DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110120049–1144–01]

RIN 0648–BA69

Atlantic Highly Migratory Species; Atlantic Shark Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: This rule would implement the International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations 10–07 and 10–08, which prohibit the retention, transshipping, landing, storing, or selling of hammerhead sharks in the family *Sphyrnidae* (except for *Sphyrna tiburo*) and oceanic whitetip sharks (*Carcharhinus longimanus*) caught in association with ICCAT fisheries. This rule would affect the commercial HMS pelagic longline (PLL) fishery and recreational fisheries for tunas, swordfish, and billfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This action implements ICCAT recommendations, consistent with the Atlantic Tunas Convention Act (ATCA) and furthers domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received by 5 p.m., local time, on May 31, 2011.

ADDRESSES: You may submit comments, identified by 0648–BA69, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*.
- *Fax:* 301–713–1917, Attn: Peter Cooper.
- *Mail:* 1315 East-West Highway, Silver Spring, MD 20910.

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

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

The public hearing dates and locations are:

1. May 16, 2011, 6–8 p.m.: Manteo Town Hall, 407 Budleigh Street, Manteo, NC 27954.
2. May 19, 2011, 6–8 p.m.: Fort Pierce Library, 101 Melody Lane, Ft. Pierce, FL 34950.
3. May 24, 2011, 2–4 p.m.: NOAA Building III, Room 1311B, 1315 East-West Highway, Silver Spring, MD 20910.

Copies of the supporting documents—including the draft Environmental Assessment (EA), Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP)—are available from the HMS Web site at *http://www.nmfs.noaa.gov/sfa/hms/*.

FOR FURTHER INFORMATION CONTACT: Peter Cooper, Michael Clark, or Karyl Brewster-Geisz by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* The U.S. Atlantic tuna and tuna-like species fisheries are managed under the dual authority of the Magnuson-Stevens Act, and ATCA, 16 U.S.C. 971 *et seq.* ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries (AA), NOAA.

On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006 that implemented the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP). This FMP consolidated management of all Atlantic HMS (i.e., sharks, swordfish, tunas, and billfish) into one comprehensive FMP. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

ICCAT is responsible for the conservation of tuna and tuna-like species in the Atlantic Ocean and adjacent seas. ICCAT recommendations are binding on Contracting Parties, unless Parties object pursuant to the treaty. All ICCAT recommendations are available on the ICCAT Web site at *http://www.iccat.int/en/*.

Two shark measures adopted at the 17th Annual Meeting of ICCAT in November of 2010 are the subject of this proposed rulemaking. Recommendation 10–07, "Conservation of Oceanic Whitetip Sharks Caught in Association with Fisheries in the ICCAT Convention Area," prohibits the retention, transshipping, landing, storing, or selling of oceanic whitetip sharks (*Carcharhinus longimanus*). The recommendation cites the fact that oceanic whitetip sharks are one of five species with the highest degree of risk based on an ICCAT ecological risk assessment, their high at-vessel survival rates and ease of identification, and the high proportion of juvenile fish that are caught as justification for adopting the recommendation.

Recommendation 10–08 "Hammerhead Sharks (Family *Sphyrnidae*) Caught in Association with Fisheries Managed by ICCAT," prohibits the retention, transshipping, landing, storing, or selling of hammerhead sharks in the family *Sphyrnidae,* except for bonnethead sharks (*Sphyrna tiburo*), taken in the Convention area in association with ICCAT fisheries. The recommendation cites sustainability concerns for scalloped and smooth hammerhead sharks, difficulty in identifying the three species (scalloped, smooth, and great) without bringing them onboard, and issues with Contracting Parties' obligations to report Task I and Task II data as justification for adopting the recommendation.

These recommendations were adopted by ICCAT to reduce fishing mortality of oceanic whitetip and hammerhead sharks caught in association with ICCAT fisheries. In this proposed rule, NMFS considers changes to the HMS regulations at 50 CFR Part 635 consistent with the ICCAT recommendations. Specifically, NMFS proposes regulatory changes that would affect HMS vessels that catch sharks in association with tuna and tuna-like species, including commercial vessels that deploy PLL gear or hold an HMS Angling/Charter Headboat permit and are fishing for and retaining billfish, swordfish, and tunas. This proposed action is necessary to implement ICCAT recommendations and to reduce the mortality of oceanic whitetip and hammerhead sharks. NMFS is not proposing to prohibit retention in all HMS recreational fisheries because there is a recreational fishery targeting sharks that is not associated with ICCAT fisheries. NMFS is not proposing to prohibit the retention of oceanic whitetip and hammerhead sharks from bottom longline, gillnet, or handgear because these gears also target sharks

and are not used in association with ICCAT fisheries.

