DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket 110112022–1025–02]

RIN 0648–BA45

Atlantic Highly Migratory Species; Modification of the Retention of Incidentally-Caught Highly Migratory Species in Atlantic Trawl Fisheries

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

ACTION: Proposed rule; request for comments; notice of public hearings.

SUMMARY: This proposed rule would modify the permitting and retention requirements for Atlantic highly migratory species (HMS) to address the incidental catch of North Atlantic swordfish in squid trawl fisheries, and the incidental catch of species in the smoothhound shark complex (which includes smooth dogfish and Florida smoothhound (genus *Mustelus*) in all Atlantic trawl fisheries. The action would reduce regulatory discards of incidentally-caught HMS in the *Illex* squid trawl fishery by establishing a new Incidental HMS Squid Trawl permit, and improve reporting and compliance with HMS regulations in Atlantic squid trawl fisheries. The proposed rule would also address regulatory discards of incidentally-caught species in the smoothhound shark complex by establishing a retention limit for smoothhound sharks in all Atlantic trawl fisheries. The proposed actions are necessary to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to implement the 2006 Consolidated HMS Fishery Management Plan (Consolidated HMS FMP), including objectives in the FMP to monitor and control all components of fishing mortality, both directed and incidental, so as to ensure the long-term sustainability of HMS stocks, and to provide the data necessary for assessing HMS fish stocks and managing HMS, including addressing inadequacies in current data collection and the ongoing collection of economic and bycatch data in Atlantic HMS fisheries.

DATES: Written comments must be received on or before April 17, 2011.

The public hearing dates are:

1. March 21, 2011, 1 p.m. to 3 p.m., Gloucester, MA
2. March 22, 2011, 4:30 p.m. to 6:30 p.m., Barnegat, NJ
3. March 28, 2011, 5 p.m. to 7 p.m., Manteo, NC
4. April 6, 2011, 8:30 a.m. to 10 a.m., Silver Spring, MD
5. April 13, 2011, 11 a.m. to 12 p.m., Annapolis, MD

ADDRESSES: The public hearings will be held at the NMFS Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA, 01930; Ocean County Library (Barnegat Branch), 112 Burr Street, Barnegat, NJ, 08005; Manteo Town Hall, 407 Budleigh St., Manteo, NC, 27954; HMS Advisory Panel (AP) Meeting, Crowne Plaza Hotel, 8777 Georgia Ave., Silver Spring, MD, 20910; Mid-Atlantic Fishery Management Council (MAFMC) Meeting, Historic Inn of Annapolis, 58 State Circle, Annapolis, MD, 21401.

You may submit comments, identified by "0648–BA45," by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov*
- *Fax:* 301–713–1917, Attn: Margo Schulze-Haugen
- *Mail:* National Marine Fisheries Service, c/o HMS Management Division, SF/1, 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope "Comments on Proposed Rule to Modify the Retention of Incidentally-Caught HMS in Atlantic Trawl Fisheries."
- *Instructions:* All comments received are part of the public record and generally will be posted to Portal *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 information.

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

Supporting documents, including the draft Environmental Assessment (EA), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) for this action are available online at the HMS Management Division Web site: *http://www.nmfs.noaa.gov/sfa/hms/.*

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson at 727–824–5399, Steve Durkee at 202–670–6637, or Delisse Ortiz at 301–713–2347.

SUPPLEMENTARY INFORMATION: North Atlantic swordfish and smoothhound shark species are managed under the authority of the Magnuson-Stevens Act, and swordfish are also managed under the authority of the Atlantic Tunas Convention Act (ATCA), which authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the 2006 Consolidated HMS FMP, which details the management measures for Atlantic HMS fisheries. The implementing regulations for the Consolidated HMS FMP and its amendments for Atlantic HMS are at 50 CFR part 635.

I. Background

NMFS is issuing this proposed rule to address the permitting requirements for, and retention of, incidentally-caught HMS in Atlantic trawl fisheries. The proposed actions are necessary to achieve domestic management objectives under the Magnuson-Stevens Act and ATCA, and to implement the Consolidated HMS FMP and its amendments. This includes objectives in the FMP to monitor and control all components of fishing mortality, both directed and incidental, so as to ensure the long-term sustainability of HMS stocks, and to provide the data necessary for assessing HMS fish stocks and managing HMS, including addressing inadequacies in current data collection and the ongoing collection of economic and bycatch data in Atlantic HMS fisheries. This proposed rule addresses two separate, but related, issues regarding the retention of incidentally-caught HMS in trawl fisheries to achieve these objectives: (1) The retention of incidentally-caught swordfish in the *Illex* squid trawl fishery; and, (2) the retention of incidentally-caught species in the smoothhound shark complex (including

smooth dogfish and Florida smoothhound (genus *Mustelus*)) in all Atlantic trawl fisheries.

Retention of Incidentally-Caught Swordfish in Squid Trawl Fisheries

Limited access permits (LAPs) in the North Atlantic commercial swordfish fishery were first implemented during 1999–2000. These LAPs were issued based, in part, upon a vessel's swordfish landings history. At the time, some squid trawl vessels qualified for a swordfish LAP, but many did not for a variety of reasons (including a lack of documented swordfish landings or income from swordfish). Under current regulations, vessels intending to legally land North Atlantic swordfish with gear other than handgear, including squid trawl vessels, must be issued a swordfish LAP, a shark LAP, and an Atlantic Tunas Longline LAP (the "HMS permit triple-pack"). The requirement to possess three LAPs was primarily intended for pelagic longline (PLL) vessels, because of the high likelihood of catching swordfish, sharks, and tunas when fishing with PLL gear. Because some squid trawl vessels did not apply for, or qualify for, the "HMS permit triple-pack," these vessels have had to discard any swordfish captured incidentally by their squid trawls. Due to physical trauma, most of the swordfish caught in trawl nets are brought onboard dead or die soon afterwards.

