

paragraphs, *i.e.*, thwart the conservation purposes of the ESA, create confusion and disruption for Federal agencies in implementing the ESA section 7(a)(2) consultation process, and prevent the Service from performing its functions under the Act.

In the March 1, 2021, Delay Rule, the Service anticipated that a second delay might be necessary (see 86 FR 11892). For the reasons stated above, we conclude that we have good cause to issue this final rule, effective immediately, extending the effective date of the January 15, 2021, Final Rule until December 15, 2021.

#### References Cited

A list of the references cited in this document may be found at <http://www.regulations.gov> under Docket No. FWS-R1-ES-2020-0050.

#### Authority

The authorities for this action are 5 U.S.C. 553 and 16 U.S.C. 1531-1544 unless otherwise noted.

#### Martha Williams

*Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 210422-0085]

RIN 0648-BI09

#### Atlantic Highly Migratory Species; Modification to the North Atlantic Swordfish and Shark Retention Limits for Certain Permit Holders and Add Inseason Adjustment Authorization Criteria

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is adjusting the current regulations for North Atlantic swordfish and shark retention limits for certain permit holders in U.S. Atlantic and Caribbean waters. Specifically, this action will modify swordfish retention limits for highly migratory species (HMS) Commercial Caribbean Small Boat permit holders, Swordfish General Commercial permit holders, and HMS Charter/Headboat permit holders with a

commercial endorsement on a non-for hire (*i.e.*, commercial) trip. This action will also modify the shark retention limits for HMS Commercial Caribbean Small Boat permit holders.

Additionally, this action will add regulatory criteria for inseason adjustment of swordfish and shark retention limits for the HMS Commercial Caribbean Small Boat permit. The changes are expected to provide fishermen with greater flexibility, establish greater consistency across regions, and improve the efficiency of swordfish and shark management.

**DATES:** This final rule is effective on June 1, 2021.

**ADDRESSES:** Copies of the supporting documents, including the Final Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) for this action, and the 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are available from the HMS website at: <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

#### FOR FURTHER INFORMATION CONTACT:

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**SUPPLEMENTARY INFORMATION:** Atlantic HMS are managed under the dual authorities of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The implementing regulations for the 2006 Consolidated Atlantic HMS FMP and its amendments are at 50 CFR part 635.

#### Background

In response to requests from HMS Advisory Panel members and other members of the public, NMFS undertook this rulemaking to provide consistency between the three open access swordfish handgear permits, all of which allow similar gears to be used within U.S. Atlantic and Caribbean waters, and to provide increased fishing opportunities for sharks in the U.S. Caribbean. Overall, this final rule should increase administrative efficiencies and increase management flexibility by managing the swordfish commercial open access permits in the different regions similarly. Additionally, this final rule should improve the efficiency of swordfish and shark management in all regions, while continuing to prevent overfishing.

The proposed rule published on April 27, 2020 (85 FR 23315). The details of

this rulemaking can be found in that proposed rule, and are not repeated here. Additional information can be found in the Final EA supporting this action, along with the 2006 Consolidated HMS FMP and its amendments [see **ADDRESSES**].

The comment period for the proposed rule closed on June 26, 2020. NMFS held two public hearings via webinar, and consulted with the HMS Advisory Panel. In addition to the comments received during the webinars and from the HMS Advisory Panel, NMFS received 29 written comments, including comments from the Puerto Rico Department of Natural Resources, Florida Fish and Wildlife Conservation, environmental non-governmental organizations, recreational and commercial fishermen, and the general public. The comments received, and responses to those comments, are summarized below in the Response to Comments section.

After considering the management goals of this final action and public comments, NMFS is adjusting some of the proposed measures. Specifically, for swordfish, this final rule will increase the default retention limit to 18 swordfish per vessel per trip for the HMS Commercial Caribbean Small Boat and Swordfish General Commercial permit holders, and HMS Charter/Headboat permit holders with a commercial endorsement on a non-for hire (*i.e.*, commercial) trip in all regions except for the Florida Swordfish Management Area, which will remain at 0 swordfish per vessel per trip. This measure is a change from the proposed retention limit of six swordfish per vessel per trip for all regions except for the Florida Swordfish Management Area. For sharks, this rule will establish a default retention limit of three non-prohibited smoothhound sharks, non-blacknose small coastal sharks, or large coastal (other than hammerhead, silky, and sandbar) sharks (combined) per vessel per trip for the HMS Commercial Caribbean Small Boat permit holders. This measure is a change from the proposed default retention limit of three smoothhound and/or tiger sharks (combined) per vessel per trip for the HMS Commercial Caribbean Small Boat permit holders. Lastly, this action will establish inseason adjustment procedures for the HMS Commercial Caribbean Small Boat permit swordfish and shark retention limits. This measure is unchanged from the proposed rule, and will allow NMFS to make inseason adjustments to the retention limits, as is already allowed for other swordfish and shark permits. These final actions are expected to provide fishermen with

greater flexibility, establish greater consistency across regions, and improve the efficiency of swordfish and shark management, while continuing to prevent overfishing.

### Response to Comments

NMFS received 29 written comments from commercial and recreational fishermen, Regional Fishery Management Councils (FMCs), states and territories, environmental non-governmental organizations, scientists, the Atlantic HMS Advisory Panel members, and other interested parties during the public comment period. All written comments can be found at <http://www.regulations.gov>. Comments are summarized below by major topic, together with NMFS' responses.

#### A. Retention Limit Inseason Adjustment Process (Alternatives A1–A3)

*Comment 1:* NMFS received multiple comments stating that NMFS should prefer the No Action alternative (Alternative A1) regarding the inseason adjustment process. In addition, the Puerto Rico Department of Natural and Environmental Resources (PR DNER) stated that the inseason retention limit adjustment process should not be changed because of the lack of data in the U.S. Caribbean region.

*Response:* NMFS disagrees that a lack of data in the U.S. Caribbean region negates the ability to adopt inseason adjustment criteria. Alternatives A2 and A3 simply establish inseason adjustment criteria. Any inseason adjustment to the retention limits would be based upon the best scientific information available, consistent with the Magnuson-Stevens Act and other applicable laws. These data include the relevant shark and swordfish status information, dealer reports, and U.S. Caribbean trip ticket data. Similarly, if NMFS maintains the No Action alternative and adjusts the retention limit via a framework action, NMFS would use the same data. Under NMFS' preferred alternatives A2 and A3, the adjustment process would be more flexible and the retention limits could be adjusted more quickly than would be done under the existing process. These alternatives could result in an increased likelihood that the retention limits would be adjusted as needed throughout the year, reducing administrative costs and potentially providing more timely management changes to swordfish and shark fishermen. This flexibility in reacting to the available data can assist in maintaining sustainable stocks and ensuring quotas are not exceeded.

Additionally, National Standard 3 requires that, to the extent practicable,

an individual stock of fish be managed as a unit throughout its range and interrelated stocks of fish be managed as a unit or in close coordination. The preferred alternatives (Alternatives A2 and A3) make management consistent throughout the range of the swordfish and shark stocks within the U.S. Exclusive Economic Zone (EEZ) as well as in state waters, because Federal HMS permit holders must comply with Federal regulations no matter where they fish, unless a state has measures that are more restrictive.

#### B. Swordfish Retention Limits (Alternatives B1–B4)

*Comment 2:* NMFS received suggestions regarding potential ways to adjust the swordfish retention limit in order to ensure the swordfish quota is not exceeded. One suggestion was starting with an 18 fish per vessel per trip retention limit for all affected permit holders and reducing that to six fish per vessel per trip when 80 percent of the quota is reached. Another suggestion was a 15 swordfish retention limit that drops to six fish once 50,000 lb of swordfish has been landed. Another suggestion was a 25-mt set-aside quota for the affected permit holders; the retention limit would be reduced to zero once that set-aside quota was reached.

*Response:* Currently, before making any inseason adjustments to regional retention limits for the Swordfish General Commercial permit, NMFS considers the inseason adjustment criteria and other relevant factors codified in 50 CFR 635.24(b)(4)(iv)(A) through (G). NMFS uses these criteria when determining whether retention limits need to be modified in the middle of a fishing season. Under preferred Alternative A2, NMFS would adopt identical inseason adjustment criteria to allow for the adjustment of the regional swordfish retention limit for the HMS Commercial Caribbean Small Boat permit as well. While the suggestions provided are not explicitly incorporated into the inseason adjustment criteria, they are consistent with the factors NMFS considers before making any inseason adjustments. For instance, if NMFS determines that the retention limit for Swordfish General Commercial, HMS Commercial Caribbean Small Boat, and/or HMS Charter/Headboat permit holders could lead to an overharvest of the swordfish quota or lead to limited opportunities for vessels in other regions, as indicated under criteria C (the estimated amounts by which quotas for other categories of the fishery might be exceeded) or criteria F (effects of catch rates in one

region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota), NMFS can reduce the retention limit inseason to reduce the rate of landings under the inseason adjustment criteria in this final action. Based on current domestic quota utilization trends and the fact that the swordfish quota has not been fully utilized since 2003, NMFS does not see a reason to create a separate quota category at this time.

*Comment 3:* NMFS received comments supporting an increase in the swordfish retention limit to 18 fish per vessel per trip for the Swordfish General Commercial, HMS Commercial Caribbean Small Boat, and HMS Charter/Headboat permit holders. Commenters noted that the United States does not fully harvest the swordfish quota and that increasing the swordfish retention limit for these vessels could better utilize the quota. Commenters, including the Florida Fish and Wildlife Conservation Commission, also supported maintaining the zero swordfish retention limit in the Florida Swordfish Management Area.

