevant regulations, federal or otherwise.

#### Alternatives

NMFS considered three alternatives to this proposed rule. All of the entities affected by this rule are small entities, so the rule would not impose disparate impacts on small and large entities. Therefore, the analysis of alternatives to reduce the impact on small entities under section 603(c) of the RFA are inapplicable. This proposed action would modify existing requirements that may affect small entities and would simplify reporting requirements and better account for the business practices of Caribbean fishermen. Specifically, this rule would allow Caribbean small-scale fishermen with the CSBP to directly sell their catches of authorized HMS without possessing a dealer permit, provided that the fishermen report the harvest and sale of these animals to their respective territorial governments, which will report these data to the NMFS SEFSC. Small entities may not be exempted from the proposed reporting requirements if the objectives of this proposed rule are to be met, consistent with legal obligations.

NMFS considered and analyzed three alternatives to the preferred alternative (this proposed rule). These alternatives ranged from the no-action alternative, or maintaining the status quo, to creating a CSBP permit valid only in the Caribbean Region which could allow fishing for and sales of BAYS tunas, swordfish, and Atlantic sharks (excluding sandbar) under specific limitations. NMFS assessed the impacts of the alternatives, which are composed of seven key topics: permitting/workshop certification; authorized species; retention limit ranges; reporting; authorized gears; vessel size restrictions; and, regions. Instead of analyzing a range of alternatives under individual topics, the IRFA analyzes four alternatives that are composed of various suites of measures under the seven key topics.

Alternative 1 would, among other things, maintain current Atlantic HMS vessel and dealer permits structure, current upgrading restrictions, current authorized species and gear structure, current retention limits, and, current observer and reporting requirements. Alternative 2 would create a CSBP allowing fishing for and sales of BAYS tunas and Atlantic swordfish under specific limitations. Alternative 3 would create a CSBP allowing fishing for and

sales of BAYS tunas, Atlantic swordfish, and Atlantic sharks, under specific limitations. Alternative 3 differs from Alternative 2 in that it could also allow for the retention of Atlantic sharks. Alternative 4 would create a CSBP allowing fishing for and sales of BAYS tunas, Atlantic swordfish, and Atlantic sharks, under specific limitations. Alternative 4 differs from Alternative 3 in that it could allow for higher retention limits of BAYS tunas, Atlantic swordfish, Atlantic sharks, and would not limit vessel size. Under alternatives 2–4, modifications to the initial proposed retention limits could be made using the adjustment procedures codified at § 635.34(b).

Under Alternative 1, NMFS does not anticipate any substantive change in economic impacts as the small-scale fishermen in the Caribbean Region are already operating under the current regulations. However, this alternative may be contributing to a loss of potential income by small-scale fishermen in the Caribbean Region, because these fishermen are limited in their ability to gain access to commercial limited access swordfish and shark fisheries due to the relatively high costs of obtaining permits considering the low volume of their catch and resulting profit. Additionally, the relative absence of a dealer structure in the U.S. Caribbean Region effectively restricts where fishermen may legally sell their catches, so they often sell to non-dealers or become individual dealers themselves.

Alternative 2 would allow small-scale fishermen in the Caribbean Region to fish for, retain, and sell BAYS tunas and swordfish. Retention limits for BAYS tunas could be set between 0 and 24 fish per trip. The upper end of this range is equal to the current maximum recreational retention limit of yellowfin tuna (YFT) for an HMS charter vessel with 6 paying passengers and 2 crew members onboard. NMFS considered setting the initial limit at 10 BAYS tunas per trip. The Caribbean small-scale commercial tunas fishery is small, the vessels are limited in range and hold capacity, and are currently allowed to harvest unlimited numbers of BAYS tunas if they possess an Atlantic tunas General category permit. Alternative 2 would also allow permit holders to retain and sell 0 to 6 swordfish per vessel per trip. This upper limit is equal to the current maximum swordfish retention limit for the open access HMS Charter/Headboat permit with 6 paying passengers onboard. NMFS considered setting the initial retention limit at 2 swordfish per trip. In summary, NMFS would have framework adjustment

authority under § 635.34(b) to modify BAYS tunas and swordfish limits in the future within the ranges identified above. Under Alternative 2, NMFS considered establishing an initial proposed limit of 10 BAYS tunas per trip, and an initial proposed retention limit of 2 swordfish per trip. Alternative 2 would limit the length of vessels eligible for the CSBP to 45 feet or less.

NMFS anticipates Alternative 2 would result in positive economic impacts for affected fishermen. Alternative 2 would allow small-scale Caribbean fishermen (vessels limited to 45 feet LOA or less) to use specific handgear (including buoy gear) and greenstick gear to fish for and retain BAYS tunas, and specific handgear to fish for and retain swordfish. Allowing small-scale fishermen in the U.S. Caribbean Region to use their traditional free-floating “yo-yo” handlines (buoy gear) to target BAYS tunas has been requested for many years. Establishing a trip limit range of 0 to 24 BAYS tunas with an initial proposed limit of 10 BAYS tunas per trip is expected to produce positive economic impacts because 10 BAYS is reported to be a very successful trip for the small-scale fishermen (Lynn Rios, pers. comm.). According to NMFS’ “Fisheries of the United States, 2010,” YFT sells for approximately \$1.75 per pound in Puerto Rico (this price likely includes lesser quality longline landings); however, according to information provided by the USVI DPNR, YFT and “tunas” harvested in the handline fishery may sell for up to \$7.00 per pound depending on quality and local demand (NMFS, 2011c).