While the use of trawl gear is not authorized for any HMS fisheries, the current regulations provide for the incidental retention of up to 15 swordfish per trip in the squid trawl fishery, provided that the vessel has been issued the "HMS permit triple-pack" that is required to retain swordfish. Under no circumstances, however, may a squid trawl vessel retain sharks (aside from smoothhound sharks) or tunas because trawl gear is not authorized for these species, and there is no exemption for these species for squid trawls. Under the HMS regulations, a vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawls on board and when squid constitutes not less than 75 percent by weight of the total retained catch. An analysis of the Northeast Vessel Trip Report (VTR) data indicates that swordfish are frequently discarded by squid trawl vessels. Because swordfish are incidentally-caught during normal squid trawl fishing operations, and the regulations allow for retention only if the vessel has been issued the "HMS permit triple-pack," the current permit requirements may be inadvertently contributing to regulatory dead discards of swordfish. When PLL gear is deployed, swordfish, sharks, and tunas are all likely to be caught. However, trawl gear is different from PLL gear, and incidentally-caught swordfish in squid trawl gear constitute a very small component of the overall catch. Therefore, the rationale which prompted NMFS to require the issuance of swordfish, shark, and Atlantic Tunas Longline LAPs in order to land swordfish is not as likely to be applicable to squid trawl vessels as it is for PLL vessels.

Squid trawl vessel owners that were not initially issued the three LAPs required to retain swordfish can currently obtain the permits by purchasing them and transferring the permits to their vessels. However, this is not a practical solution because swordfish are a very small component of the overall catch in the squid trawl fishery and the "HMS permit triple-pack" is often expensive, making it a poor investment for squid trawl vessels, and one that may take several years to recoup. The HMS permit structure is also problematic for squid trawl vessels because swordfish dead discards could be a source of revenue for U.S. fishermen. Swordfish caught incidentally by trawl gear are usually brought on board dead, or die soon afterwards.

NMFS has received an increasing number of comments, primarily from squid trawl vessel owners, requesting reconsideration of the three-permit requirement for squid trawl vessels. The current HMS permit structure (*i.e.,* the "HMS permit triple-pack") is believed by these commenters to be burdensome, confusing, and unnecessary since squid trawl vessels do not fish with PLL gear. Allowing for the retention of incidentally-caught swordfish by squid trawl vessels would also enable a more thorough utilization of the available U.S. swordfish quota, which has been consistently underharvested in recent years. As a result of suggestions received at the 2009 HMS AP meeting and in constituent correspondence, NMFS published an Advanced Notice of Proposed Rulemaking (ANPR) (74 FR 26174, June 1, 2009) requesting comments on, among other items, potential regulatory changes that would increase fishing opportunities to harvest the U.S. swordfish quota. NMFS specifically requested comments on a potential exemption for squid trawl vessels from the multi-permit requirement to retain incidentally-caught swordfish. During the comment period, the majority of the comments supported some type of multi-permit exemption for squid trawl vessels. Consequently, in this proposed rule, NMFS considers various alternatives that would allow squid trawl vessels to retain swordfish without the need for the "HMS permit triple-pack." Following consideration of the comments received on the 2009 ANPR, and at the 2009 and 2010 HMS AP meetings, and in ongoing consultation with MAFMC staff, NMFS proposes to establish a new Incidental HMS Squid Trawl permit available to all vessel owners issued a valid *Illex* squid moratorium permit. It would allow for the retention, possession, and sale of up to 15 swordfish per trip (the current trip limit for squid trawl vessels that have been issued the "HMS permit triple-pack") for all vessels in the squid trawl fishery issued the new permit.

Establishment of a Retention Limit for Incidentally-Caught Smoothhound Sharks in Trawl Fisheries

On June 1, 2010, NMFS published a final rule (75 FR 30484, June 1, 2010) implementing Amendment 3 to the Consolidated HMS FMP (Amendment 3). In Amendment 3 (75 FR 30484, June 1, 2010), NMFS determined that smooth dogfish is an oceanic shark and should be managed under the Secretary's authority because of the wide distribution of smooth dogfish and because their range extends into the jurisdictions of more than one of the five regional Atlantic fishery management councils. NMFS determined that, based on existing data, the smooth dogfish fishery was substantial with average annual landings of 431 mt dressed weight (dw), which was among the highest for any Atlantic species of shark managed by NMFS. It was decided that sound science-based conservation and management was necessary to provide for long-term sustainable yield from the stock.

During the development of Amendment 3, emerging molecular and morphological research determined that Florida smoothhounds (*Mustelus norrisi*) had been historically misclassified as a separate species from smooth dogfish. Additionally, NMFS' Southeast Fisheries Science Center (SEFSC) advised that there were insufficient data at the time to separate smooth dogfish and Florida smoothhound stocks, and that they should be treated as a single stock complex until scientific evidence indicated otherwise. Accordingly, because of this taxonomic correction and based upon SEFSC advice, both Florida smoothhounds and smooth dogfish began to be managed as the

smoothhound shark complex in Amendment 3.

Most directed smooth dogfish catch occurs with gillnets and bottom longlines, and incidental catches occur with trawl gear. As such, NMFS implemented a new requirement for a Federal smoothhound permit that is to be effective at the start of the 2012 smoothhound shark fishing season (75 FR 30524, June 1, 2010). The purpose of this action was to collect better fishery data and improve information regarding the life history of the species, among others. Consistent with the stated intent of Amendment 3 to minimize changes to the fishery, trawl gear was not authorized as an HMS gear, but NMFS indicated that vessels with trawl gear could harvest smoothhound shark species at incidental levels, similar to swordfish. Therefore, NMFS is considering in this proposed rule an appropriate retention limit that would allow fishermen to harvest incidentally-caught smoothhound shark species with trawl gear provided that sufficient quantities of target catch are retained. The proposed action would allow persons on board a vessel in a trawl fishery that has been issued a commercial open-access smoothhound permit to retain, possess, land, or sell incidentally-caught smoothhound sharks, but only up to an amount that does not exceed 25 percent, by weight, of the total fish on board or offloaded from the vessel. A vessel is considered to be in a trawl fishery when it has no commercial fishing gear other than trawls on board and when smoothhound sharks constitute no more than 25 percent by weight of the total fish on board or offloaded from the vessel.