*Response:* As a result of public comments and further consideration of the primary objectives of this rulemaking, NMFS changed the preferred swordfish retention limit alternative from Alternative B2 to Alternative B4. Under Alternative B4, the default swordfish retention limit for HMS Commercial Caribbean Small Boat permit holders, and Swordfish General Commercial, and HMS Charter/Headboat permit holders outside of the Florida Swordfish Management Area would be 18 swordfish per trip. In the Florida Swordfish Management Area, the default swordfish retention limit would be zero fish for Swordfish General Commercial and HMS Charter/Headboat permit holders. NMFS noted in the proposed rule that, with regard to Alternatives B3 and B4, it was not yet clear that Swordfish General Commercial permit holders or HMS Commercial Caribbean Small Boat permit holders would benefit from a retention limit range of 0 to 18 swordfish per vessel per trip or if a default retention limit of 6 to 18 swordfish per trip was appropriate for the U.S. Caribbean region. Public comments indicated that a retention limit range of 0 to 18 swordfish per vessel per trip and a default retention limit of 18 swordfish per trip for the U.S. Caribbean region would be beneficial and appropriate for Swordfish General Commercial permit holders and HMS Commercial Caribbean Small Boat permit holders.

The change in preferred alternatives from B2 to B4 was based on five considerations. First, one of the goals of this rulemaking is to provide consistency in swordfish retention limits among the three open access swordfish handgear permits. Thus, if an increased default retention limit for one permit is implemented, a similar default retention limit increase for the other permits would be implemented, provided such a change is also supported. Second, the North Atlantic swordfish stock is not overfished nor is it experiencing overfishing, and therefore the stock can support higher removal levels within established quotas without jeopardizing the sustainability of the stock. Third, an increase in the retention limit to 18 swordfish per vessel per trip for Swordfish General Commercial and HMS Charter/Headboat permit holders outside of the Florida Swordfish Management Area could provide additional fishing opportunities because trips that target swordfish farther offshore will be more likely to be profitable due to the higher number of swordfish that could be landed and sold. Fourth, the HMS Commercial Caribbean Small Boat (CCSB) permit is currently underutilized by commercial fishermen in the region, and a greater retention limit of swordfish that matches the retention limit of other permits could incentivize use of the HMS Commercial Caribbean Small Boat permit. If more fishermen in the region obtain the permit and comply with the reporting requirements, NMFS and territorial governments might receive better, more complete landings information. Fifth, this rule is also finalizing adaptive management measures (Alternative A2) that would allow NMFS to quickly adjust swordfish retention limits regionally (down to zero fish, if necessary) in response to landings information.

*Comment 4:* NMFS received comments that swordfish and shark retention limits (Alternatives C1–C4) should not be increased until affected vessels are required to report catch in logbooks and have a vessel monitoring system (VMS) unit on board.

*Response:* While logbooks and VMS units can provide important information for sustainable management of HMS, their application may not be appropriate in all fisheries. In the case of HMS Commercial Caribbean Small Boat permit holders, revenues are not high enough to justify the high price of a VMS unit, which has an initial cost of over \$3,000 in addition to monthly and annual service fees. The HMS Commercial Caribbean Small Boat

permit was implemented to facilitate improved HMS landings data. While a logbook could provide important information in the future, the near-term priority is to gather basic landings data to help track HMS fishing mortality. Furthermore, additional logbook and VMS requirements could disincentivize fishermen from obtaining the HMS Commercial Caribbean Small Boat permit, which would be counterproductive to the permit's purpose. Currently, Commercial Caribbean Small Boat permit holders are required to report landings through territorial reporting programs.

Similarly, revenue in the Swordfish General Commercial and commercial HMS Charter/Headboat swordfish fisheries do not justify the high cost of a VMS unit. With an initial cost of \$3,000 (not including monthly and annual service fees), a fisherman would need to sell 615 lb dw of swordfish to cover the cost (assuming average ex-vessel price of \$4.88 per pound of swordfish). The current swordfish minimum length is equivalent to a 33 pound dressed weight fish, thus, the fishermen would need to land and sell 19 swordfish just to cover the cost of the VMS unit (615 lb dw/33 lb minimum size = 18.6), which is more than the maximum retention limit. Thus, a fisherman would need to take approximately two trips just to cover the cost of the VMS unit. Data indicate that between 2014 and 2020, Swordfish General Commercial permit holders who retain swordfish conduct on average 29 trips per year. During that same time period, on average, approximately 15 vessels (out of 665 permitted vessels) were active annually in the fishery. Thus, the typical Swordfish General Commercial permit holder engages in fewer than two trips per year, and the cost of a VMS unit would exceed their annual ex-vessel revenue. The Agency expects this to be the case with HMS Commercial Caribbean Small Boat permit holders too, but does not have the data necessary to perform an analogous economic analysis. As participation in these fisheries increases, data collection methodologies will be reassessed.

Regarding logbook requirements, NMFS continues to monitor the fisheries and may increase logbook reporting requirements in the future, especially given the move towards electronic logbooks throughout the Agency and overlapping requirements between regions. For example, effective January 5, 2021, all South Atlantic Fishery Management Council and Gulf of Mexico Fishery Management Council Charter/Headboat permit holders are

required to report in an electronic logbook (July 21, 2020; 85 FR 44005). Gulf of Mexico Council permit holders will also be required to submit hail in and hail out declarations via a VMS or VMS-type device that is capable of logging location data, although that requirement is delayed indefinitely per the July 21, 2020 final rule (85 FR 44005). Any HMS Charter/Headboat permit holders that are also permitted in for-hire South Atlantic or Gulf of Mexico Council fisheries will be required to abide by these reporting requirements.

*Comment 5:* NMFS received multiple comments stating that the swordfish retention limit for HMS Commercial Caribbean Small Boat permit holders should not be increased above six fish per trip because the vessels engaged in that fishery cannot safely carry more than six swordfish. One commenter suggested that vessels too small to carry six or more swordfish may transfer the fish to another vessel while at sea, and that such transfers could encourage excessive landings and reduce prices in the local markets, causing economic harm. Other commenters stated that some vessels can safely hold more than 6 swordfish and that vessel safety weight limits should be left to the discretion of the vessel operator.

*Response:* At the proposed rule stage, NMFS preferred the alternative that would increase the retention limit range to zero to six swordfish per vessel per trip and the default retention limit to six swordfish per vessel per trip, for all three permits, because it was not clear that these permit holders would be able to benefit from a higher retention limit range. NMFS specifically requested public comments on the swordfish retention limits for these permits, and in particular, whether vessels with these permits could support the extra weight of additional swordfish. Public comments indicated that Swordfish General Commercial permit holders, HMS Charter/Headboat permit holders, and HMS Commercial Caribbean Small Boat permit holders would benefit from a retention limit range of 0 to 18 swordfish per vessel per trip, and that a default retention limit of 18 swordfish per trip was appropriate for the U.S. Caribbean region because some vessels can safely hold more than 6 swordfish. After reviewing all the public comments, NMFS feels Alternative B4, setting a retention limit range of 0 to 18 swordfish per vessel per trip and a default retention limit of 18 swordfish per vessel per trip, is the most appropriate alternative to implement. In part, this is because it will give fishermen the greatest opportunity to

harvest the North Atlantic swordfish quota. Additionally, an increase in the default retention limit to 18 swordfish per vessel per trip for Swordfish General Commercial and HMS Charter/Headboat permit holders outside of the Florida Swordfish Management Area could provide additional fishing opportunities, because trips that target swordfish farther offshore will now be profitable. Furthermore, the HMS CCSB permit is currently underutilized by commercial fishermen in the region, and a greater swordfish retention limit that matches the retention limit of other permits could incentivize use of the HMS CCSB permit. If more fishermen in the region obtain the permit and comply with the reporting requirements, NMFS and territorial governments might receive better, more complete landings information. These social, economic, and administrative benefits would not undermine the sustainable harvest of North Atlantic swordfish. As detailed in Section 3.1 of the Final EA, the North Atlantic swordfish stock is not overfished and overfishing is not occurring. The United States has not harvested its domestic allocation of the stock in a number of years and the increased harvest by Swordfish General Commercial permit holders, HMS Charter/Headboat permit holders, and HMS Commercial Caribbean Small Boat permit holders would not jeopardize the sustainability of the fishery. Furthermore, the inseason adjustment criteria give NMFS the ability to adjust retention limits regionally (down to zero fish, if necessary) in response to landings information. The healthy status of the North Atlantic swordfish stock, in concert with the inseason adjustment criteria, provide confidence that Alternative B4 would not lead to overfishing.

Safety at sea is an important consideration in fisheries management, and National Standard 10 compels the Agency to consider the issue. To reduce safety at sea concerns, management measures are specifically designed to give fishermen the flexibility to safely operate their vessels. In HMS fisheries, mitigating safety concerns has not included regulations limiting catch retention based on vessel weight capacity. Instead, retention limits are set based on analyses of ecological and socioeconomic impacts, leaving the weight capacity compliance to the discretion of the vessel operator. Provided compliance with applicable U.S. Coast Guard regulations, the HMS Management Division typically defers to vessel operators as to how best to safely

operate their vessels and will do so in this rule as well.

The transfer of any HMS at sea or in port from one vessel to another vessel is expressly prohibited in the regulations at 50 CFR 635.29(a) and 635.71(a)(61).

*Comment 6:* One commenter expressed concern about setting the swordfish retention limit on a per trip basis because fishermen could take multiple trips per day, increasing the harvest of swordfish. As a solution, the commenter suggested a daily swordfish retention limit.