Using ICCAT conversions for YFT, a fish meeting the current U.S. minimum size (27 inches Curved Fork Length (CFL)) weighs approximately 14 lb. Therefore, if each fisherman conducted two BAYS tunas trips per month (24 trips/yr.), and landed 10 YFT on each trip (240 YFT/yr.), then the annual revenue per vessel associated with this activity would range from \$5,880.00 (240 YFT × 14 lb × \$1.75/lb) – \$23,520.00 (240 YFT × 14 lb × \$7.00/lb). These estimates are based upon the initial retention limit of 10 BAYS tunas that NMFS considered under Alternative 2. Because NMFS would have authority to adjust the BAYS tunas retention limits from 0 to 24 fish under Alternative 2, the annual ex-vessel revenue estimates could vary from \$0.00 (under a 0 fish limit) to as much as \$14,112 (576 YFT × 14 lb × \$1.75/lb) – \$56,448 (576 YFT × 14 lb × \$7.00/lb) under a 24 fish retention limit if the BAYS retention limit were to change. Also, it is important to reemphasize that

a 10-fish trip is considered very successful and the likelihood that it would occur on multiple trips over an entire year is unknown. The small-scale commercial HMS fishery in the region consists primarily of small vessels that are limited by hold capacity, crew size, trip length, fishing gears, and market infrastructure. Improvements in data collection anticipated through this action will enable NMFS to better characterize the fishery and adjust management measures in the future.

The ability to legally land and sell swordfish from federal waters under Alternative 2 could increase the profitability of the local handgear fishery. Swordfish is currently selling for approximately \$4.00 to \$6.00 per pound in the Caribbean Region (Lynn Rios, pers. comm.). Analyzing a trip limit range of 0 to 6 for swordfish per trip, and setting an initial proposed retention limit of 2 swordfish per trip would likely result in positive economic impacts for those fishermen able to target and store 1 or 2 swordfish on their vessels.

Using ICCAT conversions for swordfish, a fish meeting the current U.S. minimum size (47 inches Lower Jaw Fork Length (LJFL)) weighs approximately 44 lb. Therefore, if each fisherman conducted two swordfish trips per month (24 trips/yr.), and landed 2 swordfish on each trip (24 swordfish/yr.), then the annual revenue per vessel associated with this activity would range from \$4224.00 (24 swordfish  $\times$  44 lb  $\times$  \$4.00/lb) – \$6,336.00 (24 swordfish  $\times$  44 lb  $\times$  \$6.00/lb). These estimates are based upon the initial proposed retention limit of 2 swordfish that NMFS considered under Alternative 2. Because NMFS would have authority to adjust the swordfish retention limit under this alternative from 0 to 6 fish using the framework procedures codified at 50 CFR 635.34(b), the annual ex-vessel revenue estimates could vary from \$0.00 (under a 0 fish limit) to as much as \$25,344 (144 swordfish  $\times$  44 lb  $\times$  \$4.00/lb) – \$38,016 (144 swordfish  $\times$  44 lb  $\times$  \$6.00/lb) under a 6-fish limit if the swordfish limit were to change. Also, a 2-fish trip is considered very successful and the likelihood that it would occur on multiple trips over an entire year is unknown. The small-scale commercial HMS fishery in the region consists primarily of small vessels that are limited by hold capacity, crew size, trip length, fishing gears, and market infrastructure. Improvements in data collection anticipated through this action will enable NMFS to better characterize the fishery and adjust management measures in the future.

Alternative 2 does not contain any new reporting requirements, but would require fishermen to apply for a CSBP in a manner similar to the way HMS permit holders apply for their current HMS permits, if they currently hold one. The relative absence of a dealer structure in the U.S. Caribbean Region restricts where fishermen may legally sell their catches, so they often sell catches to non-dealers or become individual dealers themselves. This alternative would simplify reporting requirements and better account for the business practices of small-scale Caribbean fishermen by allowing Caribbean fishermen with the CSBP to directly sell their catches of authorized HMS without possessing a dealer permit, provided that the fishermen report the harvest and sale of these animals to their respective territorial governments, which will report these data to the NMFS Southeast Fisheries Science Center (SEFSC).

Alternative 3, the preferred alternative proposed here, would allow Caribbean small-scale fishermen to retain and sell from 0 and 24 BAYS tunas and from 0–6 swordfish, which are the same ranges as discussed in Alternative 2. These retention limits could be adjusted using the framework procedures at § 635.34(b). Under Alternative 3, NMFS considered establishing an initial proposed limit of 10 BAYS tunas per trip, and an initial proposed retention limit of 2 swordfish per trip which are the same as Alternative 2. This suite could also allow for Caribbean small-scale fishermen to affordably participate in the commercial fishery for sharks. Under this alternative, shark retention limits could be set between 0 to 3 non-sandbar LCS and 0 to 16 SCS and pelagic sharks combined using the framework adjustment procedures at § 635.34(b). To be conservative, NMFS considered setting the initial shark trip limit at 0, with the ability to modify the limits using the framework adjustment procedures at § 635.34(b). Alternative 3 would limit the length of vessels eligible for the CSBP to 45 feet LOA or less.

With regard to BAYS tunas and swordfish, the initial proposed retention limits in Alternative 3 (10 BAYS & 2 swordfish) would have the same positive economic impacts as Alternative 2 discussed above (BAYS: \$5,880.00–\$23,520.00; swordfish: \$4224.00–\$6,336.00). Similarly, because NMFS would have authority to adjust the BAYS tunas retention limits from 0 to 24 fish under Alternative 3, the annual ex-vessel revenue estimates could vary from \$0.00 (under a 0 fish limit) to as much as \$14,112 (576 YFT  $\times$  14 lb  $\times$  \$1.75/lb) – \$56,448 (576 YFT

$\times$  14 lb  $\times$  \$7.00/lb) under a 24 fish retention limit if the BAYS limit were to change. Also, because NMFS would have authority to adjust the swordfish retention limit under this alternative from 0 to 6 fish using the framework procedures codified at § 635.34(b), the annual ex-vessel revenue estimates could vary from \$0.00 (under a 0 fish limit) to as much as \$25,344 (144 swordfish  $\times$  44 lb  $\times$  \$4.00/lb) – \$38,016 (144 swordfish  $\times$  44 lb  $\times$  \$6.00/lb) under a 6-fish limit if the swordfish limit were to change.