In summary, NMFS is proposing measures that would modify the permitting requirements and allowance for incidentally-caught HMS in trawl gears. These actions would reduce regulatory dead discards, consistent with fishery management objectives, by converting discards into landings; improve fishery data collection; provide additional opportunities for the U.S. swordfish quota to be caught; and accommodate the use of traditional fishing gears (*i.e.,* trawls) that incidentally capture North Atlantic swordfish and smoothhound shark species. The complete list of alternatives and their ecological, social, and economic analyses is provided in the draft EA, RIR, and IRFA, and is not repeated here in its entirety. A copy of the draft EA/RIR/IRFA is available from NMFS (*see* **ADDRESSES**).

II. Adjustments to the Permitting Requirements and Retention Limits for Incidentally-Caught Swordfish in Squid Trawl Fisheries

Under the current swordfish retention limit regulations for squid trawl vessels at § 635.24, a squid trawl vessel must be issued a swordfish LAP (other than handgear), a shark LAP, and an Atlantic Tunas Longline LAP to retain, possess, land or sell the allowed incidental retention limit of 15 swordfish per trip. A vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawl gear on board and when squid constitutes not less than 75 percent by weight of the total fish on board or offloaded from the vessel. In addition, vessel owners issued the "HMS permit triple-pack" are required to sell their swordfish only to federally permitted swordfish dealers, and must report all swordfish landed in Federal logbooks.

As indicated in the Background section of this preamble, these current requirements may be contributing to regulatory dead discards of swordfish by squid trawl vessels which did not apply for, qualify for, or obtain, the three requisite permits needed to retain swordfish. The intent of this proposed action is to reduce wasteful discards in squid trawl fisheries by converting regulatory dead discards of swordfish into landings, and to fully account for swordfish removed from the stock to provide better data for stock assessment purposes and quota monitoring. Relieving squid trawl vessels of the need to be issued three different HMS permits (that were primarily intended for PLL vessels) would also be more efficient, and could improve reporting and compliance with HMS regulations in all squid trawl fisheries.

NMFS is proposing the following alternatives to reduce regulatory dead discards of swordfish incidentally-caught in squid trawl gear: Alternative A1, no action; Alternative A2, the preferred alternative, which would establish a new permit (*i.e.,* Incidental HMS Squid Trawl permit) that would allow *Illex* squid moratorium permit holders to retain up to 15 swordfish per trip; Alternative A3, which would exempt *Illex* squid moratorium permit holders from current HMS permitting requirements and allow them to retain up to 15 swordfish per trip; and, Alternative A4, which would establish either a new permit or an exemption, as applicable, for *Loligo* squid moratorium permit holders to retain up to 15 swordfish per trip.

Overall squid trawl fishing effort is not expected to change under any of the four alternatives regardless of whether vessels are allowed to retain, rather than discard, swordfish captured incidentally while fishing for squid. These vessels are primarily designed to fish for, and land, small pelagic species such as squid, mackerel, and butterfish. Swordfish catches are incidental to catches of these target species. For 2011, the U.S. allowable biological catch for *Illex* squid was set at 24,000 mt, with a domestic annual harvest limit of 23,328 mt. Although *Illex* landings fluctuate on an annual basis, they are limited by these specifications.

Northeast Fisheries Science Center (NEFSC) Observer Data from 1997–2006 indicates that both the directed *Illex* and *Loligo* squid trawl fisheries appear to have relatively low levels of incidentally-caught swordfish, with considerably less catch in the *Loligo* fishery. For *Illex* trips, 12,057 lbs of swordfish were caught, with 7,683 lbs kept and 4,374 lbs discarded (976 tows sampled). For *Loligo* trips, 2,468 lbs of swordfish were caught, with 1,186 lbs kept and 1,282 lbs discarded (4,697 tows sampled). The average number of swordfish discards per *Illex* tow amounts to 0.11/tow, and the average number of swordfish discards per *Loligo* tow amounts to 0.01/tow. Using the average number of discards per tow in the *Illex* fishery and the average tows per trip among large and small vessels results in an average of 3.3 and 1.2 swordfish discards per *Illex* trip, respectively. Using the average number of discards per tow in the *Loligo* fishery and the average tows per trip among large and small vessels results in an average of 0.3 and 0.1 swordfish discards per *Loligo* trip, respectively. The incidental catch of swordfish in squid trawl gear is expected to continue to occur at the same level under all of the alternatives. There is a very high mortality rate of swordfish captured incidentally by squid trawl vessels. The primary difference between alternatives is whether the dead (or dying) swordfish would be allowed to be kept. Thus, ecologically, the impacts associated with all of the alternatives are expected to be neutral, relative to the status quo, as the same amount of squid trawl fishing effort is expected to occur and the same amount of swordfish would likely be killed under all of the alternatives.

The incidental catch of swordfish is much higher in the *Illex* squid trawl fishery than in the *Loligo* squid trawl fishery. This is because the *Loligo* fishery operates inshore during summer months, whereas the *Illex* fishery operates in the offshore mid-Atlantic canyons during the summer where

swordfish are more prevalent. Temporally and spatially, the two squid trawl fisheries are different.

In 2010, there were 365 vessels issued *Loligo* squid moratorium permits (of which 180 were active) and 76 vessels issued *Illex* squid moratorium permits (of which 18 were active). All of the *Illex* squid moratorium permit holders were issued *Loligo* squid moratorium permits. Although Alternative A4 is expected to have neutral ecological impacts because no change in squid trawl fishing effort is anticipated under any of the alternatives, establishing a new permit or a permit exemption for up to potentially 289 additional *Loligo* squid trawl vessels is not necessary to reduce dead discards because these vessels individually have very low swordfish discard rates. Thus, Alternative A4 is not preferred.

The no action alternative would have minor adverse short-term, long-term, and cumulative social and economic impacts because of the continued occurrence of regulatory dead discards of swordfish by squid trawl vessels under this alternative. Although the estimated number of discards is relatively low (less than 450 fish annually), it represents unrealized income and economic waste because the swordfish must be thrown overboard and are usually dead. Alternatives A2–A4 would all provide minor beneficial direct short-term, long-term, and cumulative social and economic impacts because dead swordfish discards would be converted into landings and income for fishermen, and a larger portion of the ICCAT-recommended U.S. swordfish quota would be harvested. Because Alternative A3 would not implement a permit requirement for *Illex* squid trawl fishermen, it would not provide additional fishery management information regarding the number of squid trawl vessels potentially landing swordfish. Thus, Alternative A3 is not preferred.