*Response:* A daily swordfish retention limit is not needed, because it is unlikely that fishermen would engage in multiple trips per day and gears authorized under the relevant permits are unlikely to catch large numbers of swordfish. As indicated in the response to Comment 3 above, there are limited geographic areas where swordfish are available close enough to shore to allow fishermen to make multiple trips per day. One of these areas is the south Florida region. However, the retention limit in that area under the Swordfish General Commercial permit is zero swordfish. The authorized gears use a limited number of hooks and are constantly tended by fishermen who quickly boat the swordfish once hooked. For these reasons, the gears authorized under these permits are unlikely to catch large numbers of swordfish. Swordfish General Commercial permit holders may use bandit, handline, harpoon, rod and reel, and green-stick gear when targeting and retaining swordfish. HMS Charter/Headboat vessel permit holders with a commercial sale endorsement may use rod and reel and handline under open-access swordfish commercial retention limits when on a commercial trip. HMS Commercial Caribbean Small Boat permit holders may use bandit, handline, harpoon, rod and reel, and buoy gear when targeting and retaining swordfish. Note that buoy gear in the context of HMS fisheries is defined in 50 CFR 635.2 as a fishing gear consisting of one or more floatation devices supporting a single mainline to which no more than two hooks or gangions are attached. The Caribbean Fishery Management Council is currently considering authorizing up to 25 hooks per vertical line in Council managed fisheries. More than two hooks would not be allowed when targeting and retaining swordfish, and NMFS will communicate this difference with targeted outreach in the U.S. Caribbean.

Furthermore, the North Atlantic swordfish stock is not overfished and not experiencing overfishing. The United States has not harvested its

domestic allocation of swordfish quota in a number of years, and there is plenty of room under the quota for additional effort and landings. Thus, even if a small number of fishermen are able to make multiple trips per day, the increase in harvest would not impact the sustainability of the North Atlantic swordfish stock.

*Comment 7:* NMFS received several comments about the stock status of North Atlantic swordfish, including whether a sub-population of swordfish existed in the U.S. Caribbean. These comments questioned whether the North Atlantic swordfish stock was healthy enough to support increased effort and harvest. The PR DNER submitted a comment stating that the size of sexual maturity has decreased for females, which could be a sign of an overfished stock. The PR DNER stated that the retention limit for swordfish should not be increased until Caribbean-specific research is performed on the stock.

*Response:* The North Atlantic swordfish stock is not overfished and is not experiencing overfishing. The International Commission for the Conservation of Atlantic Tunas (ICCAT) Standing Committee on Research and Statistics (SCRS) most recently assessed the stock in 2017. This assessment informed an Atlantic-wide total allowable catch (TAC) and the resulting domestic allocation of swordfish quota. Collectively, ICCAT Contracting Parties have not harvested the Atlantic-wide swordfish TAC in a number of years. Similarly, the United States has not harvested its full domestic allocation of swordfish quota. Thus, additional effort and landings would not jeopardize the sustainability of the North Atlantic swordfish stock.

The 2017 ICCAT SCRS North Atlantic swordfish stock assessment, which is the best scientific information available, considered all swordfish north of five degrees north latitude to be a single stock. The data considered in the assessment did not indicate any sub-populations in the Caribbean. NMFS is unaware of any reports, data, or publications suggesting a decrease in size of maturity for female swordfish. Furthermore, ICCAT has not indicated that there are any signs of a decrease of size at maturity for female swordfish, with the North Atlantic swordfish stock currently not overfished or undergoing overfishing.

### C. Shark Retention Limits (Alternatives C1–C4)

*Comment 8:* NMFS received a number of comments regarding the shark retention limit for the HMS Commercial

Caribbean Small Boat permit. Several commenters supported the No Action alternative to not allow shark retention under the HMS Commercial Caribbean Small Boat permit. Some of these commenters stated that sharks in the U.S. Caribbean are more valuable for tourism (including recreational SCUBA diving), recreational fishing, and ecological services than as a harvested resource. Other commenters indicated that a thorough analysis on the impacts to shark stocks and protected resources is needed before increasing the shark retention limit. NMFS also received a number of comments generally supporting the retention of sharks under the HMS Commercial Caribbean Small Boat permit. Some commenters stated that a shark fishery exists in the region, with vessels being able to safely hold two to six sharks, so authorizing the retention of sharks could incentivize fishermen to obtain the appropriate permit and to report their catch for quota tracking, species diversity estimates, and fishery-dependent data collection. NMFS also received multiple comments stating that a combination of Alternatives C2 and C3 should be implemented for HMS Commercial Caribbean Small Boat permit holders. Commenters stated that the species included under Alternative C2 (smoothhounds and tiger sharks) are too limited and do not include the full range of species that can be sustainably harvested in the U.S. Caribbean. Commenters stated that smoothhound catch data reflect incidental catch and that fishermen are more likely to target tiger sharks than smoothhound sharks. Thus, an allowance for the combined retention of smoothhound sharks and tiger sharks will likely direct fishing pressure only to tiger sharks, possibly leading to unsustainable catch. Commenters suggested allowing retention of more authorized shark species including small coastal, large coastal, pelagic, and smoothhound sharks. The commenters also stated that the species list under Alternative C3 (non-prohibited large coastal, small coastal, pelagic, and smoothhound sharks) was closer to the appropriate list of allowable shark species, but the retention limit of six sharks was too high, with HMS Commercial Caribbean Small Boat vessels being able to hold two to six sharks. These commenters suggested a hybrid of the two alternatives would work, with an adjustable retention limit of up to three sharks of the following species groups: Non-prohibited large coastal sharks (no hammerhead, silky, or sandbar sharks), small coastal sharks, and smoothhound

sharks. Some of these commenters, including PR DNER, were also specifically concerned about the stock status of hammerhead, oceanic whitetip, and shortfin mako sharks, and suggested waiting until more is known about whether these species can tolerate increased harvest levels before any changes are made to the regulations. Some commenters stated that retention of pelagic sharks should not be authorized.

*Response:* NMFS agrees that allowing a limited amount of shark retention could incentivize fishermen, who are already landing sharks, to obtain the appropriate permit and report landings. NMFS disagrees that the commercial harvest of shark should not be allowed solely based on the potential economic benefits of tourism and recreational fishing. Under the Magnuson-Stevens Act, NMFS strives to balance the needs of recreational and commercial fishing communities while also allowing for the opportunity to catch optimum yield. Given that many shark quotas are currently not being fully harvested, allowing for limited landings, which is also expected to improve compliance and data collection, is appropriate. Therefore, based on public comment regarding the species that should be allowed, NMFS developed a new preferred alternative, Alternative C4. This new preferred alternative is a hybrid of proposed Alternative C2 and Alternative C3. Under Alternative C4, NMFS establishes a retention limit range of zero to three non-prohibited large coastal, small coastal, and/or smoothhound sharks (combined) per vessel per trip, with a default retention limit of three sharks per vessel per trip. Prohibited sharks and pelagic (including shortfin mako and oceanic whitetip sharks), hammerhead, silky, blacknose, and sandbar sharks may not be retained under this alternative. This alternative is preferred because it would be responsive to public comments and would meet management goals by providing increased fishing opportunities to harvest sustainably managed sharks at incidental levels while still avoiding overharvest of specific species. This alternative is similar to Alternatives C2 and C3, with regional retention limits within the range discussed for all of the alternatives. Alternative C4 is anticipated to have neutral direct ecological impacts to shark stocks in the short- and long-term for several reasons. First, the quotas for the different shark management groups are not being modified, and fishermen would continue to be limited by the

established shark quotas for these sustainably managed species. The quotas for many of these species have not been fully harvested in recent years. Therefore, additional retention of species under the large coastal (except hammerhead, silky, and sandbar sharks), small coastal (except blacknose sharks), and smoothhound shark management groups should not impact the sustainability of the stocks. Second, the retention limits in Alternative C4 would not likely increase landings to a level that may adversely affect shark populations given the limited range and hold capacity of the small-scale vessels involved. Additionally, shortfin mako and oceanic whitetip sharks, which are both in the pelagic shark management group, would not be authorized for retention and would not be adversely impacted by this action. Third, this rule is also finalizing adaptive management measures (Alternative A3) that would allow NMFS to quickly adjust shark retention limits regionally (down to zero fish, if necessary) in response to landings information. Fourth, NMFS anticipates that allowing the retention of sharks under the HMS CCSB permit will not only provide increased fishing opportunities to harvest sustainably managed sharks, but also improve catch and landings data in the U.S. Caribbean shark fishery as NMFS expects more fishermen to acquire the HMS CCSB permit given the ability to retain sharks. Increased participation and permitting would likely lead to improved data collection, more accurate stock assessments, and better management of the U.S. Caribbean shark fishery. Lastly, NMFS would carry out extensive outreach and education to fishermen and government agencies in the U.S. Caribbean region following implementation of this final action to address species identification and compliance concerns.

*Comment 9:* Some commenters, including the PR DNER, expressed concern that fishermen in the U.S. Caribbean are unable to properly identify shark species. These commenters, including the PR DNER, suggested that shark identification education is an important priority for management.

*Response:* NMFS is aware of the difficulty shark fishermen, including those in the U.S. Caribbean region, may have in accurately identifying shark species, and agrees with the commenters that education and outreach is a priority for management. As part of this rulemaking, NMFS will aim to improve species identification through extensive training, outreach, and education to fishermen and

territorial partners in the U.S. Caribbean region. Specifically, NMFS plans to work with State and territorial agencies as well as the Caribbean Fishery Management Council to ensure that outreach and education materials on shark identification, safe handling, shark fishing regulations, and proper reporting reaches shark fishermen. In addition, NMFS intends to make all outreach and educational material available in both English and Spanish. This may include further developing educational materials, such as Caribbean HMS identification guides and brochures, that will be distributed at locations that fishermen frequent, and to individuals that acquire the HMS Commercial Caribbean Small Boat permit. NMFS anticipates that the extensive education and outreach measures will improve species identification and accurate reporting of catches of sharks in the U.S. Caribbean region.