NMFS prepared a draft Environmental Assessment (EA), Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA), which present and analyze anticipated environmental, social, and economic impacts of each alternative contained in this proposed rule. The complete list of alternatives and related analyses is provided in the draft EA/RIR/IRFA, and is not repeated here in its entirety. A copy of the draft EA/RIR/IRFA prepared for this proposed rule is available from NMFS (see **DATES** and **ADDRESSES**).

In this action, NMFS proposes to prohibit the retention of oceanic whitetip sharks and scalloped, smooth, and great hammerhead sharks on Atlantic HMS commercially-permitted vessels that have PLL gear on board. Regarding oceanic whitetip sharks, this species has not been assessed domestically; therefore, their stock status is currently unknown. However, in 2010, the United States formally submitted a proposal at the Convention on International Trade in Endangered Species of Wild Fauna and Flora's (CITES) Fifteenth meeting of the Conference of Parties for the inclusion of oceanic whitetip on Appendix II. The United States determined that globally, the oceanic whitetip shark qualified for listing in Appendix II under criterion A in Annex 2a, which states that it is known, or can be inferred or projected, that the regulation of trade in the species is necessary to avoid it becoming eligible for inclusion in Appendix I, and that oceanic whitetip shark would be banned from international trade. Depending on the area and study, oceanic whitetip shark populations have experienced declines of 60–70% in the northwest and central Atlantic Ocean. Abundance trend analyses of catch-rate data have reported large declines in abundance for some populations. In the northwest and western central Atlantic regions, analysis of logbook data indicated declines of 60–70% since 1992. While the U.S. CITES proposal covered scientific information on the oceanic whitetip in the Atlantic and Pacific Oceans, there have been no formal NMFS or peer-reviewed stock assessments for Atlantic oceanic whitetip sharks that have been determined to be appropriate for management action under the Magnuson-Stevens Act.

Given the declining abundance of oceanic whitetip sharks globally and the unknown status of the stock, the implementation of the ICCAT oceanic whitetip recommendation could benefit the status of this stock by reducing mortality in the Atlantic Ocean.

An analysis of the 2005 through 2009 HMS logbook data covering the HMS PLL fishery indicates that, on average, a total of 50 oceanic whitetip sharks were kept per year by fishermen using PLL gear. This proposed action would require oceanic whitetip sharks to be released by those fishermen. According to the NMFS PLL observer program data from 2005–2009, 77 percent of oceanic whitetip sharks caught were alive when brought to the vessel. Therefore, of the 50 oceanic whitetip sharks kept annually that would have to be released under this proposed action, 39 would likely be released alive. Although oceanic whitetip sharks are not caught in large numbers in the PLL fishery (*i.e.,* less than 2 percent of PLL trips between 2005–2009 caught oceanic whitetip sharks), this proposed action could have minor, beneficial ecological impacts for oceanic whitetip sharks because mortality would be reduced in the PLL fishery. A fishing mortality reduction for oceanic whitetip sharks could also have beneficial impacts due to declining abundances of this stock as described in the 2009 U.S. CoP 15 CITES Appendix II listing proposal for oceanic whitetip (CITES 2009).

Regarding hammerhead sharks, NMFS has not conducted a stock assessment for smooth or great hammerhead sharks; therefore, the status of these species of hammerhead sharks is unknown. In a recent notice published in the **Federal Register**, NMFS declared scalloped hammerhead sharks overfished with overfishing occurring consistent with the Hayes *et al.* (2009) peer-reviewed stock assessment.[1] The stock is estimated to be depleted by approximately 83 percent of virgin stock size (*i.e.,* the current population is only 17 percent of the virgin stock size). Based on this stock status determination, NMFS will be initiating an amendment to the 2006 Consolidated HMS FMP in order to implement regulations to end overfishing and rebuild the scalloped hammerhead shark stock within two years as mandated under the Magnuson-Stevens Act. Therefore, implementation of the ICCAT hammerhead recommendation could help to reduce mortality of scalloped hammerhead and contribute to the rebuilding of this species.