Alternative A2 is preferred at this time because it would provide socioeconomic benefits for the *Illex* squid trawl fishery, which has the highest interaction rate with swordfish, and is anticipated to result in neutral ecological impacts without the potential for a large increase in overall squid trawl fishing effort. Additionally, Alternative A2 could improve reporting and compliance with HMS regulations in squid trawl fisheries through the requirement to obtain an HMS permit. The proposed action (Alternative A2) is not expected to have any significant ecological impact on the environment, including protected resources, target catches, and non-target catches, beyond those that have been previously analyzed.

III. Establishment of a Retention Limit for Smoothhound Shark Species in Atlantic Trawl Fisheries

Smoothhound sharks were brought under Federal management in 2010 through implementation of Amendment 3 to the Consolidated HMS FMP. As discussed in the Background section of this preamble, NMFS included a new requirement for a federal smoothhound permit that is to be effective at the start of the 2012 fishing season. Consistent with the intent of Amendment 3 to minimize changes in the fishery, NMFS stated that vessels fishing with trawl gear would be allowed to land smoothhound shark species at incidental levels, similar to swordfish.

NMFS proposes the following alternatives to address the retention of smoothhound sharks caught incidentally in trawl gear: Alternative B1, no action; Alternative B2, the preferred alternative, which would allow for the retention of smoothhound sharks caught incidentally in trawl gear, in an amount not to exceed 25 percent of the total catch, by weight; and Alternative B3, which would allow for the retention of smoothhound sharks caught incidentally in trawl gear, in an amount not to exceed 50 percent of the total catch, by weight.

Alternative B1 would not implement management measures in the 2012 fishing year to allow for the retention of smoothhound sharks caught incidentally in trawl gear. Under Amendment 3 to the HMS FMP, trawl gear is not an authorized gear in the smoothhound shark fishery and, in the absence of additional regulations, it would be illegal, beginning with the 2012 fishing season, to retain smoothhound sharks caught with trawl gear.

After Federal smoothhound shark management measures are implemented in 2012, the no action Alternative B1 would require trawl fishermen to discard any incidentally-caught smoothhound sharks. This alternative could have minor beneficial ecological impacts. Unlike swordfish captured in trawl gear, which are thought to have a very low survivorship, smoothhound sharks may be better adapted to survive trawl capture and release. Although difficult to quantify, it is possible that a portion of the discards under no action Alternative B1 would be live discards and, therefore, fishing mortality on the Atlantic smoothhound shark stock could be reduced.

Alternatives B2 and B3 would be expected to have positive ecological impacts when compared to the status quo, since it is currently legal for trawl fishermen to retain an unlimited amount of smoothhound sharks. However, ecological impacts resulting from either Alternative B2 or B3 must also be assessed compared to the no action alternative, B1. Under the no action alternative, trawl fishermen would not be authorized to retain smoothhound sharks beginning in 2012. Therefore, both Alternatives B2 and B3 would result in an increase in the retention of the species and the potential for higher fishing mortality in comparison to the no action alternative. For this reason, both Alternatives B2 and B3 could have minor, direct short-term and long-term negative ecological impacts relative to the no action alternative, because they would allow for some retention of smoothhound sharks. The two alternatives establish different incidental catch thresholds, but both would allow for retention of the species. The potential for higher fishing mortality under Alternative B2 and B3, as compared to the no action alternative (no retention of smoothhound sharks in trawl gear beginning in 2012), could result in minor negative impacts to the stock. However, in comparison to the status quo (currently unlimited retention of smoothhound sharks in trawl gear), Alternatives B2 and B3 could have minor positive impacts to the stock because they limit retention to no more than 25 or 50 percent of the total retained catch on board, respectively. Regardless, it is important to note that the smoothhound shark complex does not show signs of being unhealthy, and catch data has remained consistent over the past 10 years.

In summary, none of the alternatives are expected to result in any change in trawl fishing effort because smoothhound sharks are rarely, if ever, targeted with trawl gear. Smoothhound sharks are usually caught incidentally while trawl fishing for other species, such as summer flounder, scup, croaker, silver hake, and squid. Therefore, any ecological impacts associated with the alternatives, either positive or negative, are expected to be either minor or non-existent.

Social and economic impacts, either positive or negative, are similarly expected to be minor under all of the alternatives. Under Alternative B1, trawl fishermen could collectively lose $56,729 per year between 266 vessels (or approximately $213 per vessel), beginning in 2012. Under Alternatives B2 and B3, however, they would

continue to be allowed to retain and sell incidentally-caught smoothhound sharks. Calculating the exact level of revenue that would continue to be earned through smoothhound shark sales by trawl fishermen is difficult due to incomplete reporting and data. However, based upon the average annual total smoothhound shark trawl revenue estimate of $56,729, and the fact that Alternatives B2 and B3 would continue to allow approximately 89 percent or 97 percent of historical smoothhound trawl trips to occur, respectively, fishermen would experience moderate positive social and economic impacts when compared to the no action alternative. Alternative B2 is preferred at this time because of the NMFS' intention to maintain smoothhound sharks as an incidental catch in the trawl fishery. Allowing no retention (Alternative B1) or up to 50 percent of trawl catches to be smoothhound sharks (Alternative B3) would not be fully consistent with the intent to minimize changes to the smoothhound shark fishery.

IV. Request for Comments

NMFS requests comments on all aspects of this proposed rule. NMFS also requests specific comments regarding the practicality and potential impacts associated with establishing a smoothhound shark retention limit for trawl vessels that is based upon the percent, by weight, of the total catch on board or offloaded from the vessel.