*Comment 10:* NMFS received a comment expressing concern about shark catch in pupping and nursery areas. The commenter indicated that juveniles of threatened and endangered sharks are known to be caught incidentally during local small-scale fisheries interactions within pupping and nursery areas of coastal areas of Caribbean Islands. The commenter stated that shallow mangrove habitats and estuarine areas are easily accessible to local net fishermen and anglers from shore. However, the number and effort of these gears is unknown due to lack of species-specific data on recreational fisheries. The presence of small juvenile specimens of multiple shark species (e.g., blacktip, lemon, hammerheads, oceanic whitetip, silky, and dusky) in the commercial fisheries suggest that U.S. Caribbean waters serve as critical nursery habitats for sharks. As such, NMFS should consider the importance of the U.S. Caribbean for the sustainability or recovery of the shark species and factor this information into the stock assessments. The commenter is concerned that human related impacts may limit the survival of juvenile sharks, undermining the populations' ability to maintain sustainable fisheries.

*Response:* NMFS agrees that, based on the limited information available, there are likely pupping and nursery areas of sharks found within the U.S. Caribbean, and that some juvenile sharks will likely be caught by commercial and recreational fishermen. Some of these sharks may be threatened species, but there are no endangered shark species found within the U.S. Caribbean. Specifically, within the U.S. Caribbean,

two shark species are listed as threatened under the Endangered Species Act (ESA). These species are the Central and Southwest Atlantic distinct population segment (DPS) of scalloped hammerhead sharks (which is a different distinct population segment than that found along the mainland) and oceanic whitetip sharks throughout their range. At this time, there are no species of sharks listed as endangered in the U.S. Caribbean. As described above under Comment 8, NMFS is finalizing a different alternative than proposed. Specifically, NMFS is finalizing Alternative C4. Under this alternative, neither oceanic whitetip nor scalloped hammerhead sharks may be harvested, and NMFS will work to provide education and outreach materials to improve shark identification in the area. This action is consistent with the results of the 2020 Biological Opinion issued under Section 7 of the ESA. On May 15, 2020, NMFS released a Biological Opinion for all Atlantic HMS fisheries except pelagic longline, which stated that the continued operation of the fisheries analyzed in the Biological Opinion (including handgear fisheries) is not likely to jeopardize the continued existence of sea turtles, sawfish, Atlantic sturgeon, scalloped hammerhead shark (Caribbean and Central Atlantic DPS), oceanic whitetip shark, and giant manta ray. NMFS is implementing the Reasonable and Prudent Measures and Terms and Conditions of that 2020 Biological Opinion. This action is not anticipated to affect the above-referenced ESA-listed species in any way not previously analyzed for existing regulations and there is no new information that would alter this conclusion. Furthermore, the Agency does not anticipate any increased risks to overfished sharks or their habitats in the region. The gears authorized with an HMS Commercial Caribbean Small Boat permit in Federal waters are bandit, handline, harpoon, rod and reel, and buoy gear (see discussion of the definition of buoy gear in HMS fisheries and possible hook limit changes for buoy gear in Caribbean FMC-managed fisheries in the response to comment 6). Each of these is a tended gear that has low bycatch and bycatch mortality, which allows for quick release of shark species while minimizing adverse impact protected species, incidentally-caught species, or essential fish habitat. Additionally, NMFS believes that allowing for a limited number of sharks to be harvested will provide additional information, including effort and gear information, that can be used in stock

assessments as well as improve our understanding of the species and any nursery and pupping areas in the U.S. Caribbean.

*Comment 11:* One commenter expressed concern that allowing shark retention in the U.S. Caribbean could attract fishermen from the mainland United States to the region to fish, increasing fishing effort.

*Response:* Currently, federally permitted commercial shark fishermen are able to fish in the U.S. Caribbean region, with the retention limits for the directed and smoothhound shark permits being higher than those allowed by the HMS Commercial Caribbean Small Boat permit. Therefore, NMFS disagrees that the allowance of up to three sharks per vessel per trip under the HMS Commercial Caribbean Small Boat permit would attract fishermen to the Caribbean and substantially increase fishing effort. The final retention limit is a conservative limit that is analogous to the lowest retention limit of the existing Federal HMS permits authorized for commercial shark fishing both off the mainland of the U.S. and in the U.S. Caribbean region. The distance for commercial fishermen from the U.S. mainland to travel to the U.S. Caribbean is over 900 miles (from Miami to U.S. Caribbean waters off the northwest of Puerto Rico) which is a considerable investment in time and fuel for any vessel, but especially one that is under 45 feet in length. The harvest of three sharks per vessel per trip would likely not offset the cost of fuel and therefore would not make a commercial fishing trip profitable. In addition, the HMS Commercial Caribbean Small Boat permit is valid only in the U.S. Caribbean region on vessels that are less than 45 feet long and cannot be held in conjunction with any other HMS permit in a calendar year. The HMS Commercial Caribbean Small Boat permit also allows fishermen to directly sell their HMS catch without possessing a dealer permit, provided that the fishermen report the harvest and sale of these fish to their respective territorial governments, which will report these data to the NMFS. This permit was implemented to provide fishermen in the region a way to comply with Federal HMS regulations while taking into account the unique and artisanal nature of the local fishery. It is unlikely that the conservative trip limit in this rulemaking would attract more fishermen from the mainland United States to the U.S. Caribbean region given the higher trip limits and vessel capacity other commercial shark permits afford them outside of the U.S. Caribbean region.

#### D. Other

*Comment 12:* Multiple comments were submitted expressing concern about enforcement of swordfish and shark fishing regulations in the U.S. Caribbean. Commenters stated that there are not enough enforcement officers to monitor all fishing areas and ports. Some commenters, including PR DNER, commented that NMFS should focus on enforcement of existing regulations and outreach before implementing changes to authorized species and increasing retention limits under the HMS Commercial Caribbean Small Boat permit.

*Response:* NMFS and the U.S. Coast Guard continue to enhance enforcement resources in the U.S. Caribbean and to enforce all Federal fisheries regulations with assistance from territorial governments through joint enforcement agreements. NMFS also provides outreach and training as part of those agreements. NMFS will provide targeted outreach and training on the measures of this final action to ensure compliance by fishermen. NMFS believes that one of the benefits of the preferred alternatives, including the increased swordfish retention limit and the ability to retain some shark species, will be an increase in the number of HMS Commercial Caribbean Small Boat permit holders. As a condition of the permit, fishermen will be required to know and comply with Federal regulations.

*Comment 13:* Comments were submitted supporting separate shark quotas for the U.S. Caribbean instead of combining the quota with the Gulf of Mexico region.

*Response:* These comments are outside the scope of this rulemaking because the purpose of this rulemaking is to modify the swordfish and shark retention limits for certain commercial swordfish and shark permits. The quotas and general management measures were established in the final rules to implement Amendment 2 to the 2006 Consolidated HMS FMP (73 FR 35778, June 24, 2008; corrected on 73 FR 40658; July 15, 2008), Amendment 5a to the 2006 Consolidated HMS FMP (78 FR 40318; July 3, 2013), Amendment 6 to the 2006 Consolidated HMS FMP (80 FR 50073; August 18, 2015), and Amendment 9 to the 2006 Consolidated HMS FMP (80 FR 73128; November 24, 2015), and Amendment 5b to the 2006 Consolidated HMS FMP (21 FR 14678).

*Comment 14:* One commenter suggested including mechanisms to ensure that sharks harvested in the U.S. Caribbean region will be contained in the local markets or for personal consumption. Other commenters stated

that there is little to no market for shark meat in the U.S. Caribbean region and that allowing the retention of sharks under the HMS Commercial Caribbean Small Boat permit could promote the clandestine export of shark fins.

*Response:* During the rulemaking process for Amendment 4 (77 FR 59842, October 1, 2012) to the 2006 Consolidated HMS Fishery Management Plan, NMFS created the Commercial Caribbean Small Boat permit. At the time, NMFS recognized the need for a unique Caribbean permit in part because of the smaller vessels, shorter trips, limited profit margins, and high local consumption of catches associated with Caribbean commercial fisheries. Currently, NMFS does not believe that large amounts of sharks and shark products would be sold outside of local U.S. Caribbean markets because the retention limit is too low for vessels to make a profit shipping and selling the sharks outside of the U.S. Caribbean. Based on comments received from the HMS Advisory Panel, NMFS believes that there are sharks being sold in the U.S. Caribbean, and therefore, there is a local market for shark meat. Increasing commercial shark fishing opportunities in the U.S. Caribbean in a limited manner under this action could expand the market for sustainably harvested shark meat in the region. With regard to the export of shark fins, trade of shark fins that are harvested from sharks legally landed with their fins attached is legal in the United States and its Caribbean territories, and can contribute to supporting a sustainable shark fishing industry. Although no retention of sharks is currently allowed under the HMS Commercial Caribbean Small Boat permit, vessels with other commercial shark permits can currently retain sharks in the U.S. Caribbean and can legally sell their fins if they are sold to a federally permitted dealer. Increasing the number of sharks that can be legally harvested by HMS Commercial Caribbean Small Boat permit holders is not expected to correspond with a rise in illegal harvest of sharks or promotion of a clandestine fin trade. Rather, allowing the legal retention of sharks by HMS Commercial Caribbean Small Boat permit holders should provide for more legal markets of shark products, which is expected to incentivize fishermen to obtain the HMS Commercial Caribbean Small Boat permit and ultimately correspond with additional data to continue managing those species sustainably, consistent with the Magnuson-Stevens Act.

*Comment 15:* One commenter expressed concern about contaminants in shark flesh and stated that research

on the subject has not been performed in Puerto Rican waters.

*Response:* The United States Food and Drug Administration's (FDA) Hazard, Analysis, and Critical Control Points (HACCP) published regulations (December 18, 1995; 60 FR 65197) that mandate the application of the HACCP principles to ensure the safe and sanitary processing of seafood products. Dealers are responsible for ensuring products they purchase and sell are in compliance with FDA HACCP regulations.