In addition, an analysis of HMS logbook data from 2005 through 2009 indicated that, on average, a total of 181 hammerhead sharks of any species are landed per year. Furthermore, it is difficult for most fishermen to distinguish among the hammerhead species. According to the NMFS PLL observer program data from 2005 through 2009, 55 percent of hammerhead sharks caught are alive when brought to the vessel. Therefore, of the 181 sharks kept annually that would have to be released under this proposed action, 100 of those hammerhead sharks would be released alive. Although hammerhead sharks are caught incidentally to tuna and tuna-like species and constitute a small portion of the non-target species catch (*i.e.,* less than 2 percent of PLL trips between 2005 through 2009 caught hammerhead sharks), this proposed action would likely have minor, beneficial ecological impacts to hammerhead sharks due to the reduction of mortality from the retention prohibition and the overfished status of scalloped hammerhead sharks.

Atlantic HMS commercial permit holders with PLL gear on board would no longer be allowed to retain oceanic whitetip sharks and scalloped, smooth, or great hammerhead sharks and could experience minor, adverse socioeconomic impacts. On average, from 2005 to 2009, approximately 12 PLL vessels kept oceanic whitetip sharks each year. For oceanic whitetip sharks, on average a total of 1,462 lb per year were landed annually by those 12 PLL vessels combined from 2005 through 2009. Therefore, approximately $497 in revenues from the meat and $813 in revenues from the fins or a total of $1,310 in average annual gross revenues from landings of oceanic whitetip sharks across those PLL vessels, or $109 per year for each vessel that landed oceanic whitetip sharks, could be lost if PLL vessels had to discard all oceanic whitetip sharks that are caught. However, it is unlikely these PLL vessels would experience significant impacts due to the low proportion of oceanic whitetip sharks relative to total landings from PLL vessels. Other pelagic sharks, including common thresher, shortfin mako, porbeagle, and blue sharks, could still be landed and may offset any lost revenues experienced as a result of not being able to land oceanic whitetip sharks.

Scalloped, smooth, and great hammerhead sharks, are caught more frequently on PLL gear than oceanic whitetip sharks. On average, from 2005 through 2009, approximately 25 vessels kept hammerhead sharks each year. On average, 9,493 lb per year were landed by those 25 vessels from 2005 through

[1] Hayes, C., Y. Jiao, and E. Cortéz. 2009. Stock Assessment of Scalloped Hammerheads in the Western Atlantic Ocean and Gulf of Mexico. North American Journal of Fisheries Management 29:1406–1417.

2009. Pelagic longline fishermen could lose approximately $2,563 in revenues from meat and $5,282 in revenues from fins or a total of $7,845 per year in average annual gross revenues of hammerhead sharks, or $314 per year for each PLL vessel that landed hammerhead sharks because those vessels would no longer be authorized to retain scalloped, smooth, or great hammerhead sharks.

When considering oceanic whitetip and hammerhead sharks together, this proposed action could have an overall impact of $9,155 per year to those PLL fishermen that landed oceanic whitetip and hammerhead sharks or an average of $247 per vessel per year as a result of this action. However, it is not likely that commercial PLL fishermen would alter commercial fishing practices for tuna and tuna-like species because oceanic whitetip and hammerhead sharks constitute a small portion of the PLL landings compared to the tuna and tuna-like species. Therefore, NMFS anticipates that this proposed action would have minor, adverse socioeconomic impacts to PLL fishermen.

NMFS is also proposing to prohibit retention of oceanic whitetip and hammerhead sharks by recreational fishermen fishing with a General Category permit participating in a HMS tournament or those fishing under an HMS Angling or Charter/Headboat permit when tuna or tuna-like species are also retained. NMFS recreational survey data, which includes HMS Angling and Charter/Headboat permit holders, from 2005 through 2009 indicates that recreational landings of either oceanic whitetip or hammerhead sharks along with tunas, swordfish, and billfish are rare events. The Large Pelagics Intercept Survey (LPIS), which covers the areas from Virginia to Maine, only intercepted three trips that landed either an oceanic whitetip or hammerhead shark out of 18,626 intercepted trips over the time period. Of those three trips, no other HMS species were reported caught. Over the same time period, the Marine Recreational Fisheries Statistics Survey (MRFSS), which covers the entire Atlantic and Gulf of Mexico (except for Texas), for HMS Angling and Charter/Headboat permit holders intercepted 29 angler trips that landed either an oceanic whitetip or hammerhead shark. Of those 29 trips, only three landed additional HMS, although all of the additional HMS retained were sharks, not tuna or tuna-like species. Therefore, NMFS concluded that because there are limited reported occurrences of oceanic whitetip or hammerhead sharks landed along with tuna or tuna-like HMS on the same recreational fishing trip, this scenario rarely occurs in the recreational HMS fishery.