Comments on this proposed rule may be submitted online via *http://www.regulations.gov,* by mail, or by fax. Comments may also be submitted at a public hearing (*see* Public Hearings and Special Accommodations below). NMFS solicits comments on this proposed rule by April 17, 2011 (*see* **DATES** and **ADDRESSES**). NMFS will hold five public hearings for this proposed rule. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Richard A. Pearson at (727) 824–5399, Steve Durkee at (202) 670–6637, or Delisse Ortiz at (301) 713–2347 at least 7 days prior to the hearing date. The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each 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.

V. 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 MSA, and other applicable law, subject to further consideration after public comment.

NMFS prepared an EA for this proposed rule that discusses the impact on the environment as a result of this rule. In this proposed action, NMFS considers the establishment of a new Incidental HMS Squid Trawl permit to reduce regulatory dead discards of North Atlantic swordfish in squid trawl fisheries with minimal ecological impacts. The proposed action also considers establishing a retention limit for smoothhound shark species in all Atlantic trawl fisheries to account for the incidental catch of these species. These measures are meant to reduce regulatory dead discards of HMS in trawl fisheries, consistent with fishery management objectives, by converting discards into landings, improving fishery data collection, providing additional opportunities for the U.S. swordfish quota to be caught, and accommodating traditional fishing methods (*i.e.,* trawls) that may incidentally capture swordfish and smoothhound shark species. A copy of the EA is available from NMFS (*see* **ADDRESSES**).

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

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

In compliance with section 603(b)(1) of the RFA, the purpose of this proposed rulemaking is, consistent with the Magnuson-Stevens Act, and the 2006 Consolidated HMS FMP and its amendments, to consider modifications to the permitting requirements for squid trawl vessels to retain incidentally-caught swordfish that would otherwise be discarded dead, and to establish smoothhound shark incidental retention limits for all Atlantic trawl vessels.

In compliance with section 603(b)(2) of the RFA, the objectives of this proposed rulemaking are to: (1) Establish a new Incidental HMS Squid Trawl permit to reduce regulatory dead discards of North Atlantic swordfish in squid trawl fisheries; and, (2) establish a retention limit for smoothhound shark species in all Atlantic trawl fisheries to account for the incidental catch of these species.

Section 603(b)(3) requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. NMFS has determined that all squid trawl vessels that are issued an *Illex* squid moratorium fishing permit and all trawl vessels that would obtain an open access smooth dogfish permit when it becomes required in 2012 are small entities under the Small Business Administration (SBA) size standards. All potentially effected vessels either had 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 13 CFR 121.201.

The proposed rule would apply to the 76 current (as of September 2010) *Illex* squid moratorium permit holders, of which 18 are considered "active" (*i.e.,* reported landings in 2009). Rhode Island and New Jersey accounted for 99 percent of *Illex* squid landings in 2009. NMFS cannot provide an estimate of the number of trawl vessels that would obtain an open access permit for smoothhound sharks in 2012, because the permit is currently not required. However, as a proxy, NMFS based its analysis upon vessels participating in the summer flounder and scup fisheries because these trawl fisheries frequently interact with smoothhound sharks. In 2009, approximately 1,100 vessels were issued either a commercial summer flounder permit or a commercial scup permit or both, with 798 vessels landing summer flounder in 2000. Rhode Island, New York, New Jersey, Virginia, and North Carolina are the primary states with landings of summer flounder and scup.

Under section 603 (b)(4) of the RFA, agencies are required to describe any new reporting, record-keeping and other compliance requirements. The proposed Federal permit requirement for an

Incidental HMS Squid Trawl permit would allow NMFS to collect data regarding participants in the fishery and landings through Federal dealer reports. The Federal Incidental HMS Squid Trawl permit requirement would require a similar permit application to the other current HMS permits. The information collected on the application would include vessel information, owner identification and contact information. A modest fee to process the application and annual renewal fee of approximately $20 may be required.

Under section 603(b)(5) of the RFA, agencies are required to identify, to the extent practicable, all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule. Fishermen, dealers, and managers in these fisheries must comply with a number of domestic laws, as well as regulations implementing other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. NMFS does not believe that the proposed regulations would duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

Under section 603(c) of the RFA, agencies are required to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. The potential impacts of this proposed action are discussed below and in the EA for the proposed action. Additionally, the RFA lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives (5 U.S.C. 603(c)(1)–(4)). 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 *Id.*

In order to meet the objectives of this proposed rule in a manner consistent with all other legal obligations, NMFS cannot exempt small entities or change the reporting requirements for only small entities. Thus, NMFS did not analyze any alternatives for either issue that fall under the first and fourth categories described above. In addition, NMFS intends to clarify and consolidate all reporting and compliance requirements associated with this proposed rule, to the extent practicable (category two above). All federally-permitted squid trawl vessels must currently report all of their landings via a NMFS Northeast Region Fishing Vessel Trip Report (VTR). NMFS intends to continue to utilize this reporting mechanism for all vessels that would be issued an Incidental HMS Squid Trawl permit to report their swordfish landings, although vessels could be selected for additional reporting under this rule if such reporting is determined to be necessary and appropriate. Similarly, the application process for the proposed Incidental HMS Squid Trawl permit would be the same, or similar, to the process used to apply for an *Illex* squid moratorium permit. The only prerequisite for obtaining the proposed new permit would be that the vessel has already been issued a valid *Illex* squid moratorium permit. There are no reporting or compliance requirements associated with establishing a smoothhound shark trawl vessel retention limit that could be consolidated, clarified, or simplified for small entities. Finally, 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 (category three above).

As described below, for this proposed rule, NMFS considered and analyzed four alternatives to address the retention of incidentally-caught swordfish in squid trawl fisheries (Issue A), and three alternatives to address the retention of incidentally-caught smoothhound sharks in trawl fisheries (Issue B).

The first alternative for Issue A is the no action alternative. This alternative would maintain existing HMS permit requirements and incidental swordfish retention limits in squid trawl fisheries. The second alternative, the preferred alternative, would implement a new permit (referred to as the Incidental HMS Squid Trawl permit) for *Illex* squid moratorium permit holders to retain up to 15 swordfish per trip, the current squid trawl limit. The third alternative would exempt *Illex* squid moratorium permit holders from current HMS permit requirements (*i.e.,* the "HMS permit triple-pack") and allow them to retain up to 15 swordfish when fishing for squid. Finally, the fourth alternative would establish either a new Incidental HMS Squid Trawl permit available to all vessel owners currently issued a *Loligo* squid moratorium permit, or establish an exemption from the need for *Loligo* squid trawl vessels to be issued the "HMS permit triple-pack" to retain swordfish.