*Comment 16:* One commenter stated that one of the outcomes of the Caribbean Challenge Initiative summit in the British Virgin Islands in May 2013, which included the participation of the Secretary of the PR DNER was a Communiqué emphasizing the urgent need to create protection for sharks and rays across the entire Caribbean Region. As a result, PR DNER agreed to protect sharks and rays in PR waters. Therefore, promoting a shark fishery is contrary to Puerto Rico's policy.

*Response:* Federal conservation and management measures have been and continue to be in place in Federal waters of the U.S. Caribbean. These measures, which will continue under this action, have resulted in sustainable managed shark fisheries. As a condition of their permits, federally permitted fishermen must abide by Federal regulations wherever they fish, including state waters, unless the state (or territory in this case) has more restrictive regulations (see 50 CFR 635.4(a)(10)). NMFS works closely with the states and territories to ensure consistent regulations for shark fishing, to the extent practicable. In some cases, the regulations are not consistent. As such, federally permitted fishermen operating from and/or landing fish in Puerto Rico or the U.S. Virgin Islands must abide by any territorial commercial shark fishing regulations that are more restrictive. It is up to the fishermen to understand the regulations that are applicable to their situation.

Additionally, this rule does not require Puerto Rico to promote a shark fishery. Rather, one of the purposes of this rulemaking is to adjust the shark retention limits of the existing HMS Commercial Caribbean Small Boat permit to better provide fishing opportunities for shark fishermen to harvest sustainably managed shark species. This permit is one of several existing Federal commercial shark permits that allow the retention of sharks in Federal waters of the United States, including the U.S. Caribbean region.

*Comment 17:* The PR DNER submitted a comment stating that shark, tuna, and swordfish in territorial waters are managed under Federal HMS regulations, and that commercial fishermen targeting or retaining these species must hold a Federal HMS permit. However, few commercial fishermen in Puerto Rico comply with this requirement, thus, PR DNER believes that data used in developing this action may be incomplete, and there is no evidence that an increase in the swordfish and shark retention limit is needed. In addition, PR DNER stated that data collection requirements should be enforced before increasing the swordfish and shark retention limits. Other commenters, including PR DNER, stated that additional research on U.S. Caribbean shark species is needed, and that HMS landings should be closely tracked. Several commenters stated that the Agency should carry out Caribbean-specific stock assessments for all sharks authorized for retention under the HMS Commercial Caribbean Small Boat permit. Some commenters specifically noted that stock status information is needed for smoothhound sharks in the Caribbean. Although the recent smoothhound shark stock assessments found that the stocks are healthy, not overfished, and with no overfishing occurring, the commenter stated that data from the U.S. Caribbean was not incorporated into the stock assessment. Two species of smoothhound sharks have been described in the U.S. Caribbean, but the assessment failed to recognize the presence of a different subspecies (*Mustelus canis insularis* Heemstra, 1997) that occurs in the region and may be the bulk of the incidental catches.

*Response:* NMFS agrees that reporting of HMS landings in the region could continue to be improved. NMFS specifically implemented the HMS Commercial Caribbean Small Boat permit in 2012 (77 FR 59842; October 1, 2012) in part to improve the Agency's capability to monitor and sustainably manage the fishery. The HMS Commercial Caribbean Small Boat permit provides several advantages for U.S. Caribbean fishermen, including the ability to act as a dealer and sell catch directly to consumers and restaurants, thus better meeting the type of markets that exist in the U.S. Caribbean. Since 2012, the reporting of landings of HMS in the territorial trip ticket programs has improved; however, fishermen seem to remain reluctant to obtain the permit. NMFS believes that one benefit of the preferred alternatives, including the increased swordfish retention limit and

the ability to retain some shark species under the HMS Commercial Caribbean Small Boat permit, will be an increase in the number of HMS Commercial Caribbean Small Boat permit holders because the authorized species and retention limits may make the permit more desirable and may more closely match the existing fishing practices in the region. If more fishermen in the region obtain the permit and comply with the reporting requirements, NMFS and territorial governments would get better, more complete landings information. For this reason, the Agency disagrees with the assertion that reporting compliance must be addressed before changes to the retention limits are made. Instead, changes to the retention limit would make the HMS Commercial Caribbean Small Boat permit more desirable since it increases the potential profitability and flexibility of each trip. This is expected to increase the adoption of the HMS Commercial Caribbean Small Boat permit, leading to increased reporting compliance, and increased HMS fishery data from the region.

Regarding the need for additional research and Caribbean-specific stock assessment for sharks authorized for retention under the HMS Commercial Caribbean Small Boat permit, management of the Atlantic shark fisheries is based on the best available science to achieve optimum yield while preventing overfishing and to rebuild overfished shark stocks. Domestic shark stock assessments are generally conducted through the Southeast Data, Assessment, and Review (SEDAR) process, in which NMFS participates. This process is also used by the South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils and is designed to provide transparency throughout the stock assessment process. Additionally, there are some shark stocks that are assessed internationally via the process established by ICCAT. In all cases, NMFS ensures the data and models used are appropriate, all sources of mortality are considered, and that the end result constitutes the best available science, consistent with National Standard 2 and other requirements. To that end, this final action is allowing limited retention of non-prohibited sharks under the HMS Commercial Caribbean Small Boat permit, with shark landings being carefully monitored through the HMS e-Dealer reporting system and via the existing territorial reporting system to ensure timely quota monitoring. NMFS anticipates, as mentioned above, that allowing the

retention of sharks under the HMS Commercial Caribbean Small Boat permit will not only provide increased fishing opportunities to harvest sustainably managed sharks, but also improve catch and landings data in the U.S. Caribbean shark fisheries as NMFS expects more fishermen to acquire the HMS Commercial Caribbean Small Boat permit given the ability to retain sharks. Increased participation and permitting is expected to lead to improved data collection, more accurate stock assessments, and better management of the U.S. Caribbean shark fishery.

With regard to the concern on stock status information needed for smoothhound sharks in the Caribbean, the stocks of most Atlantic HMS span broad areas both within and beyond the Caribbean and regional stock assessments are not appropriate in such cases. A few shark species are found mainly in the Caribbean and in such cases regional stock assessments may be appropriate and are conducted accordingly as data are available. However, as is the case of species of smoothhound sharks, NMFS has only limited data for some species, which requires management to be based on species within a complex of species. Because of the overlap in range between the different species and the extreme difficulty in distinguishing species of smoothhound sharks from one another without genetic analysis to distinguish between the species, NMFS grouped all smoothhound species (all *Mustelus* species that are currently known and those that may be discovered within the U.S. EEZ of the Atlantic, Gulf of Mexico, and Caribbean) together within the term "smoothhound sharks" for management purposes and manages them as a complex and one stock. Thus, the term "smoothhound sharks" collectively refers to smooth dogfish (*Mustelus canis*), Florida smoothhound (*M. norrisi*), Gulf smoothhound (*M. sinuamexicanus*), small eye smoothhound (*M. higmani*), and any other *Mustelus* species that might be found in U.S. waters of the Atlantic, Gulf of Mexico, and/or Caribbean. Any *Mustelus* shark species retained by commercial fishermen in the U.S. Caribbean region under the new HMS Commercial Caribbean Small Boat shark retention limits in this final action will continue to be counted towards the smoothhound shark complex quota, which in turn will help inform future stock assessments.

#### Changes From the Proposed Rule

This section explains the changes in the regulatory text from the proposed rule to the final rule. These changes



were made in response to public comment.

1. Section 635.24(b)(3), (b)(4) introductory text, and (b)(4)(iii). Modification of the Swordfish Retention Limit.

In the proposed rule, NMFS proposed a default retention limit of 6 swordfish per vessel per trip for all regions except the Florida Swordfish Management Area (which would retain the default retention limit of 0 swordfish per vessel per trip) and a retention limit of 0–6 swordfish per vessel per trip for all permits. After considering public comment, NMFS is instead finalizing a default retention limit of 18 swordfish per vessel per trip for all regions except the Florida Swordfish Management Area (which would retain the default retention limit of 0 swordfish per vessel per trip) and a retention limit of 0–18 swordfish per vessel per trip for all permits. NMFS feels this action is appropriate because it will give fishermen the greatest opportunity to harvest the North Atlantic swordfish quota and will not create differences in retention limits among different permits in the U.S. Caribbean. Public comments indicated that Swordfish General Commercial permit holders and HMS Commercial Caribbean Small Boat permit holders would benefit from a retention limit range of 0 to 18 swordfish per vessel per trip, and that a default retention limit of 18 swordfish per trip was appropriate for the U.S. Caribbean region. As described above in the response to Comment 3, this change in the retention limit was based on the following five considerations—the goal of this rulemaking to provide consistency in swordfish retention limits among the three open access swordfish handgear permits, the healthy status of the North Atlantic swordfish stock, the potential for additional fishing opportunities because trips that target swordfish farther offshore will now be profitable, an increased opportunity for more fishermen in the Caribbean region to obtain the HMS Commercial Caribbean Small Boat permit and thus provide better, more complete landings information, and that this rule is also finalizing adaptive management measures that would allow NMFS to quickly adjust swordfish retention limits regionally (down to zero fish, if necessary) in response to landings information.