The potential ability for small-scale Caribbean fishermen to participate in the federal commercial shark fishery under this alternative by analyzing a retention limit range of 0 to 3 non-sandbar LCS and 0 to 16 SCS and pelagic sharks combined would produce larger potential positive economic impacts than Alternatives 1 and 2. According to NMFS' "Fisheries of the United States, 2010," "shark" sells for approximately \$1.57 per pound in Puerto Rico (this price likely includes lesser quality longline landings); however according to information provided by the USVI Department of Planning and Natural Resources (DPNR), "shark" harvested in the handline fishery may sell for up to \$4.00 per pound depending on quality and demand (NMFS, 2011c).

NMFS considered setting the initial proposed shark retention limit at 0 under Alternative 3; this would produce \$0.00 in ex-vessel revenues. There is a potential for future revenue increases under this alternative because NMFS would have the ability to modify the limits once the shark complexes have recovered and the Agency has more data on regional participants, catches, and discards in the CSBP fishery. The range of shark limits in Alternative 3 have the potential to provide increased revenues for fishermen who catch sharks and who have or can create a market for them in the U.S. Caribbean Region.

Using information from the Northeast Fisheries Science Center (Kohler *et al.*, 1996), the average weight of a Caribbean non-sandbar LCS (i.e., tiger, blacktip, lemon, nurse, great hammerhead) fish is approximately 95 lb (ww), and the average weight of a Caribbean pelagic shark (i.e., common thresher, oceanic whitetip, blue) is approximately 150 lb (whole weight (ww)). For Caribbean SCS, a weight of 10 lb (ww) is assumed. Therefore, if each fisherman conducted two shark trips per month (24 trips/yr.), and landed 3 non-sandbar LCS and 16 SCS on each trip (72 LCS/yr. & 384 SCS), then the annual revenue per vessel associated with this activity would range from \$16,768.00 (72 LCS  $\times$

95 lb × \$1.57/lb + 384 SCS × 10 lb × \$1.57/lb) – \$42,720.00 (72 LCS × 95 lb × \$4.00/lb + 384 SCS × 10 lb × \$4.00/lb). These estimates are based upon the upper catch limit of 3 non-sandbar LCS and 16 SCS or pelagic sharks (combined) that NMFS could consider under Alternative 3. These estimates of annual revenues would be higher if more pelagic sharks were landed, due to their larger average size. The likelihood that the limits would be reached on multiple trips over an entire year is unknown. The small-scale HMS fishery in the region consists primarily of small vessels that are limited by hold capacity, crew size, trip length, fishing gears, and market infrastructure. Improvements in data collection anticipated through this action will enable NMFS to better characterize the fishery and adjust management measures in the future.

Alternative 3 does not contain any new reporting requirements, but would require fishermen to apply for a CSBP in a manner similar to the way NMFS currently requires permit holders to apply for open access HMS permits. The relative absence of a dealer structure in the U.S. Caribbean Region restricts where fishermen may legally sell their catches, and thus they sell them to non-permitted dealers or become individual dealers themselves. This alternative would simplify reporting requirements and better account for the business practices of Caribbean fishermen by allowing small-scale fishermen with the CSBP to directly sell their catches of authorized HMS without possessing a dealer permit, provided that the fishermen report the harvest and sale of these animals to their respective territorial governments, which will report these data to the SEFSC.

Alternative 4 would establish a range that could allow Caribbean small-scale fishermen to retain and sell from between 0 to an unlimited number of BAYS tunas, with an initial proposed retention limit of 24 BAYS tunas per trip. This could potentially increase the number of BAYS tunas harvested in the region. Alternative 4 would also establish a range that could allow permit holders to retain and sell from 0 to an unlimited number of swordfish per vessel per trip, with an initial proposed retention limit of 6 swordfish per trip. This alternative could potentially increase the number of swordfish harvested in the region. With regard to sharks, Alternative 4 could allow Caribbean small-scale fishermen to participate in the federal commercial fishery for sharks. Shark retention limits could be set between 0 to 33 non-sandbar LCS, and from 0 to no limit for

SCS and pelagic sharks combined. In summary, NMFS would have the ability to modify BAYS tunas, swordfish, and shark trip limits within the identified ranges using the framework adjustment procedures at § 635.34(b).

Under Alternative 4, NMFS considered setting an initial proposed limit of 24 BAYS tunas per trip; an initial proposed retention limit of 6 swordfish per trip; and initial retention limits of 1 non-sandbar LCS and 2 SCS or pelagic sharks combined, with the ability to modify these retention limits using the framework adjustment procedures codified at § 635.34(b). Alternative 4 would not limit the size of vessel allowed to be issued a CSBP. During NEPA scoping and through public comment on the Predraft, NMFS received comment from fishermen concerned about over capitalization leading to depressed market prices. Alternatives 2 and 3 would limit vessel size to 45 feet LOA or less.