For Issue A, the no action alternative (A1) would not result in any additional economic impacts to small entities in the short-term. However, this alternative contributes to a loss of potential income by squid trawl vessels which may occasionally catch a swordfish while it is foraging on squid or in the same physical environment, during normal squid trawl fishing activities. Only five squid trawl vessels out of 180 active *Illex* and *Loligo* squid vessels have been issued the requisite "HMS permit triple-pack" needed to retain swordfish. There are 18 active squid trawl vessels which are issued both an *Illex* and *Loligo* permit (*i.e., Illex*/*Loligo* vessels). It is presumed that the five squid trawl vessels issued the necessary HMS permits are also *Illex*/*Loligo* vessels. This means that the vast majority of squid trawl vessels must discard any incidentally-caught swordfish because they do not have the proper LAPs needed to retain them. Most of the swordfish incidentally caught by squid trawl vessels are brought onboard dead, or die soon afterwards; these dead discards constitute unrealized income and economic waste. NMFS estimates that the no action alternative contributes from $3,849.30–$4,154.40 annually in unrealized income for the 13 active *Illex*/*Loligo* squid trawl vessels that are not issued HMS permits. In aggregate, the total amount of unrealized annual income by the 13 active *Illex/Loligo* squid trawl vessels is estimated to range from $50,041–$54,007, depending upon the number of small and large active squid trawl vessels. Similarly, the total amount of unrealized annual income by the 162 active *Loligo* squid trawl vessels ranges from $57,562–$76,749, depending upon the number of small and large active *Loligo* squid trawl vessels. Each swordfish discard is estimated to be valued at approximately $296.10. Because the no action alternative (A1) contributes to regulatory discards of dead swordfish by squid trawl vessels, thereby causing economic waste, and because current permit requirements (*i.e.,* the "HMS permit triple-pack") are not well-suited for squid trawl vessels, it was not chosen as the preferred alternative.

The preferred alternative, Alternative A2, would implement a new permit (referred to as the Incidental HMS Squid Trawl permit) for *Illex* squid moratorium permit holders to retain up to 15 swordfish per trip, which is the current squid trawl limit. Because

Alternative A2 would allow *Illex* squid trawl vessels to retain swordfish caught incidentally during normal squid trawl fishing activities, thereby converting dead swordfish discards into landings, this alternative is expected to provide some minor economic benefits to *Illex* squid trawl vessels. Specifically, this alternative is estimated to provide a moderate increase in annual revenues from between $3,849.30–$4,154.40 annually for each of the 13 active *Illex*/*Loligo* squid trawl vessels that have not been issued HMS permits. In aggregate, Alternative A2 could produce from $50,041–$54,007 annually in additional revenue amongst the 13 active *Illex*/*Loligo* squid trawl vessels. These estimates were calculated using the average number of swordfish discards per tow from NEFSC observer data, and then extrapolating to determine the average number of swordfish discards per year for active vessels. Also, by implementing a permit requirement, NMFS would obtain important fishery management information, such as the identification of participants in the squid trawl fishery that may occasionally catch swordfish. This information will also help in outreach efforts. The Federal Incidental HMS Squid Trawl permit requirement would require a permit application similar to other current HMS permits. The information collected on the application would include vessel information and owner identification and contact information. A modest fee to process the application and annual renewal fee of approximately $20 may be required. This alternative is preferred because it would convert dead swordfish discards into landings, provide minor economic benefits to some small entities, reduce economic waste, provide additional fishery management information, and is not expected to appreciably alter current levels of fishing effort or have other adverse ecological consequences, including impacts on protected species, target species, non-target species, and essential fish habitat.

Alternative A3 is estimated to have the same minor positive economic impacts on small entities as preferred Alternative A2. However, there would be no costs to vessel owners associated with obtaining a new HMS permit (approximately $20/year). Rather, Alternative A3 would exempt vessels issued an *Illex* squid moratorium permit from HMS permit requirements and allow them to land up to 15 swordfish caught incidentally while squid trawling. All swordfish landings would still have to be reported in the VTR logbook (as currently required), so landings information would be obtained. While this alternative would be less burdensome to industry, it would not help to better identify the universe of vessels participating in the *Illex* squid trawl fishery that may be catching swordfish incidentally. It is currently difficult to separate squid trawl vessels from other vessels in landings databases because the required HMS permits are identical to those issued to longline vessels and other vessels. A removal of HMS permitting requirements for *Illex* squid trawl vessels would exacerbate this situation. Furthermore, it would hamper NMFS's efforts to improve outreach and communications with this small, but important, HMS constituency. Without a permit, NMFS could be deprived of important information regarding trawl vessel swordfish landings and fishery participation. Therefore, because Alternative A3 would not provide additional information for fishery management purposes, it was not selected as the preferred alternative.

Alternative A4 would implement the same requirements for *Loligo* squid trawl vessels that NMFS selects for *Illex* squid trawl fishermen. This alternative is estimated to provide a moderate increase in annual revenues from between $355.32–$473.76 annually for 162 active *Loligo* squid trawl vessels that are not issued HMS permits (*i.e.,* 180 active *Loligo* vessels minus 18 active *Illex*/*Loligo* vessels). In aggregate, the total amount of additional annual income that could be realized under this alternative by the 162 active *Loligo* squid trawl vessels ranges from $57,562–$76,749, depending upon the number of small and large active *Loligo* squid trawl vessels. This alternative would convert dead swordfish discards into landings and could provide minor economic benefits. However, the incidental catch of swordfish in squid trawls is much higher in the *Illex* squid trawl fishery than in the *Loligo* squid trawl fishery. This is because the *Loligo* fishery operates inshore during summer months whereas the *Illex* fishery operates in the offshore mid-Atlantic canyons during the summer where swordfish are more prevalent. Temporally and spatially, the two fisheries are different. Establishing a new permit or a permit exemption for up to potentially 289 additional *Loligo* squid trawl vessels is not necessary to reduce dead discards because these vessels individually have very low swordfish discard rates.