2. Section 635.24(a)(4)(iv). Modification of the Shark Retention Limit.

In the proposed rule, NMFS proposed a default retention limit of three smoothhound and/or tiger sharks (combined) per vessel per trip for any

vessel that holds the HMS Commercial Caribbean Small Boat permit. After considering public comment, NMFS is finalizing a default retention limit of three total non-prohibited smoothhound, small coastal sharks (other than blacknose), or large coastal (other than hammerhead, silky, or sandbar) sharks (combined) per vessel per trip for any vessel that holds a HMS Commercial Caribbean Small Boat permit. Specifically, HMS Commercial Caribbean Small Boat permit holders could retain and sell tiger, blacktip, bull, spinner, lemon, Atlantic sharpnose, finetooth, bonnethead, and smoothhound sharks. This change is responsive to public comments, and meets management goals by providing increased fishing opportunities to harvest sustainably managed sharks at incidental levels while still avoiding overharvest of specific species. As described above in the response to Comment 8, in making this change, NMFS considered several factors including that fishermen would continue to be limited by the established and currently underutilized shark quotas, that the final retention limits would not likely increase landings to a level that may adversely affect shark populations given the limited range and hold capacity of the small-scale vessels involved, that this rule is also finalizing adaptive management measures that would allow NMFS to quickly adjust shark retention limits regionally (down to zero fish, if necessary) in response to landings information, and that providing additional opportunities to retain sharks could improve catch and landings data in the U.S. Caribbean shark fishery if more fishermen acquire the HMS Commercial Caribbean Small Boat permit. Lastly, as part of the final action, NMFS intends to conduct extensive outreach and education to fishermen and government agencies in the U.S. Caribbean region to address species identification and compliance concerns.

#### Classification

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

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

#### Summary of the Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis (FRFA) was prepared for this rule. The FRFA incorporates the initial regulatory

flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, our responses to those comments, and a summary of the analyses completed to support the action. The full FRFA is available from NMFS (see **ADDRESSES**). A summary is provided below.

#### A. Statement of the Need for and Objectives of This Final Rule

Section 604(a)(1) of the RFA requires Agencies to state the need for and objective of, the final action.

The objectives of this rulemaking are to provide consistency between the three open access swordfish handgear permits, all of which allow similar gears to be used within U.S. Atlantic and Caribbean waters, and to provide increased fishing opportunities for sharks in the U.S. Caribbean. Furthermore, this final action would increase administrative efficiencies and increase management flexibility by managing the open access swordfish commercial permits similarly.

#### B. A Summary of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Rule as a Result of Such Comments

Section 604(a)(2) requires that a FRFA include a summary of significant issues raised by public comment in response to the IRFA and a summary of the assessment of the Agency of such issues, and a statement of any changes made in the rule as a result of such comments.

During the public comment period, commenters requested NMFS implement a higher swordfish retention limit given the health of the stock, the availability of the resource, and the capacity and need of some permit holders to transport more than six swordfish when traveling further offshore to fishing grounds. Based on public comment, NMFS now prefers Alternative B4, instead of the preferred alternative in the Draft EA, Alternative B2, as this alternative will provide consistency in swordfish retention limits among the three open access swordfish handgear permits and a higher retention limit than the one proposed, which would provide additional fishing opportunities because trips that target swordfish farther offshore will be profitable under the higher retention limit.

During the public comment period, some commenters expressed support for the preferred alternative in the Draft EA,

Alternative C2, but also argued that smoothhound sharks are only caught incidentally and are not a target species. As a result, these commenters were concerned that Alternative C2 would place any shark meat demand solely on tiger sharks. The commenters also felt Alternative C2 could potentially result in fishermen discarding sharks until tiger or smoothhound sharks were landed, potentially increasing fishing effort, discards, and shark mortality. The commenters also opposed the retention of any prohibited species along with some specific species, including pelagic and hammerhead sharks, given concerns regarding those species' vulnerability to fishing pressure, stock status, and effects on reef systems and ecotourism. Some commenters indicated that NMFS should combine Alternative C2 with Alternative C3 to allow for fishing opportunities to harvest sustainably managed sharks, with a retention limit not to exceed six sharks given the capacity and size of the vessels, while avoiding overharvest of specific shark species, including pelagic and hammerhead sharks. Commenters also requested NMFS provide extensive outreach and education to fishermen and government agencies on species identification and permit requirements. After considering public comment, NMFS created a new alternative, Alternative C4 to address the issues raised by the public.

NMFS did not receive any comments from the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule or the IRFA. All of the comments and responses to the comments are summarized in Appendix I of the Final EA.

#### C. Description and Estimate of the Number of Small Entities to Which the Final Rule Would Apply

Section 604(a)(4) of the Regulatory Flexibility Act requires Agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of

conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the **Federal Register** (FR), which NMFS did on December 29, 2015 (80 FR 81194, December 29, 2015). In this final rule effective on July 1, 2016, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. NMFS considers all HMS permit holders to be small entities because they had average annual receipts of less than \$11 million for commercial fishing.

As discussed in Section 6.2.1 of the Final EA, the final rule would apply to the 665 Swordfish General Commercial permit holders, 30 HMS Commercial Caribbean Small Boat permit holders, and 3,839 HMS Charter/Headboat permit holders with a commercial sale endorsement. Active permit holders are defined as those with valid permits that landed one swordfish based on HMS electronic dealer reports. Of those 665 Swordfish General Commercial permit holders, 19 landed swordfish in 2020. Of 30 HMS Commercial Caribbean Small Boat permit holders, two landed swordfish in 2020. Of the 3,839 HMS Charter/Headboat vessels, 23 had an active commercial sale endorsement, and landed swordfish in 2020. NMFS has determined that the final rule would not likely affect any small governmental jurisdictions. More information regarding the description of the fisheries affected, and the categories and number of permit holders can be found in Chapter 6 of the Final EA.

#### D. Description of the Projected Reporting, Record Keeping, and Other Compliance Requirements of the Final Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirements of the Report or Record

Section 604(a)(5) of the RFA requires Agencies to describe any new reporting, record-keeping and other compliance requirements. The action does not contain any new collection of information, reporting, or record-keeping requirements.

#### E. Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

Under section 604(a)(6) of the RFA requires Agencies in the FRFA to describe the steps taken to minimize the significant economic impact on small

entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. These impacts are discussed below and in Chapters 4 and 6 of the Final EA.

The alternatives considered and analyzed are described below. The FRFA assumes that each vessel will have similar catch and gross revenues to show the relative impact of the final action on vessels.

Alternative A1 would maintain the current ability to adjust the regional swordfish retention limits for vessels possessing the HMS Commercial Caribbean Small Boat permit only through framework adjustment procedures. See 50 CFR 635.34(b). This alternative would not result in any change in economic impacts, and would have neutral economic impacts on HMS permit holders.

Alternative A2, the preferred alternative, would provide NMFS the ability to adjust the swordfish retention limit for the HMS Commercial Caribbean Small Boat fishery on an inseason basis, as needed. NMFS already has the ability to adjust the swordfish retention limits under the Swordfish General Commercial and HMS Charter/Headboat permits. Under this alternative, NMFS would have more flexibility in the regulations to be more responsive to the changes needed in the swordfish fishery within the fishing season. The alternative would provide for a new regulatory process that would not change the actual retention limits. Therefore, this alternative would have neutral economic impacts to HMS permit holders.

Alternative A3, the preferred alternative, would provide NMFS the ability to adjust the shark retention limit for the HMS Commercial Caribbean Small Boat fishery on an inseason basis, as needed. NMFS already has the ability to adjust the shark retention limits under shark inseason trip limit adjustment authorization criteria for commercial shark fishermen. Under this alternative, NMFS would have more flexibility in the regulations to be more responsive to the changes needed in the shark fishery within the fishing season. The alternative would provide for a new regulatory process that would not change the actual retention limits. Therefore, this alternative would have neutral economic impacts to HMS permit holders.

Under Alternative B1, the No Action alternative, NMFS would maintain the existing swordfish retention limits within the swordfish management regions for all vessels possessing an HMS Commercial Caribbean Small Boat permit, a Swordfish General Commercial permit, or an HMS Charter/Headboat permit on a commercial trip. For vessels possessing a Swordfish General Commercial permit or vessels with an HMS Charter/Headboat permit on a commercial trip, the current range of swordfish retention limits is zero to six swordfish per vessel per trip for all regions with the default retention limits (see Table 4.1 of the Final EA). For the HMS Commercial Caribbean Small Boat permit, the retention limit is two swordfish per vessel per trip. As discussed in Chapter 3 of the Final EA, a single swordfish is estimated to be worth \$336.72 (ex-vessel), on average, whereas six swordfish are estimated to be worth \$2,020.32 (ex-vessel). Under this alternative, the potential gross revenue per trip for each HMS Commercial Caribbean Small Boat vessel landing the trip limit would be approximately \$673.44 based on the average ex-vessel price of swordfish. Similarly, the potential gross revenue per trip for vessels possessing a Swordfish General Commercial permit or HMS Charter/Headboat permit on a commercial trip fishing in either the U.S. Caribbean, Northwest Atlantic or Gulf of Mexico and landing the full trip limit would be \$2,020.32, with gross revenue from swordfish ranging from either \$673.44662 under a two swordfish limit or \$1,010.16 under a three swordfish limit to \$2,020.32 under a six swordfish limit. Alternative B1 would result in neutral economic impacts in the short- and long-term since there is no change in the management structure of the swordfish fishery.

Under Alternative B2, NMFS would maintain the default swordfish retention limit of zero swordfish per vessel per trip for the Florida Management Region and establish a default swordfish retention limit of six swordfish per vessel per trip for all other regions and for HMS Commercial Caribbean Small Boat and Swordfish General Commercial permit holders, and HMS Charter/Headboat permit holders with a commercial sale endorsement. For these permit holders in all regions, the retention limit range would be zero to six swordfish per vessel per trip. Under this alternative, the potential gross revenue per trip for each vessel that has landed the maximum allowed trip limit under either of the three swordfish

commercial swordfish permits (HMS Commercial Caribbean Small Boat permit, Swordfish General Commercial permit, and HMS Charter/Headboat permit, on a commercial trip) and within the U.S. Caribbean, Northwest Atlantic, and Gulf of Mexico would be \$2,020.32 per vessel per trip (Table 4.1 of the Final EA). For example, for a vessel making ten trips per year and retaining the six swordfish limit each trip, the annual gross revenue derived from swordfish would generate up to \$20,203.20. By having a higher default trip limit for swordfish, this alternative would continue to provide a seasonal, or secondary, fishery for most participants as well as new economic benefits to some fishermen as well as fishing tackle manufacturers and suppliers, bait suppliers, fuel providers, and swordfish dealers. Alternative B2 would likely result in overall neutral economic impacts in the short- and long-term. NMFS has increased the swordfish retention limit in the Northwest Atlantic and Gulf of Mexico, and the U.S. Caribbean regions to six every year since the implementation of the Swordfish General Commercial permit, thus any economic impact would be neutral for Swordfish General Commercial permit holders and HMS Charter/Headboat permit holders with a commercial sale endorsement. For the HMS Commercial Caribbean Small Boat permit holders, there would be a minor increase in revenue, but this minor increase would not have significant economic impacts for the fishery overall.