Alternative 4 could potentially have the largest positive economic impacts when compared with Alternatives 1, 2, and 3 discussed above; however, it could also result in local overcapitalization in the fishery, lead to depressed market prices, and other potential adverse economic impacts. It could increase the number of BAYS tunas harvested in the region, and the range would mirror the trip limits currently authorized for the open access Atlantic tunas General category permit. As discussed under Alternative 2, a trip where 10 BAYS tunas are harvested in the Caribbean small-scale HMS fishery is considered a very successful day, this alternative could increase the number of BAYS allowed to be harvested to an unlimited amount. This increased retention limit may result in additional positive economic impacts; however, it is not known if the Caribbean small-scale commercial fleet has the ability to hold and market this amount of tunas.

Using ICCAT conversions for YFT, a fish meeting the current U.S. minimum size (27 inches CFL) weighs approximately 14 lb. Therefore, if each fisherman conducted two BAYS tunas trips per month (24 trips/yr.), and landed 24 YFT on each trip (576 YFT/yr.), then the annual revenue per vessel associated with this activity would range from \$14,112.00 (576 YFT × 14 lb × \$1.75/lb) – \$56,448.00 (576 YFT × 14 lb × \$7.00/lb). These estimates are based upon the initial proposed retention limit of 24 BAYS tunas that NMFS considered under Alternative 4. Because NMFS would have the ability to adjust the BAYS tunas retention limit from 0 to an unlimited amount under Alternative 4, the annual ex-vessel

revenue estimates would vary from either \$0.00 to an unlimited amount if the BAYS retention limit were to change from the initial proposed limit of 24 BAYS/trip. Also, it is important to reemphasize that a 10-fish trip is considered very successful, and the likelihood that a 24 fish trip would occur on multiple trips over an entire year is unknown. The small-scale HMS fishery in the region consists primarily of small vessels that are limited by hold capacity, crew size, trip length, fishing gears, and market infrastructure. Improvements in data collection anticipated through this action will enable NMFS to better characterize the fishery and adjust management measures in the future.

The unlimited upper end of the range being considered for swordfish in Alternative 4 would be equal to the current limited access swordfish directed permit retention limit. NMFS has received anecdotal information that swordfish are being harvested by handgear fishermen in the Caribbean Region. Alternative 4 would provide small-scale fishermen in the Caribbean Region with access to the federal commercial swordfish fishery and the ability to legally market their catches. Currently, entrance to the federal limited access commercial swordfish fishery has been difficult for small-scale fishermen as permits are cost prohibitive. However, as stated above, the vessels participating in the Caribbean small-scale commercial fishery are small, limited in range, and limited in hold capacity. It is not known if these small vessels can hold and safely transport an unlimited amount of swordfish to port.

Using ICCAT conversions for swordfish, a fish meeting the current U.S. minimum size (47 inches LJFL) weighs approximately 44 lb. Therefore, if each fisherman conducted two swordfish trips per month (24 trips/yr.), and landed 6 swordfish on each trip (144 swordfish/yr.), then the annual revenue per vessel associated with this activity would range from \$25,344.00 (144 swordfish × 44 lb × \$4.00/lb) – \$38,016.00 (144 swordfish × 44 lb × \$6.00/lb). These estimates are based upon the initial retention limit of 6 swordfish that NMFS considered under Alternative 4. Because NMFS would have framework authority to adjust the swordfish retention limit from 0 to an unlimited amount under Alternative 4, the annual ex-vessel revenue estimates would vary from \$0.00 to an unlimited amount if the swordfish limit were to change from 6 per trip. Also, a 2-fish trip is considered very successful within the region and the likelihood that a 6-

fish trip would occur on multiple trips over an entire year is unknown. The small-scale HMS fishery in the region consists primarily of small vessels that are limited by hold capacity, crew size, trip length, fishing gears, and market infrastructure. Improvements in data collection anticipated through this action will enable NMFS to better characterize the fishery and adjust management measures in the future.

The shark retention limits in the range for Alternative 4 have the potential to provide increased revenues for fishermen who catch sharks and who have or can create a market for them in the U.S. Caribbean Region.

Using information from the Northeast Fisheries Science Center (Kohler et al., 1996), the average weight of a Caribbean non-sandbar LCS (i.e., tiger, blacktip, lemon, nurse, great hammerhead) fish is approximately 95 lb (whole weight (ww)), and the average weight of a Caribbean pelagic shark (i.e., common thresher, oceanic whitetip, blue) is approximately 150 lb (ww). For Caribbean SCS, a weight of 10 lb (ww) is assumed. Therefore, if each fisherman conducted two shark trips per month (24 trips/yr.), and landed 1 non-sandbar LCS and 2 SCS on each trip (24 LCS/yr. & 48 SCS), then the annual revenue per vessel associated with this activity would range from \$4,296.00 (24 LCS x 95 lb x \$1.57/lb + 48 SCS x 10 lb x \$1.57/lb) - \$11,040.00 (24 LCS x 95 lb x \$4.00/lb + 48 SCS x 10 lb x \$4.00/lb). These estimates are based upon the initial retention limit of 1 non-sandbar LCS and 2 SCS or pelagic sharks (combined) that NMFS considered in Alternative 4. These estimates of annual revenues would be higher if more pelagic sharks were landed due to their larger average size. Because NMFS would have framework authority to adjust the retention limits from 0 to 33 non-sandbar LCS and from 0 to an

unlimited amount of SCS or pelagic sharks (combined) under Alternative 4, the annual ex-vessel revenue estimates would vary from \$0.00 to an unlimited amount if the retention limits were to change. The likelihood that the retention limits would be reached on multiple trips over an entire year is unknown. The small-scale HMS fishery in the region consists primarily of small vessels that are limited by hold capacity, crew size, trip length, fishing gears, and market infrastructure. Improvements in data collection anticipated through this action will enable NMFS to better characterize the fishery and adjust management measures in the future.