This proposed action would prohibit fishermen holding a HMS Angling, a Charter/Headboat permit, or a General Category permit when fishing in a HMS tournament, from retaining oceanic whitetip or hammerhead sharks when tuna or tuna-like species are also retained on board. Data suggests that this practice is a rare event for these permit holders; therefore reducing current recreational fishing mortality and limiting future fishing effort on oceanic whitetip and hammerhead sharks by these permit holders would have minor, beneficial ecological impacts.

Prohibiting HMS Angling and Charter/Headboat permit holders from retaining oceanic whitetip and/or hammerhead sharks is anticipated to have minor, adverse socioeconomic impacts, due to limiting fishing opportunities for oceanic whitetip and hammerhead sharks while retaining tuna or tuna-like HMS. NMFS analyzed LPIS and MRFSS data from 2005 through 2009 to determine the frequency of recreational fishing trips that retained either an oceanic whitetip or hammerhead shark along with a tuna or tuna-like HMS. However, because this was such a rare occurrence during the time period, no reliable estimate could be made. Although there are no instances of oceanic whitetip or hammerhead sharks retained along with tuna or tuna-like species in the LPIS or MRFSS data from 2005 through 2009, prohibiting retention of these sharks along with tuna or tuna-like species would limit fishing opportunities, and could lead to fewer recreational trips. Charter/Headboats could experience a decrease in trips, as much of their business is based on providing recreational anglers the opportunity to catch hammerheads or oceanic whitetip sharks. The average price for a full day charter in 2004 was $1,053. Creating an annual estimate of recreational trips with oceanic whitetip and/or hammerhead landings from the limited number of intercepts from the LPIS (3) and MRFFS (29) over the time period, would result in an estimate with extremely low precision. Using only the actual intercepts over the time period (32) and assuming that all of those intercepts were for-hire Charter/Headboat trips, the total economic impact from 2005 through 2009 would be $33,936 ($6,788/year), but because none of those trips landed an oceanic whitetip or hammerhead shark along with a tuna or tuna-like species, NMFS anticipates that adverse socioeconomic impacts to Charter/Headboat operations would be minor.

This proposed action could have minor, adverse socioeconomic impacts on HMS fishing tournaments. According to HMS tournament registration data from 2005 through 2009, approximately 13 percent of all registered HMS tournaments awarded points for Large Coastal Non-ridgeback and/or Pelagic sharks along with at least one tuna or tuna-like HMS. The HMS tournament data does not specify sharks to the species level; therefore, it is unknown how many of these tournaments awarded points for hammerhead sharks and oceanic whitetip sharks, which fall into the Large Coastal Non-ridgeback and Pelagic shark categories, respectively. Assuming that points were awarded for hammerhead and oceanic whitetip sharks in all of these instances, the adverse socioeconomic impact to tournaments is expected to be minor when both sharks and tuna or tuna-like species are retained on board, as it only encompasses a small percentage (13.1 percent) of all HMS tournaments over the time period. Recreational fishermen would still be able to retain other pelagic and large coastal shark species and tunas, swordfish, and billfish on the same fishing trip which may offset lost revenues as a result of this proposed rule.

Minor, adverse socioeconomic impacts are anticipated for vessels that hold both Charter/Headboat and limited access shark permits that would commercially retain oceanic whitetip and/or hammerhead sharks along with tuna or tuna-like HMS, because of the infrequent landings of these species by this specific permit combination. In 2009, less than one percent of limited access shark permit holders also held a Charter/Headboat permit, and none of those vessels reported any commercial landings of oceanic whitetip or hammerhead sharks in the Coastal Fisheries Logbook. Currently, there is no commercial oceanic whitetip or hammerhead revenue being generated by vessels with this permit combination, but because this action would limit this fishing practice, minor, adverse socioeconomic impacts could result.