Under Alternative B3, the retention limit range would be increased for Swordfish General Commercial permit holders and HMS Charter/Headboat permit holders with a commercial sale endorsement, from zero to six swordfish per vessel per trip to 0–18 swordfish per vessel per trip for all regions with the same default retention limits as Alternative B2. For the HMS Commercial Caribbean Small Boat permit, NMFS would establish a swordfish retention limit range of 0–18 swordfish per vessel per trip with a default retention limit of six swordfish per vessel per trip. Similar to Alternative B2, this alternative would establish a default swordfish retention limit of six swordfish per vessel per trip for the HMS Commercial Caribbean Small Boat permit holder within the U.S. Caribbean region. However, unlike Alternative B2, this alternative would increase the default swordfish retention limit from 6 swordfish per vessel per trip to 18 swordfish per vessel per trip for vessels possessing a Swordfish

General Commercial permit, or vessels with an HMS Charter/Headboat permit with a commercial sale endorsement within the Northwest Atlantic, Gulf of Mexico, and the U.S. Caribbean swordfish management regions. The default swordfish retention trip limit for the Florida Swordfish Management Area would remain at zero. Under this alternative, the potential gross revenue for each vessel that has landed the maximum allowed trip limit under an HMS Commercial Caribbean Small Boat permit within the U.S. Caribbean region would be \$2,020.32 per vessel per trip with gross revenue per trip from swordfish ranging from \$2,020.32 to \$6,060.96 under a 6 and 18 swordfish limit, respectively (Table 4.1 of the Final EA). Similarly, the potential gross revenue per trip for vessels possessing a Swordfish General Commercial permit or vessels with an HMS Charter/Headboat permit on a commercial trip fishing in either the U.S. Caribbean, Northwest Atlantic or Gulf of Mexico swordfish management regions retaining the maximum allowed limit on each trip would be \$6,060.96 per vessel per trip (Table 4.1 of the Final EA). For example, for a vessel making ten trips per year and retaining the maximum allowable limit (*i.e.*, an 18 swordfish retention limit) each trip, the annual gross revenue derived from swordfish would generate up to \$60,609.60. By having a higher default trip limit for swordfish, this alternative would continue to provide a seasonal, or secondary, fishery for most participants as well as new economic benefits to some fishermen as well as fishing tackle manufacturers and suppliers, bait suppliers, fuel providers, and swordfish dealers. Alternative B3 would likely result in minor beneficial direct economic impacts on HMS Caribbean Commercial Small Boat permit holders, Swordfish General Commercial permit holders or HMS Charter/Headboat permit holders with a commercial sale endorsement in the short- and long-term since the retention limit is set above the default limit for all swordfish management region, resulting in fishermen potentially realizing higher trip revenues since fishermen would have more swordfish to sell.

Under Alternative B4, the preferred alternative, NMFS would increase the retention limit range to 0–18 swordfish per vessel per trip for all regions (*i.e.*, Florida Swordfish Management area, and the U.S. Caribbean, the Gulf of Mexico, and the Northwest Atlantic regions) for all three swordfish commercial permits. The default swordfish retention limit for these permit holders in all regions would be

set at 18 swordfish per vessel per trip, except for the Florida Swordfish Management Area, which would have a default swordfish retention limit of zero. As noted above, Alternative B3 would make the same modifications, but with a lower (six swordfish) default retention limit for the HMS Commercial Caribbean Small Boat permit within the U.S. Caribbean region. Similar to Alternative B3, the potential gross revenue per trip for each vessel that has landed the maximum allowed trip limit (*i.e.*, an 18 swordfish retention limit) with an HMS Commercial Caribbean Small Boat permit, or a vessel with an HMS Charter/Headboat permit on a commercial trip fishing in either the U.S. Caribbean, the Northwest Atlantic or the Gulf of Mexico swordfish management regions would be \$6,060.96 (Table 4.1 of the Final EA). For example, for a vessel making ten trips per year and retaining the maximum allowable limit (*i.e.*, an 18 swordfish retention limit) each trip, the annual gross revenue derived from swordfish would generate up to \$60,609.60. Similar to Alternative B3, by having a higher default trip limit for swordfish, this alternative would continue to provide a seasonal, or secondary, fishery for most participants. Increasing the retention limit above the default limit for all swordfish management regions would realize higher trip revenues since fishermen would have more swordfish to sell. Alternative B4 would likely result in minor beneficial direct economic impacts on HMS Commercial Caribbean Small Boat permit holders, Swordfish General Commercial permit holders or HMS Charter/Headboat permit holders with a commercial sale endorsement in the short- and long-term since the retention limit is set above the default limit for all swordfish management regions, resulting in fishermen potentially realizing higher trip revenues since fishermen would have more swordfish to sell.

Under Alternative C1, the No Action alternative, NMFS would maintain the current retention limit of zero sharks per vessel per trip for vessels issued an HMS Commercial Caribbean Small Boat permit. Thus, this alternative would result in neutral direct economic impacts to HMS Commercial Caribbean Small Boat permit holder in the short- and long-term. However, the No Action alternative would maintain management measures that may not be addressing multiple requests (see Chapter 1 of the Final EA) by commercial shark fishermen to land a limited number of

sharks, restricting NMFS' ability to provide additional fishing opportunities to fishermen when other factors, such as availability of fish on the grounds and available quota, support such an increase.

Under Alternative C2, NMFS would establish a default shark retention limit of three smoothhound and/or tiger sharks (combined) per vessel per trip for the HMS Commercial Caribbean Small Boat permit holders. The retention limit range would be zero to three smoothhound and/or tiger sharks (combined) per vessel per trip. The retention of any other shark species would not be allowed under this alternative. Table 4.3 in the Final EA summarizes the potential increase in annual ex-vessel revenue based on average weight and price data of smoothhound and tiger sharks. If a fisherman landed the maximum trip limit, with only tiger sharks being caught, and takes two trips per month (24 trips per year), then the annual revenue per vessel associated with this activity would be \$5,067. If the vessel landed the full trip limit and conducted two trips per month (24 trips per year), with only smoothhound sharks being caught, then the annual revenue per vessel would be \$835. Because the Agency would have the authority to adjust the shark retention limit from zero to three, the annual ex-vessel revenue estimates could vary from \$0 (under a zero fish limit) to as much as \$835 to \$5,067, depending on the species composition of the catch. This minor increase in per trip and annual revenue would result in neutral economic impacts in the short- and long-term to the HMS Commercial Caribbean Small Boat permit holders because any potential increase would be relatively minor.

Under Alternative C3, NMFS would establish a default retention limit of six non-prohibited large coastal, small coastal, pelagic, and/or smoothhound sharks (combined) per vessel per trip for HMS Commercial Caribbean Small Boat permit holders. The retention limit range would be zero to six for non-prohibited large coastal, small coastal, pelagic, and smoothhound sharks (combined) per vessel per trip. Table 4.4 in the Final EA summarizes the potential increase in annual ex-vessel revenue based on average weight and price data of non-prohibited large coastal, small coastal, pelagic, and smoothhound sharks. If a fisherman landed the maximum trip limit, with only large coastal sharks being caught, and takes two trips per month (24 trips per year), then the annual revenue per vessel associated with this activity

would be \$10,135 (Table 4.4 in the Final EA). Assuming a successful trip and two trips per month, the annual revenue per vessel associated with fishermen landing the full trip limit of either, small coastal, pelagic or smoothhound sharks would be \$969, \$12,817, and \$1,669, respectively. Because the Agency would have the authority to adjust the shark retention limit from zero to six, the annual ex-vessel revenue estimates could vary from \$0 (under a zero fish limit) to as much as \$969 to \$12,817, depending on the species composition of the catch. This minor increase in per trip and annual revenue would result in neutral economic impacts to the HMS Commercial Caribbean Small Boat permit holders in the short- and long-term because any potential increase would be relatively minor.

Under Alternative C4, the preferred alternative, NMFS would establish a retention limit range of zero to three non-prohibited large coastal, small coastal, and/or smoothhound sharks (combined) per vessel per trip, with a default retention limit of three sharks per vessel per trip. The retention of pelagic, hammerhead, silky, blacknose, sandbar, and prohibited sharks is not allowed under this alternative. Table 4.5 in the Final EA summarizes the potential increase in annual ex-vessel revenue based on average weight and price data of non-prohibited large coastal, small coastal, and smoothhound sharks. Assuming a successful trip and two trips per month (24 trips per year), the annual revenue per vessel associated with fishermen landing the full trip limit of either non-prohibited large coastal, small coastal, or smoothhound sharks would be \$5,067, \$484, and \$835 respectively. Because the Agency would have the authority to adjust the shark retention limit from 0 to three, the annual ex-vessel revenue estimates could vary from \$0 (under a 0 fish limit) to as much as \$484 to \$5,067, depending on the species composition of the catch. This minor increase in per trip, and annual revenue would result in neutral direct socioeconomic impacts in the short- and long-term to the HMS Commercial Caribbean Small Boat permit holders because any potential increase would be relatively minor.