Alternative 4 would not limit the size of vessel allowed to be issued a CSBP. During NEPA scoping and through public comment on the Predraft, the Agency received comments from fishermen concerned about over capitalization leading to depressed market prices. Alternatives 2 and 3 limit vessel size to 45 feet or less. Alternative 4 does not identify a vessel size limit and could result in local overcapitalization in the fishery, lead to depressed market prices, and other potential adverse economic impacts.

Alternative 4 does not contain any new reporting requirements, but would require fishermen to apply for a CSBP in a manner similar to the way HMS permit holders apply for their current HMS permits, if they currently hold one. The relative absence of a dealer structure in the U.S. Caribbean Region restricts where fishermen may legally sell their catches, so they often sell to non-dealers or become individual dealers themselves. This alternative would simplify reporting requirements and better account for the business practices of Caribbean fishermen by allowing small-scale fishermen with the CSBP to directly sell their catches of

authorized HMS without possessing a dealer permit, provided that the fishermen report the harvest and sale of these animals to their respective territorial governments, which will report these data to the SEFSC.

**List of Subjects**

*50 CFR Part 600*

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

*50 CFR Part 635*

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: March 13, 2012.

**Alan D. Risenhoover,**

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

For the reasons set out in the preamble, 50 CFR parts 600 and 635 as amended at 76 FR 37750, June 28, 2011, are proposed to be amended as follows:

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

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

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

2. In § 600.725, paragraph (v), under the heading “IX. Secretary of Commerce,” entry 1, add N to read as follows:

**§ 600.725 General prohibitions.**

\* \* \* \* \*

(v) \* \* \*

Fishery	Authorized gear types
*	*

**IX. Secretary of Commerce**

1. Atlantic Highly Migratory Species Fisheries (FMP):.

*	*	*	*	*	*	*
N. Caribbean Small Boat Commercial Fishery .....	N. Rod and reel, handline, harpoon, bandit gear, green-stick gear, buoy gear.					

\* \* \* \* \*

**PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

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

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

4. In § 635.4,

a. Revise paragraphs (a)(5), (a)(10), (d)(1), (d)(2), (d)(3), (e)(1), (e)(2), (f)(1),



(f)(2), (g)(1)(ii), (g)(2), (g)(3), (h)(1) introductory text, (m)(1), and (m)(2); and

b. Add paragraph (o) to read as follows:

**§ 635.4 Permits and fees.**

(a) \* \* \*

(5) *Display upon offloading.* Upon offloading of Atlantic HMS, the owner or operator of the harvesting vessel must present for inspection the vessel's HMS Charter/Headboat permit; Atlantic tunas, shark, or swordfish permit; Incidental HMS squid trawl; HMS Caribbean Small Boat Commercial permit; and/or the shark research permit to the first receiver. The permit(s) must be presented prior to completing any applicable landing report specified at § 635.5(a)(1), (a)(2), and (b)(2)(i).

\* \* \* \* \*

(10) *Permit condition.* An owner of a vessel with a valid swordfish, shark, HMS Angling, HMS Charter/Headboat, Incidental HMS squid trawl, or HMS Caribbean Small Boat Commercial permit issued pursuant to this part must agree, as a condition of such permit, that the vessel's HMS fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the U.S. EEZ, or outside the U.S. EEZ, and without regard to where such HMS, or gear, are possessed, taken, or landed. However, when a vessel fishes within the waters of a state that has more restrictive regulations pertaining to HMS, persons aboard the vessel must abide by the state's more restrictive regulations.

\* \* \* \* \*

(d) *Atlantic Tunas vessel permits.* (1) The owner of each vessel used to fish for or take Atlantic tunas commercially or on which Atlantic tunas are retained or possessed with the intention of sale must obtain an HMS Charter/Headboat permit issued under paragraph (b) of this section, an HMS Caribbean Small Boat Commercial permit issued under paragraph (o) of this section, or an Atlantic tunas permit in one, and only one, of the following categories: General, Harpoon, Longline, Purse Seine, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas, HMS Angling, HMS Charter/Headboat, or an HMS Caribbean Small Boat Commercial permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, size classes, and gear applicable to the permit or permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if

the harvesting vessel has a valid permit in the General, Harpoon, Longline, Purse Seine, or Trap category of the Atlantic Tunas permit or a valid HMS Charter/Headboat or an HMS Caribbean Small Boat Commercial permit.

(3) A vessel issued an Atlantic Tunas permit in any category for a fishing year shall not be issued an HMS Angling permit, HMS Charter/Headboat permit, or an Atlantic Tunas permit in any other category for that same fishing year, regardless of a change in the vessel's ownership. The owner of a vessel applying for an HMS Caribbean Small Boat Commercial permit as issued pursuant to paragraph (o) of this section is exempt from the requirements of this paragraph but is subject to restrictions set forth at § 635.4 (o)(3) and may not hold any other HMS fishing permit simultaneously.

\* \* \* \* \*

(e) \* \* \* (1) The owner of each vessel used to fish for or take Atlantic sharks or on which Atlantic sharks are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, at least one of the Federal Atlantic commercial shark permits described below or an HMS Caribbean Small Boat Commercial permit as issued pursuant to paragraph (o) of this section. A Federal Atlantic commercial shark permit or HMS Caribbean Small Boat Commercial permit is not required if the vessel is recreationally fishing and retains no more sharks than the recreational retention limit specified in § 635.22(c), is operating pursuant to the conditions of a shark display or EFP issued pursuant to § 635.32, or fishes exclusively within State waters. It is a rebuttable presumption that the owner or operator of a vessel without a permit issued pursuant to this part on which sharks are possessed in excess of the recreational retention limits intends to sell the sharks.