In conclusion, the proposed action of prohibiting the retention of oceanic whitetip sharks and scalloped, smooth, and great hammerhead sharks in the PLL, HMS Angling and Charter/Headboat fisheries for tuna and tuna-like species is likely to have minor beneficial ecological impacts because of the potential reduction in mortality, and minor adverse socioeconomic impacts because these species constitute a low

percentage of the total PLL landings and the low occurrence of these shark species being caught in the HMS recreational fisheries along with billfish, swordfish and tunas.

Public Hearings

Comments on this proposed rule may be submitted via *http://www.regulations.gov*, mail, or fax and comments may also be submitted at a public hearing (see **DATES** and **ADDRESSES**). NMFS solicits comments on this proposed rule by May 31, 2011. NMFS will hold three public hearings for this proposed rule. The hearing locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Peter Cooper at 301–713–2347, at least 7 days prior to the meeting. The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (*e.g.,* alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

NMFS prepared an environmental assessment for this rule that discusses the impact on the environment as a result of this rule. In this proposed action, NMFS is considering a prohibition against retaining oceanic whitetip sharks and scalloped, smooth, and great hammerhead sharks in the Atlantic PLL, HMS Angling and HMS Charter/Headboat fisheries for tuna and tuna-like species consistent with ICCAT Recommendations 10–07 and 10–08. A copy of the environmental assessment is available from NMFS (see **ADDRESSES**).

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

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

In compliance with section 603(b)(1) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking is, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments to implement recommendations of ICCAT pursuant to ATCA and to achieve domestic management objectives under the Magnuson-Stevens Act.

In compliance with section 603(b)(2) of the Regulatory Flexibility Act, the objectives of this proposed rulemaking are to consider changes to the HMS regulations at 50 CFR part 635 consistent with ICCAT recommendations. NMFS proposes to implement the ICCAT shark recommendations in the Atlantic HMS fisheries that target tuna and tuna-like species because NMFS considers these fisheries to be the ICCAT managed fisheries. The regulatory changes would affect HMS vessels that catch sharks in association with tuna and tuna-like species, including commercial vessels that deploy PLL gear and HMS Angling/Charter Headboat vessels fishing for billfish, swordfish, and tunas. This proposed action is necessary to implement ICCAT recommendations pursuant to ATCA. In compliance with the ATCA, NMFS is required to implement domestic regulations consistent with recommendations adopted by ICCAT as necessary and appropriate.

Section 603(b)(3) requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. In accordance with the Small Business Administration (SBA) size standards, NMFS used the following thresholds to determine if an entity regulated under this action would be considered a small entity: average annual receipts less than $4.0 million for fish-harvesting, average annual receipts less than $6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. Using these thresholds, NMFS determined that all HMS permit holders are small entities. Specifically, this proposed action would apply to all participants in the Atlantic HMS commercial and recreational fisheries that target tuna and tuna-like species. As of October 2010, 248 vessels held a Tuna Longline permit and can be reasonably assumed to use PLL gear, 24,479 held an Atlantic HMS Angling permit, and 4,174 vessels held an Atlantic HMS Charter/Headboat permit. These permitted vessels consist of commercial, recreational, and charter vessels as well as headboats. Vessels holding these permits could be affected by this action.

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603(b)(4)). Similarly, this proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and other participants in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, ATCA, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. NMFS does not believe that the proposed regulations would duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

Under section 603(c), agencies are required to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in the draft Environmental Assessment for the proposed action. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)–(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with

Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first, second, and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. Thus, there are no alternatives considered under the third category. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationale for identifying the preferred alternatives to achieve the desired objective.

NMFS has prepared this IRFA to analyze the impacts on small entities of the alternatives for establishing ICCAT shark recommendations for all domestic fishing categories that target tuna and tuna-like species. The IRFA assesses the impacts of the various alternatives on the vessels that participate in the Atlantic HMS commercial and recreational fisheries that target tuna and tuna-like species, all of which are considered small entities. Three alternatives were considered and analyzed and include (A1) no action; (A2) implementing the ICCAT shark recommendations in the commercial PLL fishery for tuna and tuna-like species; and (A3) implementing the ICCAT shark recommendations in the HMS Angling and Charter/Headboat fisheries for tuna and tuna-like species.