At the proposed rule stage, NMFS preferred Alternative C2, limiting the harvest to up to three tiger and/or smoothhound shark (combined) per vessel per trip for HMS CCSB permit holders. During the public comment period, some commenters expressed support for Alternative C2, but also argued that smoothhound sharks are only caught incidentally and are not a

target species. As a result, these commenters were concerned that Alternative C2 would place any shark meat demand solely on tiger sharks. The commenters also felt Alternative C2 could potentially result in fishermen discarding sharks until tiger or smoothhound sharks were landed, potentially increasing fishing effort, discards, and shark mortality. The commenters also opposed the retention of any prohibited species along with some specific species, including pelagic and hammerhead sharks, given concerns regarding those species' vulnerability to fishing pressure, stock status, and effects on reef systems and ecotourism. Some commenters indicated that NMFS should combine Alternative C2 with Alternative C3 to allow for fishing opportunities to harvest sustainably managed sharks, with a retention limit not to exceed six sharks given the capacity and size of the vessels, while avoiding overharvest of specific shark species, including pelagic and hammerhead sharks. Commenters also requested NMFS provide extensive outreach and education to fishermen and government agencies on species identification and permit requirements. After considering public comment, NMFS created this new alternative, Alternative C4. This alternative is preferred because it is responsive to public comments and would meet the management goals highlighted in Chapter 1 of the Final EA by providing increased fishing opportunities to harvest sustainably managed sharks at incidental levels while still avoiding overharvest of specific species.

Given the amount of time that transpired from the Draft EA to the Final EA, the analyses in the Final EA were updated with an additional year of fisheries data, where appropriate. In addition, the total annual revenue calculations in the Final EA were revised from the Draft EA to better estimate the total annual revenue for each alternative by focusing on the average number of trips taken by the fleet multiplied by the ex-vessel revenue per trip. These updates did not change the conclusions of the analyses in the Draft EA regarding ecological, economic and social impacts of the alternatives.

**Small Entity Compliance Guide**

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, NMFS has prepared a listserv notice summarizing fishery information and regulations for the changes to the swordfish and shark commercial permits affected in this rule. This listserv notice also serves as the small entity compliance guide. Copies of the compliance guide are available from NMFS (see ADDRESSES).

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

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

Dated: April 22, 2021.

**Samuel D. Rauch, III,**

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

For the reasons set out in the preamble, 50 CFR part 635 is 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 § 635.24, revise paragraphs (a)(4)(iv), (b)(3), (b)(4) introductory text, and (b)(4)(iii), remove paragraph (b)(4)(iv), and add paragraph (b)(5) to read as follows:

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

\* \* \* \* \*

(a) \* \* \*

(4) \* \* \*

(iv) A person who owns, operates, or is aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit may retain, possess, land, or sell any blacktip, bull, lemon, nurse, spinner, tiger, Atlantic sharpnose, bonnethead, finetooth, and smoothhound shark, subject to the HMS Commercial Caribbean Small Boat permit shark retention limit. A person who owns, operates, or is aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit may not retain, possess, land, or sell any hammerhead, blacknose, silky, sandbar, blue, thresher, oceanic whitetip, shortfin mako, or prohibited shark, including parts or pieces of these sharks. The shark retention limit for a person who owns, operates, or is aboard a vessel issued an HMS Commercial Caribbean Small Boat permit will range

from zero to three sharks per vessel per trip. At the start of each fishing year, the default shark trip limit will apply. During the fishing year, NMFS may adjust the default shark trip limit per the inseason trip limit adjustment criteria listed in paragraph (a)(8) of this section. The default shark retention limit for the HMS Commercial Caribbean Small Boat permit is three sharks per vessel per trip.

\* \* \* \* \*

(b) \* \* \*

(3) A person who owns, operates, or is aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit may retain, possess, land, or sell North Atlantic swordfish, subject to the HMS Commercial Caribbean Small Boat permit swordfish retention limit. The swordfish retention limit for a person who owns, operates, or is aboard a vessel issued an HMS Commercial Caribbean Small Boat permit will range from 0 to 18 swordfish per vessel per trip. At the start of each fishing year, the default retention limit will apply. During the fishing year, NMFS may adjust the default retention limit per the inseason regional retention limit adjustment criteria listed in paragraph (b)(5) of this section. The default retention limit for the HMS Commercial Caribbean Small Boat permit is eighteen swordfish per vessel per trip.

(4) A person who owns, operates, or is aboard a vessel that has been issued a Swordfish General Commercial permit or an HMS Charter/Headboat permit with a commercial sale endorsement (and only when on a non for-hire trip) are subject to the regional swordfish retention limits specified at paragraph (b)(4)(iii) of this section, which may be adjusted during the fishing year based upon the inseason regional retention limit adjustment criteria listed in paragraph (b)(5) of this section.

\* \* \* \* \*

(iii) *Regional retention limits.* The swordfish regional retention limits for each region will range from 0 to 18 swordfish per vessel per trip. At the start of each fishing year, the default regional retention limits will apply. During the fishing year, NMFS may adjust the default retention limits per the inseason regional retention limit adjustment criteria listed in paragraph (b)(5) of this section. The default retention limits for the regions set forth under paragraph (b)(4)(i) of this section are:

(A) Zero swordfish per vessel per trip for the Florida Swordfish Management Area;

(B) Eighteen swordfish per vessel per trip for the Caribbean region;

(C) Eighteen swordfish per vessel per trip for the Northwest Atlantic region; and

(D) Eighteen swordfish per vessel per trip for the Gulf of Mexico region.

(5) NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustments to the default swordfish retention limits specified at paragraphs (b)(3) and (b)(4)(iii) of this section. Before making any inseason adjustments to swordfish retention limits, NMFS will consider the following criteria and other relevant factors:

(i) The usefulness of information obtained from biological sampling and monitoring of the North Atlantic swordfish stock;

(ii) The estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end of the fishing year;

(iii) The estimated amounts by which quotas for other categories of the fishery might be exceeded;

(iv) Effects of the adjustment on accomplishing the objectives of the fishery management plan and its amendments;

(v) Variations in seasonal distribution, abundance, or migration patterns of swordfish;

(vi) Effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota; and

(vii) Review of dealer reports, landing trends, and the availability of swordfish on the fishing grounds.

\* \* \* \* \*

[FR Doc. 2021-08814 Filed 4-29-21; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 180117042-8884-02; RTID 0648-XB018]

#### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

**ACTION:** Temporary rule; inseason Angling category retention limit adjustment.

**SUMMARY:** NMFS has determined that the Atlantic bluefin tuna (BFT) daily

retention limit that applies to Highly Migratory Species (HMS) Angling category permitted vessels and HMS Charter/Headboat vessels (when fishing recreationally for BFT) should be adjusted for the remainder of 2021, based on consideration of the regulatory determination criteria regarding inseason adjustments. NMFS is adjusting the Angling category BFT daily retention limit from the default of one school, large school, or small medium BFT to: Two school BFT and one large school/small medium BFT per vessel per day/trip for private vessels with HMS Angling category permits; three school BFT and one large school/small medium BFT per vessel per day/trip for charter boat vessels with HMS Charter/Headboat permits when fishing recreationally; and six school BFT and two large school/small medium BFT per vessel per day/trip for headboat vessels with HMS Charter/Headboat permits when fishing recreationally. These retention limits are effective in all areas, except for the Gulf of Mexico, where targeted fishing for BFT is prohibited.

**DATES:** Effective May 2, 2021 through December 31, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Larry Redd, Jr., [larry.redd@noaa.gov](mailto:larry.redd@noaa.gov), 301-427-8503, Nicholas Velseboer, [nicholas.velseboer@noaa.gov](mailto:nicholas.velseboer@noaa.gov), 978-675-2168, or Lauren Latchford, [lauren.latchford@noaa.gov](mailto:lauren.latchford@noaa.gov), 301-427-8503.

**SUPPLEMENTARY INFORMATION:** Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic HMS FMP and its amendments. NMFS is required under the MSA to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

As a method for limiting fishing mortality on juvenile BFT, ICCAT

recommendations have adopted a tolerance limit on the annual harvest of BFT measuring less than 115 centimeters (cm) (45.3 inches) (straight fork length) to no more than 10 percent by weight of a Contracting Party's total BFT quota. Any overharvest of such tolerance limit from one year must be subtracted from the tolerance limit applicable in the next year or the year after that. NMFS implements this provision by limiting the harvest of school BFT (measuring 27 to less than 47 inches curved fork length) to 127.3 metric tons (mt)) annually (10 percent of the U.S. quota)

In 2018, NMFS implemented a final rule that established the U.S. BFT quota and subquotas consistent with ICCAT Recommendation 17-06 (83 FR 53191, October 11, 2018). In 2020, following a stock assessment update, ICCAT adopted Recommendation 20-06, which maintained the overall total allowable catch of 2,350 mt and the associated U.S. quota. As such, as described in § 635.27(a), the current baseline U.S. quota continues to be 1,247.86 mt (not including the 25-mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The Angling category quota continues to be 232.4 mt (127.3 mt for school BFT, 99.8 mt for large school/small medium BFT, and 5.3 mt for large medium/giant BFT).

The Angling category season opened on January 1, 2021, and continues through December 31, 2021. The size classes of BFT are summarized in Table 1. Large school and small medium BFT traditionally have been managed as one size class, *i.e.*, a limit of one large school/small medium BFT (measuring 47 to less than 73 inches). Similarly, large medium and giant BFT traditionally have been managed as one size class that is also known as the "trophy" class. Currently, the default Angling category daily retention limit of one school, large school, or small medium BFT is in effect and applies to HMS Angling category and HMS Charter/Headboat permitted vessels (when fishing recreationally for BFT) (§ 635.23(b)(2)).

As defined at § 600.10, "charter boat" means a vessel less than 100 gross tons (90.8 mt) that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire (*i.e.*, uninspected) and "headboat" means a vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire (*i.e.*, greater than six).