(2) The owner of vessels that fish for, take, retain, or possess the Atlantic oceanic sharks listed in sections A, B, or C of Table 1 of Appendix A with an intention to sell must obtain a Federal Atlantic commercial shark directed or incidental limited access permit or an HMS Caribbean Small Boat Commercial permit issued pursuant to paragraph (o) of this section. The only valid Federal commercial shark directed and shark incidental limited access permits are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.

\* \* \* \* \*

(f) \* \* \* (1) Except as specified in paragraphs (n) and (o) of this section, the owner of each vessel used to fish for or take Atlantic swordfish or on which Atlantic swordfish are retained or possessed with an intention to sell or from which Atlantic swordfish are sold must obtain, in addition to any other required permits, only one of three types of commercial limited access swordfish permits: Swordfish directed limited access permit, swordfish incidental limited access permit, or swordfish handgear limited access permit. It is a rebuttable presumption that the owner or operator of a vessel on which swordfish are possessed in excess of the recreational retention limits intends to sell the swordfish.

(2) The only valid commercial Federal vessel permits for swordfish are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section, or those issued under paragraphs (n) and (o) of this section.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(ii) A first receiver, as defined in § 635.2, of Atlantic bigeye, albacore, yellowfin, or skipjack tunas must possess a valid Federal Atlantic tunas dealer permit except as noted under paragraph (o) of this section.

(2) *Shark.* A first receiver, as defined in § 635.2, of any Atlantic shark listed in Table 1 of Appendix A of this part must possess a valid dealer permit except as noted under paragraph (o) of this section.

(3) *Swordfish.* A first receiver, as defined in § 635.2, of Atlantic swordfish must possess a valid Federal Atlantic swordfish dealer permit except as noted under paragraph (o) of this section.

\* \* \* \* \*

(h) \* \* \*

(1) *Atlantic Tunas, HMS Angling, HMS Charter/Headboat, Incidental HMS squid trawl, and HMS Caribbean Small Boat Commercial vessel permits.*

\* \* \* \* \*

(m) \* \* \* (1) *General.* Persons must apply annually for a dealer permit for Atlantic tunas, sharks, and swordfish, and for an Atlantic HMS Angling, HMS Charter/Headboat, tunas, shark, swordfish, Incidental HMS squid trawl, or HMS Caribbean Small Boat Commercial vessel permit. Except as specified in the instructions for automated renewals, persons must submit a renewal application to NMFS, along with a copy of the applicable valid workshop certificate or certificates, if required pursuant to § 635.8, at an address designated by

NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit if the specific requirements for the requested permit are met, including those described in paragraphs (h)(1)(iv) and (l)(2) of this section; all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in § 635.5 and § 300.185 of this title; the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section; and the workshop requirements specified in § 635.8 are met.

(2) *Shark and swordfish LAPs.* The owner of a vessel of the U.S. that fishes for, possesses, lands or sells shark or swordfish from the management unit, or that takes or possesses such shark or swordfish as incidental catch, must have the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section, except as specified in paragraphs (n) and (o) of this section. Only persons holding non-expired shark and swordfish limited access permit(s) in the preceding year are eligible to renew those limited access permit(s). Transferors may not renew limited access permits that have been transferred according to the procedures in paragraph (l) of this section.

(o) *HMS Caribbean Small Boat Commercial permits.* (1) The owner of a vessel who fishes in the U.S. Caribbean, as defined at § 622.2 of this chapter, possesses handgear or green-stick gear and retains, with the intention to sell, any BAYS tunas, Atlantic swordfish, or Atlantic sharks may obtain an HMS Caribbean Small Boat Commercial permit. An HMS Caribbean Small Boat Commercial permit is valid only within the U.S. Caribbean, as defined at § 622.2 of this chapter.

(2) To be eligible for an HMS Caribbean Small Boat Commercial permit, vessel owners must provide documentation that the vessels is less than or equal to 13.7 m (45 ft) in length overall (LOA).

(3) A vessel issued an HMS Caribbean Small Boat Commercial permit may not be issued any other HMS fishing permit, except those issued under § 635.32, as long as a valid HMS Caribbean Small Boat Commercial permit is issued to that vessel.

(4) The owner of a vessel issued an HMS Caribbean Small Boat Commercial permit may fish for, take, retain, or possess only BAYS tunas, Atlantic swordfish, and Atlantic sharks, subject to the trip limits specified at § 635.24 and may possess unauthorized gears onboard as stated at § 635.21(b).

(5) HMS landed under an HMS Caribbean Small Boat Commercial permit may be sold by the owner or operator to individuals who do not possess the HMS dealer permits required under § 635.4(g). HMS Caribbean Small Boat Commercial permit holders are not considered to be dealers as defined at § 600.10 of this chapter because HMS Caribbean Small Boat Commercial permit holders may not purchase, barter, or trade for HMS harvested by other vessels with the intent to sell such landings.

5. In § 635.21, revise paragraphs (b), (e)(1) introductory text, (e)(3)(i), (e)(4)(iii), and (e)(4)(iv) to read as follows:

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

\* \* \* \* \*

(b) *General.* No person may fish for, catch, possess, or retain any Atlantic HMS with gears other than the primary gears specifically authorized in this part. Consistent with paragraphs (a)(1) and (a)(2) of this section, secondary gears may be used at boat side to aid and assist in subduing, or bringing on board a vessel, Atlantic HMS that have first been caught or captured using primary gears. For purposes of this part, secondary gears include, but are not limited to, dart harpoons, gaffs, flying gaffs, tail ropes, etc. Secondary gears may not be used to capture, or attempt to capture, free-swimming or undersized HMS. Except for vessels permitted under § 635.4(o) or as specified in this paragraph (b), a vessel using or having onboard in the Atlantic Ocean any unauthorized gear may not possess an Atlantic HMS on board.