Under the No Action Alternative, A1, there would be no additional economic impacts to HMS vessels fishing for tuna and tuna-like species. Commercial vessels that fish for tuna and tuna-like species that are also currently authorized to land oceanic whitetip and hammerhead sharks would be able to continue that practice. Total gross average annual revenues from oceanic whitetip and hammerhead shark meat and fins from all vessels that fished for tuna or tuna-like species from 2005 through 2009 was $9,155. Vessels fishing recreationally for tuna or tuna-like species would continue to have the ability to retain an oceanic whitetip or hammerhead shark along with a tuna or tuna-like species on the same recreational trip under the no action alternative.

Under Alternative A2, a preferred alternative, ICCAT shark recommendations would be applied to PLL vessels fishing commercially for tuna and tuna-like species. This alternative would prohibit retention of oceanic whitetip and hammerhead sharks by PLL vessels. On average, from 2005 through 2009, less than 2 percent of the total PLL trips kept oceanic whitetip sharks, which equates to an average of 12 PLL vessels per year that kept caught oceanic whitetip sharks. On average, a total of 1,462 lb of oceanic whitetip sharks were landed annually by 12 PLL vessels on average from 2005 through 2009. From 2005 through 2009, on average, 2 percent of the total PLL trips kept hammerhead sharks, which equates to an average of 25 vessels that kept hammerheads on an annual basis. On average, 9,493 lb in total were landed from 25 PLL vessels per year from 2005 through 2009. Gross average annual revenues from oceanic whitetip and hammerhead shark meat and fins from the 25 PLL vessels that fished for tuna or tuna-like species and kept oceanic whitetip or hammerhead sharks from 2005 through 2009 were $9,155 or $366 per vessel. NMFS prefers Alternative 2 at this time, because it would implement ICCAT shark recommendations and would have minor adverse socioeconomic impacts on the PLL fishery.

Under Alternative A3, a preferred alternative, ICCAT shark recommendations would be applied to vessels holding a General Category permit when fishing in an HMS tournament or holding either an HMS Angling or Charter/Headboat permit fishing either recreationally or commercially for tuna and tuna-like species. This alternative would prohibit retention of oceanic whitetip and hammerhead sharks along with tuna and tuna-like species by vessels fishing recreationally and by Charter/Headboat permit holders fishing commercially. Although there are no instances of oceanic whitetip or hammerhead sharks retained along with tuna or tuna-like species in the LPIS or MRFS data from 2005 through 2009, this alternative could limit fishing opportunities and lead to fewer fishing trips. Charter/Headboats could experience a decrease in trips as much of their business is based on providing recreational anglers the opportunity to catch hammerhead and oceanic whitetip sharks. However, because none of the intercepted Charter/Headboat trips landed oceanic whitetip and hammerhead sharks along with tuna or tuna-like species, NMFS anticipates the impacts to Charter/Headboats to be minor. NMFS prefers this alternative at this time, because it would implement ICCAT shark recommendations and would have minor, adverse socioeconomic impacts on the HMS Angling and Charter/Headboat fisheries.

List of Subjects in 50 CFR Part 635

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

Dated: April 26, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

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

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

2. In § 635.21, paragraph (c)(1) is revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(c) * * *

(1)(i) If a vessel issued or required to be issued a permit under this part is in a closed area designated under paragraph (c)(2) of this section and has bottom longline gear onboard, the vessel may not, at any time, possess or land any pelagic species listed in Table 2 of Appendix A to this part in excess of 5 percent, by weight, of the total weight of pelagic and demersal species possessed or landed, that are listed in Tables 2 and 3 of Appendix A to this part.

(ii) If pelagic longline gear is on board a vessel issued a permit under this part, persons aboard that vessel may not retain, transship, land, sell, store oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks.

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3. In § 635.22, paragraph (a) is revised to read as follows:

§ 635.22 Recreational retention limits.