For Issue B, under the no action alternative (B1), beginning in 2012, the retention of smoothhound sharks would be prohibited by trawl vessels without the additional regulatory action that is proposed in this rulemaking. Therefore, Alternative B1 would have moderate direct short-term and long-term negative social and economic impacts starting in 2012. Based on VTR data from 2000–2009, an average of 145,088 lbs dw of smoothhound sharks were caught in trawl gear, retained, and likely sold per year. Using an average ex-vessel price of $0.29 for smoothhound shark meat, $2.02 for smoothhound shark fins, and assuming a fin-to-carcass ratio of five percent, total revenues from smoothhound sharks caught in trawl gear averages $56,729 per year. Thus, in aggregate, under Alternative B1, in 2012 trawl fishermen could collectively lose $56,729 per year across up to 266 vessels. Individually, each vessel could realize approximately $213.26 annually in lost revenue under the no action alternative. This alternative is not preferred because prohibiting the retention of incidentally-caught smoothhound sharks by trawl gear would not be consistent with NMFS's intent in Amendment 3 to minimize changes to the smoothhound fishery by allowing for incidental trawl landings.

Alternative B2, the preferred alternative, would allow for the retention of smoothhound sharks caught incidentally in trawl gear, in an amount not to exceed 25 percent of the total catch, by weight. When compared to the no action alternative, starting in 2012 Alternative B2 would have moderate direct short-term and long-term positive social and economic impacts. Currently, some trawl fishermen supplement fishing revenue with smoothhound shark products. Under the no action alternative in 2012, they would no longer be able to do so. Under Alternative B2, however, they would continue to be allowed to retain and sell incidentally caught smoothhound sharks. Calculating the exact level of revenue that would continue to be earned through smoothhound shark sales by trawl fishermen is difficult due to incomplete reporting and data. However, based upon the average annual total smoothhound shark trawl revenue estimate of $56,729, and the fact that Alternative B2 would continue to allow approximately 89 percent of historical smoothhound trawl trips, fishermen stand to experience moderate positive social and economic impacts compared to Alternative B1 starting in 2012. This alternative is preferred because it maintains 89 percent of historical smoothhound shark trips, but implements a reasonable upper threshold on landings to discourage a directed trawl fishery for smoothhound

sharks. This alternative is consistent with NMFS's intent to maintain smoothhound sharks as an incidental catch in trawl fisheries.

Alternative B3 would allow for the retention of smoothhound sharks caught incidentally in trawl gear, in an amount not to exceed 50 percent of the total catch, by weight. When compared to the no action alternative, Alternative B3 would have moderate direct short-term and long-term positive social and economic impacts beginning in 2012. Currently, some trawl fishermen supplement fishing revenue with smoothhound shark products. Under the no action alternative, they would no longer be able to do so starting in 2012. Under Alternative B3, however, they would continue to be allowed to retain and sell incidentally-caught smoothhound sharks. Calculating the exact level of revenue that would continue to be earned through smoothhound shark sales by trawl fishermen is difficult due to incomplete reporting and data. However, based upon the average annual total smoothhound shark trawl revenue estimate of $56,729, and the fact that Alternative B3 would continue to allow approximately 97 percent of the historical smoothhound trawl trips, fishermen would experience moderate positive social and economic impacts compared to Alternative B1 starting in 2012. This alternative is not preferred because allowing a trawl fishing trip to be up to 50 percent smoothhound sharks would not effectively ensure that a directed trawl fishery for smoothhound sharks does not develop. This alternative would not be consistent with NMFS's intent in Amendment 3 to minimize changes to the smoothhound fishery by allowing only for incidental trawl landings.

In summary, preferred Alternative A2 would have minor direct short-term positive economic impacts. It is estimated to allow 13 active *Illex* squid trawl vessels to retain and sell from 13–14 swordfish per vessel per year that they would otherwise be required to discard, assuming that historical fishing effort and discard rates remain constant. In aggregate, Alternative A2 could produce from $50,041–$54,007 annually in additional revenue amongst the 13 active *Illex*/*Loligo* squid trawl vessels. Similarly, preferred Alternative B2 would have minor direct short-term positive economic impacts, starting in 2012. Trawl vessels would continue to be allowed to retain and sell incidentally caught smoothhound sharks. Calculating the exact level of revenue that would continue to be earned through smoothhound shark sales by trawl fishermen is difficult due to incomplete reporting and data. However, based upon the average annual total smoothhound shark trawl revenue estimate of $56,729, and the fact that Alternative B2 would continue to allow approximately 89 percent of historical smoothhound trawl trips, fishermen would stand to experience moderate positive social and economic impacts compared to the no action alternative starting in 2012.

List of Subjects in 50 CFR Part 635

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

Dated: March 14, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, 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 § 635.4, paragraphs (a)(5), (a)(10), (f)(1), and (f)(2), the heading of paragraph (h)(1), and paragraphs (m)(1) and (m)(2) are revised, and paragraphs (h)(1)(iv) and (n) are added to read as follows:

§ 635.4 Permits and fees.

* * * * *

(a) * * *

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

* * * * *

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

* * * * *

(f) * * *

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

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

* * * * *

(h) * * *

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

* * * * *

(iv) An applicant for an incidental HMS squid trawl permit must submit, in addition to all other information specified in § 635.4(h)(1), a copy of a valid *Illex* squid moratorium permit, as described at § 648.4(a)(5)(i) of this chapter.

* * * * *

(m) * * *

(1) *General.* Persons must apply annually for a dealer permit for Atlantic tunas, sharks, and swordfish, and for an Atlantic HMS Angling, HMS Charter/Headboat, tunas, shark, swordfish, or Incidental HMS squid trawl vessel permit. Except as specified in the instructions for automated renewals, persons must submit a renewal application to NMFS, along with a copy of the applicable valid workshop certificate or certificates, if required pursuant to § 635.8, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit if the specific requirements for the requested permit

are met, including those described in paragraphs (h)(1)(iv) and (l)(2) of this section, all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in § 635.5 and § 300.185 of this title, the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section, and the workshop requirements specified in § 635.8 are met.