\* \* \* \* \*

(e) \* \* \* (1) *Atlantic tunas.* A person that fishes for, retains, or possesses an Atlantic bluefin tuna may not have on board a vessel or use on board a vessel any primary gear other than those authorized for the category for which the Atlantic tunas or HMS permit has been issued for such vessel. Primary gears are the gears specifically authorized in this section. When fishing for Atlantic tunas other than BFT, primary gear authorized for any Atlantic Tunas permit category may be used, except that purse seine gear may be used only on board vessels permitted in the Purse Seine category and pelagic longline gear may be used only on board vessels issued an Atlantic Tunas Longline category tuna permit, a LAP other than handgear for swordfish, and a LAP for sharks. A person issued an HMS Caribbean Small Boat Commercial permit who fishes for, retains, or possesses BAYS tunas in the U.S.

Caribbean, as defined at § 622.2, may have on board and use handline, harpoon, rod and reel, bandit gear, green-stick gear, and buoy gear.

\* \* \* \* \*

(3) \* \* \* (i) No person may possess a shark in the EEZ taken from its management unit without a permit issued under § 635.4. No person issued a Federal Atlantic commercial shark permit under § 635.4 may possess a shark taken by any gear other than rod and reel, handline, bandit gear, longline, or gillnet; except that individuals issued an HMS Caribbean Small Boat Commercial permit may only harvest sharks with rod and reel, handline, and bandit gear in the U.S. Caribbean, as defined at § 622.2. No person issued an HMS Angling permit or an HMS Charter/headboat permit under § 635.4 may possess a shark if the shark was taken from its management unit by any gear other than rod and reel or handline, except that persons on a vessel issued both an HMS Charter/Headboat permit and a Federal Atlantic commercial shark permit may possess sharks taken with rod and reel, handline, bandit gear, longline, or gillnet if the vessel is not engaged in a for-hire fishing trip.

\* \* \* \* \*

(4) \* \* \* (iii) A person aboard a vessel issued or required to be issued a valid directed handgear LAP for Atlantic swordfish or an HMS Caribbean Small Boat Commercial permit may not fish for swordfish with any gear other than handgear. A swordfish will be deemed to have been harvested by longline when the fish is on board or offloaded from a vessel using or having on board longline gear. Only vessels that have been issued, or that are required to have been issued, a valid directed or handgear swordfish LAP or an HMS Caribbean Small Boat Commercial permit under this part may utilize or possess buoy gear. Vessels utilizing buoy gear may not possess or deploy more than 35 floatation devices, and may not deploy more than 35 individual buoy gears per vessel. Buoy gear must be constructed and deployed so that the hooks and/or gangions are attached to the vertical portion of the mainline. Floatation devices may be attached to one but not both ends of the mainline, and no hooks or gangions may be attached to any floatation device or horizontal portion of the mainline. If more than one floatation device is attached to a buoy gear, no hook or gangion may be attached to the mainline between them. Individual buoy gears may not be linked, clipped, or connected together in any way. Buoy

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

(iv) Except for persons aboard a vessel that has been issued a limited access North Atlantic swordfish permit, Incidental HMS squid trawl permit, or an HMS Caribbean Small Boat Commercial permit under § 635.4, no person may fish for North Atlantic swordfish with, or possess a North Atlantic swordfish taken by, any gear other than handline or rod and reel.

6. In § 635.24, revise the section heading and add paragraphs (a)(4)(iv), (b)(3), and (c) to read as follows:

**§ 635.24 Commercial retention limits for sharks, swordfish and BAYS tunas.**

(a) \* \* \*

(4) \* \* \*

(iv) A person who owns or operates a vessel that has been issued an HMS Caribbean Small Boat Commercial permit may retain, possess, or land any LCS, SCS or pelagic sharks only when the trip limit is set above zero. The current shark trip limit for HMS Caribbean Small Boat Commercial permit holders is set at zero.

\* \* \* \* \*

(b) \* \* \*

(3) Persons aboard a vessel that has been issued an HMS Caribbean Small Boat Commercial vessel permit may retain, possess, land, or sell no more than 2 swordfish per trip in or from the Atlantic Ocean north of 5° N. lat.

(c) *BAYS tunas*. Persons aboard a vessel that has been issued an HMS Caribbean Small Boat Commercial permit under § 635.4 may retain, possess, land, or sell no more than 10 BAYS tunas per trip.

7. In § 635.27, revise paragraph (c)(1)(i)(A) to read as follows:

**§ 635.27 Quotas.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) A swordfish from the North Atlantic stock caught prior to the directed fishery closure by a vessel for which a directed fishery permit, a handgear permit for swordfish, or an

HMS Caribbean Small Boat Commercial permit has been issued or is required to be issued is counted against the directed fishery quota. The annual fishery quota, not adjusted for over- or underharvests, is 2,937.6 mt dw for each fishing year. After December 31, 2007, the annual quota is subdivided into two equal semi-annual quotas of 1,468.8 mt dw: one for January 1 through June 30, and the other for July 1 through December 31.

\* \* \* \* \*

8. In § 635.31, revise paragraphs (a)(1)(i), (a)(2)(ii), and (d)(1) to read as follows:

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

(a) \* \* \*

(1) \* \* \*

(i) A person that owns or operates a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit; a valid General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic tunas; or a valid HMS Caribbean Small Boat Commercial permit issued under this part. However, no person may sell a BFT smaller than the large medium size class. Also, no large medium or giant BFT taken by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may be sold (see § 635.23(c)). A person may sell Atlantic bluefin tuna only to a dealer that has a valid permit for purchasing Atlantic bluefin tuna issued under this part. A person may not sell or purchase Atlantic tunas harvested with speargun fishing gear.