(a) *General.* (1) Atlantic HMS caught, possessed, retained, or landed under these recreational limits may not be sold or transferred to any person for a commercial purpose. Recreational retention limits apply to a longbill spearfish taken or possessed shoreward of the outer boundary of the Atlantic EEZ, to a shark taken from or possessed in the Atlantic Ocean including the Gulf of Mexico and Caribbean Sea, to a North Atlantic swordfish taken from or possessed in the Atlantic Ocean, and to bluefin and yellowfin tuna taken from

or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel retention limit and for the cumulative retention limit based on the number of persons aboard. Federal recreational retention limits may not be combined with any recreational retention limit applicable in state waters.

(2) Vessels issued a HMS General Category permit under § 635.4(d) that are participating in a HMS registered tournament, vessels issued a HMS Angling category permit under § 635.4(c), or vessels issued a HMS Charter/Headboat permit under § 635.4(b) may not retain oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks if swordfish, tuna, or billfish are retained or possessed on board the vessel. Those vessels also may not retain swordfish, tuna, or billfish if oceanic whitetip sharks, or scalloped, smooth or great hammerheads are retained or possessed on board the vessel.

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4. In § 635.24, paragraphs (a)(2) and (a)(4)(i) are revised to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

* * * * *

(a) * * *

(2) From July 24, 2008 through December 31, 2012, a person who owns or operates a vessel that has been issued a directed LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued a directed LAP for sharks and that has been issued a valid shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 33 non-sandbar LCS per vessel per trip if the fishery is open per §§ 635.27 and 635.28. Such persons may not retain, possess, or land sandbar sharks or, as specified at § 635.21(c)(1)(ii), scalloped, smooth or great hammerhead sharks. As of January 1, 2013, a person who owns or operates a vessel that has been issued a directed LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued a directed LAP for sharks and that has been issued a shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 36 non-sandbar LCS per vessel per trip if the fishery is open per § 635.27 and § 635.28. Such persons may not retain, possess, or land sandbar sharks or, as specified at § 635.21(c)(1)(ii), scalloped, smooth or great hammerhead sharks.

* * * * *

(4)(i) A person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, or land pelagic sharks, except as specified at § 635.21(c)(1)(ii), if the pelagic shark fishery is open per §§ 635.27 and 635.28.

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5. In § 635. 31, paragraph (c)(6) is added to read as follows:

§ 635.31 Restrictions on sale and purchase.

* * * * *

(c) * * *

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

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6. In § 635.71, paragraph (d)(18) is added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(d) * * *

(18) Retain, transship, land, store, sell or purchase oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks as specified in § 635.21 (c)(1)(ii), § 635.31(c)(6) and § 635.22(a)(2).

[FR Doc. 2011–10452 Filed 4–28–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110118038–1236–01]

RIN 0648–BA72

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 22

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Framework Adjustment 22 (Framework 22) to the Atlantic Sea Scallop Fishery Management Plan (FMP), which was developed and adopted by the New England Fishery Management Council (Council) and submitted to NMFS for approval. The specifications proposed in Framework 22 are based on, and being proposed in conjunction with, the management measures proposed in Amendment 15 to the FMP (Amendment 15) that establish the process for setting annual catch limits (ACLs) and accountability measures (AMs) to bring the FMP into compliance with the requirements of the re-authorized Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The purpose of Framework 22 is to specify the following scallop management measures for the 2011 through 2012 fishing years (FYs): The overfishing limit (OFL), acceptable biological catches (ABC), ACLs, and annual catch targets (ACTs) for both the limited access (LA) and limited access general category (LAGC) fleets; open area days-at-sea (DAS) and Sea Scallop Access Area (access area) trip allocations; DAS adjustments if an access area yellowtail flounder (YTF) total allowable catch (TAC) is caught; LAGC-specific allocations, including access area trip allocations for vessels with individual fishing quotas (IFQs), the Northern Gulf of Maine (NGOM) TAC, and the incidental target TAC; management measures to minimize impacts of incidental take of sea turtles as required by the March 14, 2008, Atlantic Sea Scallop Biological Opinion (Biological Opinion); and the elimination of the default Georges Bank (GB) access area rotation schedule.

Framework 22 also proposes, consistent with proposed measures in Amendment 15, precautionary default management measures for FY 2013 to be applied if a new biennial framework adjustment is not implemented by the start of FY 2013.

DATES: Comments must be received by 5 p.m., local time, on May 31, 2011.

ADDRESSES: An environmental assessment (EA) was prepared for Framework 22 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Framework 22, the EA, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.