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

(n) *Incidental HMS Squid Trawl permits.* (1) The owner of a vessel in the squid trawl fishery, as described at § 635.24(b)(2), on which Atlantic swordfish are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, an Incidental HMS squid trawl permit.

(2) An Incidental HMS squid trawl permit is valid only when the vessel has on board a valid *Illex* squid moratorium permit, as described at § 648.4(a)(5)(i) of this chapter, and no commercial fishing gear other than trawl gear.

3. In § 635.5, paragraph (a)(1) is revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(1) *Logbooks.* If an owner of an HMS charter/headboat vessel, an Atlantic tunas vessel, a shark vessel, a swordfish vessel, or a vessel in the squid trawl fishery for which a permit has been issued under § 635.4(b), (d), (e), (f), or (n) is selected for logbook reporting in writing by NMFS, he or she must maintain and submit a fishing record on a logbook form specified by NMFS. Entries are required regarding the vessel's fishing effort and the number of fish landed and discarded. Entries on a day's fishing activities must be entered on the logbook form within 48 hours of completing that day's activities or before offloading, whichever is sooner. The owner or operator of the vessel must submit the logbook form(s) postmarked within 7 days of offloading all Atlantic HMS. If no fishing occurred during a calendar month, a no-fishing form so stating must be submitted postmarked no later than 7 days after the end of that month. If an owner of an HMS charter/headboat vessel, Atlantic tunas vessel, shark vessel, swordfish vessel, or a vessel in the squid trawl fishery permitted under § 635.4(b), (d), (e), (f), or (n) is selected in writing by NMFS to complete the cost-earnings portion of the logbook(s), the owner or operator must maintain and submit the cost-earnings portion of the logbook postmarked no later than 30 days after completing the offloading for each trip fishing for Atlantic HMS during that calendar year, and submit the Atlantic Highly Migratory Species Annual Expenditures form(s) postmarked no later than the date specified on the form of the following year.

* * * * *

4. In § 635.21, paragraphs (e)(3)(i), (e)(4)(i), and (e)(4)(iv) are revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(e) * * *

(3) * * *

(i) No person may possess a shark in the EEZ taken from its management unit without a permit issued under § 635.4. No person issued a Federal Atlantic commercial shark permit under § 635.4 may possess a shark taken by any gear other than rod and reel, handline, bandit gear, longline, or gillnet, except that smoothhound sharks taken incidentally while fishing with trawl gear may be retained by vessels issued a Federal commercial smoothhound permit, subject to the restrictions specified in § 635.24(a)(7). No person issued an HMS Angling permit or an HMS Charter/Headboat permit under § 635.4 may possess a shark if the shark was taken from its management unit by any gear other than rod and reel or handline, except that persons on a vessel issued both an HMS Charter/Headboat permit and a Federal Atlantic commercial shark permit may possess sharks taken with rod and reel, handline, bandit gear, longline, or gillnet if the vessel is not engaged in a for-hire fishing trip.

* * * * *

(4) * * *

(i) No person may possess north Atlantic swordfish taken from its management unit by any gear other than handgear or longline, except that such swordfish taken incidentally while fishing with a squid trawl may be retained by a vessel issued a valid Incidental HMS squid trawl permit, subject to restrictions specified in § 635.24(b)(2). No person may possess south Atlantic swordfish taken from its management unit by any gear other than longline.

* * * * *

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

* * * * *

5. In § 635.24, paragraphs (a)(7), (b)(1), and (b)(2) are revised to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

* * * * *

(a) * * *

(7) Only persons who own or operate a vessel that has been issued a Federal commercial smoothhound permit may retain, possess, and land smoothhound sharks if the smoothhound fishery is open per §§ 635.27 and 635.28. Persons aboard a vessel in a trawl fishery that has been issued a commercial smoothhound permit, and are in compliance with all other applicable regulations, may retain, possess, land, or sell incidentally-caught smoothhound sharks, but only up to an amount that does not exceed 25 percent, by weight, of the total catch on board or offloaded from the vessel. A vessel is considered to be in a trawl fishery when it has no commercial fishing gear other than trawls on board and when smoothhound sharks constitute no more than 25 percent by weight of the total fish on board or offloaded from the vessel.

* * * * *

(b) * * *

(1) Persons aboard a vessel that has been issued an incidental LAP for swordfish may retain, possess, land, or sell no more than 30 swordfish per trip in or from the Atlantic Ocean north of 5° N. lat.

(2) Persons aboard a vessel in the squid trawl fishery that has been issued an Incidental HMS squid trawl permit may retain, possess, land, or sell no more than 15 swordfish per trip in or from the Atlantic Ocean north of 5° N. lat. A vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawls on board and when squid constitute not less than 75 percent by weight of the total fish on board or offloaded from the vessel.

6. In § 635.27, paragraph (c)(1)(i)(B) is revised to read as follows:

§ 635.27 Quotas.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(B) A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental catch permit for swordfish or an HMS Angling or Charter/Headboat or Incidental HMS squid trawl permit has been issued, or caught after the effective date of a closure of the directed fishery from a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued, is counted against the incidental catch quota.

* * * * *

7. In § 635.28, the first sentence of paragraph (c)(1)(i)(A) is revised to read as follows:

§ 635.28 Closures.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) No more than 15 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5 N. lat. or landed in an Atlantic coastal state on a vessel using or having on board a pelagic longline, or issued an Incidental HMS squid trawl permit. * * *

* * * * *

8. In § 635.71, paragraph (d)(18) is added, and paragraph (e)(8) is revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(d) * * *

(18) Retain or possess on board a vessel in the trawl fishery smoothhound sharks in an amount that exceeds 25 percent, by weight, of the total fish on board or offloaded from the vessel, as specified at § 635.24(a)(7).

* * * * *

(e) * * *

(8) Fish for North Atlantic swordfish from, possess North Atlantic swordfish on board, or land North Atlantic swordfish from a vessel using or having on board gear other than pelagic longline or handgear, except as specified at § 635.21(e)(4)(i).

* * * * *

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