\* \* \* \* \*

(2) \* \* \*

(ii) Dealers may first receive Atlantic bigeye, albacore, yellowfin and skipjack tunas only if they have submitted reports to NMFS according to reporting requirements of paragraphs § 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. Individuals issued a valid HMS Caribbean Small Boat Commercial permit, and operating in the U.S. Caribbean as defined at § 622.2, may sell their trip limits of BAYS tunas, codified at § 635.24(c), to dealers and non-dealers.

\* \* \* \* \*

(d) \* \* \* (1) Persons that own or operate a vessel on which a swordfish

in or from the Atlantic Ocean is possessed may sell 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; except that individuals issued a valid HMS Caribbean Small Boat Commercial permit, and operating in the U.S. Caribbean as defined at § 622.2, may sell swordfish trip limits, codified at § 635.24(b)(3), to non-dealers.

\* \* \* \* \*

9. In § 635.71, revise paragraphs (a)(3)(iii), (a)(4)(ii), (a)(53), (a)(55), (e)(1), (e)(10), (e)(11), (e)(16) to read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(iii) First receive, or attempt to first receive, Atlantic bigeye, albacore, yellowfin, and skipjack tunas, swordfish, or sharks without the appropriate valid Federal Atlantic HMS dealer permit issued under § 635.4 or submission of reports by dealers to NMFS according to reporting requirements of §§ 635.5(b)(1)(ii) and 635.5(b)(1)(iii). This prohibition does not apply to HMS harvested by HMS Caribbean Small Boat Commercial vessel permit holders operating in the U.S. Caribbean as defined at § 622.2 or to a shark harvested by 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.

(4) \* \* \*

(ii) Offload an Atlantic bigeye, albacore, yellowfin, or skipjack tuna, swordfish, or shark other than to a dealer that has a valid Federal Atlantic HMS dealer permit issued under § 635.4, except that this does not apply to HMS Caribbean Small Boat Commercial vessel permit holders operating in the U.S. Caribbean as defined at § 622.2 or to a shark harvested by 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.

\* \* \* \* \*

(53) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, "buoy gear", as defined at § 635.2, unless the vessel owner has been issued a swordfish directed limited access permit or a swordfish handgear limited access permit in accordance with § 635.4(f) or an HMS Caribbean Small Boat Commercial permit in accordance with § 635.4(o).

\* \* \* \* \*

(55) For an individual issued an HMS Caribbean Small Boat Commercial permit to purchase, barter for, or trade for HMS harvested by other vessels with the intent to sell such landings.

\* \* \* \* \*

(e) \* \* \*

(1) First receive or attempt to first receive Atlantic swordfish from the north or south Atlantic swordfish stock without a Federal Atlantic swordfish dealer permit as specified in § 635.4(g) unless the harvesting vessel possesses a valid HMS Caribbean Small Boat Commercial permit issued under § 635.4 of this part and harvested the swordfish in the U.S. Caribbean as defined at § 622.2.

\* \* \* \* \*

(10) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, “buoy gear” as defined at § 635.2, unless the vessel owner has been issued a swordfish directed limited access permit or a swordfish handgear limited access permit in accordance with § 635.4(f) or a valid HMS Caribbean Small Boat Commercial permit in accordance with § 635.4(o).

(11) As the owner of a vessel permitted, or required to be permitted, in the swordfish directed, swordfish handgear limited access permit category, or issued a valid HMS Caribbean Small Boat Commercial permit and utilizing buoy gear, to possess or deploy more than 35 individual floatation devices, to deploy more than 35 individual buoy gears per vessel, or to deploy buoy gear without affixed monitoring equipment, as specified at § 635.21(e)(4)(iii).

\* \* \* \* \*

(16) Possess any HMS, other than Atlantic swordfish, harvested with buoy gear as specified at § 635.21(e) unless issued a HMS Caribbean Small Boat Commercial permit and operating within the U.S. Caribbean as defined at § 622.2.

\* \* \* \* \*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 120306154-2152-01]

RIN 0648-XA920

#### Atlantic Highly Migratory Species; 2012 Atlantic Bluefin Tuna Quota Specifications

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

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

**SUMMARY:** NMFS proposes 2012 quota specifications for the Atlantic bluefin tuna (BFT) fishery. This action is necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Written comments must be received on or before April 16, 2012. Dates and locations for public hearings on this proposed action will be specified in a separate document in the **Federal Register** to be published at a later date.

**ADDRESSES:** You may submit comments, identified by “NOAA-NMFS-2012-0048”, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter “NOAA-NMFS-2012-0048” in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.

- **Fax:** 978-281-9340, Attn: Sarah McLaughlin

- **Mail:** Sarah McLaughlin, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Drive, Gloucester, MA 01930

- **Instructions:** Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other

method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Supporting documents, including the 2011 Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis, as well as others, such as the Fishery Management Plans described below may be downloaded from the HMS Web site at [www.nmfs.noaa.gov/sfa/hms/](http://www.nmfs.noaa.gov/sfa/hms/). These documents also are available by sending your request to Sarah McLaughlin at the mailing address specified above.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin or Brad McHale, 978-281-9260.

**SUPPLEMENTARY INFORMATION:** Atlantic bluefin tuna, bigeye tuna, albacore tuna, yellowfin tuna, and skipjack tuna (hereafter referred to as “Atlantic tunas”) are managed under the dual authority of the Magnuson-Stevens Act and ATCA. As an active member of ICCAT, the United States implements binding ICCAT recommendations to comply with this international treaty. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NMFS.

#### Background

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). The 1999 FMP included a framework process to promulgate annual specifications for the BFT fishery, in accordance with ATCA and the Magnuson-Stevens Act, and to implement the annual recommendations of ICCAT. Since 1982, ICCAT has